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Putting Nondiscrimination into Practice

Realizing the Promise of Gender Equality Laws

As this book's first chapters have shown, substantial gaps exist worldwide in the adoption of laws to address workplace discrimination and sexual harassment. At the same time, some types of protection against discrimination have been passed in the majority of countries. But have these protections been fully realized? Some examples offer insights:

- In Europe and Central Asia, all countries but one have passed employment discrimination laws addressing gender and disability. Greater protections for workers with disabilities have likely helped make workplaces more inclusive; according to the European Social Survey, the gap in employment between people with and without disabilities fell by nearly 5 percentage points from 2006 to 2011.[1] At the same time, inequalities remain large, and women are especially disadvantaged: across twenty-eight European countries, women with disabilities are between 17 and 25 percentage points less likely to be employed than women without disabilities.[2]
- In the Americas, all countries but one address employment discrimination based on gender and race. For example, in Canada, the 1986 Employment Equity Act, which prohibited employment discrimination on the basis of gender and race/ethnicity, preceded a decline in occupational segregation and an increase in women's employment; however, these trends leveled off less than a decade after the law was strengthened in 1995, which researchers hypothesized was "the consequence of a weak enforcement mechanism, with the penalties for not following the law being too weak and/or the likelihood of such sanctions even being imposed being small."[3] Today, it's clear equality has

yet to be achieved: Indigenous women earn just 65 cents per dollar compared to the earnings of non-Indigenous men, while racialized women earn just 67 cents compared to nonracialized men.[4]

- Every country in South Asia takes some approach to prohibiting sexual harassment. These laws have contributed to growing public awareness that sexual harassment is a barrier to women's participation in the economy.[5] However, experiences of sexual harassment remain common in the region: in Bangladesh, one-third of women report that sexual violence in the workplace is likely, while in Delhi, 66 percent of women and girls have experienced sexual harassment in public spaces.[6]

In other words, in each of these regions, the adoption of laws addressing discrimination has mattered—yet it's also clear that the promise of these laws has not been fulfilled. Addressing this unrealized potential is the focus of this chapter.

To be sure, discrimination laws alone, even if perfectly implemented, are not enough to eliminate gender inequalities in the economy (which is why the second half of this book focuses on other critical areas of law, such as those impacting gender equality in caregiving and education). Yet these protections, which can reduce discrimination and influence norms and expectations about workplace behavior, are an important piece of the solution—and, when fully realized, can have transformative impacts on people's lives.

Around the world, countries have adopted a variety of strategies and legal mechanisms designed to facilitate broader and more effective realization of protections against discrimination and sexual harassment, and to ensure that the benefits of these laws are accessible to all workers regardless of socioeconomic status. These measures range from reducing barriers to litigation by guaranteeing legal aid and enabling workers to approach the courts collectively, to providing alternative methods of dispute resolution that require less time and money, to requiring employers to take preventive measures against discrimination and establishing human rights commissions specifically tasked with enforcing equal rights legislation.

This chapter examines these strategies and the evidence to support them, looks at how widely they've been adopted worldwide, and assesses the key obstacles to justice that must be addressed. Why doesn't the court system already work for all people, and how can barriers to litigation be addressed? Are there effective alternatives to the formal judicial process? What can countries do to not only address discrimination after it occurs but also prevent it from happening in the first place? And most fundamentally, what would it take—and what more do we need to learn—to ensure that laws comprehensively addressing discrimination and harassment are not only in place but actually realized in a way that improves workers' lives and increases gender equality in the economy?

ACCESS TO JUSTICE: COMMON BARRIERS ACROSS COUNTRIES

Going to court remains one of the central avenues to seek remedies for employment discrimination when other approaches fail. While they can be lengthy and costly, with no guarantee that they will provide a remedy, lawsuits can lead to powerful outcomes for individuals and groups, increase public awareness about critical issues of discrimination, contribute to shifts in public opinion, and mandate impactful changes to discriminatory laws and employer practices. For example:

- In a 2014 Supreme Court of Justice case from Argentina, a female bus driver, in partnership with the Women's Foundation, a civil society organization, brought a collective lawsuit successfully challenging a pattern of gender discrimination across seven different transport companies, all of which refused to hire women who met all the qualifications for the job.[7] As part of its remedy, the Court ordered the establishment of a 30 percent quota for women bus drivers in Salta, the city that was the focus of the litigation. Though companies have yet to meet the quota, as of 2019 the number of women drivers in the city had increased to 140.[8]
- In a 2010 Supreme Court case from Finland, the public prosecutor won a conviction against a company managing director who had sexually harassed and discriminated against at least four young female employees. The women, who were ambulance drivers, had all been subjected to unwanted touching by the director while resting in the breakroom, typically during the night shift. Though the women had not filed a complaint within the one-year statute of limitations, the Court determined that the matter met the standard of being "very important to the public interest," and that it was understandable that the women hadn't immediately pursued litigation given the power imbalance and economic risks of doing so. Consequently, the Court held that the public prosecutor could bring the case of their own accord.[9]
- In the United States, court-ordered mandates to change workplace policies following discrimination litigation improved outcomes for women and workers of color; for example, an analysis of 500 high-profile employment verdicts found that mandates to institute formal progress and performance reviews improved representation in management for both White and Black women.[10]

Across countries, however, a range of common barriers often deters women from pursuing their rights through courts; some of the same barriers likewise deter reporting through internal workplace processes or other formal mechanisms. While many of these obstacles affect workers regardless of gender, others intersect with underlying norms and forms of discrimination to create even higher hurdles for women whose rights have been infringed in the workplace.

Understanding the nature and prevalence of these barriers is critical for identifying responsive solutions.

Financial Barriers

Pursuing a discrimination claim can impose a range of financial costs, including court fees and the costs of hiring an attorney. Alongside these direct costs, indirect costs—such as transportation costs, loss of income from missing work, and childcare costs while attending hearings—can quickly escalate. Particularly given the often lengthy duration of litigation, with lawsuits commonly enduring for months or years, these costs can easily become overwhelming and serve to deter many workers who've experienced discrimination from seeking justice through the courts. At the same time, workers seeking to enforce their rights through any mechanism—whether the formal court system or an internal workplace process—often fear losing their jobs or income due to retaliation. And while this is true for workers personally filing a claim or complaint, it can also extend to colleagues who participate in the investigation.

These barriers span countries at all income levels. In Wales, for instance, a study involving in-depth interviews with workers who had filed employment discrimination claims based on sex, race, or disability found that financial costs and fear of retribution by employers were among the most common obstacles to pursuing justice.[11] In Indonesia, a United Nations Development Programme survey conducted in five provinces found that 83 percent of respondents cited "costs" as their greatest problem in working with lawyers.[12] In South Africa, the 2014 Social Attitudes Survey found that "lack of funds to pay for expenses" was the most frequently cited barrier to the courts, named by 59 percent of respondents; people in rural areas, from marginalized racial groups, and with less education were even more likely to indicate costs were an obstacle.[13] Moreover, while financial barriers affect workers regardless of gender, due to gender gaps in pay, assets, and control over household finances, women are often even less equipped than other workers to pay filing fees, other court costs, and attorneys' fees. For example, in Jordan, women are more likely than men to either refrain from going to court or go to court without a lawyer due to financial barriers.[14]

Knowledge Barriers

Alongside lack of financial resources, lack of awareness about the law and how to access legal institutions creates a second barrier to taking action in the face of discrimination. Across countries, the legal system is often notoriously complex to navigate, and bureaucratic obstacles to justice are common. The ability to access the courts or other justice mechanisms requires not only knowing what rights the law protects but also having an understanding of how to file and pursue a claim.

Knowledge barriers to justice are widespread. For example, a survey in Colombia found that 66 percent of people felt that a lack of information about their rights was a serious obstacle to justice.[15] In South Africa, the same 2014 Social Attitudes survey noted in the previous section found that "lack of knowledge about laws and legal rights" was the second-most-cited deterrent to court access, mentioned by over a quarter of respondents.[16] And in countries where women still have significantly lower access to formal education than men, these knowledge gaps can likewise reflect and exacerbate gender disparities. In Timor-Leste, for instance, where just half of girls completed lower secondary school as of 2008,[17] a survey completed that year found that only 59 percent of respondents (68 percent of men versus 50 percent of women) had heard of the formal court system, while just 27 percent (32 percent of men compared to 22 percent of women) were aware of any nongovernmental organization (NGO) that provided legal services; those least likely to have knowledge of these institutions disproportionately lived in rural areas and/or had lower levels of education.[18]

Distance and Accessibility Barriers

Third, geographical distance from courts and legal services can create another obstacle to pursuing justice through formal mechanisms.[19] In some countries, the nearest lawyer may be hundreds of miles away. For example, a 2006 study found that in Sierra Leone, which was home to nearly six million people at the time, there were only around 100 lawyers across the country, and that over ninety of them were based in the capital city, Freetown.[20] Meanwhile, 62 percent of survey respondents in Indonesia reported that courts were not at an accessible distance from home.[21] These geographic barriers are particularly burdensome given that the average legal case can require a series of court appearances; one study in the Delta state of Nigeria, for example, found that the average case required nine separate trips to court.[22] Moreover, as with barriers linked to financial costs, geographic barriers disproportionately affect women, given restrictive norms and even laws that discourage or restrict women from traveling by themselves.

Lack of accommodations for specific groups can also hinder accessibility. For example, for some migrant, Indigenous, and ethnic minority women, language barriers and a lack of interpretation services can put formal court proceedings out of reach.[23] For women with disabilities, a lack of accommodations within courthouses—such as ramps to enable entry by wheelchair users, sign language interpreters, and forms available in Braille or by screen reader for those with visual impairments—are common and substantial barriers to realizing rights. A survey of court users' satisfaction in Armenia, for example, found that "access for persons with disabilities" received the lowest score among thirty-five different aspects of the court experience.[24]

Normative Barriers and Expectations about the Judicial System

Finally, normative and societal barriers that discourage women from pursuing justice through formal mechanisms can pose a significant barrier to the realization of rights, particularly for cases concerning sexual harassment, gender-based violence, or rights within the family. Similarly, the expectation that pursuing litigation will not lead to the favorable resolution of a claim—whether informed by past negative experiences with unfulfilled legal rights, the experiences of friends or family, or even empirical evidence about the likelihood of success—can likewise discourage women who've faced discrimination from seeking a legal remedy.

Speaking up about one's experience of discrimination or harassment is a first step toward pursuing redress.[25] Yet women often don't raise their legal rights. In some contexts this may reflect limited awareness of newer laws (since only in more recent decades have most countries begun to legally prohibit sexual harassment in the workplace); in others, community norms may inhibit women from labeling discriminatory or even violent behavior as a violation of legal rights. The 2017–20 World Values Survey, for instance, found that over a quarter of people across fifty-seven countries and territories—and over half in some countries—believed it was acceptable in at least some circumstances for a man to beat his wife.[26] Yet in many places, women's reluctance to assert their claims of discrimination, harassment, or violence likely also reflects a fear of the social and economic consequences.

In Jordan, for example, a study analyzing the Statistical Survey on the Volume of Demand for Legal Aid found that 26 percent of women, compared to 17 percent of men, noted that they were likely to avoid going to court to resolve a dispute due to customs and traditions.[27] In Timor-Leste, a survey of over 1,120 residents conducted by the Asia Foundation found that a higher share of respondents were comfortable resolving disputes through traditional institutions (*adat*) (79 percent) than through the courts (64 percent), and that 58 percent of respondents disapproved of women speaking on their own behalf in the *adat* proceedings.[28] And in the United States, a study by the Equal Employment Opportunity Commission (EEOC) found that most workers who were harassed on the job elected to avoid their harassers, downplay the incident(s), or "attempt to ignore, forget, or endure the behavior"; reporting the harassment or filing a legal complaint were the least common responses, due to fear of "disbelief of their claim, inaction on their claim, blame, or social or professional retaliation."[29]

In a range of countries, these concerns and attitudes are often amplified by the judicial process itself due to stigmatizing court practices that compel accusers to publicly answer questions about their relationships and sexual history. For high-profile incidents, media coverage only exacerbates the public scrutiny of women who bring discrimination and sexual harassment cases, often by way of attacks on their character or "blame-the-victim" narratives. A group of female mine workers who brought a landmark sexual harassment case in the United States, for

example, had to contend with gross violations of privacy throughout their decade-long lawsuit, including a federal magistrate's report that disclosed one of the plaintiff's children had resulted from a rape, and a line of questioning in court of another plaintiff regarding her husband's purported low sperm count.[30] Troublingly similar stories abound across countries, with some women even facing violent retribution for asserting their rights. As one case study of women's access to justice in Egypt summarized, given the combined effects of social pressure, financial costs, lengthy proceedings, and emotional and economic consequences of litigation, "for women to go to court, it means that they have exhausted all other avenues and that going to court is worth the price they pay."[31]

More broadly, a learned distrust of institutions, and of the legal system in particular, can deter people in many settings from pursuing a legal remedy after facing discrimination. Closely related to this is the perception that the judicial system is corrupt and delivers justice only to the wealthy. Surveys from a range of countries over the past several decades have confirmed this is a common view. In Ecuador, for instance, a 2000 survey found that 91 percent of people felt that corruption was the biggest problem with their judicial system.[32] According to the most recently completed World Values Survey, an average of 15 percent of people across fifty-seven countries and territories, when asked how much confidence they have in the courts, report "none at all"; an additional 29 percent report "not very much."[33]

Critically, this lack of confidence is not unfounded; corruption is indeed a problem that plagues countries at all income levels to varying degrees. Further, the odds of success in litigation—particularly for individuals with fewer economic resources—are often quite low. For example, an analysis of employment cases filed in the United States between 2009 and 2017 found that just 101 out of 2,431 sex discrimination claims were decided in favor of the plaintiff—a win rate of 4 percent. Likewise, just 3 percent of race discrimination claims were successful; some evidence suggests that biases within the judiciary help explain the even lower rate of success for employment discrimination claims compared to other civil lawsuits.[34] These barriers to enforcement at the individual level create a vicious cycle, as the lack of justice and accountability experienced reinforce distrust in the legal system and feelings of disempowerment, thereby impeding laws' potential for impact.

MECHANISMS FOR ACTION

Collectively, the barriers articulated in the previous section—from financial and personal costs to infrastructural and social barriers to many women's well-founded concerns that they won't be heard, believed, or provided with justice in court—underscore the importance of ensuring the burden of enforcement does not fall primarily on individual women. Indeed, efforts to monitor employers' compliance with the law and prevent discrimination before it happens are critical elements of

any effective approach to equal rights at work. At the same time, providing viable pathways for individuals and groups of workers to seek legal remedies when their rights have been violated, including by making litigation more accessible and by providing alternative methods of seeking justice, will remain essential for antidiscrimination laws to be effective. Importantly, beyond their substantive protections against discrimination and harassment, laws shape what tools women have access to if and when their rights at work are infringed. In particular, laws determine:

- Who can go to court to claim their rights
- Whether claims have to be brought individually or can be initiated and decided on behalf of a group that has experienced discrimination
- Whether options are available for seeking individual remedies and compensation that are less costly than litigation—in time, resources, and reputation
- Whether workers who claim their rights are protected from retaliation

How do laws vary in these areas worldwide, and what do we know about the strengths and drawbacks of different approaches to enforcement of laws to end discrimination and sexual harassment at work?

Access to Legal Aid

Although the barriers to litigation are many, access to legal assistance can make a critical difference for individuals seeking to enforce their rights through the courts. For example, an evaluation of a legal aid program that deployed paralegals trained in law and mediation to rural Liberia found that access to legal aid substantially increased the share of individuals involved in legal disputes who reported that their case outcome was fair, who were satisfied with the result, and who felt "it left them better off"; women who had access to the program were particularly likely to opt into paralegal assistance, when their other option was customary dispute resolution.[35] Always important, the impact of legal assistance on gender equality is heightened in settings where the alternative is customary mechanisms with gender inequality embedded in practice. In Ecuador, an evaluation of a five-year pilot program providing legal aid to low-income women, many of whom needed help with family law cases, found that participants in the program were more likely to receive child support payments, less likely to experience domestic violence following their divorce, and more likely to view the justice system positively than women with similar legal issues who did not receive legal aid.[36] In the United States, a systematic review of studies examining the impact of bringing a civil case either with a lawyer or pro se (representing oneself) found that those represented by an attorney were between 1.2 and 14 times as likely as pro se litigants to win their cases.[37]

Under international law, there is a well-established right to counsel for people facing criminal charges.[38] In recent decades, international and regional instruments and courts have likewise begun to more strongly embrace the right to an attorney in civil cases, which can address issues as consequential as custody of

one's children, eviction from one's home, or loss of employment. For example, the Charter of the Organization of American States, adopted in 1967, requires that all countries in the region "dedicate every effort to . . . adequate provision for all persons to have due legal aid in order to secure their rights."[39] In 1979, a decision of the European Court of Human Rights found that a woman had a right to legal aid in her divorce case against her abusive husband, establishing a precedent used to advance the right to counsel in civil cases more broadly.[40]

International treaty bodies have also made clear that access to justice should include representation in civil matters related to fundamental human rights. For example, in 2005, the United Nations (UN) Committee on the Elimination of Racial Discrimination, charged with monitoring the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, issued an official interpretation of the treaty's right to equality before the law in which it made clear that "in order to make it easier for the victims of acts of racism to bring actions in the courts, the steps to be taken should include the following: Granting victims effective judicial cooperation and legal aid, including the assistance of counsel and an interpreter free of charge."[41] Similarly, in 2007, the UN Human Rights Committee published guidance on Article 14 of the International Covenant on Civil and Political Rights, which establishes the right to counsel for people charged with a crime, in which it clarified that "states are encouraged to provide free legal aid in [noncriminal cases], for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so."[42]

International treaties and agreements have also recognized the specific importance of legal aid for gender equality. The Beijing Declaration and Platform for Action, adopted unanimously by 189 countries in 1995, committed governments to "ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty."[43] Most recently, the Protocol to the African Charter on the Rights of Women ("Maputo Protocol"), ratified by forty-two out of fifty-five African countries and signed by seven more,[44] established that: "States Parties shall take all appropriate measures to ensure: 1) effective access by women to judicial and legal services, including legal aid; 2) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid."[45]

At the national level, however, there is substantial variation in whether individuals have the right to legal aid in civil cases, and in particular in employment discrimination and sexual harassment cases. In some countries, the provision of legal aid is at the discretion of the court or other bodies and may depend on whether the matter is deemed important enough. For example, Australia's legislation requires that legal aid be "in the interest of justice" and "reasonable given the importance of the matter." In some cases, legal aid is limited to "complex" matters, which may limit access to justice for women in cases that are not deemed legally complex but are still too difficult for an individual unfamiliar with the legal system to navigate.

For example, Ireland limits legal aid to cases where it "should be unreasonable for the applicant to deal with the matter because of its complexity."

In other countries, the availability of legal aid is based not on the importance or complexity of the case but rather on whether litigation is reasonable or likely to be successful. The strength of these restrictions varies. For example, Djibouti's legal aid law states that "legal aid is granted in gratuity and in contentious matters both to the applicant and the defendant whose action does not appear, manifestly, inadmissible or unfounded." Other countries, such as Malaysia and Zimbabwe, require that individuals have a "reasonable ground" to sue. Stronger restrictions are found in some countries, such as Germany, Iceland, and South Africa, that require that litigation have a reasonable chance to be successful.

Moreover, further details of countries' legal aid policies and programs often shape their coverage and impact, particularly for marginalized women. For example, some countries' legal aid programs exclude certain undocumented immigrants from eligibility; migrant workers are often particularly vulnerable to discrimination and sexual harassment because of their lack of legal rights and protections.[46] Some also restrict eligibility to the very poorest workers, leaving out many who have slightly higher incomes but nevertheless cannot afford private counsel. In some countries, legal aid systems are established but there is no explicit individual right to legal aid or guarantee that all individuals have access to legal aid. For example, in Rwanda, legislation requires the Law Society Council to establish a bureau for individuals with insufficient resources "in such manner as it sees fit." In Fiji, legal aid is subject to the resources available.

Quality of representation also varies; in Bangladesh, for example, NGO lawyers representing women in family law cases have much higher success rates than do government legal aid lawyers.[47] This may be due to capacity rather than ability: in many countries, legal aid offices handle a high volume of cases with only minimal resources, inevitably creating barriers to full and comprehensive representation of every client.

The overburdening and underfunding of legal aid offices also require public interest lawyers to turn away potential clients, especially since few countries fulfill a "right" to legal assistance for civil cases. For example, one study from Australia found that 45 percent of women seeking legal aid for a discrimination claim were turned down.[48] In Wales, a study found that the Equal Opportunities Commission provided litigation support in only a small fraction of discrimination claims brought to their attention: two out of thirty-four for race discrimination in employment and two out of eight for sex discrimination.[49] And again, would-be litigants in rural or remote areas may face even higher hurdles to representation. For example, in Canada, a 1998 study of legal aid services provided to women found that "most lawyers in the smaller towns had stopped accepting legal aid cases since it was not financially worthwhile";[50] nearly two decades later, reports

from across provinces continued to find that legal aid was largely inaccessible in rural areas.[51]

Collective Legal Actions

Although legal aid to individuals is critical—especially since some acts of discrimination or harassment target only a small number of people, and individuals may not know who else is affected—a second mechanism for expanding access to justice is group legal actions. Group-based litigation has two key benefits: (1) allowing more people to access the court system, despite the aforementioned barriers, and (2) increasing judicial efficiency by addressing a significant number of similar claims at once. Different forms of collective lawsuits are available across countries, including:

- **Class actions**, in which a small group of representative plaintiffs brings a claim on behalf of a large group of people in the same circumstances, seeking a judgment and ruling on damages that will typically bind the whole group. These types of actions have had demonstrated impacts in discrimination cases: in the United States, for instance, a study of over 500 employment discrimination cases found that class actions were far more likely than other cases to result in substantive remedies requiring the employer to take specific actions, such as analyzing demographic data on compensation and promotions, taking affirmative measures to recruit and hire members of marginalized groups, establishing new job training or mentoring programs, hiring an equal employment opportunity consultant, or complying with reviews by an external monitor tasked with overseeing implementation of the court's orders.[52] In relation to more "pro forma" remedies—such as simply posting workers' rights more conspicuously—research suggests these actions have greater impacts on inequality.[53]
- ***Amparo colectivo***, a collective lawsuit available in some Latin American countries, through which a group of individuals can approach the courts for a fast-track ruling on an action that has infringed their fundamental rights. Whereas traditional class actions are rare in Latin America, *amparo colectivo* can be a similarly important tool for realizing rights on behalf of a group. In Argentina, the case brought against the bus companies by Mirtha Sisnero was an *amparo colectivo*.[54]
- **Mass torts**, in which a group of individual lawsuits seeking remedies based on the same conduct by the same defendant are joined together. Mass torts have been used to seek redress in cases of sexual harassment, assault, and other forms of discrimination.[55] For example, one of the key lawsuits targeting former Hollywood producer Harvey Weinstein, whose long history of sexual abuse and harassment served to catalyze the #MeToo movement, was a mass tort.[56]

- **Public interest litigation (PIL)**, which refers to cases brought by or on behalf of large groups that address issues of substantial public concern. In India, it was a PIL case, *Vishakha and others v. State of Rajasthan*, that led to the landmark Supreme Court ruling on sexual violence and harassment in 1997, which in turn paved the way for the country's groundbreaking workplace sexual harassment law sixteen years later.
- ***Actio popularis***, which likewise refers to a case brought on behalf of a group to advance a public interest, and which may or may not name specific parties. Some countries also allow an *actio popularis* to be brought before an ombudsman or human rights commission. In Macedonia, for example, a civil society organization brought an *actio popularis* to the ombudsman regarding the policy of public and private hospitals to allow only a child's mother, rather than their father, to accompany them during a hospitalization, arguing that the policy discriminated based on sex and reinforced gender stereotypes about care.[57]
- **Strategic litigation**, in which lawyers bringing a case on behalf of one person or a small group of people aim to change the law in a way that will affect a much larger population. For example, in Switzerland, a group of nurses, vocational teachers, and physical and occupational therapists brought a lawsuit on July 1, 1996—the day the Equality Law came into force—arguing that their low pay classifications constituted gender discrimination, particularly when contrasted to higher-pay, male-dominated occupations such as police officers. In 2001, the nurses succeeded in having their occupation upgraded by one or two pay classes, which translated into around $540 to $1,080 more per month for nurses nationwide.[58]

As these examples demonstrate, these and other collective approaches to litigation have had an impact for workers facing discrimination across countries. However, the availability of these mechanisms varies within and across countries. In Canada, for example, a study found that cases addressing systemic discrimination were five times as likely in the British Columbia Human Rights Tribunal, which allows for group litigation akin to class actions, than in the Human Rights Tribunal of Ontario, which has no standard group litigation procedure.[59] Moreover, the specific requirements and limitations that different countries assign to these mechanisms in the law can shape the extent to which they are effective. Three elements in particular that can make a difference are:

- Who can legally bring a claim on behalf of a group, often referred to as who has "standing"
- What types of claims are eligible for collective litigation
- What types of damages are available to participants in different kinds of collective lawsuits

Further, for class actions in particular, two additional rules can be particularly consequential:

- How potential class members learn about and join the lawsuit, also known as "notice" requirements; and
- Whether the class needs to be "certified" before litigation can move forward.

Right to Bring a Claim. An individual's right to bring a discrimination lawsuit varies across contexts, depending on factors including whether a private right of action is available (meaning that a private person, rather than the government, can seek to enforce a violation of the law) and whether someone must exhaust other remedies before approaching the courts. Generally, the person bringing the claim must also show that they have been personally harmed to be eligible to seek a remedy through the court; in some jurisdictions this is known as "standing." In group-based litigation, this varies. In some countries, only certain government bodies are empowered to bring a claim on behalf of a group; in others, any concerned citizen can do so, even if they were not directly affected. For example, the Constitution of Kenya specifies that:

> (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by . . . a person acting in the public interest.[60]

In some countries, however, collective lawsuits are permitted only if brought by an organization rather than a group of individuals with no organizational affiliation.

Some countries also empower civil society organizations to initiate collective or public interest lawsuits. In Switzerland, the Federal Act on Gender Equality provides that "organisations that have been in existence for at least two years and that have as their object in terms of their articles of incorporation the promotion of gender equality or safeguarding the interests of employees may in their own names have a finding of discrimination declared if the probable outcome of proceedings will have an effect on a considerable number of jobs."[61]

Enabling individuals and organizations representing their interests, rather than government bodies alone, to initiate discrimination claims is likely to support wider access to justice. Particularly in countries where state institutions have been slow to act to protect the rights of marginalized groups, so-called third party public interest standing or other mechanisms for ensuring a broad right to approach the courts can be powerful tools.[62]

Types of Claims. In a range of countries, class actions or PIL are available only for certain types of claims. In particular, a significant number of countries restrict

collective legal actions to those addressing environmental or consumer claims.[63] Explicitly ensuring that collective mechanisms are available for employment discrimination is important for enabling these mechanisms to serve as a tool for workers.

Damages Available. Countries vary in terms of the damages available for different kinds of collective lawsuits and the processes for securing them. Class actions may determine damages for the entire class and foreclose class members bringing their own separate lawsuits or may allow class members to opt out. In the United States, class actions allow for attorneys' fees and punitive damages, making it more likely that lawyers will be eager to take them on. In Brazil, class actions can establish liability on behalf of a group, but each individual must then file their own suit to claim damages.[64] In Australia, only low damages are available for "representative" discrimination lawsuits—those brought on behalf of a group—which disincentivizes the pursuit of collective legal action.[65] Consequently, a number of high-profile sex discrimination lawsuits that could have been brought together were instead initiated as individual cases, decreasing efficiency for claimants and courts alike.[66]

Class Actions: Notice Requirements. For class actions, one important step is identifying all potential members of the class—or, in the case of workplace discrimination, all workers who faced the same type of discrimination while working for the same employer. This process involves two key decisions: (1) what steps must be taken to inform all potential class members of the lawsuit, and (2) whether class members have to opt out or opt in to be a part of it. The United States and Australia, for example, employ an opt-out model, meaning that all potential class members are automatically part of the lawsuit.[67] In contrast, in the United Kingdom, Group Litigation Orders, a class action mechanism introduced in 2000, require plaintiffs to affirmatively opt in.[68] From a judicial efficiency perspective, an opt-out model has clear advantages, as it vastly reduces the likelihood of individuals with repetitive claims coming before the courts. An opt-out model is also most likely to secure a remedy for the largest number of people, especially since the number of people who do opt out is extremely low.

Providing adequate notice to potential class members is important whether countries take an opt-in or opt-out approach. For those with an opt-out model, learning about the lawsuit is important for ensuring they do not become bound by the judgment affecting the class if they would prefer to bring an individual lawsuit, especially if they have more detailed or specific claims relating to the same conduct. For those with an opt-in model, adequate notice requirements are essential to ensure that a class action reaches a substantial share of people affected.[69]

Class Actions: Class Certification. Some countries, such as Australia, allow for class actions and do not require class certification before the lawsuit can proceed, instead putting the burden on the defendant to challenge the lawsuit's validity at any time.[70] In other countries, such as the United States, the court must first certify the class by confirming that all the members of the class have enough in common, including shared questions of law or fact, to bring their case together.

These structural choices, and courts' application of them, matter to the accessibility of class actions. Particularly stringent requirements or narrow interpretations of commonality can limit workers' ability to assert common claims. In the United States, for instance, the Supreme Court's ruling in *Wal-Mart v. Dukes*—the largest sex discrimination lawsuit in US history—dealt a blow to class actions challenging systemic discrimination by finding that the members of the class, 1.5 million women who worked at Wal-Mart branches all over the country, did not have enough in common to be certified as a class. As the lawsuit alleged, Wal-Mart's practice of leaving decisions about pay and promotions up to local managers had systematically disadvantaged women, resulting in a workforce in which women comprised 70 percent of hourly workers but less than 10 percent of store managers and just 4 percent of district managers. Since the ruling, according to lawyers in the field, employment discrimination class actions have markedly decreased, and past successful class actions have faced new appeals.[71]

Alternative Dispute Resolution

Although litigation can yield powerful impacts—especially in individual cases that result in structural changes or in cases that are brought and decided on behalf of large groups of workers—the process can also exact significant financial and emotional tolls on participants. Moreover, the duration of lawsuits, which can easily extend for years, are highly disruptive to litigants' lives and work. Indeed, studies across countries find that the length of judicial proceedings is one of the primary sources of dissatisfaction for people accessing the courts. In Turin, Italy, for instance, a survey found that 75 percent of court users did not agree that "judicial timeframes were reasonable"—by far the greatest area of dissatisfaction recorded.[72]

In recent decades, methods of alternative dispute resolution (ADR)—including mediation, negotiation, and arbitration—have grown as mechanisms that can provide remedies to common individual workplace discrimination claims at lower cost and in a shorter period of time than going to court.[73] In South Africa, for example, an analysis of employment cases referred to arbitration in 2005/2006 found that they were resolved in just seventy-nine days, on average,[74] whereas civil trial proceedings typically take eighteen to thirty-six months.[75] In the United States, a 2009 study found that the average duration of a class action

employment discrimination lawsuit to settlement was 1,327 days; in contrast, the average duration of arbitration for employment cases ranged from 233 to 383 days.[76]

ADR mechanisms can serve several functions and take a range of forms.[77] These include:

- Independent investigations of disputes
- Mediation or counseling, which typically involves working collaboratively with a trained third party to reach a solution
- Conciliation, through which a third party helps the two parties to the dispute communicate and evaluate the problem, but does not personally propose a solution[78]
- Administrative hearings, where both parties can present their evidence in arguing their case, and
- Arbitration, in which the two parties present their claims before a trained third party empowered to make a legally enforceable decision, similar to a judge or jury in a trial. In most cases, parties submit to arbitration having agreed in advance that the arbitrator's decision will be binding; in nonbinding arbitration, the arbitrator's decision is advisory and can become legally enforceable only if both parties accept it or if the terms of their agreement specify that it will become binding if neither party objects within a certain period of time.[79]

Availability of ADR. Some countries provide options to pursue ADR at low or no cost through public institutions, including labor commissions, equality bodies, and human rights commissions. Around the world, more than half of countries (54 percent) have independent bodies that handle claims of workplace gender discrimination, sexual harassment, and retaliation or inability to take paid parental leave. However, a third of countries have ADR mechanisms only for some areas, and 14 percent have no independent complaint mechanism for any of these areas.

Countries vary greatly in the extent to which these independent bodies investigate claims or can arrive at a decision that is legally enforceable. For example, in one ADR mechanism in Angola, parties can agree voluntarily to go to arbitration and the matter will be decided by three arbitrators; once they agree to arbitration, the decision of the arbitrators is enforceable in the same way as a court judgment. In some countries, the dispute is settled at administrative hearings, which operate similarly. For example, in Venezuela, labor officials first attempt to provide a solution through mediation, but if that process does not reach an agreement, the employer can provide a written response, and the matter is decided by the labor official. The utility may vary greatly depending on the accessibility, fairness, resolution availability, and quality of execution.

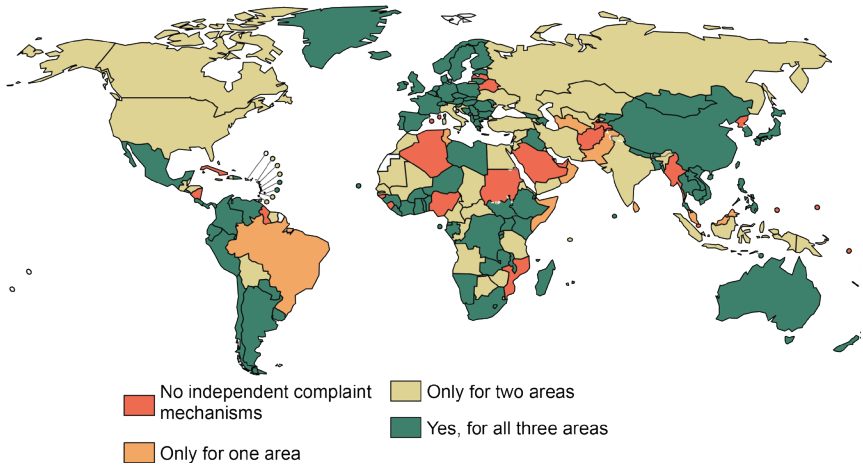

FIGURE 11. Can employees seek justice through an independent body for gender discrimination?
NOTE: The three areas of gender discrimination examined were: (1) gender discrimination, (2) sexual harassment, and (3) inability to take paid parental leave because of caregiving-related gender discrimination.

While some countries offer mediation alongside other ADRs, some exclusively offer mediation as the first step, and if the parties do not reach an amicable resolution, the employee must rely on litigation. For example, in the United States, the EEOC may conduct an investigation to see if a claim is plausible and, if so, attempts to use "informal methods of conference, conciliation, and persuasion" to arrive at an agreement. Some countries reduce the onus on the employee to produce evidence by tasking independent bodies with undertaking investigations. In Iceland, for example, workers can choose to pursue their claims through mediation or an independent investigation, which will result in a decision that is legally enforceable; likewise, in Bolivia, decisions of independent bodies following their investigations are enforceable. In other countries, such as the Netherlands, the body issues only a recommendation or opinion that can not be legally enforced, requiring the employee to take further legal steps if their employer does not follow the recommendation given.

For workers who pursue justice through ADR, legislation guarantees that they can receive at least some form of monetary compensation in nearly half of countries for gender discrimination cases and a third of countries for sexual harassment cases. However, in nearly a third of countries for gender discrimination cases and nearly a quarter of countries for sexual harassment cases, legislation establishes ADR processes but does not contain explicit provisions enabling workers to claim monetary compensation.

The extent to which independent bodies can impose penalties on individuals or companies when they find through ADR processes that gender discrimination

or sexual harassment has occurred is also limited. Only half of countries legally provide for fines, sanctions, or disciplinary action on perpetrators in gender discrimination cases through ADR. Even fewer (34 percent) do so in sexual harassment cases.

Limitations of ADR. As noted earlier, while ADR mechanisms can provide a promising alternative for workers facing discrimination, their potential depends on their effectiveness, fairness, and the remedies they have available. The availability of ADR should not foreclose the opportunity to take a case to court. A noteworthy development in the past two decades is the increase in mandatory arbitration clauses in employment contracts, which prohibit workers from initiating litigation for employment claims.[80] Requiring that workers resolve claims through arbitration has been found to largely favor employers and can prevent employees from making grievances public.[81] For example, an analysis of all employment arbitration cases administered by the American Arbitration Association between 2003 and 2007—nearly 4,000 cases total—found that employees won just 21 percent of cases, compared to a 36 percent win rate for employment discrimination cases heard in federal court.[82] These gaps matter as mandatory arbitration becomes more common. In the United States, the share of workers subject to mandatory arbitration has risen from 2 percent in 1992 to over half; among those, 30 percent have contracts that also waive their right to pursue class actions, excluding nearly twenty-five million workers from the ability to initiate discrimination lawsuits as part of a group.[83] The catalyst was a 1991 Supreme Court decision finding that a worker with an age discrimination claim could be compelled to resolve it through arbitration rather than litigation.[84]

While many European countries have historically prohibited mandatory binding arbitration for individual employment disputes, this is an important area for ongoing monitoring, especially given the many people employed by multinational companies.[85] As just one example, in 2020, the Supreme Court of Canada held that a mandatory arbitration clause for Uber drivers, which required that all disputes be resolved through arbitration in the Netherlands at the cost of $14,500 to the plaintiff, was "unconscionable" and thus invalid.[86] Following the ruling, Uber adopted a contract for drivers in Canada that specified that arbitration could take place where they lived and that they would be responsible only for basic court filing fees. At the same time, the new contracts still defaulted drivers into arbitration as well as a class action waiver, with the option to opt out only by contacting the company within thirty days after signing their contract.[87]

Moreover, beyond employment contracts, laws that require workers who have faced discrimination to go through ADR before they can go to court may also serve to curb transparency about employers' behaviors. This critique of mandating or defaulting to ADRs has intensified in the context of #MeToo. For some workers

who've experienced sexual harassment at work, the privacy afforded by ADR may be a strength of this approach; for those who wish to make their claims public, however, being pushed toward private settlement will allow employers to avoid media and public scrutiny.[88]

A second important consideration is the amount of damages available through ADR, which can potentially be much lower than is available through litigation. In the same American Arbitration Association analysis, for example, among employees who won their cases, the median award was $36,500 and the mean was $109,858—far lower than typical damages won through federal employment discrimination litigation ($150,500 median damages, $336,291 mean damages).[89] Further, some empirical studies have found that women and minority participants receive lower compensation through ADR than do their White, male counterparts, suggesting that the biases and disadvantages commonly embedded in the traditional judicial system often likewise extend to alternative mechanisms.[90]

WHAT HAPPENS TO WORKERS WHO PURSUE THEIR RIGHTS?

While ensuring workers have the ability to take action and access remedies is critical, ensuring that seeking justice is not penalized by employers is equally necessary. In particular, guaranteeing workers will be protected against retaliation if they initiate or participate in a claim is essential for discrimination laws to achieve the intended impacts.

Research shows that retaliation against workers who bring discrimination claims is widespread. For example, a study of workers who took action to address employment discrimination in the Netherlands found that 17 percent reported being unfairly denied a promotion, 17 percent were transferred to a less desirable job, and 10 percent were excluded from a training opportunity in retaliation for their discrimination complaint.[91] Similarly, a US-based survey found that more than two-thirds of women who reported sexual harassment faced some form of retaliation, ranging from being denied a promotion or training opportunity to being given a poor performance review to facing threats or unfair discipline.[92] Overall, an American Bar Association analysis of nearly 1,800 federal employment discrimination claims filed between 1987 and 2003 found that 40 percent of cases alleged retaliation.[93] And even when women are successful in litigation, it may cost them. For example, years after winning her case challenging gender discrimination by bus companies in Argentina—a country that has no explicit protections against retaliation for workers who report discrimination—Mirtha Sisnero has yet to be hired as a driver.[94]

Globally, more than a quarter (28 percent) of countries prohibit gender discrimination at work but fail to ensure any protection from retaliation for reporting

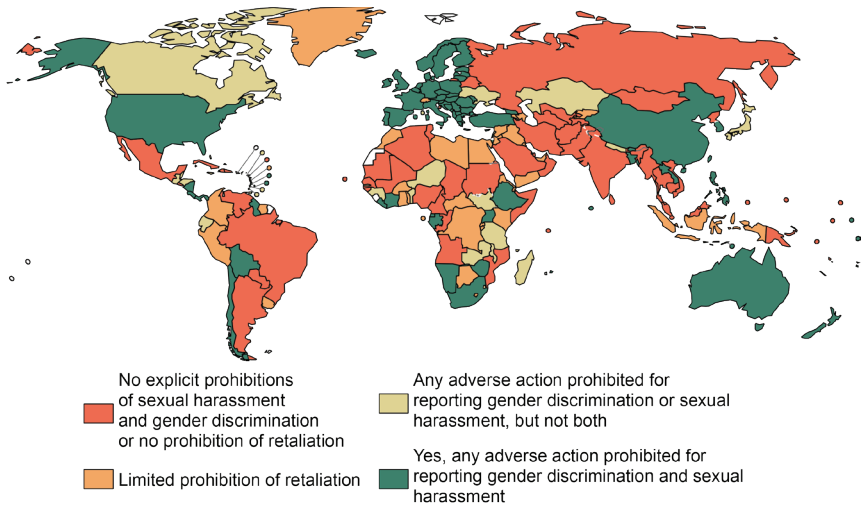

FIGURE 12. Do countries prohibit retaliation for reporting sexual harassment and gender discrimination at work?

discrimination, whether internally, through independent bodies, or by initiating litigation. Twenty percent prohibit sexual harassment at work but fail to prohibit any form of retaliation.

Even among the nearly two-thirds of countries that prohibit at least some forms of retaliation for individuals who report workplace gender discrimination and the more than half that do so for sexual harassment, provisions often fall short of ensuring comprehensive protections. In 14 percent of countries globally, retaliatory dismissal is the only form of retaliation legally prohibited after an individual reports gender discrimination, leaving the door open to other forms of retaliation. Five percent of countries also prohibit other specific aspects, such as harassment or disciplinary actions, but fail to protect comprehensively. Only 46 percent of countries globally prohibit gender discrimination at work and ensure that workers who report discrimination are protected from any adverse retaliatory action. Forty-five percent do so for sexual harassment. These stronger prohibitions are more common in high-income countries than low- and middle-income countries.

In addition to ensuring that workers who report gender discrimination or sexual harassment are legally protected from adverse action, it is also important to prohibit retaliation against workers who participate in investigations. Witnesses have a powerful role in supporting or undermining claims of workplace discrimination or harassment, so ensuring that they feel safe to participate in internal investigations, external hearings, or litigation is critical. Forty-four percent of countries prohibit at least some form of retaliation for workers who

participate in investigations related to gender discrimination, and 39 percent do so for sexual harassment. However, in 20 percent of countries, legislative provisions cover only individuals who report gender discrimination, while 14 percent of countries take the same approach for sexual harassment. Similar to the types of adverse action covered, high-income countries are more likely than low- or middle-income countries to prohibit retaliation against workers participating in investigations.

PREVENTING DISCRIMINATION BEFORE IT HAPPENS: IT TAKES ALL OF US

For employees and employers alike, reducing the incidence of discrimination and harassment in the workplace, rather than merely providing remedies after it occurs, has profound benefits: it protects workers' well-being, helps foster a productive and healthy workplace culture, and enables employers to retain talented employees and avoid costly litigation. Moreover, given the many barriers to pursuing justice on an individual basis—and the greater obstacles and deterrents that persist across gender, race, migration status, and class[95]—effective preventive measures can play an important role in shifting the burden for enforcing equal rights at work from workers themselves to employers and society more broadly.

Yet realizing this vision is far from the current reality. What can employers, labor unions, and labor and human rights commissions do to accelerate progress, and how can national laws create the conditions for everyone to do their part?

The Role of Employers

Evidence suggests that workplace cultures—and the leaders and policies that shape them—make a critical difference for whether discrimination and harassment take place. Indeed, prior research has found that "organizational climate" is the biggest predictor of whether sexual harassment will occur in a given workplace.[96] In a study from Spain, for example, employees who reported through the National Survey on Working Conditions that in their organization there was "tolerance to mobbing and tolerance to threats" were also substantially more likely to report having been sexually harassed.[97] In the words of psychologist Mindy Bergman, testifying before the US EEOC, "organizational climate is an important driver of harassment because it is the norms of the workplace; it basically guides employees . . . to know what to do when no one is watching."[98] Key aspects of the workplace climate include whether perpetrators are held accountable, the extent to which targets of sexual harassment expect to face retaliation if they report, and workers' perceptions of whether their reports of discrimination and harassment will be taken seriously.

Within organizations, leadership plays a crucial role in shaping the workplace climate by setting the tone for whether everyone will be treated equally, including

whether sexual harassment or discrimination will be tolerated.[99] The values leaders hold can also directly influence workplace policies; for example, one study of 350 firms found that those in which top management expressed stronger support for equal employment opportunities were more likely to have voluntarily adopted internal policies designed to promote the recruitment and retention of women and people of color, which were in turn associated with better employment outcomes for those groups of workers.[100] The leaders of any organization or workplace therefore have an immensely important responsibility to set expectations about workplace culture that are conducive to all employees' well-being and equal opportunities.

Once this leadership is in place, well-designed trainings, internal enforcement processes, and other accountability mechanisms can play an important role in maintaining an organizational climate that clearly repudiates discrimination and sexual harassment. Both the existence of these policies and their details matter. Overall, while studies suggest that diversity and inclusion efforts within workplaces can make a difference, the extent of their impact is likely to depend on factors including whether leaders and institutions genuinely respect and commit to these ideals, whether adequate and sustained resources are allocated to implementation, and whether a given initiative provides pragmatic tools for reducing bias, rather than merely symbolic or superficial gestures. For example, past research in the United States has shown that women working for employers without sexual harassment policies experience higher rates of sexual harassment than those with policies; moreover, "proactive" approaches to preventing harassment (e.g., explicit complaint procedures and training programs) were found to be more effective than "informational" approaches (e.g., including sexual harassment in the employee handbook).[101] Similarly, efforts to establish organizational responsibility for increasing the managerial diversity of a given workplace have been found to be more effective than managerial trainings on diversity alone.[102] Moreover, while further research is needed across contexts to identify which employer practices are most likely to measurably reduce discrimination at work, an organization's public commitments to equal treatment can help shape norms to discourage the expression of biases in the workplace.[103]

In short, neither leadership nor policy adoption alone is enough. Both are needed to ensure that, in practice, the steps taken are effective at reducing harassment and instilling confidence in employees that any claims they do have will meet with a fair response. Importantly, laws can both influence the policies in place and help shape leadership priorities.

What Steps Must Employers Take to Prevent Sexual Harassment? Forty percent of countries require employers to prevent sexual harassment in the workplace. In 12 percent of countries, prevention is a general requirement, but legislation does not specify the particular steps employers need to take. In 28 percent of countries, however, legislation outlines specific measures to prevent sexual harassment,

including holding trainings, creating a code of conduct or outlining penalties for committing sexual harassment, raising awareness of sexual harassment laws, or devoting human resources to handling sexual harassment complaints. Laws containing specific employer requirements to prevent harassment are currently more common in high-income countries (40 percent) than in middle-income countries (24 percent) or low-income countries (15 percent).

Separately, laws may incentivize employers to take steps to prevent sexual harassment by holding them legally responsible for sexual harassment committed by employees at work. More than a third of countries (36 percent) have these types of provisions. For example, Macedonia's Law on the Prevention of the Harassment at work makes individual employees and their employers liable for damage caused by sexual harassment. Other countries, such as South Africa, hold employers vicariously liable unless they have taken steps to prevent harassment: "(3) If the employer fails to take the necessary steps referred to in subsection (2), and it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened that provision. (4) Despite subsection (3), an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act." While nearly half of high-income countries explicitly make employers legally responsible for sexual harassment at work, only 4 percent of low-income countries do. Similarly, while these provisions are somewhat common in Europe and Central Asia and the Americas, only 11 percent of countries in the Middle East and North Africa and 11 percent of countries in sub-Saharan Africa have explicit provisions making employers legally responsible.

Importantly, court cases demonstrate that these types of requirements matter for accountability. For example, in Costa Rica, a company urged a female employee to resign after she reported sexual harassment by her supervisor. When she went to court, the judge found that she had been sexually harassed and ruled that the employer had a responsibility to communicate sexual harassment policies, to take steps to ensure those policies were effective, and to protect whistleblowers, citing provisions of the labor code that required preventive measures.[104] The case also underscored the importance of vicarious liability: though the woman initially sued both the company and the individual who had harassed her, the Labor Court ruled that only her employer could be held liable and required to pay damages.

Meanwhile, in Australia, the Industrial Court ruled in a 1995 case that the dismissal of a truck driver who sexually harassed a woman working at a store where he was making a delivery was unjust because he had not been educated about sexual harassment. The court explained: "The broadening of the concept of sexual harassment . . . has cast a very wide net over conduct that heretofore

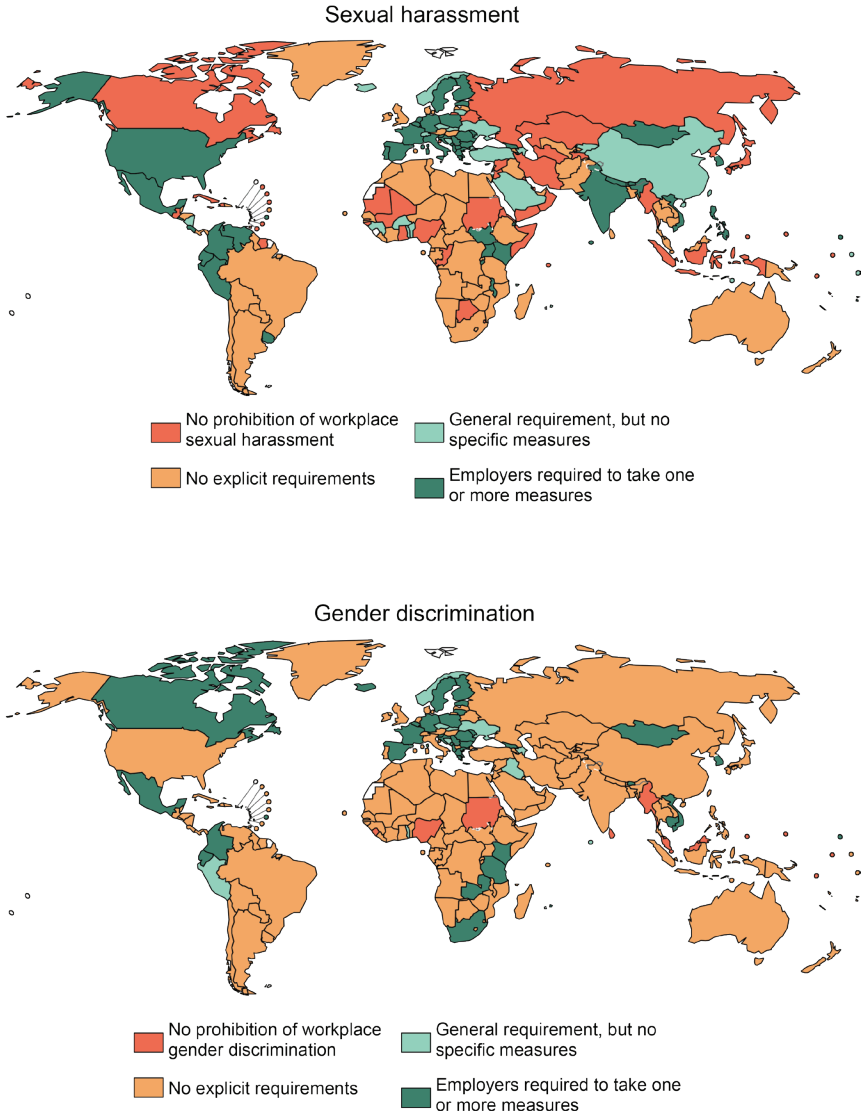

FIGURE 13. Are employers required to take steps to prevent workplace sexual harassment and gender discrimination?

was not unlawful. The failure of the respondent to bring to the applicant's attention, within its own workplace, his new obligations to avoid engaging in conduct that constitutes sexual harassment makes it harsh, in the context of his good service record, to terminate him for a single incident of this type."[105] In so doing, the court plainly indicated that employers have a responsibility to communicate sexual harassment policies clearly and comprehensively to their employees.[106]

What Steps Must Employers Take to Prevent Discrimination? Just a quarter of countries require employers to take steps to prevent gender discrimination in the workplace. In 5 percent of countries, this is a general requirement with no detail regarding particular actions, while in 20 percent of countries, employers are required to take specific steps to prevent discrimination. For example, Barbados requires employers to have a policy statement against discrimination that contains the following information:

> a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to discrimination; a statement to the effect that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects an employee to discrimination; a statement explaining how complaints of discrimination may be brought to the attention of the employer; . . . a statement informing employees of the provisions in this Act which give them a right to make a complaint where discrimination is committed against them and the relevant authority to whom the complaint may be made.

Are All Private Employers Covered? Critically, even when countries do require employers to take proactive steps to prevent gender discrimination and sexual harassment, exceptions built into the law often leave workers at certain employers uncovered. In particular, religious organizations and nonprofits are sometimes exempt from antidiscrimination laws that apply to other private employers. Altogether, discrimination laws in 12 percent of countries include exceptions for religious employers, while 3 percent do for nonprofits. These legal loopholes typically happen not by chance but as a result of extensive lobbying by the employers they affect.[107]

Moreover, exempt employers do indeed discriminate, and cases of religious organizations refusing admission or employment on the basis of sex, sexual orientation, race, and other characteristics have been documented across countries.[108] For example, a range of court cases in the United States have ruled that religious schools can validly discriminate against unmarried female employees who become pregnant, arguing that they are bad role models. The precedents established by these exemptions can even erode protections for workers in covered employment:

in *Chambers v. Omaha Girls Club*, a US federal district court ruled that a private, nonprofit organization—despite not being explicitly exempt—did not violate federal protections against sex, race, or marital status discrimination when it fired a twenty-two-year-old Black unmarried woman for getting pregnant. Citing cases involving religious employers, the court found that the organization's policy of terminating unmarried pregnant employees was "a legitimate attempt by a private service organization to attack a significant problem within our society."[109]

The Role of Labor Unions

Like leadership within workplaces, leadership within labor unions can also play a powerful role in the extent to which sexual harassment and gender discrimination are addressed. Though unions have played a foundational role in strengthening labor rights legislation worldwide, they are affected by bias and discrimination just as other institutions are. Moreover, as with many membership-based organizations, they have often prioritized the interests of the majority at the expense of underrepresented groups.

Both factors contributed to the opposition of some early-twentieth-century unions, which were overwhelmingly male, to the expansion of women's labor rights, as the entry of more women into the workforce was perceived as competition for "men's" jobs. A more contemporary manifestation of this dynamic is the deprioritization of labor issues that are particularly important to women, such as paid leave and sexual harassment. These gaps are exacerbated by women's underrepresentation in union leadership roles. Moreover, unions' own policies may inadequately recognize and provide responses for discrimination and harassment, particularly when involving actions by one union member against another. Unions have also often prioritized seniority at the expense of increasing gender and intersectional equality. Examining these internal policies and practices and ensuring that gender and intersectional equality are sufficiently prioritized in governance and in the laws, policies, and practices that unions advocate for could powerfully support the realization of equal rights in the workforce.

The Role of Labor Commissions, Human Rights Commissions, and Other Independent Bodies

Finally, labor commissions and human rights commissions have the potential to play an important role in creating safer and nondiscriminatory work environments by holding employers accountable.

First, these independent bodies can help raise awareness of discrimination and harassment at work and how to prevent it through education, awareness, and advocacy support. These efforts may broadly aim to reach the general public or take the form of more targeted approaches, including supporting employers who want to improve by identifying best practices and providing legal advice and support to

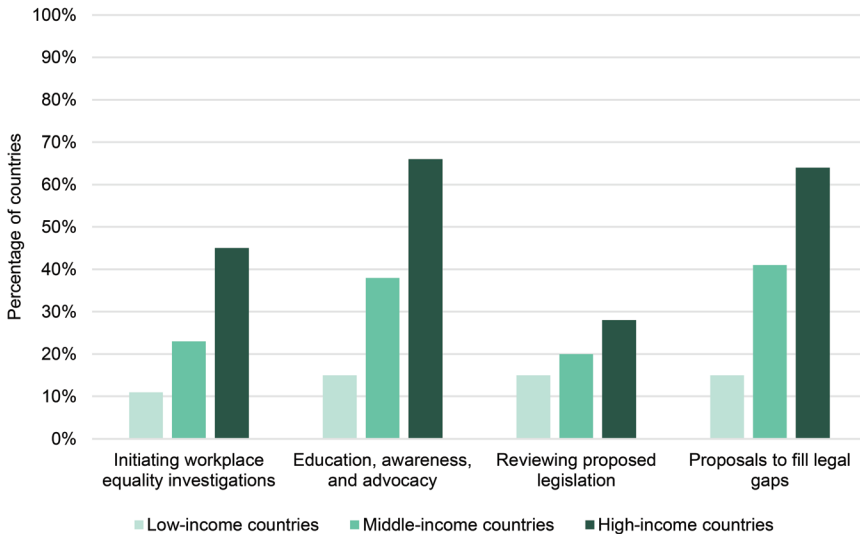

FIGURE 14. What responsibilities do independent bodies have for preventing workplace gender discrimination?

individuals whose rights have been violated. Forty-three percent of countries legally require an independent body to take on these roles, and an additional 20 percent of countries task independent bodies with at least some aspect of these roles.

Second, these independent bodies can help identify violations independently through data collection, monitoring, or routine or targeted investigations of workplaces even in the absence of a claim. Workplace investigations to ensure countries' compliance with occupational health and safety laws or child labor laws are already commonly conducted by labor inspectorates in countries around the world. Ensuring there is dedicated staff monitoring compliance with discrimination and harassment provisions is critical to identifying and remedying violations in settings where workers may be hesitant to pursue claims on their own. Similarly, companies are already required to provide a significant amount of information to national governments about their finances and activities; requiring that they also submit sufficient information about workplace demographics, compensation across gender, race, and other statuses, and discrimination complaints would serve as a valuable tool for monitoring firms' efforts to realize equal rights at work in practice. More than a quarter of countries (28 percent) have taken the important first step of making an independent body legally responsible for initiating investigations into gender discrimination or sexual harassment at work.

Third, independent bodies can help realize equal rights at work through systemic changes. As bodies responsible for supporting equality in employment and

investigating individual claims of discrimination or harassment, they are uniquely positioned to identify gaps in existing legislation. Forty-four percent of countries make independent bodies responsible for proposing new legislation, policies, or regulations to advance gender equality at work. An additional 13 percent task them with at least some aspect that may intersect with workplace gender equality, such as labor rights broadly or human rights generally. Additionally, these bodies have the potential to play an important role in advising government on the impact that legislation may have on workplace gender equality. More than a fifth of countries (22 percent) make these independent bodies responsible for reviewing proposed laws and policies for the impact that they're likely to have on gender equality at work.

BETTER DATA AND MONITORING TO REALIZE INTERNATIONAL TREATIES AND AGREEMENTS

Countries' proactive efforts to enforce discrimination laws and reduce barriers to accessing justice are critical in their own right—but they also play an important role in shaping whether governments are fulfilling their commitments under international treaties and agreements. Numerous widely adopted global instruments guarantee equal rights in employment, including:

- The Universal Declaration of Human Rights
- The International Convention on Economic, Social, and Cultural Rights
- The International Labour Organization (ILO)'s Discrimination (Employment and Occupation) Convention
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Rights of Persons with Disabilities
- The Beijing Declaration and Platform for Action
- The Sustainable Development Goals
- The ILO Violence and Harassment Convention

However, most international instruments' reporting mechanisms fall short of providing full accountability and transparency about the actions countries are taking to realize their guarantees in practice. Indeed, most international treaties only require that countries submit reports on their progress toward fulfilling treaty commitments every few years, and there are minimal repercussions for countries that fail to meet these deadlines. Moreover, the information that countries provide is often in the form of lengthy reports that do not facilitate an easy understanding of how a specific country's policies have changed over time or of how its policies compare to those of peer countries.

Both the global community and individual countries have important roles to play in realizing the promise of international treaties and agreements on discrimination and harassment at work. First, regularly collecting quantitative policy data on all 193 countries can help provide globally comparative, readily understandable information about progress and gaps in key areas of law. Second, more robust infrastructure around implementation and enforcement at the national level—including, for example, permanent national monitoring bodies provided for in law—can confirm that detailed information about laws' implementation is being regularly collected and made publicly available.

TABLE 4 Legal approaches to access to justice for workplace gender discrimination and sexual harassment, by country income level

	Low-income countries	Middle-income countries	High-income countries
Are there independent monitoring bodies that handle complaints of workplace gender discrimination, sexual harassment, and inability to use paid parental leave?			
No complaint mechanism	6 (22%)	12 (11%)	9 (16%)
Only for one area	1 (4%)	8 (7%)	1 (2%)
Only for two areas	7 (26%)	32 (30%)	12 (21%)
Yes, for all three areas	13 (48%)	56 (52%)	36 (62%)
What remedies are available through the independent body for individuals who experience workplace sexual harassment?			
No prohibition of workplace sexual harassment	9 (35%)	26 (24%)	11 (19%)
No independent complaint mechanism for individuals	4 (15%)	22 (20%)	15 (26%)
No explicit remedies	8 (31%)	28 (26%)	5 (9%)
Re-employment only	0 (0%)	1 (1%)	0 (0%)
Some form of monetary compensation	5 (19%)	31 (29%)	27 (47%)
What remedies are available through the independent body for individuals who experience workplace gender discrimination?			
No prohibition of workplace gender discrimination	3 (11%)	7 (7%)	4 (7%)
No independent complaint mechanism for individuals	5 (19%)	13 (12%)	10 (17%)
No explicit remedies	7 (26%)	37 (35%)	12 (21%)
Re-employment only	1 (4%)	0 (0%)	1 (2%)
Some form of monetary compensation	11 (41%)	50 (47%)	31 (53%)
Can the independent body impose penalties in workplace sexual harassment settlements?			
No prohibition of workplace sexual harassment	9 (35%)	26 (24%)	11 (19%)
No independent complaint mechanism for individuals	4 (15%)	22 (21%)	15 (26%)

(contd.)

TABLE 4 *(continued)*

	Low-income countries	Middle-income countries	High-income countries
No explicit penalties	6 (23%)	22 (21%)	11 (19%)
Explicit penalties	7 (27%)	37 (35%)	21 (36%)
Can the independent body impose penalties in workplace gender discrimination settlements?			
No prohibition of workplace gender discrimination	3 (12%)	7 (7%)	4 (7%)
No independent complaint mechanism for individuals	5 (19%)	13 (12%)	10 (17%)
No explicit penalties	5 (19%)	36 (34%)	13 (22%)
Explicit penalties	13 (50%)	50 (47%)	31 (53%)
What types of retaliation are prohibited for reporting gender discrimination at work?			
No explicit prohibition of gender discrimination at work	2 (7%)	7 (6%)	4 (7%)
No prohibition of retaliation	11 (41%)	36 (33%)	8 (14%)
Only dismissal	9 (33%)	14 (13%)	4 (7%)
Harassment or disciplinary action	1 (4%)	9 (8%)	0 (0%)
Any adverse action	4 (15%)	42 (39%)	42 (72%)
Is retaliation prohibited for participating in workplace investigations of gender discrimination?			
No explicit prohibition of gender discrimination at work	2 (7%)	7 (6%)	4 (7%)
No prohibition of retaliation	11 (41%)	36 (33%)	8 (14%)
Only individuals who report	3 (11%)	26 (24%)	10 (17%)
Explicit coverage for workers participating in investigation	10 (37%)	39 (36%)	35 (60%)
Coverage not specified	1 (4%)	0 (0%)	1 (2%)
Is retaliation prohibited for participating in workplace investigations of sexual harassment?			
No explicit prohibition of sexual harassment at work	9 (35%)	28 (26%)	13 (22%)
No prohibition of retaliation	4 (15%)	31 (29%)	4 (7%)
Only individuals who report	3 (12%)	17 (16%)	7 (12%)
Explicit coverage for workers participating in investigation	9 (35%)	32 (30%)	33 (57%)
Coverage not specified	1 (4%)	0 (0%)	1 (2%)
What types of retaliation are prohibited for reporting sexual harassment at work?			
No explicit prohibition of sexual harassment at work	9 (35%)	28 (26%)	13 (22%)
No prohibition of retaliation	4 (15%)	31 (29%)	4 (7%)
Only dismissal	4 (15%)	4 (4%)	2 (3%)
Harassment or disciplinary action	1 (4%)	5 (5%)	1 (2%)
Any adverse action	8 (31%)	40 (37%)	38 (66%)

TABLE 4 *(continued)*

	Low-income countries	Middle-income countries	High-income countries
Are employers required to take steps to prevent sexual harassment in the workplace?			
Sexual harassment not prohibited	9 (35%)	28 (26%)	13 (22%)
No requirements	10 (38%)	41 (38%)	14 (24%)
General requirement, but no specific measures	3 (12%)	13 (12%)	8 (14%)
Employers required to take one or more of the specific measures	4 (15%)	26 (24%)	23 (40%)
Can employers be held legally responsible for sexual harassment at work?			
No explicit prohibition of sexual harassment at work	9 (35%)	28 (26%)	13 (22%)
No explicit legal responsibility	16 (62%)	39 (36%)	18 (31%)
Employers can be held legally responsible	1 (4%)	41 (38%)	27 (47%)
Are employers required to take steps to prevent gender discrimination in the workplace?			
No explicit prohibition of gender discrimination at work	2 (7%)	7 (6%)	4 (7%)
No explicit requirements	24 (89%)	75 (69%)	33 (57%)
General requirement, but no specific measures	1 (4%)	6 (6%)	3 (5%)
Employers required to take one or more of the specific measures	0 (0%)	20 (19%)	18 (31%)

CONCLUSION

Taking effective steps to enforce antidiscrimination and sexual harassment laws is fundamental to their reach and impacts. While existing evidence suggests that no single enforcement strategy may be enough on its own, adopting a range of strategies together can support better realization of rights. Employer obligations to prevent discrimination and harassment, alongside effective leadership, can shape work environments to reduce the incidence of discriminatory conduct; it is essential these requirements cover all employers. Legal aid can help ensure that access to the courts is available to women regardless of socioeconomic status, provided it is adequately funded. Collective legal actions can help workers realize structural change while improving judicial efficiency and lowering the burden on individual employees. Alternative dispute resolution can provide quicker and less expensive access to justice, so long as remedies are adequate and going to court remains an option.

At the same time, while this chapter has sought to highlight promising approaches, far more research is needed on a country level to rigorously evaluate what works to fully realize antidiscrimination and sexual harassment laws. Most existing studies focus on policies and practices within individual companies rather than on what approaches are most effective at the national level. To achieve change at scale, more extensive evidence about country-level changes will be important.

Nevertheless, some elements of effective national approaches are clear. For example, it almost goes without saying that workers would prefer not to experience sexual harassment or discrimination in the first place rather than seek remedies after the fact, and national policies should thus provide a framework for prevention. It's also clear that full realization of nondiscrimination will require strong leadership by employers and by labor. Moreover, the expectations that discrimination and harassment will not be tolerated, and that effective remedies will be available when discrimination occurs, should be embedded in the national laws of every country, even as ongoing research will enable us to understand the best approaches to implementation.

NOTES

1. Geiger, B. B., Van Der Wel, K. A., & Tøge, A.G. (2017). Success and failure in narrowing the disability employment gap: Comparing levels and trends across Europe 2002–2014. *BMC Public Health, 17*(1), 1–7.

2. European Parliament. (2017). *Discrimination and access to employment for female workers with disabilities.* www.europarl.europa.eu/RegData/etudes/STUD/2017/602067/IPOL_STU(2017)602067_EN.pdf. This study uses two definitions of disability: "(1): People having a basic activity difficulty (such as sight, hearing, walking, communicating). Definition of disability (2): People having an 'employment disability' (limited in work activity because of a long-standing health problem and/or a basic activity difficulty—LHPAD)." The gender gap for definition 1 is 16.8 percentage points, and 25 points for definition 2.

3. Jain, H. C., Lawler, J. J., Bai, B., & Lee, E. K . (2010). Effectiveness of Canada's employment equity legislation for women (1997–2004): Implications for policy makers. *Relations Industrielles/ Industrial Relations*, 304–329.

4. Canadian Women's Foundation. (2022, March 25) *The facts about the gender pay gap in Canada.* https://canadianwomen.org/the-facts/the-gender-pay-gap/.

5. Lakshmi, R. (2013, October 25). In India, new law reflects growing awareness of sexual harassment in workplace. *Washington Post.* www.washingtonpost.com/world/in-india-new-law-reflects-growing-awareness-of-sexual-harassment-in-workplace/2013/10/25/d6d95c90–3be2–11e3-b0e7–716179a2c2c7_story.html.

6. Orlando, M. B., Pande, R. P., & Quresh, U. (2020, November 25). Sexual harassment in South Asia: What recent data tells us. *World Bank Blogs.* https://blogs.worldbank.org/endpovertyinsouthasia/sexual-harassment-south-asia-what-recent-data-tells-us.

7. Sisnero, et al. v. Taldelva SRL, et al. (2014). www.law.cornell.edu/women-and-justice/resource/sisnero_et_al._v._taldelva_srl_et_al.

8. Lopez, M. (2020, November 3). Salta tiene casi 100 colectiveras, pero sigue lejos del cupo mínimo. *Pagina 12.* www.pagina12.com.ar/303433-salta-tiene-casi-100-colectiveras-pero-sigue-lejos-del-cupo-.

9. KKO (2010). www.law.cornell.edu/women-and-justice/resource/kko_20101.

10. Hirsh, E., & Cha, Y. (2017). Mandating change: The impact of court-ordered policy changes on managerial diversity. *ILR Review, 70*(1), 42–72.

11. Williams, C. (2004). Access to justice and social inclusion: The policy challenges in Wales. *Journal of Social Welfare and Family Law, 26*(1), 53–68.

12. United Nations Development Programme. (2006). *An assessment of access to justice in five provinces of Indonesia.* In UN Women. (2011). *2011–2012 progress of the world's women: In pursuit of justice.*

13. Department of Justice and Constitutional Development, Republic of South Africa. (2017). Assessment of the impact of decisions of the Constitutional Court and Supreme Court of Appeal on the transformation of society. www.justice.gov.za/reportfiles/2017-CJPreport-Nov2015-Final.pdf.

14. Prettitore, P. S. (2013). Gender and justice in Jordan: Women, demand, and access. MENA Knowledge and Learning Quick Notes Series #107. *World Bank*. https://openknowledge.worldbank.org/bitstream/handle/10986/20561/837220BRIoBox30geonoteoseriesoQN107.pdf?sequence=1&isAllowed = y.

15. Buscaglia, E. (2001). *Investigating the links between access to justice and governance factors: An objective indicators' approach*. Paper presentation. World Bank Conference on Justice, St. Petersburg, Russia. In Gargarella, R. (2002). *Too far removed from the people: Access to justice for the poor—The case of Latin America*. Chr. Michelsen Institute Workshop, United Nations Development Programme Oslo Governance Centre, vol. 18.

16. Department of Justice and Constitutional Development, Republic of South Africa (2017).

17. UNESCO Institute for Statistics. *Lower secondary completion rate, female (% of relevant age group), Timor-Leste* [Data set]. Retrieved April 11, 2022 from https://data.worldbank.org/indicator/SE.SEC.CMPT.LO.FE.ZS?locations=TL.

18. The Asia Foundation, USAID & AusAid. (2008). *Law and justice in Timor-Leste: A survey of citizen awareness and attitudes regarding law and justice*. https://pdf.usaid.gov/pdf_docs/PBAAD788.pdf.

19. Sieder, R., & Sierra, M. T. (2010). *Indigenous women's access to justice in Latin America*. Chr. Michelsen Institute.

20. Maru, V. (2006). Between law and society: Paralegals and the provision of justice services in Sierra Leone and worldwide. *Yale Journal of International Law, 31*, 427.

21. UNDP. (2006). *An assessment of access to justice in five provinces of Indonesia*.

22. United Nations Office on Drugs and Crime. (2006). *Assessment of the integrity and capacity of the justice system in three Nigerian states: Technical assessment report*. Vienna: UNODC.

23. Sieder and Sierra (2010).

24. Council of Europe. (2017, July 6). *Analysis of the results of court users' satisfaction survey of all courts of all instances of Armenia*. www.coe.int/en/web/cdcj/-/analysis-of-the-results-of-court-users-satisfaction-survey-of-all-courts-of-all-instances-of-armenia.

25. Felstiner, W. L. F, Abel, R. L., & Sarat, A. (1980). The emergence and transformation of disputes: Naming, blaming, claiming. *Law and Society Review*, 631–654; Albiston, C. R., Edelman, L. B., & Milligan, J. (2014). The dispute tree and the legal forest. *Annual Review of Law and Social Science, 10*, 105–131; Best, A., & Andreasen, A. R. (1976). Consumer response to unsatisfactory purchases: A survey of perceiving defects, voicing complaints, and obtaining redress. *Law & Society Review, 11*, 701; Curran, B. (1976). *The legal needs of the public: The final report of a national survey*. 126; Albiston et al. (2014).

26. Haerpfer, C., Inglehart, R., Moreno, A., Welzel, C., Kizilova, K., Diez-Medrano, J., Lagos, M., Norris, P., Ponarin, E., & Puranen, B. (Eds.). (2022). *World values survey: Round seven—country-pooled datafile version 3.0* (Q189). Madrid, Spain, & Vienna, Austria: JD Systems Institute & WVSA Secretariat. https://doi.org/10.14281/18241.16.

27. Prettitore (2013).

28. The Asia Foundation, USAID & AusAid. (2008).

29. U.S. Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace. (2016, June). *Report of co-chairs Chai R. Feldblum & Victoria A. Lipnic*. Washington, DC: EEOC. www.eeoc.gov/select-task-force-study-harassment-workplace.

30. Grimsley, K. D. (1996, October 28). In court, women miners felt harassed again. *Washington Post*. washingtonpost.com/archive/politics/1996/10/28/in-court-women-miners-felt-harassed-again/65a7c3c3-f1ab-405a-ae41-a4ade4b7e5f9/.

31. Barakat, S. (2018). The costs of justice: Exploratory assessment on women's access to justice in Lebanon, Jordan, Egypt, and Yemen. *OxFam*. https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620488/rr-womens-access-to-justice-mena-040618-en.pdf?sequence=4.

32. Thomson, J. (Coord.) (2000), *Acceso a la justicia y equidad. Estudio en siete países de América Latina, Banco Interamericano de Desarrollo*. In Gargarella (2002).

33. Haerpfer, C., Inglehart, R., Moreno, A., et al. (2022). Q70.

34. Byrd, O. (2017, July 12). Lex Machina launches legal analytics for employment litigation. *Lex Machina*. https://lexmachina.com/blog/lex-machina-launches-legal-analytics-for-employment/;

Selmi, M. (2000). Why are employment discrimination cases so hard to win. *Louisiana Law Review, 61*, 555; See also Clermont, K. M., & Schwab, S. J. (2009). Employment discrimination plaintiffs in federal court: From bad to worse. *Harvard Law & Policy Review, 3*, 103.

35. Sandefur, J., & Siddiqi, B. (2013, May.) Delivering justice to the poor: Theory and experimental evidence from Liberia. In *World Bank Workshop on African Political Economy*, vol. 20. Washington, DC.

36. World Bank. (2003). *Impact of legal aid: Ecuador*. Washington, DC: The International Bank for Reconstruction and Development. https://documents1.worldbank.org/curated/en/402701468770063715/pdf/269150English01of0Legal0Aidoscode09.pdf.

37. Sandefur, R. L. (2010). The impact of counsel: An analysis of empirical evidence. *Seattle Journal for Social Justice, 9*, 51.

38. United Nations. (1966). *International Covenant on Civil and Political Rights*. (Article 14(3)(d)). www.ohchr.org/sites/default/files/ccpr.pdf.

39. Organization of American States. (1967). *Charter of the Organization of American States* (Article 45). www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp.

40. Airey v. Ireland 32 Eur Ct HR Ser A (1979): [1979] 2 E.H.R.R. 305.

41. UN Committee on the Elimination of Racial Discrimination (CERD). (2005). *CERD General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*. www.refworld.org/docid/48abd56dd.html.

42. UN Human Rights Committee. (2007). *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial* (90th sess.). Geneva.

43. Fourth World Conference on Women. (1995). *Beijing Platform for Action* (Art. 58(p), 61(a), 125(a), 232(n)).

44. African Union. (2019, September 17). List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa.

45. African Union. (2019, September 17). Article 8.

46. Bianchini, K. (2011). Legal aid for asylum seekers: Progress and challenges in Italy. *Journal of Refugee Studies, 24*(2), 390–410; Legal Services Corporation. *Statutory restrictions on LSC-funded programs*. Retrieved April 11, 2022 from www.lsc.gov/our-impact/publications/other-publications-and-reports/statutory-restrictions-lsc-funded-programs#:~:text=The%20LSC%20Act%20prohibits%20participation,court%20or%20law%20enforcement%20officers.

47. Ahmed, C. J. (2012). Legal aid and women's access to justice in Bangladesh: A drizzling in the desert. *International Research Journal of Social Sciences, 1*(3), 8–14.

48. Hunter, R., & De Simone, T. (2009). Women, legal aid and social inclusion. *Australian Journal of Social Issues, 44*(4), 379–398.

49. Williams (2004).

50. Addario, L. (1998). *Getting a foot in the door: Women, civil legal aid, and access to justice*. Ottawa: Status of Women Canada.

51. Skinnider, E., & Montgomery, R. (2017). *Enhancing access to justice for women living in rural and remote areas of British Columbia: Reviewing practices from Canada and abroad to improve our response*. Vancouver, Canada: International Centre for Criminal Law Reform and Criminal Justice Policy. https://icclr.org/publications/enhancing-access-to-justice-for-women-living-in-rural-and-remote-areas-of-british-columbia-reviewing-practices-from-canada-and-abroad-to-improve-our-response/; Canadian Forum on Civil Justice. (2015). Rural & remote access to justice: A literature review. The Rural and Remote Access to Justice Boldness Project. https://boldnessproject.ruralandremoteaccesstojustice.com/wp-content/uploads/2016/01/Rural-Remote-Lit-Review_newcoverpage.pdf.

52. Deitch, C., & Hegewisch, A. (2013). Title VII sex and race discrimination litigation settlements as opportunities for organizational change. *Journal of Business and Psychology, 28*(4), 425–438.

53. Deitch & Hegewisch (2013); Sturm, S. (2004). Second generation employment discrimination: A structural approach. In Schwarzenbach, S., & Smith, P. (Eds.). *Women and the US Constitution* (pp. 292–313). New York: Columbia University Press. https://doi.org/10.7312/schw12892.

54. Bauger, E. S. (2020). El amparo colectivo para garantizar el derecho de igualdad laboral y no discriminación en razón del género. *Anales de la Facultad de Ciencias Jurídicas y Sociales, 17*.

55. Sperino, S. F. (2014). Let's pretend discrimination is a tort. *Ohio State Law Journal, 75*, 1107.

56. McHugh, R. (2020, July 1). Finally an $18 million settlement in Weinstein case—but closure elusive for some. *Vanity Fair*. www.vanityfair.com/news/2020/07/settlement-in-weinstein-case-but-closure-elusive-for-some.

57. Chubrikj, S., & Dimovska, N. C. (2016). *Use of actio popularis to cases of discrimination*. Skopje: Helsinki Committee for Human Rights in the Republic of Macedonia. www.osce.org/files/f/documents/3/1/337191.pdf.

58. Fuchs, G. (2013). Strategic litigation for gender equality in the workplace and legal opportunity structures in four European countries. *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société, 28*(2), 189–208.

59. Schoenholz, J-S. (2016). Opening the doors of justice: Group litigation and claims of systemic discrimination. *Ottawa Law Review, 48*, 687.

60. Constitution of Kenya (2010), Art. 22.

61. Federal Act on Gender Equality (Gender Equality Act, GEA) of 24 March 1995. (Status as of 1 July 2020). Article 7.

62. Polavarapu, A. (2016). Expanding standing to develop democracy: Third-party public interest standing as a tool for emerging democracies. *Yale Journal of International Law, 41*, 105.

63. Taruffo, M. (2001). Some remarks on group litigation in comparative perspective. *Duke Journal of Comparative and International Law, 11*, 405; Xie, L., & Xu, L. (2021). Environmental public interest litigation in China: A critical examination. *Transnational Environmental Law*, 1–25.

64. Gidi (2003).

65. MacDermott, T. (2018). The collective dimension of federal anti-discrimination proceedings in Australia: Shifting the burden from individual litigants. *International Journal of Discrimination and the Law, 18*(1), 22–39.

66. MacDermott (2018).

67. Clark, S. S., & Harris, C. (2001). Multi-plaintiff litigation in Australia: A comparative perspective. *Duke Journal of Comparative and International Law, 11*, 289.

68. Smith, D. B. (2019). Class action and aggregate litigation: A comparative international analysis. *Penn State Law Review, 124*, 303.

69. Gidi, A. (2003). Class actions in Brazil—A model for civil law countries. *American Journal of Comparative Law, 51*(2), 311–408; McAllister, L. K. (2007). Revisiting a promising institution: Public law litigation in the civil law world. *Georgia State University Law Review, 24*, 693.

70. Clark and Harris (2001).

71. Martin, N. (2013, September 27). The impact and echoes of the Wal-Mart discrimination case. *Pro Publica*. www.propublica.org/article/the-impact-and-echoes-of-the-wal-mart-discrimination-case.

72. Oberto, G. (2011, December 8–9). *Report on the expert meeting aimed to assist the Court Of Vrancea, Focsani, Romania, in applying the methodology for conducting satisfaction surveys among Court users developed within the framework of the activity of the European Commission for the Efficiency of Justice (CEPEJ)*. Focsani, Italy: Court of Turin. https://rm.coe.int/report-on-the-expert-meeting-aimed-to-assist-the-court-of-vrancea-focs/168078d07f.

73. Roche, W. K., & Teague, P. (2012). The growing importance of workplace ADR. *International Journal of Human Resource Management, 23*(3), 447–458.

74. Bhorat, H., Pauw, K., & Mncube, L. (2009) *Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA data*. DPRU Working Paper 09/137. University of Cape Town, Development Policy Research Unit. https://open.uct.ac.za/bitstream/handle/11427/7287/DPRU_WP09–137.pdf?sequence=1&isAllowed=y.

75. Bowmans. (2017). *Guide to dispute resolution in Africa*. www.bowmanslaw.com/wp-content/uploads/2017/01/Guide-Litigation.pdf.

76. Estreicher, S., & Yost, K. (2009). Measuring the value of class and collective action employment settlements: A preliminary assessment. *Journal of Empirical Legal Studies, 6*(4), 768–792.

77. Roche & Teague (2012).

78. Eurofound. (2010). *Individual disputes at the workplace: Alternative disputes resolution*. www.eurofound.europa.eu/sites/default/files/ef_files/docs/eiro/tn0910039s/tn0910039s.pdf.

79. International Centre for Dispute Resolution. (2021, March 1). *International dispute resolution procedures*. www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar; American Arbitration Association. (2009, November 1). *Employment: Arbitration rules and mediation procedures*. https://adr.org/sites/default/files/EmploymentRules_Web_2.pdf.

80. Weiss, H. H. (n.d.). *Mandatory Arbitration Agreement Drafting Checklist*. Schulte Roth & Zabel LLP. Retrieved April 11, 2022 from https://www.srz.com/images/content/1/5/v2/156873/Lexis Nexis-Mandatory-Arbitration-Agreement-Drafting-Checklist.pd.pdf; Campbell, A. F., & Chang, A. (2018, September 8). There's a good chance you've waived the right to sue your boss. *Vox*. www.vox.com/2018/8/1/16992362/sexual-harassment-mandatory-arbitration.

81. Colvin, A. J. S . (2014). Mandatory arbitration and inequality of justice in employment. *Berkeley Journal of Employment and Labor Law, 35*(1/2), 71–90; Gough, M. D. (2014). The high costs of an inexpensive forum: An empirical analysis of employment discrimination claims heard in arbitration and civil litigation. *Berkeley Journal of Employment and Labor Law*, 91–112; Colvin, A. J. S. (2011). An empirical study of employment arbitration: Case outcomes and processes. *Journal of Empirical Legal Studies, 8*(1), 1–23; Sternlight, J. R. (2005). Creeping mandatory arbitration: Is it just?. *Stanford Law Review, 57*(5), 1631–1676.

82. Colvin, A. J. S. (2011).

83. Colvin, A. J. S . (2018, April 6). *The growing use of mandatory arbitration*. Economic Policy Institute. www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/.

84. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991).

85. Tarasewicz, Y., & Borofsky, N. (2012). International labor and employment arbitration: A French and European perspective. *The ABA Journal of Labor & Employment Law, 28*, 349; Sternlight, J. R. (2001). Is the US out on a limb—Comparing the US Approach to mandatory consumer and employment arbitration to that of the rest of the world. *University of Miami Law Review, 56*, 831.

86. Uber Technologies Inc. v. Heller, 2020 SCC 16; Urbanski, A. (2020, July 3). Supreme Court of Canada finds Uber's mandatory arbitration clause invalid and paves way for gig economy class action. *Stikeman Elliot*. www.stikeman.com/en-ca/kh/canadian-class-actions-law/supreme-court-of-canada-finds-ubers-mandatory-arbitration-clause-invalid?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration.

87. Deschamps, T. (2020, August 31). New Uber contract for Canadian drivers takes aim at class-action lawsuits: Lawyer. *Canadian Press*. https://globalnews.ca/news/7308188/new-uber-contract-law suits/; Doorey, D. (2020, September 1). Uber reinvents its controversial arbitration clause after Uber v. Heller. *Law of Work*. https://lawofwork.ca/ubernewarbitrationclause/.

88. Mulvaney, E., & Beyoud, L. (2021, August 9). Cuomo harassment scandal underscores limits of #MeToo movement. *Bloomberg Law*. https://news.bloomberglaw.com/daily-labor-report/cuomo-harassment-scandal-underscores-limits-of-metoo-movement.

89. Colvin, A. J. S. (2011).

90. LaFree, G., & Rack, C. (1996). The effects of participants' ethnicity and gender on monetary outcomes in mediated and adjudicated civil cases. *Law & Society Review, 30*, 767; Rack, C. (1998). Negotiated justice: Gender & (and) ethnic minority bargaining patterns in the Metrocourt study. *Hamline Journal of Public Law and Policy, 20*, 211; Gazal-Ayal, O., & Perry, R. (2014). Imbalances of power in ADR: The impact of representation and dispute resolution method on case outcomes. *Law & Social Inquiry, 39*(4), 791–823.

91. Svensson, J., & van Genugten, M. (2013). Retaliation against reporters of unequal treatment: Failing employee protection in The Netherlands. *Equality, Diversity and Inclusion: An International Journal*.

92. Dobbin, F., & Kalev, A. (2019). The promise and peril of sexual harassment programs. *Proceedings of the National Academy of Sciences, 116*(25), 12255–12260; Cortina, L. M., & Magley, V. J. Raising voice, risking retaliation: Events following interpersonal mistreatment in the workplace. *Journal of Occupational Health Psychology, 8*(4), 247.

93. Nielsen, L. B., Nelson, R. L., Lancaster, R., & Pedriana, N. (2008). *Contesting workplace discrimination in court: Characteristics and outcomes of federal employment discrimination litigation, 1987–2003*. American Bar Foundation. www.americanbarfoundation.org/uploads/cms/documents/nielsen_abf_edl_report_08_final.pdf.

94. Mirtha Sisnero: La mujer que ganó su puesto de colectivera en la Justicia, pero que aún no maneja. (2020, September 24). *Télam*. www.telam.com.ar/notas/202009/517941-mujer-chofer-salta-colectivera.html.

95. See, e.g., Sandefur, R. L. (2008). Access to civil justice and race, class, and gender inequality. *Annual Review of Sociology, 34*, 339–358.

96. Fitzgerald, L. F., Hulin, C. L., & Drasgow, F. (1995). The antecedents and consequences of sexual harassment in organizations: An integrated model. In G. Keita & J. Hurrell Jr. (Eds.). *Job stress in a changing workforce: Investigating gender, diversity, and family issues*, pp. 55–73. Washington, DC: American Psychological Association; Fitzgerald, L. F., Drasgow, F., Hulin, C. L., Gelfand, M. J., & Magley, V. J. (1997). Antecedents and consequences of sexual harassment in organizations: A test of an integrated model. *Journal of Applied Psychology, 82*, 578–589.

97. Ollo-López, A. & Nuñez, I. (2018). Exploring the organizational drivers of sexual harassment: Empowered jobs against isolation and tolerant climates. *Employee Relations*.

98. U.S. EEOC. (2015, June 15). *Written testimony of Mindy Bergman, Associate Professor of Psychology, Texas A&M University*. Washington, DC: EEOC. www.eeoc.gov/written-testimony-mindy-bergman-associate-professor-psychology-texas-am-university.

99. Schneider, B. (1987). The people make the place. *Personnel Psychology, 40*, 437–454.

100. Konrad, A. M., & Linnehan. F. (1995). Formalized HRM structures: Coordinating equal employment opportunity or concealing organizational practices?. *Academy of Management Journal, 38*(3), 787–820.

101. Gruber, J. E. (1998). The impact of male work environments and organizational policies on women's experiences of sexual harassment. *Gender & Society, 12*(3), 301–320.

102. Kalev, A., Dobbin, F., & Kelly, E. (2006). Best practices or best guesses? Assessing the efficacy of corporate affirmative action and diversity policies. *American Sociological Review, 71*(4), 589–617.

103. Kaiser, C. R., Major, B. Jurcevic, I., Dover, T. L., Brady, L. M., & Shapiro, J. R. (2013). Presumed fair: Ironic effects of organizational diversity structures. *Journal of Personality and Social Psychology, 104*(3), 504.

104. Corte Suprema de Justicia (Costa Rica). (2008, January 23). Sentencia: 00038, Expediente: 040013750166LA. www.law.cornell.edu/women-and-justice/resource/expediente_04–001375–0166-la.

105. Parker, C. (1999). Public rights in private government: Corporate compliance with sexual harassment legislation. *Australian Journal of Human Rights, 5*(1), 159–193.

106. Andrew & Another v. Linfox Transport (Aust.) Pty. Ltd. In Aeberhard-Hodges, J. (1996). Sexual harassment in employment: Recent judicial and arbitral trends. *International Labour Review, 135*, 499.

107. Sandberg, R., & Doe, N. (2007). Religious exemptions in discrimination law. *Cambridge Law Journal, 66*(2), 302–312; McLean, I., & Peterson, S. (2016). Religious freedom and anti-discrimination in Europe and the US: Generally applicable laws and possible exceptions. In *The Social Equality of Religion or Belief*. pp. 68–79. London: Palgrave Macmillan.

108. As an example of racial discrimination, see Goldsboro Christian Schools, Inc. v. United States, 436 F. Supp. 1314 (E.D.N.C. 1977).

109. Chambers v. Omaha Girls Club, 629 F. Supp. 925 (D. Neb. 1986); see also Minow, M. (2007). Should religious groups be exempt from civil rights laws. *Boston College Law Review, 48*, 781.