

Women in justice in Africa

A comparative study
of women judges in 14 countries.



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Acknowledgements

This study is part of the UNDP and UN Women Gender Justice Platform, made possible by the generous contribution from the Government of The Netherlands and The Government of the Federal Republic of Germany to UNDP's Global Programme for Strengthening the Rule of Law, Human Rights, Justice and Security for Sustainable Peace and Development.

The study was based on the research developed by two independent consultants: Lucianna Thuo and J. Jarpa Dawuni (PhD) from August 2021 until November 2021.

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We would like to thank everyone who participated in the collection of information for this study. This includes UNDP colleagues in Country Offices in Algeria, Burkina Faso, Central African Republic, Ethiopia, Kenya, Lesotho, Malawi, Morocco, Mozambique, Nigeria, Sierra Leone, Tanzania, Uganda and Zimbabwe, as well as colleagues at headquarters, the Regional Hub for Africa, the Regional Hub for Arab States and individuals within the judiciaries of the selected countries who shared their advice, insights and experiences so that this topic could be explored.

We would like to acknowledge Jessica Hazelwood (Cordaid), Léah Guyot (Pathfinders), Helen Schwittay McArthur (Institute for Inspiring Children's Futures), Horacio Ortiz (World Justice Project), Daniela Barba (World Justice Project), Grace Hulseman (World Justice Project), UNDP colleagues and UN Women colleagues for reviewing the study.

The views expressed in this publication are those of the author(s) and do not necessarily represent those of the United Nations, including UNDP, or the UN Member States.

Foreword

The *Women in justice in Africa* study breaks ground by shining a light on the remarkable contribution women make in the field of justice. This journey: of strength, determination, sisterhood and collective action, is sparking something new – one woman at a time.

The *Women in justice in Africa* study breaks ground by shining a light on the remarkable contribution women make in the field of justice. This journey: of strength, determination, sisterhood and collective action, is sparking something new – one woman at a time.

Today, Africa has the world's largest number of women heading constitutional courts and acting as chief justices. This historic fact can play a role in overcoming gender inequality across a range of areas – broadly in society, but also specifically within the justice system.

Women have become judges, heads of judiciaries and have taken their seats in international courts, and their impact is visible. A study in Kenya shows that women judges influenced a feminist jurisprudence in matrimonial property and inheritance disputes. In international criminal tribunals, female judges ensured that sexual and gender-based violence were not omitted, but that they became central parts of the proceedings.¹

As we look towards a more equitable and sustainable future, gender equality must remain at the forefront of our efforts. UNDP's [Gender Equality Strategy](#) signifies our unwavering commitment to gender equality as a fundamental element in realizing sustainable development by 2030. To further this mission, UNDP's [Crisis Offer](#) has launched the [10-Point Action Agenda for Advancing Gender Equality in Crisis Settings \(10PAA\)](#). This ambitious roadmap will guide our work towards transforming and advancing gender equality in crisis contexts. We recognize that the path to realizing gender equality is intricate and requires coordinated United Nations support. For this reason, UNDP and

UN Women have established [Gender Justice Platform](#), which reflects our commitment to strategic partnerships to achieve gender justice. Our focus remains on empowering women and advancing gender equality in crisis and development contexts through specific action points, as demonstrated in this study.

The *Women in justice in Africa* study chronicles evidence that women judges are less susceptible to corruption, and their effective representation in the judiciary increases trust in the system. Interviews conducted for this report confirm the positive impact women's participation in the judiciary has on confidence in institutions - often perceived as out of reach by those who may need justice the most.

However, there is much more we need to do. This study also confirms that very few women make it to the top, and that when they do become judges, harassment, intimidation and breaches of privacy are common challenges that they face. The dynamics behind these testimonies are as multifaceted as they are complex – with pervasive gender stereotypes; legal, religious and social restrictions, lack of equitable access to education and opportunities being some of them.

Political will and proactive leadership within judiciaries are instrumental to accelerating progress; and ensuring that judiciaries and other legal professions are a true reflection of the population in terms of gender, race and socioeconomic status is key for people-centred justice.

From Algeria to Kenya, Lesotho to Zimbabwe, the testimonials in this study offer wisdom on how to attain and sustain progress including through strategic programming interventions that can increase the number of women in judiciaries, create the environments in which they can bring transformative change; and enable women to fulfil their duties with the dignity, respect and tenacity that is uniquely feminine.

UNDP remains committed to work towards a more equitable and just world for all by supporting gender equality and access to justice for women and girls around the world in order to leave no one behind.

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Foreword

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Equal representation in the judiciary is key to ensuring that courts adequately reflect the composition of society and hand down sound judgments. The mere presence of women judges enhances the legitimacy of courts, sending a powerful signal that they are open and accessible to all who seek justice. Yet in many places throughout the world, women remain significantly underrepresented across the justice chain.

Targeted research on women in the judiciary can help us to identify barriers to entry, as well as good practices and lessons learned to advance women in justice systems. *Women in justice in Africa: A comparative study of women judges in 14 countries* presents qualitative and quantitative learnings and lessons for improving women's representation in different contexts.

The research is a significant addition to the Gender Justice Platform, a joint collaboration between UN Women and UNDP to bridge the gender justice gap, empower women, and dismantle obstacles to their ability to access justice, as well as to participate in the execution of mandates of rule of law institutions.

The collaboration between UN Women and UNDP is an excellent complement to UN Women's ongoing work in support of increasing women's presence in the judiciary. In Tanzania for instance, UN Women recently assisted the Tanzania Women Judges Association to produce the country's first Gender Bench Book on Women's Rights. This Bench Book is currently serving as an accessible, user-friendly reference guide on protecting the rights of women and girls for judicial officers.

UN Women also provides support to international courts, as well as dedicated gender advisers to tribunals and truth commissions around the world. In 2023, UN Women supported the revision of the Office of the Prosecutor at the International Criminal Court's policy on sexual and gender-based crimes.

By investing in women's participation in the justice sector, we not only ensure that regional and global norms and standards, such as those reflected in the Convention on the Elimination of All Forms of Discrimination (CEDAW), are applied in the appointment and promotion of women, but also that these norms and standards are utilized in the delivery of justice. Through the learnings and insights from this study, we are all the more strengthened in our mission to enhance women's participation in the justice sector.

Our hope is that this report can serve as an accelerator, spotlighting that to achieve justice, we need more women at all levels of leadership across the justice chain. It confirms that this will only contribute to making our justice institutions more independent, accessible and gender sensitive. UN Women will continue to support this effort towards not only closing the justice gap in appointments to the bench, but also ensuring that the justice needs of women and other marginalized and excluded groups are adequately addressed.

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Acronyms

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CIJ	Customary and Informal Justice Mechanisms
FIDA	International Federation of Women Lawyers
IAWL	Institute for African Women in Law
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICCPR	International Covenant on Civil and Political Rights
IDLO	International Development Law Organization
JSC	Judicial Service Commission
KWJA	Kenya Women Judges Association
NGEC	National Gender and Equality Commission
SDGs	Sustainable Development Goals
TAWJA	Tanzania Women Judges Association
UMAWJ	Union of Moroccan Women Judges
UNDP	United Nations Development Programme
UNESWA	United Nations Economic and Social Committee for Western Asia
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WPS	Women, peace and security (WPS) agenda

Definition and terminology

Baseline

An analysis of the starting point for a project or study, which provides a benchmark against which future progress can be evaluated and comparisons drawn.

Courts

Formal justice systems including first instance, administrative, appellate and apex courts of each country under study. In some countries, data was available for specialized courts such as commercial courts. For countries where Sharia law is applicable to deal with personal status laws, the court structures include Sharia or Kadhi's Courts depending on the nomenclature used in the country.

Federal State

States in which power is shared between two levels of government: the federal government and state government, and each level of government has its own court systems. State courts have general jurisdiction and interpret state laws while ensuring that federal power is kept in check while federal courts are generally responsible for disputes involving the federal law, interstate disputes or disputes with foreign governments.

Judges

Judicial officers serving in the courts of superior jurisdiction of a country such as high courts and courts of equal status, appellate courts, cassation courts, apex courts such as constitutional courts or supreme courts, as well as administrative courts. For the purposes of this report, judges and magistrates are considered under the same category as officers who sit and hear cases and render decisions, acknowledging that both roles have differences particularly in relation to their professional training, and their judicial authority to cover specific matters. This definition does not include prosecutors, members of tribunals or judicial officers serving in informal court systems.

Judiciary/Judiciaries

The role of the judiciary is to hear and decide legal cases based on the law and legal precedent. In this report judges, magistrates and judiciary have been used interchangeably referring to people who sit and hear cases and render decisions.

Kadhi's Courts

Specialized courts which deal with matters of Sharia law. These courts have jurisdiction over personal matters such as marriage, divorce, inheritance, and other disputes. Kadhi's Courts are presided over by a Kadhi, who is a judge trained in Islamic law and appointed by the government.

Legal tradition

A country's set of historically conditioned attitudes about the nature and role of law, the organization and operation of its legal system and how the law is created, applied, studied and taught. A country's legal tradition is classified by reference to its sources of law, its historical background, its characteristic mode of thought and the role of judges and lawyers within the system.

Sharia Law

Sharia law is a legal framework derived from the Qur'an and the sayings and practices of the Prophet Muhammad that covers all aspects of life, including personal conduct, family matters, business transactions and criminal justice.

Sharia Courts

A Sharia court is a legal body that operates under the principles of Sharia law. Sharia courts are typically found in countries with significant Muslim populations, and their authority may vary depending on the legal system of the country in which they operate.

Sharia Law

Sharia law is a legal framework derived from the Qur'an and the sayings and practices of the Prophet Muhammad that covers all aspects of life, including personal conduct, family matters, business transactions and criminal justice.

Women in leadership

For the purposes of this study, women in leadership refers to women at the highest position within a particular court with decision-making authority, including in judicial and administrative leadership positions. These include head of courts e.g. chief justices/deputy chief justices or head of the constitutional court as well as administrative heads such as registrars of

courts and heads of court stations. Court registrars were not included in this report as data were not available from all countries.

Women's meaningful participation

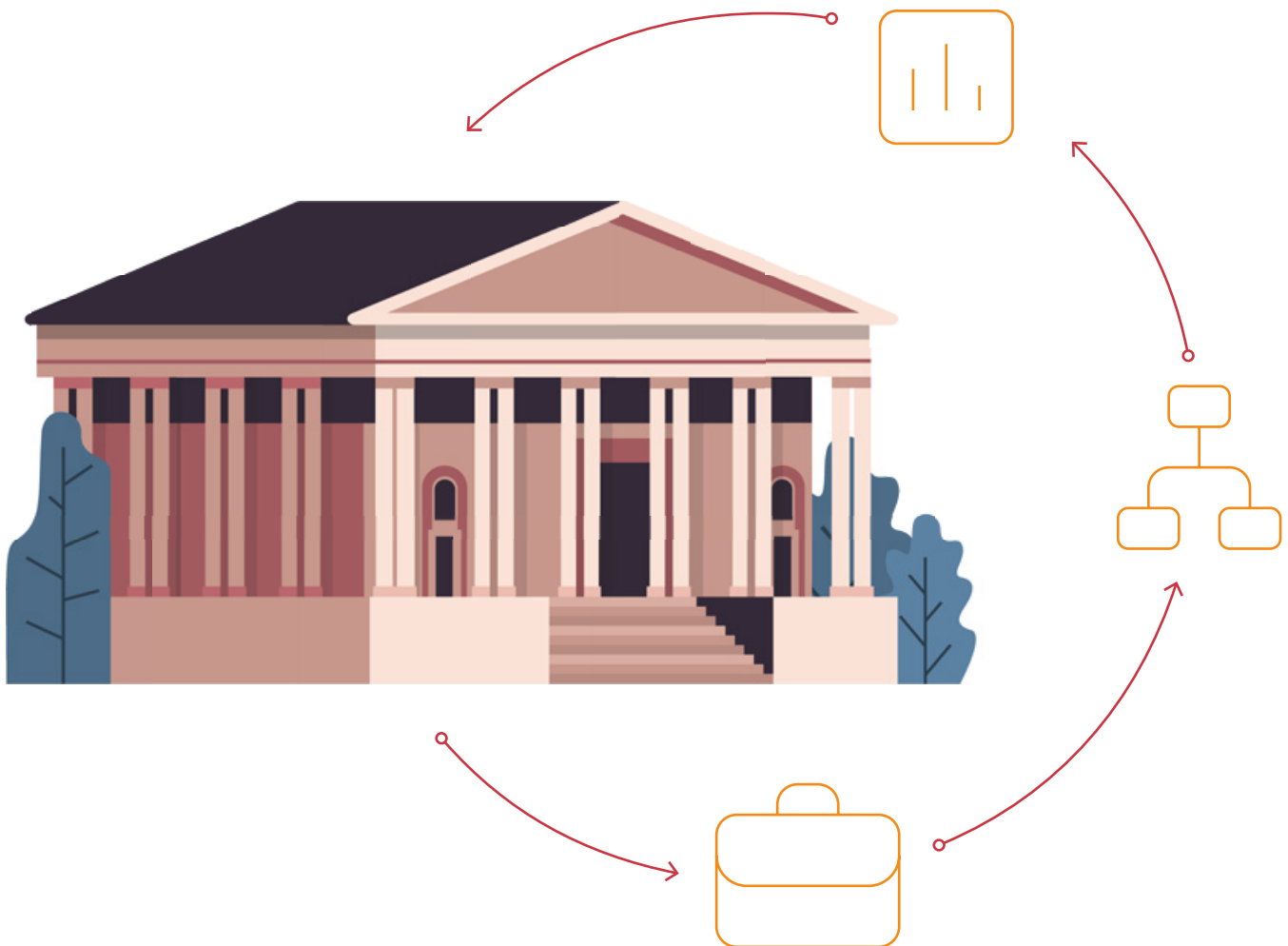
Women's meaningful participation refers to the active engagement and involvement of women in decision-making processes or activities that affect them and the broader development landscape. This is both a process and an outcome related to women's engagement in political, social, economic and other realms and relates to the quality and effectiveness of their role to influence decisions and processes.

Qualitative data

Refers to non-numerical data that is collected through observations, interviews and open-ended surveys. It involves the collection of descriptive and subjective information that cannot be easily measured or expressed in numerical terms.

Quantitative data

Refers to numerical data that can be measured and expressed in terms of numbers or quantities.



Executive summary

This explorative study on the representation of women in judiciaries at different levels of court systems in select countries in Africa forms an important part of the innovative strategic alliance between United Nations Development Programme (UNDP) and UN Women under the Gender Justice Platform. The two agencies contribute towards closing the justice gap for women and girls, specifically in crisis and conflict-affected countries or transitional settings. This partnership strives to enhance programmatic efforts in the field of women's access to justice and the legal empowerment of women.

The study includes a total of 14 countries and comprises both qualitative and quantitative sections. While the quantitative section examines 10 countries, the qualitative section covers 13, with varying country representation in each section.

The quantitative section of the report establishes a baseline on the representation of women in the judiciary in Algeria, Burkina Faso, Ethiopia, Kenya, Lesotho, Morocco, Mozambique, Nigeria, Sierra Leone and Zimbabwe. This baseline research assessed the state of women's representation in the judiciaries, the number of women actively working as judges and the types of formal courts in which they are actively represented. The research sought to identify the level of courts in which women are represented as well as their thematic mandates.

As detailed in the section of the report on challenges (see Methodology below), the study focuses solely on formal courts for which data was available.

In the 10 countries covered in the quantitative part of the study, women account for 4,619 judges and magistrates, compared to 6,988 men. As such, women judges represent only 40 percent of the total number of judges reported in the study. The four countries where women make up more than 50 percent of the judiciaries (Algeria, Kenya, Lesotho and Zimbabwe) may be compensating for the countries where data suggests that women make up less than 30 percent of the judiciaries (Burkina Faso, Morocco, Nigeria and Sierra Leone).

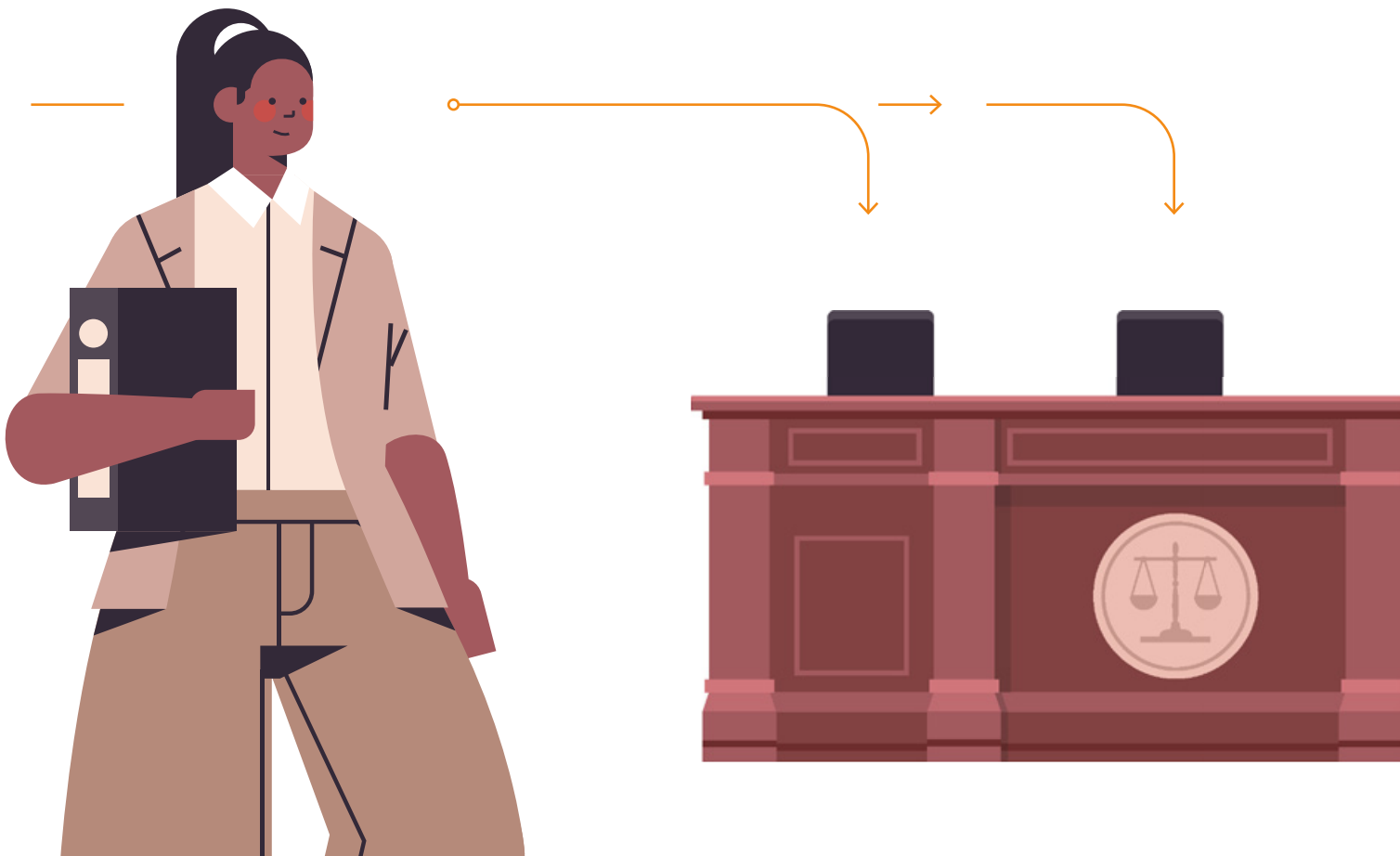
The pattern of women's representation in the countries covered in this report confirms the findings of other global studies which show that women are often located heavily in lower courts. When it comes to representation of women in leadership, the study confirms that there is an overall paucity of women in leadership positions in judiciaries in the countries studied. However, when the numbers of women in leadership are disaggregated by type of court, the percentage of women in leadership positions appears to correlate with the overall number of women in the court. Based on the data presented and using the experiences of the 10 countries as proxy, it is clear that the gender gap in representation is wide and that gender inequalities exist particularly in judicial leadership positions. The positive examples of high women's representation in leadership positions in the judiciaries in Kenya, Lesotho and Zimbabwe demonstrate the importance and effect of initiatives that promote the general increase in the participation of women in the justice sector more broadly.

The qualitative analysis section reviews the barriers that limit women from entering the judiciary, the challenges that they face once they are in the judiciary and the impediments to their promotion within the judiciary. The biggest barriers identified to entry into the judiciary were either societal (such as negative social norms, gender stereotypes and attitudes), or institutional (such as discriminatory recruitment processes), due to the lack of an enabling environment (no legal directives or policy for inclusion or mentoring) or because efforts to retain women were weak. The barriers to the retention of women in the judiciary were found to include the lack of work-family balance, harassment, security concerns, intimidation and gendered criticism, limited mentorship and discrimination. The barriers to promotion cited include legal barriers (the selection/promotion process and the criteria for promotion), institutional barriers (institutional policies on transfers and promotions, lack of support when seeking promotion) and individual and societal barriers (lack of political will, negative perceptions, lack of legal and political networks).

The findings are consistent with other studies and global trends as they relate to the representation of women in the higher courts and in leadership. Women's representation remains low and is unlikely to improve without targeted interventions.² This is despite the fact that six of the countries studied in the quantitative analysis have had women serve either as chief justices or as head of the Constitutional Court: Ethiopia, Kenya, Lesotho, Mozambique, Nigeria and Sierra Leone.³

The report then shares lessons learned and good practices where women are better represented in the judiciary or where women are supported to enter or be retained in the justice sector. Examples of the good practices identified include proactive leadership within judiciaries, constitutional gender quotas/laws on gender equality, professional associations offering peer support/training programmes, gender-sensitive judicial policies and civil society advocacy for gender inclusive benches.

Finally, the report includes general recommendations to address the specific barriers identified to women's equal participation in the judiciary and to support strategic programming at regional and country level. These include: targeted outreach and capacity development; training support for women in leadership through the creation of, or support from, networks of women judges, enabling better networking and lobbying for promotion; 'insider-outsider collaboration' where women in leadership in judiciaries seek out competent candidates and encourage them to apply; entry and career progression rules that are transparent and gender sensitive; highlighting successful women role models in judiciaries to counter negative stereotypes; civil society involvement in advocacy and strategic litigation in improving women's representation; and gender audits to identify and address institutional policies and implicit gender biases. Moreover, judiciaries are encouraged to promote gender sensitive workplaces, establish or strengthen mentorship initiatives for women judges and encourage cross cultural dialogue/peer learning support to facilitate sharing of experiences and good practices. Additionally, the report includes specific recommendations for the countries participating in the study.



Contextualizing the importance of women's participation in the justice sector

1

1.1. Purpose and approach of the study

Despite women's increased engagement in public life, they remain significantly underrepresented in decision-making positions. Globally, a relatively small number of women have been, or are part of, the judiciary, particularly at senior judicial leadership positions.

Women's meaningful participation has a normative value and should be a guiding principle in society. However, it also has instrumental value in helping to make the system more responsive to women's demands and aspirations. Women's representation in the judiciary is key to ensuring that courts represent their citizens, address their concerns and hand down sound judgments. By their presence, women judges enhance the legitimacy of courts, signaling that they are open and accessible to those who seek recourse to justice. In addition to ensuring that the legal system is developed with all of society in mind, it also inspires the next generation of female judges and motivates them to achieve their goals.

The entry of women judges into spaces from which they have historically been excluded has been a positive step in the direction of judiciaries being perceived as being more transparent, inclusive and representative. The active, effective and meaningful participation of women, on equal terms with men, at all levels of decision-making is one of the fundamental principles for the attainment of sustainable development, peace and democracy.

The UN Convention on Elimination of All Forms of Discrimination against Women requires states to ensure that women, on equal terms with men have the right to hold public office and perform all public functions at all levels of government. In the Beijing Declaration and Platform for Action, 189 participating States reaffirmed that “without the active participation of women and the incorporation of their perspectives at all levels of decision-making and their access to power; the goals of equality, development and peace are impossible to achieve”. In General Recommendation 23, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) Committee stated “in order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in decision-making at all levels, both nationally and internationally, so that they may make their contribution to the goals of equality, development and the achievement of peace”.

The United Nations recognizes the importance of the equal participation of women in matters relating to peacebuilding and conflict prevention and resolution. The Women, Peace and Security (WPS) Agenda, first laid out in UN Security Council resolution 1325,⁴ requires countries to ensure women's equal and meaningful participation in all aspects of peace and security. It highlights the need for women's participation at decision-making levels and emphasizes how women's full participation can promote peace and security processes.

This approach is reinforced by the 2030 Sustainable Development Goals (SDGs), which recognize the importance of the presence of women in decision-making and public life to advance the achievement of the SDGs, highlight that gender equality is both a purpose and an engine for development. This agenda calls for ensuring the full and effective participation of women and equal leadership opportunities at all decision-making levels in political, economic and public life. Goal 5 requires gender equality and the empowerment of all women and girls, and Goal 16 is aimed at promoting peaceful and inclusive societies and access to justice for all.⁵

Additionally, in 2021, a resolution adopted by the General Assembly declared 10 March each year to be the International Day of Women Judges,⁶ with the aim of promoting the full and equal participation of women at all levels of the judiciary, to celebrate progress and identify challenges ahead. This initiative emphasizes the importance of women in decision-making positions, and the UN's commitment to promote the entry of women into spaces from which they have historically been excluded.⁷

While it is challenging to understand the country-specific barriers preventing or frustrating women's representation in the judiciary in Africa due to the

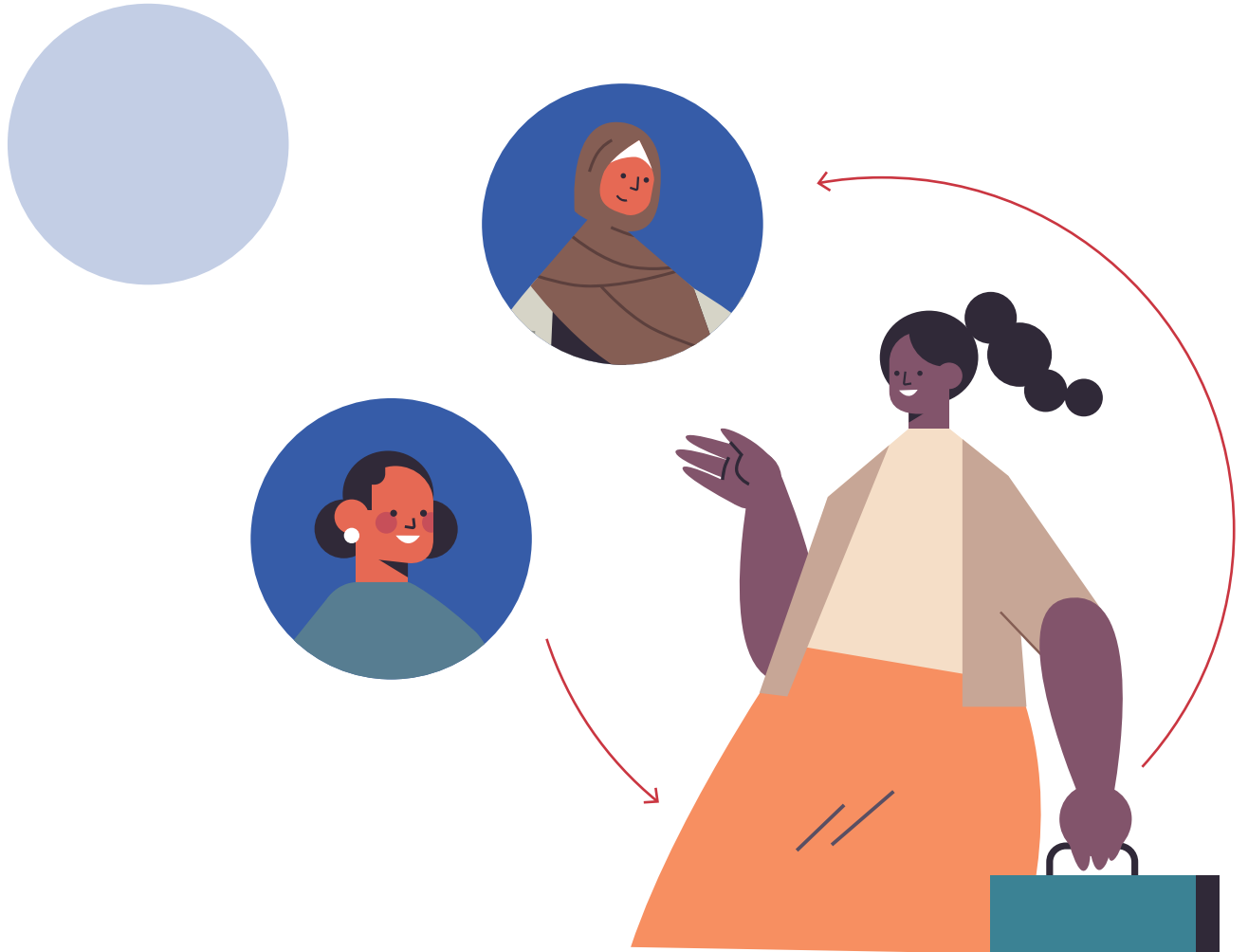
scarcity of current information, it's important to acknowledge the progress that women have made in the past decade. Despite hardships, many women have paved the way for progress in the African continent and have risen to positions in the highest courts in various countries. Women have not only become judges but also heads of judiciaries and are serving as judges in international courts and tribunals.⁸ These efforts have been supported by the African Union Agenda 2063, which prominently features gender equality and the rule of law as essential elements for sustainable peace and development in the region. Obtaining country-specific data on women's representation in the justice sector is key to developing strategic programmatic and policy support that effectively address the complexities described above. UNDP is committed to ensuring that gender justice remains high on its agenda as it is a vital component of work in country settings, including through legal protections, gender-sensitive justice, security sector reforms, development of legal aid services, women's meaningful inclusion in transitional justice mechanisms and constitutional reforms. As part of this work, the Gender Justice Platform, a strategic alliance with UN Women, is being implemented to close justice gaps for women and girls, specifically in conflict and post conflict or transitional settings.

In order to enable an effective and comprehensive response to women's empowerment in the justice sector, this study aims to analyse the current challenges in relation to women's representation in judiciaries in the African continent. Building on the lessons learned and recommendations from the joint UNDP and UN Women publication on women's meaningful participation in transitional justice,⁹ this report aims to highlight best practices for women's effective participation in judiciaries and make general recommendations to move towards women's equal and meaningful participation in the justice sector in Africa.

Purpose of the study

This study seeks to contribute to a deeper understanding on the situation of women judges in the African continent. The objectives of this study are to help policy and programming practitioners to:

- Acquire an overview on women's representation in judiciaries from select countries in Africa. This includes analysing the number of women actively working as judges in the judiciaries of the countries selected and the types of courts and other justice institutions where women are more greatly represented (depending on the different legal systems).
- Understand the specific barriers preventing or challenging women's representation, particularly at senior levels in the judiciary.
- Enable an effective and comprehensive response to women's empowerment in the judiciaries following an examination of the main challenges women are facing in accessing power and decision-making positions and the pathways that have facilitated women's accession in the sector.
- Utilize the information gathered from the study to identify lessons learned, good practices and make general recommendations for interventions and programming to overcome the identified challenges and move towards a future where women judges are equally represented in judiciaries in Africa.



Background

There has been a significant increase in the number of women judges worldwide, with women increasingly serving and leading in the higher courts of their countries, and also in international courts and tribunals.¹⁰ This is in part due to an increase in the number of female law students in law schools across the globe, but also due to deliberate advocacy for equality and programmatic work on inclusion in many countries. Some countries have also benefited from constitutional and legislative provisions and government directives which mandated the inclusion of women in the public sector, including judiciaries.

This study was informed by the fact that there was insufficient information on the representation of women in judicial institutions across Africa. Existing literature was lacking in comprehensive comparative data on women's presence in judicial institutions across a number of countries. In part, this is due to the fact that data on women's representation in judiciaries is not always collected by states for research purposes and systematic reporting.¹¹ Even where such data does exist, the diversity of judicial systems in terms of sources of law, history, structures, degree of independence and judicial career paths limit the possibility of drawing trends from the data available.¹² The lack of a data collection mechanism adversely affects the production of empirically grounded research and weakens advocacy efforts to address root causes for the underrepresentation of women in judiciaries in Africa. SDGs 5 and 16 call for disaggregated data on the representation of different groups in parliament, public service and justice systems. Indicator 16.7.1 measures representation in terms of age, sex, disability and population group and how they correspond to the representation of these groups in society as a whole, demonstrating the importance that the global community is beginning to accord to

gender equality within judiciaries and the contribution women judges can make in strengthening the rule of law.

This study examines the numerical representation of women in judiciaries in select countries in Africa, identifies barriers to women's entry to and progress through the ranks, and offers policy recommendations to remove the barriers, promote gender equality and increase women's representation and leadership within judiciaries. Due to the scarcity of current information on women's representation in the justice sector in Africa, it is challenging to understand the country-specific barriers challenging women's representation, particularly at senior levels, in the judiciary. The information obtained from this study is key to developing strategic programmatic and policy support to effectively address the barriers identified. The study covers a total of 14 countries, distributed across the African continent. It builds on studies carried out by the International Commission of Jurists (ICJ),¹³ the International Development Law Organization (IDLO)¹⁴ and United Nations Economic and Social Committee for Western Asia (UNESCWA)¹⁵ in Arab states and also in some African countries.¹⁶ The study also draws from important empirical work from the World Bank's recent publication on *Gender, Judging and the Courts in Africa: Selected Studies*¹⁷ and work by African legal scholars.¹⁸ It builds on the UNDP-UN Women research into women's participation in transitional justice.¹⁹

While the study covers select countries, the findings provide general recommendations on strategic interventions to be implemented through country-specific programming with judiciaries and partner organizations to enhance the representation and promotion of women in judiciaries across Africa.

International normative framework

The State has the legal obligation to ensure the full and equal participation of women. This obligation derives from state commitments to women's rights under various human rights instruments. The contemporary framework requiring women's meaningful participation in justice stems from the wider WPS agenda and is comprehensively laid out by many international treaties that include obligations of non-discrimination and equal participation in public life.

The International Covenant on Civil and Political Rights (ICCPR) entitles all persons to equality before the law and to equal protection of the law without discrimination on any ground, including gender. The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires states to guarantee the equal rights of men and women to enjoy economic, social and cultural rights.²⁰ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires states to eliminate discrimination against women in all its forms

and ensure practical realization of the principle of equality of men and women through law and other appropriate means.²¹

The African Charter on Human and Peoples' Rights (ACHPR) requires states to guarantee the enjoyment of charter rights to all persons without discrimination.²² The Protocol to the Charter on the Rights of Women in Africa (the Maputo Protocol) requires states to "combat all forms of discrimination against women through appropriate legislative, institutional and other measures".²³ The Arab Charter on Human Rights requires states to ensure enjoyment of rights without discrimination and states that all persons are equal before the law and the right to enjoy protection without discrimination.²⁴

These instruments are crucial for accountability as they create obligations on the part of the States which have ratified them to respect, protect, promote and fulfil the rights contained therein. This is especially true when the instruments contain requirements on periodic reporting to the various treaty bodies which allows for civil society actors and the treaty bodies themselves to query inaction and recommend that states act in accordance with their obligations.

Even where these instruments are not yet domesticated by states, they can form the basis of training on women's rights, as was done in Kenya through the Equality of Jurisprudence Programme run by the Kenya Women Judges Association (KWJA), which had the long-term effect of influencing outcomes in inheritance and matrimonial property disputes.²⁵ The status of ratification of these instruments by the countries under study is available in Annex 5.

Methodology

A. The Research Team: Interdisciplinary and geographically diverse

The research and analysis to produce this study report was led by UNDP and undertaken by two external and independent research consultants from August - November 2021.²⁶ This work was led by UNDP in New York, in coordination with UNDP Regional Hubs for Africa and Arab States. As per UNDP guidelines the study was peer reviewed by colleagues from Cordaid, Pathfinders, the Institute for Inspiring Children's Futures and World Justice Project.

Additionally, the research benefited from the collaboration of UN Women, as part of the joint UNDP and UN Women Gender Justice Platform, through strategic policy advice and technical support.



B. Methodological approach

The research and ensuing analyses focused on three broad questions:

- 1 **What is the number of women judges vis-à-vis men judges?**
- 2 **How are women represented within each type of court??**
- 3 **What is the representation of women as leaders or heads of court?**

To answer to the research questions, an integrated approach was used, including a quantitative and a qualitative design. The quantitative approach was used to establish the regional scope of women representation based on official national data. This analysis covered a total of 10 countries (see table below).

The qualitative and inductive design was employed to gather and analyse the personal perceptions in

relation to the barriers that have challenged women's entry and equal participation in the justice system, in relation to men. This approach was also used to explore and present good experiences and lessons regarding women's meaningful participation in judiciaries. This qualitative research and analysis included participants from a total of 13 countries (see table below).

C. Technical tools: Mixed methods for different answers

To implement this mixed methodology, a variety of tools were employed.

For the collection of quantitative data:

Data request to national justice institutions: A request for official and recent data on the representation of women in national courts was sent to the national justice institutions of the selected countries, with support from UNDP Country Offices (the data request form is included as an annex of the report). As a result, data from 10 countries was provided; the countries that participated can be seen in the table below.

For the collection of qualitative data:

Qualitative survey: A survey was utilized to gather qualitative data on the personal perceptions of women judges and women lawyers (the survey form is included as an annex of the report). These surveys were sent to approximately 60 people and 25 surveys were received back and used for the purpose of this report. The surveys targeted a wide range of justice sector actors, including senior judges, magistrates, law associations, students, heads of court stations, registrars, women judges' associations, law students and United Nations staff from the selected countries.

Focus group discussions and select interviews: The focus group discussions were aimed at collecting a supplementary diversity of views and experiences regarding women's presence in the judiciary, identifying good practices and understanding country-specific challenges on the representation of women and barriers to effecting meaningful change for women in leadership. The focus group discussions targeted a wide range of justice sector actors, including senior judges, magistrates, law associations, students, heads of court stations, registrars, women judges' associations, law students and United Nations staff in the selected countries. Additionally, in depth interviews were conducted with women trailblazers from the justice sector to better identify individual, social and institutional factors that facilitated their promotion. This was done with support of UNDP Country Offices and, in certain cases, complemented by support from the Institute for African Women in Law (IAWL). Of those who took part in the focus group discussions and surveys, 75 percent were judges and 25 percent were other participants e.g. law students, academics, UNDP staff and civil society actors.²⁷

Literature review: Additionally, publicly available academic, United Nations and non-governmental publications were reviewed to source secondary data and examples.

D. The Countries: The method for a strategic selection and analysis in diverse contexts

The selection of countries for the research was established jointly by the consultants, UNDP global and regional teams in the Africa and Arab States Regional Hubs, and in coordination with UN Women headquarters office. To allow a strategic approach to assist coordinated programming in the future, the following criteria were used for the selection:

- Availability and capacity of the country to participate in the research (available data, disaggregated data, etc).
- Diversity of legal systems (including common law, civil law and mixed systems).
- Existing UNDP and/or UN Women offices at national level.

- Inclusion of developing countries and countries in conflict or post-conflict contexts.
- Different contexts of women's representation in the judiciary.
- Diversity of political systems (federal and unitary).

Using the above criteria, 14 countries²⁸ were finally selected for the study, including the quantitative (formal data) and/or qualitative analysis (perceptions), as detailed in the table below:

Figure 1.1
Participating Countries

Country	Quantitative	Qualitative (Number of Participants)	Legal System	Political System
Algeria	Yes	Yes (18)	French Civil Law / Sharia Law	Unitary
Burkina Faso	Yes	No	French Civil Law/Customary Law/ Sharia Law	Unitary
Central African Republic (CAR)	No	Yes (2)	French Civil Law/Customary Law	Unitary
Ethiopia	Yes	Yes (2)	Civil Law / Customary Law	Federal
Kenya	Yes	Yes (4)	British Common Law / Customary Law / Sharia Law	Unitary
Lesotho	Yes	Yes (2)	Roman-Dutch Civil Law / British Common Law	Unitary
Malawi	No	Yes (1)	British Common Law / Customary Law	Unitary
Morocco	Yes	Yes (5)	French Civil Law / Sharia Law	Unitary
Mozambique	Yes	Yes (3)	Portuguese Civil Law / Customary Law	Unitary
Nigeria	Yes	Yes (1)	British Common Law / Customary Law / Sharia Law	Federal
Sierra Leone	Yes	Yes (4)	British Common Law / Customary Law / Sharia Law	Unitary
Tanzania	No	Yes (3)	British Common Law / Customary Law / Sharia Law	Federacy
Uganda	No	Yes (3)	British Common Law / Customary Law	Unitary
Zimbabwe	Yes	Yes (7)	Roman-Dutch Civil Law / British Common Law	Unitary
Total				
14 countries	10 countries	55 individuals from 13 countries		

E. Challenges

Although extensive efforts were made to represent a wide range of countries and court structures, and to speak to a variety of different individuals, the data collected is not meant to be an exhaustive study of all countries in the African continent, nor to represent the situation in all countries or that of all women judges. As previous studies have shown, and this study has confirmed, each situation is highly individual and complex. This report is intended to provide baseline data on women's representation in select judiciaries and investigate some of the lived experiences that challenge women's equal representation. Additionally, of the countries selected, not all were able to provide both quantitative and qualitative data for the report, as can be seen in the chart above. There are a total of 14 countries represented in the report, with qualitative data from 13 countries, and quantitative data from 10.

The differing legal systems, varied languages and contexts in each country lead to barriers in making broader generalizations and drawing conclusions which would be representative of the experiences of all women.

To protect the privacy and confidentiality of the participants in the research, the names and positions of those who took part in the surveys, focus groups and interviews are not published in this report or shared in the annex.

Some of these challenges are explored in further detail below.

Data Collection: While it was the intention to prioritize countries that are understudied and under-represented in previous research efforts, many of these countries were unable to assist with collection of quantitative data. The diverse ways that data is collected in different countries also impeded homogenization in the type of data collected for the report. Of the 10 countries that provided official data, some needed additional support to collect the necessary information. In some contexts, the lack of official or informal networks made it difficult to include respondents in the survey or the focus group discussions. Finally, as the research was developed during 2021, it is possible that the context and data from the participating countries of the report have since changed.

Language and gender barriers: Some participating countries required translation of the data collection tools into the local languages, and this impacted data analysis timelines. The qualitative survey was targeted at both male and female respondents, however, only responses from women were received.²⁹ This meant that crucial perspectives on the role of women in judiciaries as well as perceptions on women judges and their leadership could not be obtained from their male counterparts as anticipated.

Diverse Court Classification: An additional challenge was that of differing court structures and different systems for classifying courts in each country. Most courts fall under the broad categories of superior/higher courts, or lower/inferior courts. Due to the pluralistic nature of some African legal systems, within some jurisdictions, customary or traditional courts may be counted as part of the courts or may be considered as running parallel to the statutory courts. In countries with religious courts, these courts (e.g. Sharia courts in Nigeria, and Kadhi's Courts in Kenya) are classified differently. For purposes of this study, the courts included were those with available data. Thus, some of the data collected represent only the higher courts which have original and appellate jurisdiction, while some of the country data include lower courts such as circuit courts and magistrate courts.

While attempts were made to disaggregate the data based on the jurisdiction of the courts, not all the data received specified the jurisdiction of each court, whether civil, criminal, family or otherwise. To ensure uniformity across the analysis, the data is not presented according to the type of jurisdiction each court exercises. Given the variation in the available data, the report must be read paying close attention to the types of courts presented, as the total number of judges or magistrates will not always be fully representative of all the judges and magistrates in the country at the time of writing.

Finally, the research focuses on formal courts of the countries studied and not customary and informal courts. This is because the formal courts have more readily available data. Nevertheless, future research on women's representation in customary and informal justice (CIJ) mechanisms would be valuable, particularly in conflict affected regions and rural areas.

1.2 Why women's representation in judiciaries matters

Previous studies have shown that women are increasingly playing greater roles in the higher courts of many countries, whether as heads of judiciaries and courts or as judges within these courts. These range from making precedent-setting decisions on women's rights³⁰ and gender equality to educating colleagues on gender-based discrimination and stereotypical gender norms.³¹

This section reviews some of the reasons why women's contribution is important and the need to work towards improving representation of women in the justice sector. It does not in any way attempt to treat women judges as homogenous or essentialize

their experiences. The report draws from existing research and acknowledges that contexts are diverse and the examples given are not necessarily representative of the experiences of all women judges, thereby adopting an anti-essentialist stance.

Assertion 1:

Women's meaningful participation can enhance judicial legitimacy, public trust and confidence.

Women's meaningful participation in the judiciary contributes to an equitable legal system and therefore reaffirms the commitment of the 2030 Agenda of "Leaving no one behind". It also sets a positive example for young women and girls, encouraging them to pursue careers in the justice system. Over time, women's leadership in the justice system can contribute to greater accountability by bringing different perspectives and experiences, therefore strengthening judicial systems.

The World Justice Project has found evidence that women face greater barriers to justice than men in nearly 70 percent of the countries surveyed.³² Equal and meaningful representation of women increases trust, enhances judicial legitimacy,³³ and increased diversity within a judiciary enables it to better respond to diverse social and individual contexts and experiences. Conversely, a judiciary that is not diverse may undermine public confidence in the judicial process.³⁴ Judicial diversity is especially important in addressing public image and trust deficit in countries that have experienced conflict.³⁵

When there is equal representation of women in the judiciary, it strengthens the rule of law.³⁶ The presence of female judges can be catalytic for sustainable rule of law by empowering those who are less privileged and making the court environment accessible to the marginalized.³⁷ It is argued that the presence of women, and by extension other vulnerable people in society, shows the public that diversity is important to the judiciary.³⁸

This is especially significant where social justice, including gender justice, is sought through constitutional reform. Gayoye's work points out the importance of the representation of women judges in countries like Kenya where the judiciary has predominantly been male occupied, possibly causing patriarchal bias to be reflected in certain categories of disputes, such as matrimonial disputes.³⁹ Increased representation of women in the higher courts, even where they are not actually sitting in those particular disputes, has served to bring gender sensitive perspectives to an otherwise male gendered discourse.

Assertion 2

Women’s equal participation and representation can contribute to strong, independent, accessible and gender-sensitive institutions.

The judiciary is a critical institution for combating discrimination and ensuring equal application of the law. It is a key institution in the enforcement and protection of human rights. Across Africa, the entry of women into the legal professions and by extension the judiciary, was a late occurrence due to colonization. As Dawuni has argued, colonization modified many African systems of governance where women had discrete roles, “British, French, Belgian and Portuguese colonial rule brought forms of government that were modelled on their own. Women’s roles as chiefs, religious leaders, and warriors were subsumed under the patriarchal systems of governance of the colonial powers.”⁴⁰ The representation of groups that have previously been marginalized, including women, allows these groups to fulfil their right to equal participation, but also serves as a catalyst for the development of strong, independent, accessible

and gender-sensitive judicial institutions.⁴¹ The representation of women in judiciaries is particularly important because women have historically been excluded from political and public life in many countries, and the law was the primary instrument of exclusion.⁴² While authors like Hunter have argued that it is “at best naïve and at worst essentialist”⁴³ to assume that female judges are necessarily representative of their gender or that they speak with one voice, and that rather than transform judicial institutions, their capacity to transform may be curtailed by existing institutional norms and procedures and the law itself; the presence of women on the bench allows the judiciary to reflect the diversity of society and “generate higher levels of social trust”.⁴⁴ The inclusion of women in judiciaries at all levels of decision-making is an important step towards equal access and equal opportunity in other sectors.⁴⁵

Assertion 3

Women’s participation may strengthen gender-sensitive decision-making.

It is argued that the inclusion of women in judiciaries contributes to strengthening equality by producing decisions and public policies that are gender-sensitive, which have a direct impact on the lives of women, e.g., decisions on discrimination in employment,⁴⁶ divorce, child custody, gender-based violence, asylum and criminal and commercial law⁴⁷ and on matrimonial property rights.⁴⁸ In Benin, Kang finds that women judges have interpreted equality clauses in the constitution and in basic law to fight for women’s equality, as well as advocating for women’s rights outside of courts in civil society.⁴⁹

Without full and equal representation of women in the judiciary, the overall quality of judicial decision-making could be considered deficient, especially in relation to matters that specifically impact women and other people in vulnerable situations.

While opinion is divided on whether the gender of the judge impacts their decision-making, it is argued that women judges may bring a unique perspective to the bench, they may also favour gender equality in their decisions⁵⁰ although the desire for perceived legitimacy may hinder the capacity of women judges to effect meaningful change.⁵¹

The presence of a woman judge on a mixed panel may therefore influence the outcome in a gender discrimination or sexual harassment case or bring out the gendered nature of certain crimes in a way that male judges may not otherwise appreciate.⁵² A seminal text that captures the lived experiences of African women judges is *International Courts and the African Woman Judge: Unveiled Narratives*. Judge Julia Sebutinde, the first African woman to serve on the International Court of Justice makes a strong observation when she states as follows:

“

“Although I am a judge, I’m also a mother. I’m also a wife. I’m also somebody’s daughter. Do I put my human emotions... in these cases? Are we not the human face of justice? I think we are.”⁵³

IDLO captures the experiences of judges of the International Criminal Court (ICC), the International Criminal Tribunal for Rwanda (ICTR) and the ICTY as having provided a better understanding of crimes targeted at women occurring during an armed conflict, and

how this has had the effect of strengthening international human rights jurisprudence.⁵⁴ Justice Patricia Wald, former ICTY judge sums up this contribution as follows:

“Women judges can and should be both women and judges. International criminal law is a field in which women stand front and centre in multiple ways. Not only are they the principal victims of the displacements inevitably associated with combat and military campaigns, but they also suffer most often from crimes, including rape, sex crimes, and forced labour, that enemy forces perpetrate against hapless civilians.”⁵⁵

While acknowledging the significant impact of women judges in international courts, it is important to avoid the potential consequence of confining women to specialized areas of law based on gender stereotypes. Such an approach may limit the agency of women, as it may prevent them from exercising their judicial roles to the fullest extent.⁵⁶

As it is not always easy to determine what influences professional behaviour, and decision-making is influenced more by political persuasion, improving access to justice for women should involve both increasing the number of women in judiciaries, and cultivating gender expertise and sensitivity among all judges—both female and male.⁵⁷

Assertion 4:
Women’s participation in the judiciary can enable more opportunity for other women in the sector.

The appointment of women judges to senior positions in the judiciary is symbolic of fairness, meritocracy and the non-discriminatory nature of appointments to justice sector positions. This is especially important for law students and other justice sector actors desirous of joining the bench.⁵⁸ Women judges in senior roles can also provide encouragement and mentorship for younger women justice professionals, and in countries

like Ghana, the presence of women judges in superior roles appears to have inspired several female judges to pursue a judicial career and believe that positions of power can be occupied by women.⁵⁹ The same has been said of Kenya where Lady Justices Effie Owuor and Joyce Aluoch set the pace for other women to join higher ranks of the judiciary.⁶⁰

Assertion 5:
Women judges can improve the justice experience for women.

In the context of gender-based crimes, it is asserted that the presence of women judges can make the process less distressing for women and girls who have to appear in court, and that women judges can aid in providing litigants with holistic justice solutions, which have the effect of making the justice process more appealing for women.⁶¹ Yoon’s study highlights the role of the Tanzania Women Judges Association (TAWJA) Jurisprudence of Equality Project in providing gender-sensitive legal education to both women and men judges.⁶² A study on Arab states demonstrated a tangible change of atmosphere in court rooms, better adjudication of cases as well as a higher impact on protecting women from violence.⁶³ One participant from a focus group discussion conducted as part of this report pointed out that a predominantly male judiciary made evidence taking from female victims of gender-based violence more difficult.

In an example cited by IDLO, Ghana’s former Chief Justice Georgina Wood during her tenure spearheaded the creation of a centre to provide holistic support to survivors of violence.⁶⁴ Lady Justice Koome of Kenya highlighted that being able to serve outside Nairobi when she was a High Court judge gave her an opportunity to work with children who had experienced abuse, establishing a network of police and setting up gender desks at police stations, all of which improved access to justice for women and girls who experienced gender-based violence. She attributed the capacity to providing these solutions as stemming from the fact that judges are leaders and they command authority in countries like Kenya where they are highly respected.⁶⁵ It has also been shown that female judicial officers have contributed to making courtrooms and the wider court environment more accommodating for women, e.g. by prioritizing the cases of lactating mothers or mothers with young children.⁶⁶

Data analysis on women's representation in judiciaries in the study countries

2

This section of the report presents an analysis of the quantitative data collected on the representation of women in judiciaries in 10 select countries in Africa. The data is first presented, followed by a brief discussion of the representation of women in the courts vis-à-vis men, and an analysis of the numbers of women in leadership positions within the judiciary.

2.1 Data trends ⁶⁷

As explained in the challenges section, given the diversity in the ways countries structure their courts and tribunals, the data presented here should be viewed against the backdrop of the types of courts described previously. These nuances in the data presented are

an important indicator of the need for more investment in collecting systematized data to allow for cross-comparison of similarly situated countries in order to paint a full portrait of the state of women's representation in African judiciaries.



1

Women's representation in African judiciaries is varied depending on country.

Out of the 10 countries covered in the quantitative section of this research, women account for 4,619 judges and magistrates, compared to 6,988 men. As such, women judges represent only 40 percent of the total number of judges reported in the study, and this number must be considered with the specific country level data: in Kenya, Lesotho and Zimbabwe women make up more than 50 percent of the judiciaries and in Burkina Faso, Morocco, Nigeria and Sierra Leone women make up less than 30 percent of the

judiciary. As noted earlier, due to the lack of data on all judges within some countries, these numbers are not fully reflective of all the women *vis-à-vis* men judges. Nonetheless, these numbers provide a snapshot of where women are represented at higher levels as a percentage of all judges. Based on available data, Algeria (5,711) and Morocco (3,032) have the largest total number of judges (men and women), while Sierra Leone presents the lowest number at 82 judges.

Figure 2.1

Representation of women judges in countries selected

Country	Female %	Total female	Total judges
Burkina Faso	18%	130	707
Sierra Leone	22%	18	82
*Nigeria	25%	45	179
Morocco	28%	860	3,032
*Ethiopia	30%	120	402
Mozambique	39%	163	416
Algeria	47%	2698	5,711
Kenya	51%	322	627
Lesotho	58%	80	137
Zimbabwe	58%	183	314
TOTAL	40%	4,619	11,607

Data sourced from country judiciaries in 2021.

* Ethiopia and Nigeria are federal systems and the data for these two countries focus only on the federal courts. These numbers could therefore change drastically when the courts within the states/regions are added to the equation.

2

Women are better represented in lower courts than in higher courts.

Generally, the pattern of women's representation in the countries covered in this report confirm other global studies which show that women tend to be located predominantly in lower courts.⁶⁸ Possible reasons for this could be delayed legal educational opportunities for women, the lingering perception

that the legal profession is for men, the challenges of non-transparent selection and promotion practices, the continuity of patriarchal institutional practices, and the lack of leadership and skills-building opportunities for women. A similar tendency is highlighted in UNDP's Gender Inequality Index (GII),

“

“...when more concentrated political power is at stake, women appear severely underrepresented. The higher the power and responsibility, the wider the gender gap—and for heads of state and government it is almost 90 percent. Similar gradients occur even for women who reach higher power.”⁶⁹

With time, as increasing numbers of women move through the judicial ranks, the numbers may equalize, however, this is also dependent on appointment processes. Given that countries use different classifications for ranking courts as higher or lower, country-level analysis provides a better picture than an aggregate table. For instance, despite the lower overall number of women judges reported by Sierra Leone (18 percent), women make up a higher percentage in the Supreme Court (36 percent), the Court of Appeal (29 percent), the High Court (17 percent) and the Magistrate Court (21 percent) but appear to have no presence in the Circuit Court. Possible explanations for this variation can be found in the qualitative analysis of women’s entry into the judiciary. At the other end

of the spectrum, Zimbabwe has the highest percentage of women judges, at 58 percent, yet the highest representation of women is found in the lower courts. In the Magistrate Courts women make up 151 out of the total number of 241 judges, representing 63 percent, and in the Labour Court women make up six of the nine judges. The data from Kenya shows that women are evenly distributed within all the courts presented in this study, with each court represented in the 40-percentile range. While the 40-percentile is still below parity, the even representation of women across all courts is notable.

3

Legal tradition impacts women’s representation in the judiciary, but it is not the most influential factor.

The civil law tradition is generally considered to be welcoming of women entering the judiciary due to the civil service bureaucratic model of taking an exam to qualify as a judge. It therefore allows women to enter judiciaries right out of law school, at an earlier age, than the common law systems which have multiple levels of entry points to the judiciary.⁷⁰ If one applies this model, the expectation is that civil law countries will have more women judges than common law countries. However, this logic is not borne out by the data collected, which shows the opposite in the case of Burkina Faso and Morocco. In Burkina Faso it was not possible to obtain data on the lower courts where women may be more prevalent, however from the data available women represent 18 percent of the judges and magistrates. For the Constitutional Court, the Council of State and Commercial Courts, the representation of women accounts for 33 percent, 47 percent and 20 percent of the judges respectively and

no women in positions of leadership were identified. In Morocco women account for 28 percent of all judges, and the representation of women in leadership is 7 percent. This suggests that other factors may have a stronger role in influencing the number of women in the judiciary than the type of legal tradition, other possible factors are discussed in the barriers section of this report. These factors vary in each country and could include the role of religion and culture, selection methods, or institutional mechanisms such as the impact of constitutional or quota laws guaranteeing affirmative equality for women.



Figure 2.2

Legal tradition and women's representation listed from lowest to highest percent

Country	Female	Legal tradition
Burkina Faso	18%	Civil law
Sierra Leone	22%	Common law
*Nigeria	25%	Common law
Morocco	28%	Civil law
*Ethiopia	30%	Civil law
Mozambique	39%	Civil law
Algeria	47%	Civil law
Kenya	51%	Common law
Lesotho	58%	Civil/Common law*
Zimbabwe	58%	Civil/Common law*

Data sourced from country judiciaries in 2021.

(*) Elements of civil law tradition borrowed over from the hybrid legal system in South Africa.

4**Greater numbers of women have leadership positions in countries where women are well represented across the whole judiciary.**

A major aspect of this report has been to examine women in leadership, guided by the question, “what if any, are the discernible patterns on women’s representation as leaders and heads of courts within the study countries?” Generally, as a percentage of all leadership positions in the 10 countries studied for quantitative data, women’s leadership within judiciaries remains low with a few exceptions.

As indicated in the definitions section of this report, for purposes of this study a judicial leader is defined as the highest authority within a particular court with decision-making authority. This classification may be the chief justice in the case of a supreme court (e.g. Ghana, Nigeria, Sierra Leone), president in the case of a constitutional court (Senegal, South Africa), or chief or head judge in the case of high courts (Nigeria state courts). Despite the challenges they face in accessing leadership positions within African judiciaries, women have ascended to leadership positions across the continent.⁷¹ Since research for this report was conducted, recent appointments of women to leadership positions have occurred in Ethiopia, Kenya and Sudan. While women chief justices may signal opportunities for women to rise to leadership positions, a deeper exploration of the challenges women face in leadership positions, and in accessing leadership

positions within the lower levels of the court structure is required.

When the numbers of women in leadership positions from the 10 countries where quantitative data was collected are disaggregated by type of court, the percentage of women leaders appears to correlate with the overall number of women in the court. Consequently, women leaders tend to be highly populated in the lower courts where women often tend to be present in larger numbers.

Figure 2.3

Comparison of the percentage of women in leadership positions compared to overall women's representation in the courts of the 10 countries where quantitative data was collected⁷²

Country	Female	Female representation	Ranking
Zimbabwe	67%	58%	Above range
Kenya	60%	51%	Above range
Lesotho	46%	58%	Below range
Ethiopia	33%	30%	Within range
Nigeria	25%	25%	Within range
Algeria	20%	47%	Below range
Mozambique	20%	39%	Below range
Morocco	7%	28%	Below range
Burkina Faso	0%	18%	Below range
Sierra Leone	0%	22%	Below range

Data sourced from country judiciaries in 2021.

As a percentage of the number of women judges in the countries, compared to women in leadership positions, most of the countries have remained constant in their ranking. Kenya and Zimbabwe are both good examples of progress towards parity. In Kenya the representation of women in the judiciary is the highest of the countries studied, currently at 51 percent, with women accounting for 40 percent of the judges of the Supreme Court, 50 percent of the Appellate Court judges and 45 percent of the High Court judges and women are also well represented in leadership. These positive advances towards women's meaningful participation have occurred in a short time; the Court of Appeal, had only one woman judge before 2010.⁷³ Kenya has some good practices which have contributed to its progress towards parity. Appointments to the judiciary are merit-based and recruitment processes and interviews are done openly by the Judicial Service Commission. The Judiciary has also gone through a Gender Audit and developed a Gender Mainstreaming Policy to address sexual harassment, flexible working hours and transfers, maternity and to provide gender sensitization and awareness training.⁷⁴ The Kenya Women Judges Association has been training judges to prepare them for interviews for higher court positions and The Kenya Magistrates and Judges Association has also been acknowledged

for training male judges on gender sensitization and awareness, which has been credited with a shift in jurisprudence in inheritance and matrimonial disputes.

It is evident that where women are leaders of courts, and in countries that have had a woman as leader of the judiciary (either as chief justice or head of the constitutional court), generally the overall representation of women judges is higher.⁷⁵ This can be seen particularly well in Kenya (51 percent) and Lesotho (58 percent). Conversely, Burkina Faso (where the data refers only to the High Courts, which may not be representative) shows a lower number of women in the judiciary (18 percent) and has no history of a woman in a senior leadership position. The representation of women in the superior courts is 36 percent in the Supreme Court, 29 percent in the Court of Appeal and 17 percent in the High Court. It was suggested during the qualitative research for this report that a possible reason for this pattern could be the nature of the selection and recruitment process.

Although the pattern described above can be observed, there are countries which disprove this trend. In the case of Ethiopia, Nigeria and Sierra Leone, despite having (currently or previously) a woman in leadership, all have low numbers of women in their judiciaries at 22 percent, 30 percent and 25 percent respectively. Contrastingly, Algeria and

Lesotho have a high percentage of women judges, but women remain underrepresented at the higher ranks. This highlights that although trends can be observed in women's appointment to leadership positions and the overall number of women judges, it is not the only factor to consider.

Figure 2.4

Representation of women in judicial leadership in the 10 countries where quantitative data was collected

Country	Primary legal tradition	Percent of women judges	Woman Chief Justice/ President of Constitutional Court	Percent of women heading courts
Algeria	Civil law	47.2%	No*	20%
Burkina Faso	Civil law	18%	No	0%
Ethiopia	Civil law	30%	Meaza Ashenafi, 2018 –	33%
Kenya	Common law	51%	Martha Karambu Koome, 2021 –	60%
Lesotho	Civil law /Common law	58%	Nthomeng Majara 2014 – 2019	46%
Morocco	Civil law	28%	No	7%
Mozambique	Civil law	39%	Lúcia da Luz Ribeiro 2019 –	15%
Nigeria	Common law	25%	Aloma Mariam Mukhtar, 2012 – 2014	25%
Sierra Leone	Common law	22%	Umu Hawa Tejan-Jalloh, 2008 – 2015	0%
Zimbabwe	Civil law /Common law	58%	No	67%

Data sourced from country judiciaries in 2021.

* At the outset of the research conducted in 2021, Algeria had a woman president leading the Council of State, and women magistrates overseeing the Courts of Appeal. It is important to note that the Algerian Constitutional Court operates independently from the national judiciary and Ministry of Justice. For this study official data was only retrieved for the latter and not for the Constitutional Court.

Barriers to women's meaningful participation in judiciaries in the study countries

3

The United Nations Basic Principles on the Independence of the Judiciary require that methods of judicial selection safeguard against judicial appointments for improper motives and that in the selection process, no discrimination should be made against a person on any ground, including gender, save that the requirement that a candidate be a national of the country concerned shall not be considered discriminatory.⁷⁶

Historically, countries have had more male than female judges due to a number of intersecting factors and partly due to the misconception that the law is a male profession, a belief that began in the pre-colonial period but has persisted in post-colonial contexts.⁷⁷ While women have been underrepresented in public life, the push to make judiciaries more diverse and representative of society and the diverse needs of its citizens has been gaining momentum. In three of the countries studied, women make up more than 50 percent of the judiciary: Kenya, Lesotho and Zimbabwe.

This chapter identifies barriers to women's participation at three levels: entry, retention and promotion, and shares commentary obtained from the qualitative data collected during the study through surveys, focus groups and interviews. Trends from the 13 countries that participated in the qualitative part study are evaluated, as well as evidence discovered an examination

of existing literature and research. This approach was selected because, as can be seen in Annex 2, there was a disparity between the countries that participated in the quantitative data collection process and those that participated in the focus groups and survey. The chapter also captures the lived experiences of judges in the countries studied.

The barriers to women's participation in the judiciary are multifaceted and may be attributed to legal, social, religious, institutional, normative and other factors, and a failure to implement human rights standards on women's equal access to opportunities. These barriers can be attributed to an uneven implementation of women's rights and undermine the rights of women to equally access a judicial career.

3.1 Barriers for women to enter the judiciary

This section reviews cultural, legal and institutional barriers that may account for the low representation of women in the superior courts of the countries studied.

A

Cultural barriers to women's entry into the judiciary

Negative gender stereotypes and attitudes

In the survey, respondents were asked if they had experienced a gender stereotype based on culture, religion, customs or traditions, or another factor about women's unsuitability for a judicial role. Of those that had experienced a stereotype, culture, religious attitudes and customs or traditions were all equally cited as the cause of the stereotype.

As noted by Aura-Odhiambo, the perception that the law is a profession better suited for men historically precluded women from careers in law in many African countries.⁷⁸ While much progress has been made in addressing gender biases through normative frameworks, in some countries, particularly Arab states, stereotypes about the capacity and suitability of women for judicial roles remain a barrier for entry into judicial service.⁷⁹ From this study it appears that these barriers may remain in Ethiopia, Kenya and Morocco. Of those individuals who completed the survey, 48 percent reported that they knew of, or had personally experienced negative gender stereotypes. These stereotypes are based on "religion, culture, custom, tradition, and/or ideology".⁸⁰

Both the surveys and focus groups revealed that women's entry to the judiciary continues to be challenged by negative assumptions that judges ought

to be men and the assertion that women are too emotional to remain unbiased when deciding cases⁸¹ or that women cannot balance domestic and professional roles. Qualitative data collected from the literature, surveys and focus group discussions support this theory, especially in rural areas where traditional views may perpetuate when compared to urban areas where the population may be more open-minded and progressive.⁸² In Algeria and Morocco, for example, female judges are concentrated in cities and urban areas.⁸³ One of the respondents from Algeria stated that in the capital city, perceptions of women judges has changed and it no longer matters if the judge is female or male. In some countries which are multicultural or multi-religious such as Nigeria, there can be a preference for male judges particularly in the northern part of the country due to religious reasons.⁸⁴ The preference for male judges may also be attributed to in-group bias, where male appointing authorities may prefer candidates they feel more comfortable with.⁸⁵ A respondent from a Southern African country mentioned that the preference for male judges is attributed to scepticism as to the capacity for impartiality of 'feminist' female judges.

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"Upon joining the bench, one of my colleagues from the law school, not into feminism herself, felt that it would be wrong for me to view myself as a feminist...a judge is supposed to be neutral. You cannot come with predetermined positions on men and women. Yet, in my view, that has probably been the single most important contribution that I have made as a judge; the fact that I am bringing in feminist insights to those aspects of the law that have not really been strongly looked at from a feminist perspective."

Some respondents from Zimbabwe also indicated that in some instances, male litigants would decline to have their cases brought to their courts for decisions on bail where the accused were charged with murder or rape, ostensibly because they could not be trusted to be impartial.

However, except for the Kadhi's Courts where no woman has ever been appointed, this is no longer the case. One respondent from Algeria indicated that previously men would decline to have their

cases adjudicated over by women, the perception had slowly changed to the extent that some litigants preferring female judges over male judges. Respondents from Mozambique also indicated that women judges are held in high regard by male judges, in part because they have fewer cases of corruption being brought against them compared to their male counterparts. Where women judges excel in their judicial roles, respondents indicated that this had a positive effect on countering negative stereotypes about women's capacity for judicial work. This is bolstered by the fact

that leadership at the Ministry of Justice and Judicial Training Centre in Mozambique is female, which has facilitated the development of gendered approaches to justice.⁸⁶

It emerged during the focus groups that the positive trend in the representation of women in judiciaries in Algeria (standing at 47 percent, an increase from 42 percent in 2018) may be attributable to the high number of women with law degrees, which results in more female than male applicants to judicial positions.⁸⁷

B

Legal and institutional barriers to women's entry into the judiciary

Selection and recruitment processes

Previous studies on the representation of women in leadership in judiciaries have drawn a distinction between those countries of the civil law tradition, where judges join the judicial track much earlier and through entry exams, and common law countries where judges enter the judiciary through a selection process after serving in private practice or in other positions in the justice sector. It is argued that the former are more open to the representation of women than the latter because in the latter, selection processes focus on factors such as length of service, reputation and experience in law firms, which are possibly influenced by patriarchal considerations and indirect discrimination.⁹¹ Moreover, in civil law countries, judicial councils are responsible for the independence of the judiciary and individual judges and efficient functioning of the judicial system. It should be noted that the data collected in the quantitative part of this report did not reflect this pattern, for example, in Burkina Faso and Morocco, both civil law countries, women's representation was comparatively low, so other factors have an impact. Theoretically, in civil law countries, if the number of women and men obtaining a master's degree is the same, an equal number of both can become judges in training, this contrasts to common law countries where 'experience', which is assessed through external and subjective lenses, is needed to become a judge, therefore potentially creating a barrier for women wishing to join the judiciary. Women's professional development may be hindered by socioeconomic limitations that make it harder to gain 'experience' in certain contexts, creating additional hurdles compared to men.⁹²

Algeria and Mozambique are among the countries selected for this study where entry into the judiciary is based on an entry exam and training at a judicial institute. An increase in numbers of women in the judiciary in these countries may be attributed in part to this pathway of entry. In Mozambique, women make

up 39 percent of the representation, but the balance is expected to shift in favour of women in the future. During the focus group, it was reported that more women than men had been taken for training at the judicial academy, indicating a positive trend towards greater gender balance in the legal profession.⁹³ Furthermore, the UNDP Country Office in Mozambique also attributes the expectation of balance shift to the adoption of several gender strategies in the public administration and the development of gender strategies with support of UNDP within the Supreme Court and the Ministry of Justice.

In Morocco, where women represent 28 percent of the judiciary, like most civil law countries, the Judicial Institute is accessed by passing an exam open to all law graduates, applicants have to then be nominated and selected if they wish to become a judge.⁹⁴ The King presides over the Superior Council of Judicial Power and approves the appointment of magistrates by the Council.⁹⁵ Usually additional layers of selection may be a factor that hinders women's meaningful participation in the judiciary. However this can be remedied by taking extra measures to ensure women's participation, as was done in Morocco with the adoption of the 2011 Constitution, the introduction of quotas for women's representation in the judiciary and increased access to legal education for women. These measures have led to a steady increase in the number of female judges in Morocco, from 683 women judges in 2011 to 860 women judges in 2021.⁹⁶

In the three common law countries studied, the appointment of judges was done by the Executive, either independently or upon the recommendation of a judicial service commission or council.⁹⁷ In Tanzania, one respondent revealed that appointees do not always have to apply to be appointed, the Judicial Service Commission can recommend persons for appointment directly. It is argued that such

appointment processes leverage on existing political connections, which in many cases privilege male over female judges due to the capacity of the former to network and form political connections.⁹⁸ Moreover, the representation of women on the judicial commissions is crucial to women's inclusion as a male-dominated appointing commission can limit opportunities for women's entry into judiciaries.⁹⁹ However, other studies and the focus group discussions reveal that there is not a fundamental difference in representation based on the recruitment process, it appears that political will and commitment from national stakeholders has a greater impact on the increase in women's representation than the entry requirements.

Institutional policies

Certain policies which are not gender responsive within the judiciary may have a disproportionate impact on the decision of women to join judicial ranks. While most survey respondents indicated that there were no institutional policies that affected their capacity to enter the judiciary, the literature shows that practices that may not seem initially restrictive for women, likely have a direct impact. For example, requiring travel or time away from the home may disproportionately affect women who often have the primary responsibility for child rearing and domestic care work.

In civil law countries, those who enter the judiciary can either work as judges or prosecutors. Prosecutors are normally involved in investigations into alleged crimes and therefore work closely with the police. Respondents from Algeria indicated that the demands of work led to more women preferring to be judges rather than prosecutors due to their perception that the workload of prosecutors seemed more demanding compared to the roles of judges. Additionally, this choice allowed them to balance their familial responsibilities with greater flexibility.

Legal and social environment

Where there are legal and social barriers to women's economic and social spheres, these may have an impact on their representation in judicial bodies. For example, in civil law countries becoming a judge involves passing an entrance exam, further studies at a judicial institute and potential relocation to pursue a judicial career, this may dissuade law graduates.¹⁰⁰ Limited interest in judicial careers may also arise where there are not sufficient female role models, as will be discussed below.

Respondents from Mozambique reported during the focus group discussions that the representation of women in the public sector has gradually increased in recent years, this is also reflected within the judiciary where women in leadership in the courts rank almost at par with men. At present, the Minister of Justice, the Attorney-General of the Republic, the National Director of the Justice Administration and the Head of the Judicial Training Centre are all women. This provides room for insider-outsider collaboration, which has been shown to be fruitful in increasing women's candidature for judicial office and representation in countries such as Kenya,¹⁰¹ Rwanda and South Africa.

Where there is a constitutional, legislative or other government directive or quota requiring the inclusion of women in political and public life, this creates impetus for the inclusion of women and provides a tool with which to hold the state accountable on the representation of women in the judiciary. Among the countries studied, Algeria,¹⁰² Ethiopia,¹⁰³ Kenya,¹⁰⁴ Malawi,¹⁰⁵ Morocco,¹⁰⁶ Uganda¹⁰⁷ and Zimbabwe¹⁰⁸ had constitutional provisions, legislation or government policies mandating the inclusion of women in the public sector. Of those who completed the survey, 48 percent stated that their country had quotas or legal requirements to increase women's participation. The appointment of Chief Justice Aloma Mukhtar in Nigeria is attributed to a government commitment to ensuring women occupy at least 30 percent of public service positions.¹⁰⁹ The constitutional quotas in Kenya played a key role in the inclusion of women at all levels of the judiciary. As can be seen from the data in the previous section, all the courts, except the Kadhi's Courts where efforts to include women have been opposed,¹¹⁰ comply with the constitutional two-thirds gender rule.

Quotas or government directives are not sufficient in themselves to catalyse change without political will to implement the changes,¹¹¹ and without being accompanied by public education to generate public support.¹¹² It was revealed during the focus groups that the presence of such quotas in Malawi has not been sufficient to achieve gender parity within their judiciary.¹¹³ Kenya's Supreme Court remained unconstitutional until 2021 despite the two-thirds gender rule and litigation challenging non-compliance in the apex court¹¹⁴ and a previous study revealed discriminatory practices against female applicants during the selection processes.¹¹⁵ Conversely, Ghana and Nigeria previously saw the appointment of women chief justices without the constitution creating a gender quota.¹¹⁶ Similarly, there has been an increase in women's representation in Algeria's judiciary which is attributed in part to fair and transparent recruitment

processes rather than a quota.¹¹⁷ Morocco, which does have a quota for the representation of women in the Superior Council of the Judicial Power, has a lower representation of women in the judiciary. One respondent from Morocco indicated that quotas were less important than individual drive on the part of the applicant:

“

“During the last election, out of the seven positions, three women were elected with the remaining four being men. His Majesty the King has affirmed the role of women in the judiciary. During the election in October last year, a woman judge succeeded a place in the supreme judicial council even without the quota because she had more votes than the man judge. The success of this woman judge in the election was her confidence. The men judges gave her their vote. It was not because of the quota.”

It is argued that while quotas are useful for increasing women’s representation in other branches of government such as the Executive and Legislature, their application to the judiciary raises fundamental questions such as independence of the judiciary and the need for objective criteria in making judicial appointments.¹¹⁸

In line with previous studies that have highlighted the role of national stakeholders and those in authority in increasing the number of women at the helm of apex courts,¹¹⁹ this study shows the presence of leaders and gatekeepers with the will to ensure equality is a huge determinant as to whether courts become more inclusive. In an interview with a former deputy chief justice, it was revealed that part of the reason why the representation of women in Kenya’s judiciary is at par with men, is because of a deliberate decision made by the first post-2010 Constitution Chief Justice (Prof.) Willy Mutunga, who was also the Chair of the Judicial Service Commission (JSC), along with the Deputy Chief Justice Dr. Nancy Baraza, to hire more women judges to fulfil the constitutionally mandated quotas.¹²⁰ It is noteworthy that both of them had a human rights background before joining the helm of the judiciary.¹²¹ Kamau also attributes the positive changes that have occurred in women’s representation to the change in the composition of the JSC in the post-2010 Constitution, which was for the first time not entirely comprised of male commissioners.¹²² It is her assertion that this was crucial for the JSC as the controller of a gender-balanced bench.¹²³ In Lesotho, a member of the JSC indicated that there was a new policy arbitrating that if there was a tie between a male and female candidate for the position of judge, preference would be made for the female candidate.

Respondents from both Kenya and Zimbabwe cited the presence of women in leadership at the helm of the judiciary and in other courts as the reason why they were confident they could ascend to higher ranks of the judiciary without discrimination. It was also the assertion of Mozambican judges that the number of

women judges always increased when women judges sat in the judicial service commission. A respondent from Algeria attributed the allocation of court duties on an even basis between male and female judges to the fact that the president of the State Council was a woman.

Nevertheless, it is crucial that the provisions of equality are not only aspirational but have tangible deliverables in order to be effective. Having hard quotas, as Kenya’s case shows, provides a yardstick against which government’s efforts can be measured. The reverse is also true, The Federal Constitution of Ethiopia does not have specific gender quotas, but instead promotes gender equality and equal rights in employment, promotion, pay and transfer of pension payments. Despite the intention of these initiatives, it appears to have less impact on the meaningful representation of women in the judiciary, as within the federal courts, women make up only 30 percent of all federal judges.

The presence of advocacy groups remains crucial to holding the government accountable. For example, in 2011, the failure to comply with the two-thirds gender rule in the appointment of the first judges to Supreme Court in Kenya was the subject of litigation in *FIDA Kenya v Attorney-General*.¹²⁴ In 2016, another petition was filed by the National Gender and Equality Commission that challenged the appointment of Justice Lenaola on the basis that a woman should have been appointed instead, to comply with the two-thirds gender rule.¹²⁵ While both cases were dismissed and a finding made that there was no violation of the two-thirds gender rule in the Constitution, the litigation may have set the stage for a compliant Supreme Court 10 years later.¹²⁶

Lack of mentorship and role models

Role models are instrumental in the decision of women to join judicial ranks. Mentoring is crucial to encouraging professional growth, and it benefits both mentors and mentees. In countries like Ghana, the presence of women judges in senior roles has been shown to have inspired several female judges to pursue a judicial career and believe that positions of power can be occupied by women.¹²⁷ Only 32 percent of those questioned responded positively to the question if there are any formalized, structured mentoring opportunities for young women in institutions of higher learning that expose them to careers in the justice sector.

In Ethiopia, the study revealed that the judges of the Federal Supreme Court have themselves taken the initiative to reach out to female law students and mentor them with the hope that they will eventually form the pool from which future judicial officers will be drawn. This is especially important because there are few law schools in Ethiopia, and therefore a small pool from which future women judges can be drawn.

Some respondents to the survey reported that mentoring from senior judges was offered, other respondents pointed to mentoring specifically for newly appointed judges, others stated that they did not know of mentoring opportunities or that those which do exist are informal.

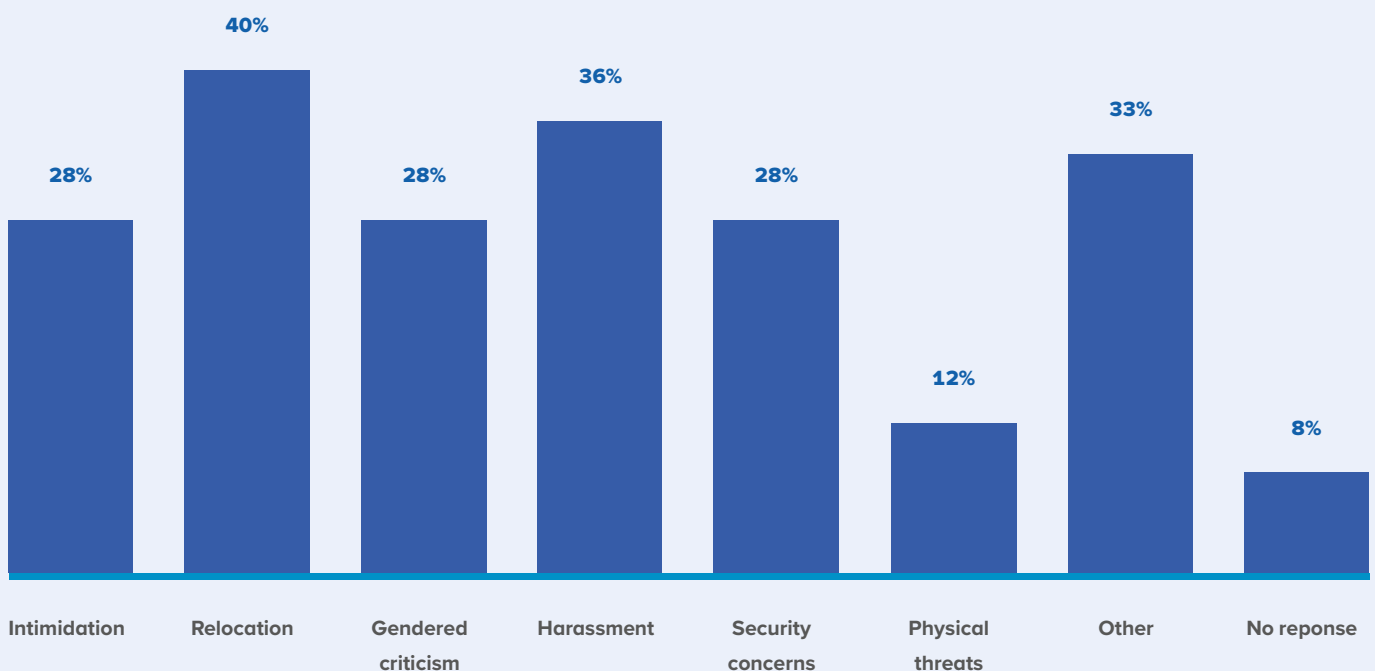
3.2 Barriers for women to be retained in the judiciary

While in countries with deeply entrenched social, cultural or religious norms that do not align with the presence of women in judiciaries, entry is likely the biggest hurdle, it has been noted that obstacles to thriving in a judicial career do not end at entry. Women

judges reported having many hurdles to overcome, such as transfers, harassment, security concerns and intimidation, in order to thrive in their judicial careers. These hurdles are discussed below.

Figure 3.1
Hurdles women judicial officers experience within judiciaries

Percentage of survey respondents who listed each factor as a barrier that women judicial officers have to overcome in order to thrive in their judicial careers.



Data sourced from survey responses in 2021.

Unlike the findings of other studies, 84 percent of survey respondents indicated that gender was largely an irrelevant consideration in the allocation of court responsibilities and that generally court duties were allocated on an even basis between male and female

judges. Additionally, only 16 percent of respondents stated that there were policies or practices that made it harder for women judges who are primary child-carers to work in the judiciary. One respondent from Morocco asserted:

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“Appointment to courts, judicial supreme council and the ministry depends on criteria and there is no discrimination for women and men because they are the same. ... Once you are a judge, you can be nominated in all courts including judicial administration and office of the public prosecutor so there is no discrimination but in the early stages of a woman judge’s career, she may not be nominated to certain chambers because of limited experience and it’s the same for men and women, not just women judges.”

With the exception of respondents from Kenya, the majority of those surveyed also considered the perception of male judges towards women joining the judiciary to be largely positive. However, one judge

from Lesotho felt that a male senior colleague had made it difficult for her when she was nominated by her supervisor for a career progression opportunity.

A

Cultural barriers to women’s retention in the judiciary

Work-family balance

Some women in judicial careers cite the difficulty of balancing work and family responsibilities as one of the challenges they face in their judicial role.¹²⁸ Women are often considered as primary care givers in their families and a career as a judge is sometimes perceived as conflicting with that role, considering its demands.

As can be seen from the chart in Figure 3.1 above, 40 percent of those surveyed cited relocation as a hurdle that women judges must overcome to thrive in

their judicial careers. This is supported by evidence from the focus groups where respondents from Kenya, Malawi, Mozambique, Tanzania and Uganda indicated that the possibility of being posted to remote areas impacted on the decision to join the judiciary, especially in contexts where the best schools, hospitals and other resources are in the capital city.¹²⁹ A respondent from Algeria cited family responsibility as one of the considerations for whether to take up training and deployment opportunities leading to promotion. A respondent from Uganda indicated:

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“There is no policy concerning deployment of pregnant and nursing women or even women with young children. It is survival for the fittest; many people leave or go into depression trying to balance.”

One exception to this was in Lesotho where the courts mostly sit in the capital so transfer outside of the capital is not something that the women judges had to grapple with.

It was noted that gender policies were instrumental in ensuring women were able to attend to work obligations while fulfilling their family obligations. For example, in Kenya, while transfers remain challenging, women judicial officers are permitted to carry young children and bring a nanny with them when they attend training programmes. In Zimbabwe, women judges who were surveyed reported that judicial officers are entitled to maternity leave with full pay and benefits, and when they return to work they are entitled to breastfeeding hours until the infant

is six months old. In Mozambique, accommodations are made during training of judges and in transfers to ensure that those who are pregnant or who have families are considered. A respondent from Algeria indicated that women judges are permitted to move to be closer to their families. These examples highlight how gender-sensitive policies can make it easier for women judges to juggle work and family responsibilities. In 2021, Kenya adopted a Gender Mainstreaming Policy in response to the Judiciary Gender Audit of 2019, which, inter alia, addresses sexual harassment, flexible working hours and transfers, maternity leave and provide gender sensitization and awareness training.¹³⁰

Labour harassment and security concerns

The fact that the legal profession has historically been male dominated makes it prone to power relations operating along gender lines.¹³¹ Even where there is no direct discrimination, indirect discrimination may exist. Among those surveyed, harassment was the second ranking hurdle that women judges had to

overcome to thrive in their judicial careers. However, when asked to explain why harassment or security concerns were hurdles for them, many of the respondents provided no response. One judge from Lesotho indicated during the focus groups:

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“Sometimes you look at a lawyer and you can see all over his face that he thinks I don’t know what I am doing and I cannot order him around.”

Some judges indicated that security concerns arose when they had to travel long distance to and from

their court stations. One respondent from Lesotho indicated:

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“During my term as a magistrate, I also had administrative functions over local courts. One of the issues that the women working as court presidents in these courts had was in the issues of safety. One court president’s house was burnt down and unfortunately she was in it and she died.”

Even countries which are progressing well in the area of gender equality have reported several cases of gender and sexual harassment, the majority of which either go unaddressed or are underreported, where those who did not report to a superior cited fear of retribution.¹³² Some of the countries under study, including Kenya and Uganda, have now developed a sexual harassment policy for the judiciary.

Limited mentorship opportunities

Previous studies have shown that role models and mentorship are crucial to helping women actively seek out judicial appointment and that the media is a vital tool increasing the visibility of women in the judiciary as role models.¹³³ Mentorship is especially important because judges are not knowledgeable in all areas

of law, which is the expectation of judicial appointees. The presence of women judges in superior roles has been shown to have inspired several female judges to pursue a judicial career and believe that positions of power can be occupied by women.¹³⁴ In the survey, 40 percent of respondents stated that there were no mentorship opportunities offered upon recruitment or during judicial tenure. The countries where respondents indicated that mentorship opportunities are available include Kenya, Morocco and Zimbabwe. One respondent from Morocco indicated that her capacity to mentor had been improved by participation in a mentorship programme herself.

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“Personally, I benefited from a training known as IVLP program. I visited different courts in the USA to learn more about the judiciary so I can in turn mentor young magistrates and students.”

However, from the information gathered in the survey it appears that none of the participants were aware of an existing formal mentorship structure in their country, although they pointed to the International Association of Women Judges or local association of judges or lawyers (FIDA) in the case of Kenya, Uganda and Zimbabwe, as some of the avenues providing opportunities for mentorship. In countries where no women judges’ association exists, such as Algeria, Ethiopia and Sierra Leone, respondents did not point to an existing mentorship structure. One respondent from

Kenya indicated that “mentorship has not been institutionalized and is a self-driven-thing.”

This suggests that in the majority of countries studied, mentorship is not institutionalized but occurs because of personal initiative. One judge from Malawi indicated her disappointment when she asked to shadow a woman judge who had been serving longer in the judiciary, but the senior woman judge declined to allow her to shadow her in court. In contrast, respondents from Zimbabwe indicated that senior judges were

always willing to mentor and assist new judges and a respondent from Uganda and another from Lesotho indicated that the support of male judges was instrumental in helping them settle as newly appointed judges. Some respondents from Mozambique pointed out that the bonds between women judges are weak and mentorship and solidarity among the women judges are areas that the judicial training institute can work on for the future to ensure that gains made towards gender parity are not lost.¹³⁵

Discrimination

Unlike other studies which have demonstrated that there may be a distinction made between male and female judges in the allocation of court duties,¹³⁶ this research did not reveal a clear trend of this. This may

in part be explained by the fact that in most countries judges preside over all matters, and there is no strict division of jurisdiction in courts in some countries, especially outside of the capital city.¹³⁷ Respondents from Mozambique, Nigeria and Uganda indicated that a lot of discretion was given to presiding judges in allocating duties, but in all three countries, allocation of assignments was done on an equal basis between male and female judges. In Malawi, the allocation of responsibilities is based on seniority, where the judges who are most senior, whether male or female get appointed to head court registries. One judge from Morocco stated that appointments depend on criteria, and there is no discrimination apart from in the early stages of a women's career. However, another Moroccan judge believed that some courts were better staffed by women:



“...a woman can be a license judge but the appointment of women in some courts like family court is because of the nature of women such as their capacity of listening and understanding submissions related to family life. Also, people are more comfortable to have a woman judge than having a male judge.”

The quantitative data collected from Lesotho supports this opinion, the Children's Courts are staffed only by women judicial officers, and women make up the majority in the Central and Local Courts (at 92 and

60 percent respectively), similarly, the family division of the High Court and Children's Courts in Kenya are staffed predominantly by women judges.¹³⁸

3.3 Barriers for women to be promoted in the judiciary

This section reviews legal, institutional and societal as well as individual factors that may account for the underrepresentation of women in the judiciaries in the countries studied. These factors may range from ideological opposition and restrictive views on gender roles and norms to failures of political will in the appointing authority.

For the inclusion of women to be meaningful, it must transcend all levels of the justice system. This means that women should not just be involved at the entry level, but also at higher courts and in decision-making positions.¹³⁹ The United Nations Basic Principles on the Independence of the Judiciary require that the promotion of judges be based on objective criteria, particularly competence, integrity and experience.¹⁴⁰ The Human Rights Committee has also expressed concern that where promotion is at the discretion of administrative authorities, it would “expose judges to political interference and jeopardise judicial independence and judges’ impartiality.”¹⁴¹

The trend in the representation of women in judiciaries suggests that women are better represented in

the lower courts than in the apex courts across most countries studied. Aura-Odhiambo¹⁴² and Dawuni¹⁴³ argue that the late entry of women into training for these professions may account for this trend. Nevertheless, where those in decision making positions are sensitive to the need for gender representation and the promotion processes are clear and transparent, women are able to emerge as leaders.¹⁴⁴ The representation of women in higher courts and leadership roles has increased steadily over time, with women being appointed to the highest courts across legal systems. The following study countries have had women serve either as chief justices or as head of the constitutional court: Central African Republic, Ethiopia, Kenya, Lesotho, Mozambique and Nigeria.¹⁴⁵

The survey respondents were largely confident (72 percent) that they could progress up the judicial ranks without gender discrimination. The majority (84 percent) also confirmed that leadership opportunities for responsibility in judicial administration that contribute to promotion are allocated on an equal basis. Nevertheless, some hurdles keep women from accessing leadership and positions in higher courts

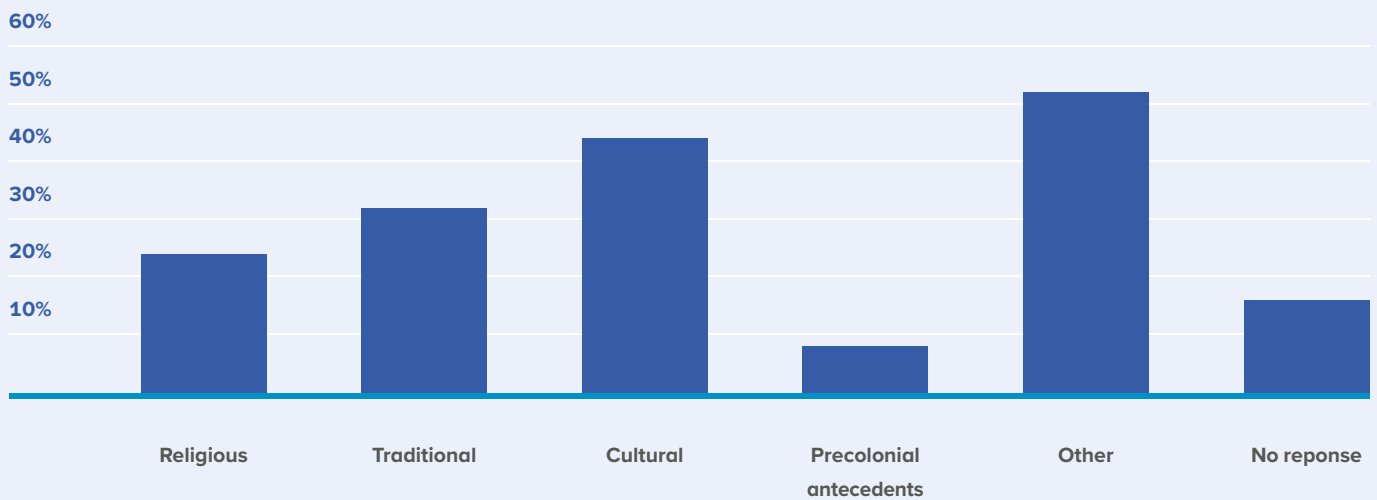
on an equal basis with their male counterparts. Some of these are negative perceptions about women's capacities, as shown in the chart below. Therefore, as previous studies have shown and as will be discussed, despite the progress made in women's

representation, ascension to the higher echelons will take not just individual commitment and drive, but also a commitment from those in authority to allow women to assume these posts.¹⁴⁶

Figure 3.2

Barriers to women's leadership in judiciaries

Percentage of Survey Respondents who felt each attitude or antecedent affects women's ascent to leadership in the Judiciary in their country.



Data sourced from survey responses in 2021.

A Legal barriers preventing women from being promoted in the judiciary

Selection and promotion process

Writing on the rise of women in judicial leadership, Dawuni and Kang assess different factors that may have contributed to the increase in the number of women serving either as chief justices or as heads of constitutional courts in the 1990s and 2000s.¹⁴⁷ The five factors identified were: type of legal system, selection method, commitment of national stakeholders, end of a major armed conflict and regional diffusion. For the first of these factors, the type of legal system, as has previously been discussed, there is some evidence that women are more likely to emerge as leaders in civil law rather than in common law countries, however, this is not always the case and other factors may play a larger role in determining the representation of women in the judiciary. The second factor, the selection method, it was asserted that the more open the selection/promotion process is, the more likely that women ascend to the higher echelons of judicial ranks. Thirdly, because the process involves decision makers beyond the appointing authority who is often the president, the study found that appointing

commissions can, if reformed, promote the ascension of women to higher ranks in the judiciary. Dawuni and Kang's study also found that the end of a major conflict could result in a change in gender norms allowing women to ascend to leadership in justice institutions. Finally, they found a trend in regions where the appointment of women to leadership in one country in a region could have a snowball effect in other countries, thus leading to more women being appointed to leadership.¹⁴⁸ UNDP and UN Women's study on the importance of women's meaningful participation in transitional justice also highlights that when women are meaningfully involved in justice systems in crisis and conflict affected and post-conflict regions the outcomes are positive for all members of society, ultimately leading to a more stable and sustainable future with reduced return to conflict.¹⁴⁹

Due to the limited participation of post-conflict states in the study, it was not possible to establish whether post-conflict reconstruction efforts have resulted in

more women ascending to higher levels in the judiciary. While in Sierra Leone the study highlighted a correlation between the end of the conflict and women's ascent to leadership, that trajectory does not appear to have resulted in a significant increase in women in higher courts as representation of women in the Supreme Court, Appeals Court and High Court where representation stands at 36 percent, 29 percent and 17 percent respectively. Kamatali's study on Rwanda, where there was an increase in the number of female law graduates following the genocide, found that with the increase in the number of qualified women, it was difficult for the state to continue to justify the exclusion of women from judicial ranks.¹⁵⁰ Without data from other post-conflict states, it is difficult to discern any patterns or trends.

Previous studies on women in the judiciary appear to indicate that women are more likely to be promoted through an exposed and open process rather than a sheltered one.¹⁵¹ This is because Constitutional Courts and other apex courts handle constitutional matters and require multiple judges, the public will therefore require diversity as inequality is more apparent. The selection process is exposed in cases where the selectors are elected, visible and accountable to the public, and are therefore able to claim credit for their actions in diversifying the bench. Conversely, selection is sheltered when it is undertaken by a group of unelected people without public scrutiny (for instance by a non-partisan nominating commission, such as a judicial commission), and the selectors who make the appointment are thus sheltered from voters and lack incentives to claim credit for their actions.¹⁵² Of those surveyed, 80 percent indicated that promotion processes to higher courts were fair and transparent. The majority of focus group participants indicated that opportunities at higher courts were advertised

and interviews carried out. In some countries such as Zimbabwe and Kenya, the interviews are broadcast live on television and streamed on news media sites.

However, from the literature and the results of this study, there is no consensus on the hypothesis that women's representation is increased with public involvement compared to appointment by an elected official.¹⁵³ A recent study by Escobar-Lemmon *et al*, indicates that whereas previous studies on exposed versus sheltered selection processes have focused on wealthier established democracies, this distinction is less material in developing countries. This is because where countries are considered to be developing, appointing more women to state institutions is a way to move them towards international norms, which in the context of judicial institutions are the highest courts or positions in the administration of justice. Appointing women to these courts, being the most visible courts, allows states to improve their global standing and reputation. It is therefore suggested that the desire to improve global status is a greater influence on women's promotion than the type of process, and that the distinctions between open and sheltered processes are not so material in developing countries.¹⁵⁴

Recruitment processes were discussed during the focus groups and interviews that were conducted for this report, respondents from Kenya, Lesotho, Tanzania, Uganda and Zimbabwe indicated that the public scrutiny that accompanies open recruitment processes is invasive of the private and family lives of applicants. The heightened public scrutiny acts as a deterrent and many women would opt to shield their families from such scrutiny rather than go through the public interviews. One respondent from Zimbabwe indicated:

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“When we moved under the new Constitution to public interviews, the interviews may be or are often regarded...as particularly gruelling in the approach in which they are conducted. For some women, and men, it is not what they are wired to be put through in terms of the kind of interviewing process that currently exists... That is not to say that women do not apply. At the present moment, when one looks at the statistics in the magistrates' courts, there are more female magistrates than there are male magistrates. In the higher courts, the percentage of women is lower...there are fewer women putting themselves up for public interviews.”

In Kenya, for example, the process includes wealth declaration and clearance by criminal investigative agencies and the anti-corruption commission.¹⁵⁵

One former deputy chief justice indicated that due to the personal and invasive nature of the interview process, where she was probed about issues that were unrelated to the role (such as her divorce which had been concluded long before the interview), by the time she had completed the recruitment and taken

office, she felt drained and unenthusiastic about her new role. Another acting chief justice pointed to unfavourable interactions with peers and politicians and exposure to public ridicule during her tenure as having blighted her term as acting chief justice.

Criteria for selection/ promotion

The rules on promotion were varied in the selected countries which were evaluated. In some of the

countries studied for this research, a multiplicity of factors seems to affect the rise of women up the judicial ranks, one of which is a lack of clear and objective criteria on promotion which may hinder women's career progression. The progress to higher ranks is often dependent on meeting a seniority threshold and an assessment of judicial performance, often carried out by senior judges, the judicial council or the ministry of justice, whose members are predominantly male.¹⁵⁶ Although 80 percent of survey respondents felt that selection and promotion processes were fair, the focus group discussions and interviews highlighted several examples of where these processes may hinder women's promotion within the judiciary. These include male structured processes as a factor limiting women's representation in higher courts, however, positive new trends suggest possibilities for this situation to change, such as the fact that the Council of State in Algeria is now headed by a woman. Participants from Uganda indicated concerns in relation to the lack of independency of the state powers needed for a proper and fair process.

In Malawi and Tanzania, promotion of judges to the Court of Appeal needs to be done based on promotion, which is done by the President on the recommendation of the Judicial Service Commission. It was reported that many women judges retire as High Court judges because the system does not entrust women with senior roles. In the case of Nigeria, promotion is based on seniority, which may work either way when it comes to the promotion of women as they may not have the same opportunities to gain experience, but if they have experience they should progress equally to men.¹⁵⁷ This is contrasted with Kenya where non-judicial officers who have been in legal practice or the academy can apply to directly join the Court of Appeal or the Supreme Court. This has created opportunity for more gender parity as the High Court was previously male dominated.¹⁵⁸

B

Institutional factors preventing women from being promoted in the judiciary

As the data from the 10 countries covered in the quantitative research shows, the presence of women tends to diminish in the higher ranks of the courts. This section reviews institutional policies on promotions that may affect women's ascent to higher rungs of the judicial ladder in the countries in the study.

Institutional policies on transfers and promotions

Many of the surveyed candidates stated that their country did not have clear and objective criteria on transfers and promotions and the distribution of administrative and leadership responsibilities within the judiciary. In respect of allocation of responsibilities, a lot of discretion is given to the presidents of the

The research reflected that in systems where promotion is based on meritocracy and this is coupled with an open recruitment process, the number of women judges in higher courts appears higher, such is the case in Kenya. However, survey responses indicated that meritocracy is sometimes tempered by considerations of seniority and the need for regional balancing in the higher courts, which may lead to some qualified candidates being overstepped.¹⁵⁹

Where the system did not allow judges to join higher ranks from outside the judicial track, the numbers of women were unlikely to be high, as it is the predominantly male judicial staff who are promoted to higher ranks, this may be the case in Malawi and Morocco.

In many of the countries where the promotion criteria lack transparency, the status quo remains as male judges tend to be promoted to higher levels of courts. This may relate to the fact that promotion is dependent on the capacity of judges to lobby, which favours male judges more than female ones.¹⁶⁰ Lobbying favours men as they experience advantages allowing them to form political networks and it is more difficult for women to be mentored by male judges. As developing a working network was revealed as a key factor to enable promotions, respondents from Kenya, Malawi, Nigeria, Tanzania and Uganda indicated that this one of the areas where women judges would benefit from capacity building.

From existing research, which was confirmed with the focus group discussions, caution must be exercised where women are underrepresented in higher ranks; no attempt should be made to directly appoint women using unclear criteria to fill the gender gaps as this might end up creating a legitimacy deficit. If women are not appointed legitimately, it leaves space for lack of trust in the system or in the women judges themselves.

courts or the head of the judiciary. Lack of support to women in leadership may make it difficult for women to thrive in leadership roles. In Lesotho, for example, one of the respondents indicated that she was appointed duty judge and did not receive the required induction training necessary for the position.

In some countries, there is an assumption that women will choose to remain close to their family home and they should therefore not be moved away from the major cities or urban areas or be relocated away from their families. Such assumptions, made without inquiring as to the actual preferences of women judges, may limit opportunities for leadership which may be present away from the major cities. Respondents from

Mozambique reported during the focus groups that the women judges lobbied to have all judges treated equally during promotions and transfers to avoid prejudicing competent women judges who were willing to move to take up promotions.

In Kenya, it was during the tenure of Chief Justice Willy Mutunga that the first transfer policy was drafted within the judiciary. Previously, transfers were carried out in an *ad hoc* manner, which was detrimental to judicial officers' family lives.¹⁶¹ Despite the drafting of the policy, it was indicated both in the survey and in the focus group discussions that the policy is yet to be implemented and transfers are sometimes carried out in the middle of the school year, which is problematic for those with young families. Frequent transfers were also demonstrated to be a challenge to promotion in Malawi, Mozambique and Tanzania. In the latter, it was indicated during the focus group that judges preferred to retire while serving in the High Court to avoid being transferred from station to station while serving at the Court of Appeal. The respondents nevertheless expressed hope that a change would occur now that the presidency of the country is occupied by a woman. Contrastingly, respondents from Lesotho indicated that transfer was not a challenge since the High Court only sits in the capital.

Lack of training support/mentorship when seeking promotion

While acknowledging that mentorship was indispensable to progressing up the ranks of the judiciary, none of the countries, studied had a formal mentorship programme. In many countries, judges associations serve to help women seek out and prepare for promotion within the judiciary. The Kenya Women Judges Association's has been credited for work in training of women judges and transforming outcomes in matrimonial disputes heard under the 2010 Constitution in Kenya.¹⁶²

Respondents from Algeria also cited a lack of support for and encouragement of women to take up senior positions as one of the reasons that could hinder women from achieving top leadership positions. Respondents from Kenya and Tanzania indicated that while more senior judges are willing to assist, a lot depends on the proactivity of those seeking mentorship. Nigeria did not have a mentorship programme for judges, but it was reported that attempts were often made by the chief judge to ensure that every magistrate was attached to a chief magistrate upon appointment for mentorship.

C

Individual and societal factors preventing women from being promoted in the judiciary

Lack of legal and political networks

Kalantry points to a lack of networks and connections that facilitate advancement as a major challenge for women in their pursuit of judgeships.¹⁶³ This was supported by survey participants from Kenya, Mozambique, Nigeria and Uganda.

It is argued, and Kenya is a good example of this, that having women in senior positions has the potential to create numerous downstream effects, including recruitment of more women and other marginalized groups, removing institutional barriers and normalizing the presence of women in positions of leadership. Mozambique credited their chief justice with the increase in women's representation in leadership roles within the judiciary since it is the chief justice who appoints judge-presidents of the court. It was reported during the focus groups that women rank almost at par with men in the judge-president roles.

Perceptions on women's leadership

Negative perceptions on women's leadership were shown to be a barrier to women rising to higher levels in the judiciary. Due to unspoken rules about the capacity of women to lead, more concerted effort is needed for women to ascend to leadership than their male counterparts.¹⁶⁴ These perceptions are anchored in socially accepted gender roles¹⁶⁵ and the assumption that men are better suited for judicial work because they are less encumbered by family care duties. This often results in women not feeling properly valued and having to adapt to a system that privileges male experiences as free from family responsibilities, and capable of working long hours.¹⁶⁶ These perceptions came from both male and female quarters, with previous studies indicating that there was an unspoken rule that leadership positions were designated for men.¹⁶⁷ During an interview with one former deputy chief justice, it was reported that despite being qualified for the chief justice position, she was advised to apply for the deputy position as the top-most seat had been reserved for a man. One respondent from Lesotho, indicated that one male applicant declined

to apply for a judicial position as it would require that he be interviewed by her (a female judge) during the appointment process.

In Algeria, it was reported during the focus groups that women preferred not to seek out leadership positions due to perceptions that it would affect their

domestic relationships or impose too many responsibilities, which were unappealing to women judges. One respondent stated:

“

“...many women judges prefer to remain at the courts because if you are in a leadership position you are asked to manage or take charge of a whole tribunal or court but if you are a judge, you will have responsibility of managing the sittings only and not the court.”

This may account for why the representation of women in the Administrative and Appellate Courts is almost at par with that of male judges, while women judges account for only 30 percent of the Supreme Court judges at present. Moreover, only one woman is in leadership at the Appellate Courts compared to 47 men, while at the Administrative Court there are 18 women in leadership compared to 30 men, there are currently no women in leadership positions in the Supreme Court.

Lack of political will

As discussed above, more than the selection process and the legal system that is in place in a country, the political leadership of the country and government policies that proactively seek to increase women’s representation in public life are key determinants of whether women’s presence in judiciaries will increase. The 2006 Executive Decree in Kenya, which mandated that 30 percent of all public service positions be reserved for women, was a crucial first step in increasing women’s representation in the judiciary

before quotas were introduced by the 2010 Constitution. However, lack of political will was cited as the reason why women remained underrepresented in the higher courts and in leadership until recently.¹⁶⁸ Decisions by the political leadership to appoint women chief justices in Ghana and Nigeria, even where the Constitution did not create a gender quota,¹⁶⁹ demonstrate the capacity of political leadership to reverse discriminatory cultures in judicial appointments. This is also evident in Mozambique, the Gender Policy and its Implementation Strategy (PGEI) 2006, which aims at “guaranteeing gender-equal participation, access to rights, and opportunities, so that every person can contribute to the development of and reduction of absolute poverty in Mozambique” are credited with not only increasing women’s political participation but also the number of women in the judiciary and the prosecution service.¹⁷⁰

Lesotho, which has a good overall representation of women at 58 percent, has relatively few women in the higher courts and leadership positions. One respondent indicated:

“

“The lower courts, that is the magistrates, judicial commissioner courts, central courts and lower courts, is the place where there are so many lady judicial officers. From my experience as a magistrate, women judicial officers tend to stay in the Judiciary for a long time, maybe because they do not have anywhere to go...from my past experience, it is men who move to greener pastures.”

While Lesotho had a woman chief justice in 2014, Nthomeng Justina Majara, and a woman acting chief justice, Justice Maseforo Mahase, in 2019, their terms in office ended abruptly and the cases were covered by the local press.¹⁷¹ In the case of Justice Majara, the government stated that there were grounds to suspend and investigate her, however, other commentators blame her removal on changes to top judicial

appointments that occurred as part of an established pattern of change.¹⁷²

A former woman judge from the discussion group also explains a similar experience following her suspension, and the subsequent appointment of a male chief justice in her position without clear criteria for this process:

“

“When I was acting chief justice, the kind of treatment I received from some of the politicians and from some of my peers was not very favourable. I was ridiculed (..). I was removed from the position of acting chief justice.”

Lessons learned and good practices on women's meaningful participation in judiciaries

4

A number of repeating themes or patterns have become apparent across the different countries studied in this report. From these patterns it is possible to identify lessons learned and good practices that help to promote the equal and meaningful representation of women in judiciaries and in positions of leadership.

4.1 Lessons learned

1

Religious and customary courts tend to have lower representation of women

Throughout the research and analysis, it has become evident that women are less represented in religious and customary courts. An excellent example is Kenya, where women are well represented at 51 percent of all judges, and 60 percent in leadership positions, but have no representation in the religious courts which are presided over by male judges.

This pattern is also true in Nigeria. This highlights that religion and tradition are key factors in the justice chain which must be considered when defining gender equality approaches. Engaging religious leaders concerning women's representation may be a way to challenge this entrenched gender bias.

2

Other justice actors must be considered to support women's participation, with attention to the legal system

In common law systems it is evident that the appointment of judges is often achieved via recommendation, either by an executive or a judicial service commission. This process is advantageous to men as they are provided with greater opportunity to form political connections and also because the recommending institutions are male dominated. These factors limit opportunities for women. Increasing women's

meaningful participation in appointing commissions and in positions of leadership will allow for more women to be recommended for judicial appointment.

3

Gender sensitive procedures for women's effective participation are useful, but political will can have a greater impact

Women's representation on judiciaries does not appear to be fundamentally affected by recruitment process. Although variations can be observed, the recruitment process alone is not a limiting factor. Where there are increasing numbers of women qualified for the position, generally more women are recruited, which suggests that with time the representation of women will improve if all other factors are equal. It has also been found that government directives and quotas are superficial in some instances, although the intention is positive, they may be insufficient to catalyse meaningful change. As is the case in Malawi where, despite quotas, women are not well represented on the judiciaries.

However, quotas and a fair recruitment system work well when supported by political will and commitment from those in authority and the selection institutions. Where there is strong political motivation to move towards women's equal participation it has been found to have a profound effect on the numbers of women represented in judiciaries. As Ghana and Nigeria have shown, where there is political will, gender quotas are not necessary for women to be appointed. Strong political will can be effectively supported by public education initiatives to generate public support and enthusiasm to move towards a representative justice system.

4

Leadership and champions on gender equality inside the judiciary are key to set positive role models

The presence of leaders and national stakeholders with the will to ensure equality is a determinant as to whether courts become more inclusive. For example, in Kenya, where women are well represented (except for in religious courts), a deliberate decision was made by the Chief Justice and Deputy Chief Justice to work to fulfill the constitutionally mandated quotas. This

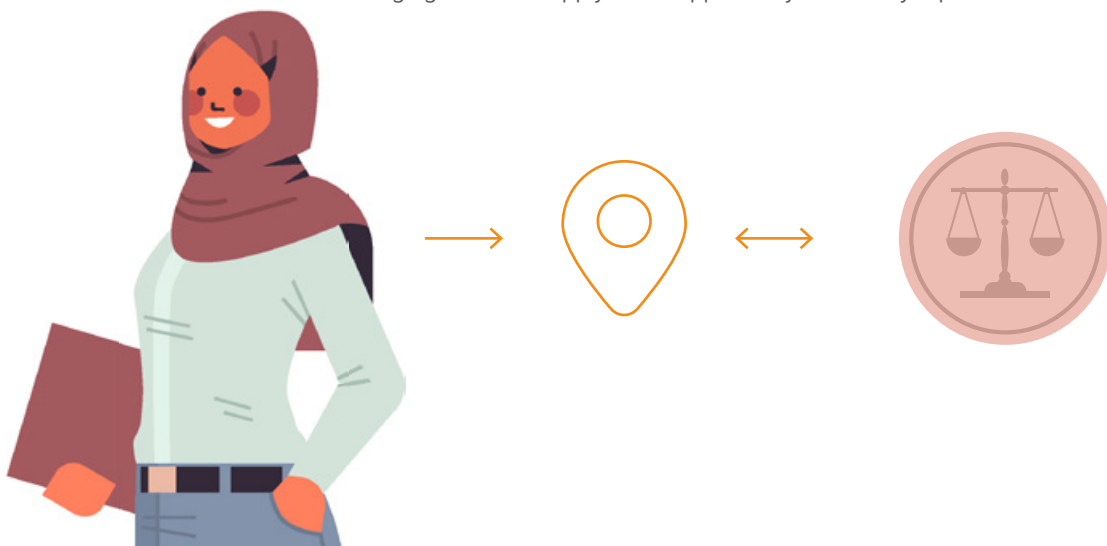
type of positive action by those in authority is essential to elevate women into the judiciary and into positions of leadership. It can also be seen, for example in Zimbabwe, that the presence of women in positions of leadership and where women are proactively engaged to seek judicial positions, there is an increase in women ascending into the judiciary.

5

The accountability process will define the success of the outcome expected regarding gender sensitive measures at the national level

Accountability is a strong determinate for the success of gender sensitive policies and quotas. Advocacy groups can be effective at holding governments accountable to their obligations to achieve women's equal participation in judiciaries. For example, gender activists in South Africa successfully lobbied against sexist interview questions and comments directed at female judicial nominees by the Judicial Service Commission. This action, coupled with the proactivity of the commission in encouraging women to apply for

judicial positions, led to an increase in the number of women applicants.¹⁷³ Another example can be seen in Kenya, where failure to comply with the two-thirds gender rule in the Supreme Court led to litigation. Where advocacy groups can bring petitions and hold governments to their quota rules or gender equality laws, even when cases are dismissed, drawing attention and maintaining pressure on governments will lead to a future where women have more equal opportunity to be fairly represented.



4.2 Good practices on women's meaningful participation in the judiciary

1

Proactive leadership

There is a direct correlation between proactive judicial leadership and the number of women in higher courts. Studies from Kenya and Rwanda and anecdotal evidence from Mozambique indicates that where judicial leadership proactively engages women to seek out high judicial positions, women's representation at higher levels is increased. The roles of the chief justices of Kenya and Rwanda and the Judicial Service Commission in South Africa in encouraging and recruiting women have been shown to provide a favourable environment for more women to join the higher ranks of the judiciaries of the three countries. Survey respondents from both Kenya and Zimbabwe

cited the presence of women in leadership at the helm of the judiciary and in other courts as the reason why they were confident they could ascend to higher ranks of the judiciary without discrimination. Lesotho's Judicial Service Commission has also adopted a policy of prioritizing female candidates where there are equally qualified applicants during the selection process. Targeted outreach by the judicial service commission has been shown to be effective in increasing women's representation in South Africa.¹⁷⁴ The proactivity of those in authority, if sustained, will result in greater women's representation at all levels of judicial service in the future.

2

Constitutional gender quotas/laws on gender equality

While not sufficient in themselves to ensure parity, legal provisions mandating gender equality in the public sector in countries such as Kenya, Morocco and Zimbabwe provide a basis for holding the stat

e accountable or challenging the exclusion of women from such positions. Where these provisions are coupled with robust strategic litigation and advocacy, they increase momentum towards parity.

3

Professional associations for peer support/training programmes

Even in the absence of formal mentorship programmes, existing associations of women judges in Kenya (the KWJA) and Tanzania have filled the gap by offering mentorship for women seeking promotion to higher ranks and training on areas where discourses have been especially gendered.¹⁷⁵ Similar initiatives exist in Kenya and Uganda under the local chapters of the IAWJ. In Mozambique, training on human rights, gender-based violence and HIV and AIDS has been developed by the Judicial Training Centre. UNDP, along with the Commonwealth Secretariat and IAWJ have launched the gender diversity in the judiciary initiative, hoping to provide national decision-makers

with the information they need to increase gender parity in the judiciary.¹⁷⁶ These initiatives, if replicated in other countries would not only strengthen the capacity of women judges for higher roles but also promote solidarity among women judges. Collegiality is a vital source of mentorship. Existing informal mentorship structures can be strengthened to build the capacity of women to seek ascension to superior courts. In Zimbabwe, the newly established training institute is a good opportunity to provide mentorship and leadership support.

Gender-sensitive judicial policies

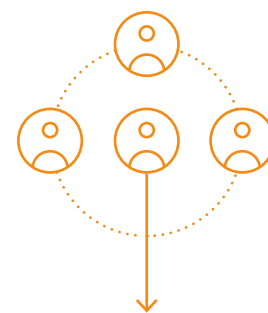
To address the hurdles that prevent women from thriving in their judicial careers, it is crucial to make judiciaries gender sensitive. This would require countries to carry out audits of their practices and policies to ensure that they do not disadvantage women in their impact. Such an audit was completed in Kenya in 2019 and formed the basis for the adoption of the Gender Mainstreaming Policy in 2021. A similar policy exists in Uganda, though it is due for review. The latter includes a requirement that there be training for all judges on gender and the law and creates a procedure for reporting sexual harassment claims.

Some promising gender sensitive work practices can be found in the flexible working hours implemented in Algeria and on the internal policies to accommodate nursing mothers in Mozambique and Zimbabwe, as these practices support the role that (in the majority of cases) women play as caregivers, while allowing them to pursue their judicial careers. The Mozambican Judicial Training Institute has also developed Human Resources, gender-based violence and HIV and AIDS policies.¹⁷⁷ In Sudan, the successful introduction of childcare facilities in court buildings may alleviate some of the pressure that primary care givers have upon returning from maternity leave.

Civil society advocacy for gender inclusive benches

The present research has found that strategic litigation by civil society as well as mobilization around appointment processes to ensure transparent and fair procedures, which are sensitive of the need to include women, have been instrumental to increasing the representation of women in higher courts. The role of civil society in advocacy and strategic litigation in improving women's representation has been demonstrated to be effective in reversing male dominance in the judiciary in Kenya and South Africa. In Kenya, the failure to comply with the two-thirds gender rule in appointing Supreme Court judges was challenged by civil society. The IAWL has successfully used advocacy to promote the appointment of women judges to the Supreme Court of Ghana,¹⁷⁸ to the International Court of Justice,¹⁷⁹ and the International Law Commission.¹⁸⁰ The IAWL has also been at the forefront of centring the experiences of African women judges through their legal narratives project called the African Women in Law Legacy Project, they are documenting top women judges across the continent through videos.¹⁸¹ Additionally, the Amandla African Women in Law Speaker Series (Vanguard Edition and Women to Watch Edition) both highlight the stories of trailblazing women leaders in law.¹⁸²

In South Africa, civil society has been instrumental in critiquing the composition of the JSC, which was male-dominated, and has also suggested failure by the President to appoint more women to the Constitutional Court and the failure to address gender disparities with the same vigour as racial disparities. In addition, the failure by the JSC to actively promote the nomination of more female candidates for judicial appointment has been highlighted. The civil society antecedents of chief justices such as in Kenya, where the chief justice is also head of the JSC, have also proven instrumental in increasing representation of women in higher courts.



Recommendations on improving women's representation in the judiciary

5

5.1 General recommendations

This section provides general recommendations aimed at addressing the underrepresentation of women on the judiciaries of select countries in Africa. These recommendations are drawn from quantitative data collected on the 10 countries involved in the study and from the qualitative information from 13 countries obtained through the surveys, focus group discussions and interviews carried out, as well as the review of specific literature.

1

Targeted outreach, capacity development and mentoring

Targeted outreach to women justice professionals and law students can increase the pool of candidates from which potential women judges are drawn. This could take the form of a future judges' programme where young lawyers are targeted and trained to be judges, or outreach by selection bodies such as judicial service commissions to encourage suitable women candidates to apply to join higher judicial ranks. To be perceived as legitimate, the participants ought to be selected based on transparent, objective and clearly advertised criteria. Where women have not had much success with joining judicial ranks, targeted outreach may help to increase women's participation.

To ensure that inclusion efforts permeate male-dominated institutional cultures and advance women's full and equal participation in the judiciary, it is vital to obtain the solidarity, support and leadership of male judges in such capacity building and outreach efforts.

The establishment of mentoring and support networks, and other practical measures designed to allay women's concerns about being a judge, should be pursued. This is an important way to encourage women judges to keep exercising agency and striving to move up the judicial ladder and can encourage law graduates and other justice sector professionals to consider judicial careers. Cross-cultural dialogues and peer exchanges allow for sharing of experiences and good practices which are making strides towards gender parity. These experiences may raise the consciousness of women judges in countries where

representation is low and embolden them to demand greater integration of women in the judiciary.¹⁸³ As part of promoting peer learning and building of solidarity among women judges, it is recommended that civil society actors consider supporting retreats for women judges to enable peer learning and experience sharing across jurisdictions. This could be done just for peer learning or combined with leadership training to strengthen the capacity of women leaders to effect meaningful change and to mentor other women leaders coming up the ranks.

Examples



In countries such as **Central African Republic and Ethiopia**, there are ongoing outreach programmes to law schools aimed at encouraging law students to consider judicial vocations early in their career, these could be strengthened for sustained impact.¹⁸⁴

2

Training and support for women in the judiciary

Providing support and training for women judges, either through creating networks, or by supporting the work of existing networks, can enable women better network and lobby for promotion to higher courts. It is important that this support extends to helping women leaders lobby the other arms of government to obtain the level of support necessary to effect meaningful change when women are at the helm of the judiciary, especially where the judiciary does not control its

own funds. While it is not the intention to essentialize women's contribution to the justice sector, it is important to solidify gains made in the ascent of women to leadership positions to create powerful role models that can counter negative stereotypes about women's capacity to lead. Enhancing the capacity and infrastructure of associations of women judges and women lawyers is critical in efforts towards advancing the role of women within the judiciary.



In **Mozambique**, respondents indicated that where women did exceptionally well in leadership, it made it easier to lobby for more women to ascend to leadership roles in the future.

3

'Insider-outsider collaboration'

The implementation of quotas may be a necessary temporary measure to advance the recruitment and appointment of women judges by overcoming and redressing significant historical gender imbalances within the judiciary. However, quota systems must operate in a manner that ensures that judicial appointments are based on qualifications and skills.

Studies on increased women's representation in Rwanda¹⁸⁵ and Kenya have shown that existing

quotas can be capitalized upon to increase women's representation in judiciaries without undermining judicial independence and the requirements of objective criteria in judicial appointments. In such cases, those in leadership do not just wait for women to apply; they actively seek out competent candidates and encourage them to apply. With more women joining the leadership of judiciaries in both civil and common law countries, this approach could be used to increase women's representation in the higher courts.



An innovative initiative was implemented by UNDP in the **Central African Republic (CAR)** to promote local young women's leadership in the justice sector at earlier stages, by targeting law students, encouraging them to study and start careers in the judiciary

4

Promotion of entry and career progression rules that are fair, transparent and gender sensitive

Laws, procedures and administrative practices governing judicial selection and appointment must ensure the independence and impartiality of the judiciary and must vigorously safeguard against appointment for improper motives and gender-biased recruitment processes. They must be designed to ensure judicial diversity, equality of opportunity and to overcome deficits in women's full and equal participation.

While few countries have had express legal barriers to women's entry into the judiciary, selection criteria and promotion processes for higher courts have not served to facilitate women's progression on judicial

career ladders. Public scrutiny that surrounds interviews for higher court positions have been cited as invasive of private and family life and dissuaded women from seeking promotions to superior courts.

Where selection and promotion processes draw from a broad pool of applicants, including legal practice, the academy and civil society in addition to the magistracy, there are increased numbers of women represented in higher courts. Also, legal systems must endeavor to ensure that restrictions on women's full and equal participation as judges in various higher tribunals are removed.



In **Kenya, South Africa and Zimbabwe** where applicants are drawn from a wide pool, women's representation in the higher courts appears higher than in countries where superior court appointments are only by promotion. This is due to a number of factors but having a wide pool of applicants and a transparent and fair recruitment and promotion process can aid women's increased participation.

5

Highlighting successful role models in the judiciary to counter negative stereotypes

Modelling and mentoring are crucial to helping women lawyers have the determination to seek judicial appointment. Where role models are highlighted, it helps to counter the entrenched negative perceptions that society may have about the capacity of women to judge and lead.¹⁸⁶ Highlighting role models is especially important where discriminatory attitudes towards women judges mirror what the public perception is towards women.

The media and other targeted education campaign efforts can be used to elevate the perception of women in the eyes of society and to raise the visibility of women judges and leaders as role models.

Support for such initiatives, especially in countries where women's representation remains low, may help to boost women's interest in judicial careers.

Authorities in jurisdictions where religious ideology has played a role in restricting women's full and equal participation in the judiciary must take specific targeted educational and outreach measures to address public perceptions as to the role of women in society and in the judiciary.



The respondents from **Mozambique** reported that where women succeed in their judicial roles and their successes are highlighted, it discredits negative stereotypes about women's capacity to lead.

6

Civil society involvement

Where former civil society actors enter decision-making positions within the justice sector, it has been shown to have an impact on the number of women who are appointed to the judiciary.¹⁸⁷ Civil society

actors should continue to push for states to include more women in decision-making bodies broadly, and in the higher courts, and for judicial appointments to be based on a meritocracy.



Criticism and advocacy around non gender-responsive human resources processes by **South Africa's** civil society has been instrumental to raise awareness on the necessity of nominating more female candidates for judicial appointment roles¹⁸⁸ and to properly address gender disparities within the justice sphere.

7

Gender audits and institutional policies to reduce gender bias and discrimination

As the study has revealed, some institutional policies or implicit gender biases have had a disproportionate impact on the capacity of women to thrive in their judicial careers. The issue of transfers was repeatedly cited as one of the biggest hurdles that women judges have to overcome. Recruitment processes which are not transparent, or which are not based on objective criteria disproportionately affect women. Where gender audits are not carried out, practices that are discriminatory towards women cannot be identified and eliminated. It is therefore recommended that judicial authorities conduct periodic gender audits to assess whether their organizational services, structures, procedures, budgets and overall environments promote gender equality and where they do not, create a plan with clear commitments and targets for how they can be improved upon. These must be accompanied by monitoring and oversight mechanisms, with responsibility for delivery clearly designated.

It is also recommended that countries consider promoting gender sensitive workplaces by granting men and women equal paternity and maternity leave and consider flexible working arrangements where women judges could work from home for aspects of judicial work that do not require physical presence. Additional support for all judges, such as increasing research assistants and tools to manage workloads will allow women more opportunity to flourish in the judiciary. To address concerns on gendered harassment targeted at women judges, it is recommended that each country adopt protection mechanisms for all judges, but especially ensuring that female judges exposed to high profile cases, particularly those relating to elections or corruption by state or political representatives, are shielded from harm.



A gender audit was carried out in **Kenya** in 2019 with the support of IDLO, and according to the 2020/2021 State of the Judiciary Report, the audit will be the basis for reviews on transfers, flexible hours, maternity leave, sexual harassment and sensitization training within the judiciary.



UNDP's Country Office in **Mozambique** is supporting the Supreme Court and Ministry of Justice with the development of gender strategies which, in combination with the gender curriculum for the training of legal officers and judges, should enable a safer environment for women to thrive in their legal careers.

5.2 Specific country recommendations

This section includes recommendations for the countries that formed part of the present study, and also additional countries that were not able to participate, as per the challenges discussed in the Methodology section above.

Algeria

Representation at the higher courts of Algeria remains at 30 percent of the total number of judicial officers. Nevertheless, overall representation of women is increasing, from 42 percent in 2018 to 47 percent in 2021, showing a positive trend.

Insider-outsider collaboration may help leaders attract and encourage suitable candidates to apply for judicial positions. The existing women judges may also benefit from mentorship, support and peer learning opportunities..

Ethiopia

Despite having a woman representing as national chief justice, Ethiopia has yet to achieve substantial representation of women in the higher courts. Nevertheless, without official data from the state courts, it becomes challenging to form a complete assessment of the barriers to accessing higher courts. It is suggested that further studies are conducted that establish the specific challenges to promoting women into higher courts.

A positive entry point is the existing mentorship programme being run by the National Supreme Constitutional Court to attract female law students to judicial careers, this could be strengthened to encourage more women to join judicial ranks.

Kenya

Kenya is to be commended for commissioning a Judiciary Gender Audit 2019 and developing a Gender Mainstreaming Policy in 2021. It is hoped that this will address issues of transfers, maternity, flexible hours, harassment and gender sensitivity training. The implementation of this policy should be advocated for.

Given that there are currently no women serving in the Kadhi's Courts, it is recommended to initiate and sustain engagement with religious leaders concerning pursuing women's representation as judges in these courts.¹⁸⁹

To ensure gains on women's representation and leadership are consolidated, the judiciary together with other justice sector actors such as the Law Society of Kenya should implement and train on gender policies and continue to support equality in participation and advancement. To address the question of work-family balance, the judiciary should consider flexible hours for working mothers as well as childcare policies that are institutionalized rather than ad hoc.

Gender bias consciousness training/training on gender equality and non-discrimination is recommended. Positive impacts have been seen as a result of the increased presence of women and of educating their male counterparts through trainings and informal interactions on outcomes in inheritance and matrimonial property disputes in Kenya. Such programmes should be sustained and extended to other areas of law where the jurisprudence has suffered from predominantly male perspectives.

Lesotho

The representation of women in the lower courts is fair in relation to men, but the situation is not the same within the higher courts. No women are permanently appointed to the Court of Appeal, even though high court judges do sometimes sit in the Court of Appeal on an *ad hoc* basis. On the gender responsive national capacities, the establishment of a national judicial training institute and increased opportunities for peer learning and support for women judges would be

beneficial. Positively, there is an appetite to receive capacity training as expressed by some women judges during this research. Therefore, it is recommended to continue to lobby for inclusion of women in the higher courts and support training of women to join the judiciary at the higher ranks. It is also crucial that there continues to be a push for fair procedures, in order to assure judges of security of tenure.

Morocco

With women in leadership accounting for 7 percent, and women judges accounting for 28 percent of the total number of judges, the representation of women still remains low. Morocco would therefore benefit from leadership capacity training as well as mentorship programmes to support raising overall the numbers,

as well as to strengthen the women judges' capacity for leadership. The national UNDP office has also expressed interest in a related initiative in this area that could be used as a strategic entry point for further work on women leadership.

Mozambique

Mozambique's participation in the study allowed perspectives from a Lusophone country to be received. The study has shown that women are under-represented in the higher courts, there is a need for capacity building to strengthen women's leadership. The judges who participated in the study expressed interest in having a mentorship programme through the judicial training institute. Leadership training and support for peer learning opportunities would be beneficial. The UNDP Country Office reported having

supported such training initiatives in the last two years, targeting about 180 professionals. Financial support for training could be crucial in consolidating gains made in women's inclusion. Moreover, there is still a need for women to take up judicial careers as well as to build solidarity and networks among women judges. Such capacity building endeavours could serve both as training ground for judicial work and opportunities for building solidarity and networking.

Nigeria

A previous study indicated that Nigeria had "one of the highest rates of female judgeship on the African continent."¹⁹⁰ This study did not benefit from data from the State Courts, where women's representation may be higher. The data from the Federal Courts show that women represent 29 percent of the judges at the Supreme Court, 21 percent at the Court of Appeal and 33 percent at the High Court. There is no woman judge in the Sharia Courts or the Customary Court of Appeal.¹⁹¹

It is recommended that further studies are undertaken to systematically collect data that is disaggregated to establish the representation of women at the state level. Further, seeing as there are no women serving in the religious courts and Customary Courts of Appeal, it is recommended to engage religious leaders concerning women's representation. Political leadership has been considered crucial to the inclusion of women in Sharia Courts in other regions.¹⁹²

Sierra Leone

Despite having had a woman chief justice, the representation of women in the higher courts and in the Magistrate's Courts remains low. There is therefore a need to increase advocacy for fair and transparent selection processes and targeted outreach to

increase the number of women at all levels of courts. Mentorship and peer learning for women judges might also allow women judges to obtain vital collegiate mentorship opportunities.

Zimbabwe

While Zimbabwe ranks well in terms of women's representation at the higher courts and in leadership, parity as required by the 2013 Constitution is yet to be achieved. The numbers are favourable but to consolidate gains and increase representation of women in the higher courts, continued peer engagement and capacity building is crucial. Mentoring programmes

for lawyers could be implemented to create a pool of female candidates from which future judges of the higher courts can be selected. To improve on work-family balance, increased support in research resources was also highlighted as important. One respondent indicated that electronic resources for research would make their work easier.

Angola, Central African Republic, Democratic Republic of the Congo and Somalia

In Angola and Democratic Republic of the Congo it was not possible to collect either quantitative numerical data or qualitative information, and in Central African Republic, only qualitative information was available through focus groups. Nevertheless, it is recommended that for these three countries attempts still be made to collect disaggregated data which can form the basis for future programmatic work in these countries.

While limited information has been obtained about the judiciaries in Somalia, it is clear from the information collated from different sources that the representation of women remains low. Somalia is also yet to ratify key instruments such as CEDAW, the Arab Charter

and the Maputo Protocol. Research on the impact of CEDAW in diffusing important norms on the participation of women at all levels, including decision-making bodies, indicates that the longer a country has been committed to CEDAW, the higher the likelihood of appointing women to a higher court.¹⁹³ The reporting process to the CEDAW Committee is said to increase the likelihood of women's access to public positions. It is highly recommended to increase advocacy for the country to ratify CEDAW, the Maputo Protocol and the Arab Charter, as they are cornerstones to create greater opportunities for women to be appointed in the justice sector.



Endnotes

- 1 M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", *Social and Legal Studies*, Vol. 31(1), (2022), pp. 72-98.
- 2 UNESCWA, *Women in the Judiciary in Arab States: Removing Barriers, Increasing Numbers*, (2019), p. 51. E/ESCWA/ECW/2019/2.
- 3 J. Dawuni and A. Kang, "Her Ladyship the Chief Justice: The Rise of Female Leaders in the Judiciary in Africa," in *Africa Today*, Vol. 62, No. 2 (2015): pp. 45–69; Institute for African Women in Law "Women Chief Justices Across Africa", Available at <https://www.africanwomeninlaw.com/chief-justices>.
- 4 United Nations Security Council Resolution 1325, S/RES/1325, (2000).
- 5 United Nations, *Transforming our world: The 2030 Agenda for Sustainable Development* (2015). Available at <https://sdgs.un.org/2030agenda>.
- 6 United Nations General Assembly Resolution 75/274, (28 April 2021).
- 7 United Nations International Day of Women Judges Website. Available at <https://www.un.org/en/observances/women-judges-day>.
- 8 J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", pp. 45–69; J. Dawuni and A. Kuenyehia, eds., *International Courts and the African Woman Judge: Unveiled Narratives* (New York: Routledge, 2018).
- 9 UNDP and UN Women, *Women's Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace*, (2022).
- 10 J. Dawuni, "Women in Judiciaries Across Africa" in O. Yacob-Haliso and T. Falola (eds.) *The Palgrave Handbook of African Women's Studies* (Palgrave Macmillan, 2021), p. 2.
- 11 Kenya and Morocco are among the few countries selected for this study where data on the representation of women in the judiciary is kept by the state. In Kenya, the audit was facilitated by civil society support. See National Gender and Equality Commission (NGEC) "The Judiciary Gender Audit 2019", available at https://www.ngeckkenya.org/Downloads/Judiciary_Kenya_Gender_Audit_Dec.pdf.
- 12 United Nations Economic and Social Committee for Western Asia (UNESCWA) *Women in the Judiciary in the Arab States: Removing Barriers, Increasing Numbers* (2019) p. 4; J. Dawuni "Women in Judiciaries Across Africa" p. 3; International Development Law Organization (IDLO), *Women Delivering Justice: Contributions, Barriers, Pathways*, (2018) p. 10.
- 13 International Commission of Jurists (ICJ) Kenyan Section, *Profiles and Status of Women in Judiciaries in East Africa*, (2016); International Commission of Jurists, *Women and the Judiciary, Geneva Forum Series No. 1*, (Geneva, 2014). Available at <https://www.icj.org/geneva-forum-series-no-1-women-and-the-judiciary/>.
- 14 IDLO, *Women Delivering Justice*.
- 15 UNESCWA, *Women in the Judiciary in the Arab States*.
- 16 International Development Law Organization (IDLO), *Women's Professional Participation in Kenya's Justice Sector: Barriers and Pathways*, (2020).
- 17 J. Dawuni (ed), *Gender, Judging and the Courts in Africa: Selected Studies*, (Routledge, 2022).
- 18 J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", pp. 45–69; G. Bauer and J. Dawuni (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity* (1st Edition, Routledge, 2016); J. Dawuni and T. Masengu, "Judicial Service Commissions and the appointment of women to higher courts in Nigeria and Zambia" in S. Sterett and L. Walker (Eds.), *Research Handbook on Law and Courts* (Cheltenham, Edward Elgar Publishing, 2019) pp. 213–230; J. Dawuni and T. Masengu "Process and Progress: Women and Judicial Appointments to the Bench in Nigeria and Zambia" in S. Sterett and L. Walker (Eds.), *Research Handbook on Law and Courts* (Cheltenham, Edward Elgar Publishing, 2019) pp. 213–230; M. Gayoye, *The role of the Judiciary in Constitution Making: The Two-thirds Gender Principle in Kenya* (2020); M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", pp. 72-98.
- 19 UNDP and UN Women, *Women's Meaningful Participation in Transitional Justice*.
- 20 United Nations, International Covenant on Economic, Social and Cultural Rights (ICESCR), Art 3, (1966).
- 21 United Nations, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art 2, (1979).
- 22 The African Charter on Human and Peoples' Rights (ACHPR), Art 2, (1981).
- 23 African Commission on Human and People's Rights, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, (2003), p. 4.
- 24 The Arab Charter on Human Rights, Arts 3 & 11, (1994).
- 25 M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", pp. 72-98.
- 26 Please see the acknowledgements section for more information on the independent consultants: Lucianna Thuo and J. Jarpa Dawuni (PhD).
- 27 The list of countries that participated in the focus group discussions and survey is annexed to this report. No responses from men were received.
- 28 For the purpose of this report, these 14 countries are considered as the absolute total.
- 29 Initially, both male and female respondents were given the same deadline to complete the survey. However, male respondents were contacted multiple times after the deadline to provide them with an opportunity to complete the survey. This gap may relate to the fact of gender issues generally be considered women only issues, and therefore, a specific recommendation on the need of targeted outreach and capacity development is made in the recommendations section.
- 30 R. Aura-Odhiambo "Gender Equality: Integration of Women in the Judiciary in Kenya" in W. Kabira et al (eds) *Changing the Mainstream: Celebrating Women's Resilience* (Nairobi, Africa Women Studies Centre, 2018).
- 31 M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", pp. 72-98; p. 74.
- 32 World Justice Project, *Disparities, Vulnerability, and Harnessing Data for People Centered Justice: WJP Justice Data Graphical Report II*, (2023), p. 16.
- 33 International Commission of Jurists (ICJ) Kenyan Section, *Profiles and Status of Women in Judiciaries in East Africa*, (2016) p. 6; J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", pp. 45–69; p. 46; T. Masengu, "Gender transformation as a means of enhancing perceptions of impartiality on the bench", *South African Law Journal* 133(3) (2016), pp. 475-490.
- 34 S. Kalantry, "Women in Robes", *Americas Quarterly* (2012) p. 81, p. 87.
- 35 IDLO, *Women Delivering Justice*, p. 13.

- 36 S. Kalantry, "Women in Robes", p. 81, p. 83.
- 37 H. Ibrahim, "Nigeria: Women Judges Enhancing the Judiciary" in G. Bauer and J. Dawuni (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity?* (Routledge, 2016), p. 76.
- 38 IDLO, *Women Delivering Justice*, p. 13.
- 39 M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", pp. 72-98, p. 89.
- 40 Dawuni, "Gender and the Judiciary in Africa: An Introduction" in G. Bauer & J. Dawuni (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity?* (Routledge, 2016), pp. 3-4.
- 41 UNESCWA, *Women in the Judiciary in Arab States*, p. 3.
- 42 IDLO, *Women Delivering Justice*, p. 13.
- 43 R. Hunter, "Can feminist judges make a difference?" in U. Schultz and G. Shaw (eds) *Women in the Judiciary* (London: Routledge, 2012), p. 6.
- 44 D. Acemoglu and J. A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* 1st Edition (New York: Crown Publishers, 2012) cited in International Commission of Jurists Kenyan Section, *Profiles and Status of Women in Judiciaries in East Africa*, (2016), p. 6.
- 45 IDLO, *Women's Professional Participation in Kenya's Justice Sector*, p. 14.
- 46 IDLO, *Women Delivering Justice*, p. 14.
- 47 S. J. Kenney, "Thinking about gender and judging", *International Journal of the Legal Profession*, vol. 15, (2008), pp. 87-110.
- 48 Gayoye's study found that whenever women judges sat alone in High Court cases on matrimonial property rights, they always upheld the rights of women. M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", pp. 72-98.
- 49 A. Kang, "Benin: Women Judges Promoting Women's Rights" in G. Bauer and J. Dawuni (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity?* (Routledge, 2016), p. 119.
- 50 S. Kalantry, "Women in Robes", p. 86.
- 51 R. Hunter, "Can feminist judges make a difference?", p. 6.
- 52 J. Dawuni, "African Women Judges on International Courts: Symbolic or Substantive Gains?", *University of Baltimore Law Review*, vol. 47, No. 2, Article 3, (2018), p. 235, pp. 239-240. This has especially been documented in relation to the crime of rape where the presence of female judges on the bench was said to have been a determining factor in sentencing. See IDLO, *Women Delivering Justice*, p. 16.
- 53 N. Grossman "Julia Sebutinde: An Unbreakable Cloth" in J. Dawuni and A. Kuenyehia, *International Courts and the African Woman Judge*, p. 43.
- 54 IDLO, *Women Delivering Justice*, p. 16.
- 55 P. Wald, "Women on International Courts: Some Lessons Learned", *International Criminal Law Review*, vol. 11, No. 3, (2011), p. 403..
- 56 D. Otto, "A sign of 'weakness'? Disrupting gender uncertainties in the implementation of Security Council Resolution 1325." *Michigan Journal of International Law*, Vol 13, (2006) pp. 113-175.
- 57 C. Albertyn and E. Bonthuys, "South Africa: A Transformative Constitution and a Representative Judiciary" in G. Bauer and J. Dawuni (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity?* p. 49, p. 54 (2015); IDLO, *Women Delivering Justice*, p. 14.
- 58 IDLO, *Women Delivering Justice*, p. 14.
- 59 J. Dawuni, "To 'Mother' or not to 'Mother': The Representative Roles of Women Judges in Ghana", *Journal of African Law*, vol. 60, No. 3, (2016), p. 426.
- 60 R. Aura-Odhiambo, "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 110.
- 61 IDLO, *Women Delivering Justice*, p. 18.
- 62 M. Yoon, "Tanzania: Women Judges as Agents of Judicial Education" in G. Bauer and J. Dawuni (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity?* (2015), p. 93.
- 63 UNESCWA, *Women in the Judiciary in Arab States*, p. 13.
- 64 IDLO, *Women Delivering Justice*, p. 18.
- 65 Virtue Foundation "Senior Roundtable on Women and the Judiciary Conference Report", (2011) p. 16, available at <https://virtuefoundation.org/wp/media/pdfs/Senior-Roundtable-Report-Women-Judiciary.pdf> (accessed 6 December 2021).
- 66 J. Dawuni, "To 'Mother' or not to 'Mother': The Representative Roles of Women Judges in Ghana".
- 67 All data analysed for this report was collected between August and November 2021. Between the conclusion of the study and the time of publication, progress was noted in some of the countries, such as Algeria. For more information see Chapter 1, "Purpose and approach of the study". Surveys and data request forms are included as Annexes at the end of the report.
- 68 M. C. Escobar-Lemmon, et al., "Breaking the Judicial Glass Ceiling: The appointment of Women to High Courts Worldwide" in *The Journal of Politics*, vol 83, No. 2 (2021), pp. 662-674; UNESCWA, *Women in the Judiciary in the Arab States*, p. 51; C. Albertyn and E. Bonthuys, "South Africa: A Transformative Constitution and a Representative Judiciary", p. 49, p. 54.
- 69 UNDP, *Tackling social norms: A game changer for gender inequalities*, (2020).
- 70 U. Schultz and G. Shaw, "Introduction" in U. Schultz and G. Shaw (eds), *Women in the Judiciary* (London: Routledge, 2012).
- 71 J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", pp. 45-69.
- 72 Ranking: The country ranking is based on an assessment of the percentage of women in the judiciary relative to the percentage of women in leadership. When the numbers are within the same percentile range, a country is ranked as "within range." Where a country's leadership is lower than the percentage of women in the court, it is said to be "below range." When the percentage of women is leadership as above the overall percentage of women in the judiciary it is considered "above range."
- 73 R. Aura-Odhiambo, "Gender Equality: Integration of Women in the Judiciary in Kenya" p. 105.
- 74 National Gender and Equality Commission (NGEC) "The Judiciary Gender Audit 2019".
- 75 'Higher' in this sentence refers to higher in absolute terms, not in relative terms against the representation of men.
- 76 United Nations Human Rights Office of the High Commissioner, *Basic Principles on the Independence of the Judiciary*, (6 September 1985), Principle 10. Available at <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx> (accessed 8 January 2022).
- 77 R. Aura-Odhiambo "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 93.
- 78 Ibid. pp. 95-97.
- 79 IDLO, *Women Delivering Justice*, p. 21.
- 80 Ibid.
- 81 This argument was also captured in a previous study. See M. Hamad, "Egypt: The Lingering Battle for Female Judgeship", in G. Bauer and J. Dawuni (eds) *Gender and the Judiciary in Africa: From Obscurity to Parity?* (New York, Routledge, 2015), p. 26.
- 82 The Arab States report also records this divide. See UNESCWA, *Women in the Judiciary in Arab States*, p. 51.
- 83 This was reported by participants in the focus groups and tallies with what is contained in a previous study. See UNESCWA, *Women in the Judiciary in Arab States*, p. 35.
- 84 It is important to note that is not an absolute bar to women being appointed to leadership. Former Chief Justice Mukhtar for example was from the North where usually there is a preference for male judges. See H. Ibrahim "Nigeria: Women Judges Enhancing the Judiciary", pp. 68-69.
- 85 IDLO, "Women Delivering Justice", p. 24.
- 86 It was reported by the Country Office that due to the female leadership, there had been developed a manual on gender-based violence and HIV and AIDS with the support of UNDP.
- 87 It was reported by the Country Office that due to the female leadership, there had been

- developed a manual on gender-based violence and HIV and AIDS with the support of UNDP.
- 88** IDLO, *Women's Professional Participation in Kenya's Justice Sector*, p. 33.
- 89** H. Ibrahim, "Nigeria: Women Judges Enhancing the Judiciary", p. 68.
- 90** UNESCWA, *Women in the Judiciary in Arab States*, p. 51.
- 91** T. Masengu, "It's A Man's World: Barriers to Gender Transformation in the South African Judiciary. Perspectives from Women Advocates and Attorneys", *International Journal of the Legal Profession*, vol. 23, No. 3 (May 2016), pp. 305-319; IDLO, *Women Delivering Justice*, p. 22.
- 92** A. Kang, "Benin: Women Judges Promoting Women's Rights", p. 5.
- 93** This was confirmed by the UNDP Country Office, which, however, expressed concern about lack of funds for the initial training and long-term allocation of resources for appointed judges.
- 94** UNESCWA, *Women in the Judiciary in Arab States*, p. 20.
- 95** Constitution of Morocco, Arts 56 & 57.
- 96** Numbers for 2010 obtained from: Kingdom of Morocco, *Judiciary: Distinguished Presence of Moroccan Women Highlighted in Vienna, (2023)*. Numbers for 2021 obtained from data received from the judiciary in Morocco for the purposes of this study in 2021.
- 97** Some of the common law countries that use this process include Kenya, Nigeria, Ghana, Sierra Leone and civil law countries like Mozambique.
- 98** S. Kalantry, "Women in Robes", p. 81, p. 85; R. Aura-Odhiambo, "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 117.
- 99** C. Albertyn and E. Bonthuys, "South Africa: A Transformative Constitution and a Representative Judiciary", p. 49, p. 56.
- 100** UNESCWA, *Women in the Judiciary in Arab States*, p. 44.
- 101** As discussed previously in this study under Section 2.1, Data Trends, Section 4, 'Greater numbers of women have leadership positions in countries where women are well represented across the whole judiciary.'
- 102** Article 68 of Algeria's Constitution of 2020 sets out the principle of promoting gender parity in the labour market.
- 103** The Federal Constitution of Ethiopia at Art 35 does not have gender quotas, but it entitles women to equal rights with men and to equality in employment, promotion, pay and transfer of pension payments.
- 104** Before the 2010 Constitution, the 2006 Executive Decree mandated that at least 30 percent of all employees in the public sector be women. This laid the basis for the affirmative action provisions in the 2010 Constitution. The Constitution of Kenya, Art 27 (3) entitles men and women to equal treatment and to equal access to opportunities in political, economic, cultural and social spheres. Art 27(6) requires the state and other public bodies to take legislative and other measures, including affirmative action programmes and policies, to remedy any disadvantage due to past discrimination. Art 27 (8) mandates that not more than two thirds of all elective and appointive offices shall be occupied by the same gender. Art 172 (2) of the Constitution requires the Judicial Service Commission to be guided by, inter alia, the promotion of gender equality.
- 105** The Gender Equality Act, 2013 s 11 requires that the appointing or recruiting authority to the public service shall ensure that no less than 40 percent and not more than 60 percent of any sex shall be appointed to any position, unless no suitable person is found.
- 106** The 2011 Constitution at Article 115 sets a quota for the representation of women in the Superior Council of the Judicial Power, which led to a third of the elected judges being women in the 2015 elections. UNESCWA, *Women in the Judiciary in Arab States*, p. 54. However, the numbers remain low at lower-level courts.
- 107** While Uganda has no constitutional quota, the judiciary has had a gender policy since 2012 which, inter alia, requires that 50 percent of judicial appointments go to women, that gender and the law be a component of induction training for judges and magistrates, that all judicial officers attend a refresher course on gender and the law, that there be a specific procedure on reporting sexual harassment claims and that both male and female magistrates are deployed equally to all districts. See International Commission of Jurists (ICJ) Kenyan Section, *Profiles and Status of Women in Judiciaries in East Africa*, (2016), p. 11.
- 108** The Constitution of Zimbabwe of 2013 at Art 17 (1) requires the state to take all measures, including legislative measures to ensure that both genders are represented in all institutions and agencies of government and that women constitute at least half of the membership of all commissions and other elective and appointed governmental bodies established by the Constitution or legislation.
- 109** IDLO, *Women Delivering Justice*, p. 28; J. Dawuni and A. Kang "Her Ladyship the Chief Justice", p. 60.
- 110** While former Chief Justice Mutunga supported the appointment of women as Kadhi's during his tenure, this move was opposed by others saying it was contrary to Sharia law. The appointment of the first woman Chief Justice has given fresh impetus to the push for women's inclusion in this court, not just as Kadhi's, but also as leaders of the court. W. Mwangi & F. Hussein, "Kenya: Muslim Women Push for Chief Kadhi Position", *All Africa* (July 2021). Available at <https://allafrica.com/stories/202107010469.html>. It is noteworthy that for the first time, two Muslim women serve in the Court of Appeal: Justices Fatuma Sichale and Jamila Mohamed have been serving in the second highest court since 2011 and 2012 respectively.
- 111** R. Aura-Odhiambo "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 113.
- 112** IDLO, *Women Delivering Justice*, p. 28. See also R. Aura-Odhiambo "Gender Equality: Integration of Women in the Judiciary in Kenya" p. 93.
- 113** There have been sustained calls on the appointing authority to adhere to the statutory provisions and there has been a trend towards adherence. For instance, out of the 12 high court judges appointed in October 2020, six are women and six are men (50:50 representation) and out of the seven high court judges appointed in March 2022, three are women and four are men, representing 43 percent women representation. D. Mlanjira and W. Chiuta, "Malawi: Chakwera Gets Gender Activists Salute Over Appointments- 'Inspires Confidence to Malawi Women'", *Nyasa Times*, (October 2020). Available at <https://allafrica.com/stories/202010280291.html>; Malawi 24 Reporter, "Chakwera appoints seven new High Court judges", (March 2022). Available at <https://malawi24.com/2022/03/21/chakwera-appoints-seven-new-high-court-judges/>.
- 114** FIDA Kenya v Attorney-General [2011] eKLR; NGEK & Anor v JSC & Anor [2017] eKLR.
- 115** W. Kamau, "Women Judges and Magistrates in Kenya: Challenges, Opportunities, and Contributions" in Ulrike Schultz and Gisela Shaw (eds) *Gender and Judging* (Oxford: Hart Publishing, 2013) cited in J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", pp. 59-60.
- 116** J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", p. 60.
- 117** The representation of women was placed by a previous study at 42 percent in 2018 and this had risen to 47 percent at the time of this study. See UNESCWA, *Women in the Judiciary in Arab States*, p. 26, p. 53.

- 118** J. Kamatali, "Rwanda: Balancing Gender Quotas and an Independent Judiciary", p. 137.
- 119** IDLO, *Women Delivering Justice*, p. 27; J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", p. 60, J. Dawuni and T. Masengu, "Judicial Service Commissions and the appointment of women to higher courts in Nigeria and Zambia", pp. 213–230.
- 120** Save for the Kadhi's Courts where attempts to appoint female judges have been met with strong opposition, Kenya's courts have a good representation of women at all levels, meeting the 2/3 gender rule required by the Constitution. In addition to staffing, there is good representation in the leadership as well, with the Chief Justice, Deputy Chief Justice, Principal Judge of the High Court, Principal Judge of the Employment and Labour Relations Court, Chief Registrar of the Judiciary, Registrar of the Supreme Court, Registrar of the High Court, Registrar of the Environment and Land Court and Registrar of Tribunals are all women.
- 121** Kamatali also credits Soline Nyirahabimana, a minister in the office of the president in Rwanda in the mid-2000s with a civil society background, working with the first woman Chief Justice, Aloysie Cyanzayire, for their significant role in encouraging women to apply to and recruiting them into the judiciary. J. Kamatali, "Rwanda: Balancing Gender Quotas and an Independent Judiciary" p. 147.
- 122** Art 171 (1) (d) of the Constitution requires that one of the two representatives elected by the association of judges and magistrates be a woman. Arts 171 (f) and (h) require that of the two representatives that the LSK and the public each nominate respectively, one must be a woman.
- 123** W. Kamau, "Women Judges and Magistrates in Kenya: Challenges, Opportunities, and Contributions" in U. Schultz and G. Shaw (eds) *Gender and Judging* (Oxford: Hart Publishing. 2013). Aura also asserted that the recommendation of more women nominees for appointment in line with the gender rule had contributed to more women being appointed. See R. Aura-Odhiambo "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 103.
- 124** Constitutional Petition 102 of 2011.
- 125** *National Gender & Equality Commission & Another v Judicial Service Commission & the A-G* [2017] eKLR.
- 126** R. Aura-Odhiambo "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 105.
- 127** J. Dawuni, "To 'Mother' or not to 'Mother': The Representative Roles of Women Judges in Ghana".
- 128** Virtue Foundation, "Senior Roundtable on Women and the Judiciary Conference Report", (2011) p. 17. Available at <https://virtuefoundation.org/wp/media/pdfs/Senior-Roundtable-Report-Women-Judiciary.pdf>. Up to 96 percent of the women judges surveyed indicated that the work-family life balance as a significant barrier to their advancement within the Judiciary. Lady Justice Koome (then High Court judge and now Chief Justice) indicated that due to the Judiciary's transfer policy, entry to the judiciary is difficult for those with young children and therefore women opted to wait until later in their careers, when their children were older, to apply to join the judiciary. Even then, remaining connected to one's family came at a significant cost of travel. This was confirmed to still be a challenge during the focus group discussions.
- 129** This was also captured by ICJ in a previous study on East African judiciaries. See International Commission of Jurists (ICJ) *Kenyan Section, Profiles and Status of Women in Judiciaries in East Africa*, (2016), p. 15.
- 130** "Speech by Lady Justice Agnes Murgor on Judiciary Gender Mainstreaming Policy" <https://www.judiciary.go.ke/download/speech-by-lady-justice-agnes-murgor-on-judiciary-gender-mainstreaming-policy/>.
- 131** Institute for African Women in Law, "Unveiling Subalternity? Women and the Legal Professions Across Africa", (2020) p. 11. Available at https://fad16571-c2e4-4e40-a397-d2b33e3e4caf.filesusr.com/ugd/dc397a_f4ad148771d-44bea826991d7c95e87c4.pdf.
- 132** National Gender and Equality Commission, "The Judiciary Gender Audit 2019", p. 77. In Kenya it was reported that "of those who were bullied or harassed because of their gender, 60.8 percent did not report it. 19.6 percent reported it to a peer and 19.6 percent reported it to a superior. Of those who had been sexually harassed, 63.1 percent did not report it, 20.2 percent reported it to a peer and only 16.7 percent reported it to someone superior to them."
- 133** IDLO, *Women Delivering Justice*, p. 24.
- 134** J. Dawuni, "To 'Mother' or not to 'Mother': The Representative Roles of Women Judges in Ghana".
- 135** The South African Chapter of the International Association of Women Judges has a programme tailored towards leadership development and building solidarity not just among women judges, but also with male judges and other institutions at the provincial and national levels. Such models can be adopted when creating local chapters of the IAWJ where they do not exist such as in Mozambique. See <https://www.justice.gov.za/saiawj/whatwedo.html>.
- 136** UNESCWA, *Women in the Judiciary in Arab States*, p. 44.
- 137** This was the experience of, inter alia, judges from Kenya, Lesotho, Malawi, Mozambique, Tanzania, Uganda and Zimbabwe.
- 138** R. Aura-Odhiambo, "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 117.
- 139** IDLO, *Women's Professional Participation in Kenya's Justice Sector*, p. 14.
- 140** United Nations Human Rights Office of the High Commissioner, *Basic Principles on the Independence of the Judiciary*, Principle 13; The African Commission's Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, Principle A (4)(o).
- 141** Concluding Observations of the Human Rights Committee on Azerbaijan, UN Doc. CCPR/CO/73/AZE, para. 14.
- 142** R. Aura-Odhiambo "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 93-94.
- 143** J. Dawuni "Women in Judiciaries Across Africa", p.5.
- 144** J. Dawuni and T. Masengu, "Process and Progress: Women and Judicial Appointments to the Bench in Nigeria and Zambia".
- 145** Institute for African Women in Law "Women Chief Justices Across Africa".
- 146** IDLO, *Women Delivering Justice*, p. 27.
- 147** J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", pp. 45–69.
- 148** Ibid, p. 63.
- 149** UNDP and UN Women, *Women's Meaningful Participation in Transitional Justice*.
- 150** J. Kamatali, "Rwanda: Balancing Gender Quotas and an Independent Judiciary" p. 145.
- 151** M. E. Valdini and C. Shortell, "Women's Representation in the Highest Court: A Comparative Analysis of the Appointment of Female Justices", *Political Research Quarterly*, vol. 69, no. 4, (2016) pp. 865-876; p. 866.
- 152** Ibid.
- 153** IDLO, *Women Delivering Justice*, p. 29; J. Dawuni and A. Kang, "The Rise of Female Leaders in the Judiciary in Africa", p. 56.
- 154** M. C. Escobar-Lemmon, et al., "Breaking the Judicial Glass Ceiling:"
- 155** In 2019, the President declined to appoint 41 judges recommended by the Judicial Service Commission on the basis that they had unresolved integrity issues. While 34 of these judges were later appointed, to date there are six judges, including one woman, whose promotions to the Court of Appeal and High Court are pending as the President has remained emphatic that he will not appoint them, despite court orders directing him to do so. The matter is currently pending in the Court of Appeal. See People Daily, "Uhuru stays put, moves to challenge

- ruling compelling him to appoint six judges he rejected", (27 October 2021). Available at <https://www.pd.co.ke/news/politics-analysis/uhuru-stays-put-moves-to-challenge-ruling-compelling-him-to-appoint-six-judges-he-rejected-101020/>.
- 156** UNESCWA, *Women in the Judiciary in Arab States*, p. 41.
- 157** J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", p. 59
- 158** International Commission of Jurists (ICJ) Kenyan Section, *Profiles and Status of Women in Judiciaries in East Africa*, (2016), p. 10; NGECE "The Judiciary Gender Audit", p. 33.
- 159** The Judicial Service Act No. 1 of 2011, sec 14 requires the Judicial Service Commission to take into account considerations of "gender, regional, ethnic and other diversities of the people of Kenya" in nominating applicants for judicial appointment.
- 160** IDLO, *Women Delivering Justice*, p. 24.
- 161** See remarks of Lady Justice Koome of the Kenyan judiciary in Virtue Foundation "Senior Roundtable on Women and the Judiciary Conference Report", (2011) p. 17. Available at <https://virtuefoundation.org/wp/media/pdfs/Senior-Roundtable-Report-Women-Judiciary.pdf>.
- 162** M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", pp. 72-98.
- 163** S. Kalantry, "Women in Robes", p. 81, p. 85; R. Aura-Odhiambo, "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 117.
- 164** International Commission of Jurists (ICJ) Kenyan Section, *Profiles and Status of Women in Judiciaries in East Africa*, (2016), p. 15.
- 165** H. Ibrahim "Nigeria: Women Judges Enhancing the Judiciary", p. 74.
- 166** T. Masengu, "It's A Man's World".
- 167** International Commission of Jurists (ICJ) Kenyan Section, *Profiles and Status of Women in Judiciaries in East Africa*, (2016) (2016), p. 15.
- 168** R. Aura-Odhiambo, "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 113.
- 169** J. Dawuni and A. Kang, "Her Ladyship the Chief Justice", p. 60.
- 170** Japan International Cooperation Agency (JICA), Country Gender Profile: *Mozambique Final Report*, (2015) p. 9. Available at https://www.jica.go.jp/english/our_work/thematic_issues/gender/background/c8h0vm0000anj6-att/mozambique_2015.pdf.
- 171** *Lesotho Times*, "Chief Justice Majara Fights Suspension" (21 September 2018). Available at <https://lestimes.com/chief-justice-majara-fights-suspension/>; University of Cape Town Democratic Governance and Rights Unit, "Statement on the suspension of the Chief Justice of the Kingdom of Lesotho". Available at https://www.jica.go.jp/Resource/english/our_work/thematic_issues/gender/background/c8h0vm0000anj6-att/mozambique_2015.pdf.
- 172** C. Rickard, "The Eight Allegations Against Lesotho's Chief Justice Nthomeng Majara, and their Context", African Lii, (September 20, 2018). Available at http://www.dgru.uct.ac.za/sites/default/files/image_tool/images/103/Lesotho%20DGRU%20statement%20FINAL%20.pdf.
- 173** C. Albertyn and E. Bonthuys, "South Africa: A Transformative Constitution and a Representative Judiciary", p. 56-57.
- 174** Ibid, p. 49, p. 56; T. Masengu, "It's A Man's World".
- 175** M. Gayoye, "Why women judges really matter: The impact of women judges on property law outcomes in Kenya", pp. 72-98, p. 89.
- 176** UNDP, "Promoting gender equality in the judiciary", UNDP Blog Article, 5 July 2019. Available at <https://www.undp.org/blog/promoting-gender-equality-judiciary>.
- 177** The UNDP Country Office in Mozambique reported that there are upcoming Gender Strategies of the Ministry of Justice and the Supreme Court which are anticipated to add to the progress made in achieving gender sensitivity in the public and judicial service.
- 178** Institute for African Women in Law, "Why More Women on the Supreme Court of Ghana Matters: Open Letter to H.E Nana Addo Dankwa Akufo-Addo." Available at <https://www.africanwomeninlaw.com/post/why-more-women-on-the-supreme-court-of-ghana-matters-open-letter-to-president-nana-addo-dankwa-akuf>.
- 179** Institute for African Women in Law, "Open Letter to the African Union: Africa's Opportunity to Address Gender Diversity at the ICJ". Available at <https://www.africanwomeninlaw.com/post/open-letter-to-the-african-union-africa-s-opportunity-to-address-gender-diversity-at-the-cj>.
- 180** Institute for African Women in Law "Open Letter to the UN & AU: Gender Equality for African Women in International Law Cannot Wait". Available at <https://www.africanwomeninlaw.com/post/open-letter-to-the-un-au-gender-equality-for-african-women-in-international-law-cannot-wait>.
- 181** Institute for African Women in Law "The African Women in Law Legacy Project". <https://www.youtube.com/playlist?list=PLORYeugAXycqH-qZPNao92AeYX2wiCWXnS>.
- 182** Institute for African Women in Law, "Amandla! African Women in Law Speaker Series". Available at <https://www.africanwomeninlaw.com/amandla-women-in-law-series>.
- 183** R. Aura-Odhiambo, "Gender Equality: Integration of Women in the Judiciary in Kenya", p. 103. Aura attributes the progress in the women's rights movement made in Kenya to the 1985 Global Women's Conference and the Beijing Platform of Action held a decade later.
- 184** It was reported in an interview carried out during the study that ongoing programme work by the UNDP Country Office in CAR targeted law students and encouraged them to apply during the 2021 judicial recruitments.
- 185** J. Kamatali, "Rwanda: Balancing Gender Quotas and an Independent Judiciary" p. 147.
- 186** Institute for Women in Law in Africa, "Unveiling Subalternity? Women and the Legal Professions Across Africa", (2020) p. 13.
- 187** Kamatali credits Soline Nyirahabimana, a minister in the office of the president in Rwanda with a civil society background, working with the first woman Chief Justice Aloysie Cyanzayire for their significant role in encouraging women to apply to and recruiting them into the judiciary in the mid-2000s onwards. J. Kamatali, "Rwanda: Balancing Gender Quotas and an Independent Judiciary", p. 147 and p. 151.
- 188** C. Albertyn and E. Bonthuys, "South Africa: A Transformative Constitution and a Representative Judiciary", p. 49, p. 56-57.
- 189** With the appointment of two women Cadis to serve in the Sharia Courts in the Gambia, a push can be made for the opening up of Kenya's Kadhi's Courts to women. *The Standard* (Gambia), "Gambia appoints first women cadis", 17 February 2022.
- 190** H. Ibrahim, "Nigeria: Women Judges Enhancing the Judiciary", p. 68.
- 191** With the Gambia moving to admit women Cadis to the Sharia Courts, civil society has an example of positive traction towards women's representation in the Sharia Courts that can be drawn from.
- 192** UNESCWA, *Women in the Judiciary in Arab States*, p. 54.
- 193** M. C. Escobar-Lemmon, et al., "Breaking the Judicial Glass Ceiling:"

Annexes of interview questions and participating countries

Annex 1

Focus Group Discussion Questions

Barriers to entry

What barriers have prevented women's entry into the Judiciary of your country?
e.g. religious, cultural, educational, ideological etc.

Are there any negative perceptions about the capacity of women for judicial work that have had an impact on women's decision to join the judiciary?
e.g. fear of reprisal, lack of aspiration, insecurity, fear of being misunderstood etc.

How much information is availed to the public about the recruitment/selection process for the Judiciary?

Are there role models to whom law students/younger women justice professionals can look up to within the Judiciary?

Are there particular roles/courts to which women are relegated on the basis of stereotypes rather than capacity?

Barriers to retention

What challenges do women justice professionals in your country face in seeking advancement within the Judiciary?
e.g. legal, cultural, institutional, educational barriers, entrenched ideologies etc.

Is there an induction programme for judges upon entry into the Judiciary?

Does the Judiciary have continuous training and education opportunities for judges or provide support for such programmes externally?

Are there any institutional structures or policies which, though appearing gender-neutral, have a disproportionate impact on women's advancement within the Judiciary?

Barriers to advancement

Is the promotion/selection process for higher levels within the Judiciary open/sheltered?

Do women have equal access to opportunities/ assignments which contribute to their professional development and promotion within the Judiciary?

Are there any individual, social or institutional factors that impede women's advancement within the Judiciary ranks? e.g. lack of political will to improve women's representation in higher levels of the Judiciary, lack of commitment from gatekeepers, aspirational rather than obligatory gender quotas, lack of transparency in the promotion process, lack of individual commitment and drive

Are there any barriers faced in effecting meaningful change within the judiciary by women judges/ women in leadership within the judiciary?

Is there anything else you would like to add?

Annex 2

Participating countries

Element of the study	Country
Quantitative data (n=10)	Algeria Burkina Faso Ethiopia Kenya Lesotho Morocco Mozambique Nigeria Sierra Leone Zimbabwe
Survey (n=6)	Algeria Kenya Morocco Sierra Leone Uganda Zimbabwe
Focus groups and interviews (n=13)	Algeria Central African Republic Ethiopia Kenya Lesotho Malawi Morocco Mozambique Nigeria Sierra Leone Tanzania Uganda Zimbabwe

Annex 4

Copy of survey distributed to gather qualitative information

Research on women's representation in the judiciary in Africa

This study on women's representation in the justice sector in Africa seeks to understand the country specific barriers preventing or frustrating women's representation, particularly at senior levels, in the Judiciary. The information provided will be instrumental for UNDP to develop strategic programmatic support to allow more women to access power and decision making positions in judiciaries in Africa.

The survey is divided into three parts. The first part seeks to understand the process of selection into the Judiciary and what barriers women face in entering the Judiciaries of different countries.

The second part evaluates the challenges to retention once women are in the Judiciary and what barriers keep women from effecting meaningful change within the sector.

The final part evaluates the rate of advancement of women to senior echelons in the profession. It seeks to understand the correlation between the number of women in the Judiciary and the number of women serving in leadership and in the highest courts. It also seeks to evaluate the barriers to women's ascendancy to senior roles and the place of selection processes, work-life balance and opportunities for development and promotion in determining the uptake of senior roles within the Judiciary among women.

Based on the results, UNDP will develop specific targeted interventions to overcome the identified challenges in a selected number of African countries

This survey is anonymous.

1. Country: *

Une seule reponse possible.

- Kenya
- Ethiopia
- Eritrea
- Egypt
- Mauritania
- Algeria
- Morocco
- Mozambique
- Zimbabwe
- Seychelles
- Cameroon
- Central African Republic
- DRC
- Nigeria
- Burkina Faso
- Sierra Leone
- Rwanda
- Other (please specify)
- Autre:

2. Gender:*

Une seule réponse possible.

- Woman
- Man
- Transgender
- Non-binary
- Other
- Prefer not to answer

3. Are you a judge? *

Une seule réponse possible.

- Yes
- No

4. Number of years as a judge:

PART I: ENTRY OF WOMEN INTO JUDICIARIES

5. Are you aware of a gender stereotype based on religious attitudes about women's unsuitability for a judicial role in your country?*

Une seule réponse possible.

- Yes
- No

6. If yes, please elaborate:

7. Have you experienced any gender stereotype based on religious attitudes about women's unsuitability for a judicial role in your country? *

Une seule réponse possible.

- Yes
 No

8. If yes, please elaborate

9. Are you aware of a gender stereotype based on culture about women's unsuitability for a judicial role? *

Une seule réponse possible.

- Yes
 No

10. If yes, please elaborate

11. Have you experienced any gender stereotype based on culture about women's unsuitability for a judicial role in your country? *

Une seule réponse possible.

- Yes
 No

12. If yes, please elaborate

13. Have you experienced a gender stereotype based on custom or tradition about women's unsuitability for a judicial role in your country? *

Une seule réponse possible.

- Yes
 No

14. If yes, please elaborate

15. Are you aware of any other stereotypes about the suitability of women as judicial officers that limit women's entry in the Judiciary of your country? *

Une seule réponse possible.

- Yes
 No

16. If yes, please elaborate

17. Have you experienced any other stereotypes about the suitability of women as judicial officers that limit women's entry in the Judiciary of your country? *

Une seule réponse possible.

- Yes
 No

18. If yes, please elaborate

19. Are there any formalised, structured mentoring opportunities for young women in institutions of higher learning that expose them to careers in the justice sector? *

Une seule réponse possible.

- Yes
 No

20. If yes, please elaborate

21. Is information publicly available for the selection/recruitment process for judicial officers in your country? *

Une seule réponse possible.

- Yes
 No

22. Is the process for appointing judges in your country transparent and fair? *

Une seule réponse possible.

- Yes
 No

23. Please explain your answer:

24. Are the rules for appointing judges in your country transparent and fair? *

Une seule réponse possible.

- Yes
 No

25. Please elaborate:

26. Are there any government efforts or legal requirements/quotas to increase women's representation in the Judiciary? *

Une seule réponse possible.

- Yes
 No

27. Upon recruitment, are women judges allocated courts on an even basis with men, or are there specific courts that are dominated by women and others by men?

Une seule réponse possible.

- Yes
 No

28. Please elaborate:

PART II: RETENTION OF WOMEN AND GROWTH OF THEIR NUMBERS IN THE INSTITUTIONS

29. What is the general attitude of male judges to the recruitment of women judges? *

Une seule réponse possible.

- Positive
- Negative
- I don't know
- Autre:

30. Please elaborate

31. Are there policies or practices in the Judiciary that make it harder for women judges who are primary child-carers to work in the Judiciary?*

Une seule réponse possible.

- Yes
- No

32. If yes, please elaborate

33. Are there training/induction opportunities offered upon recruitment or during the judicial tenure? *

Une seule réponse possible.

- Yes
- No

34. Are there mentorship opportunities offered upon recruitment or during the judicial tenure?*

Une seule réponse possible.

- Yes
- No

35. If yes, please elaborate

36. What hurdles do women judicial officers have to overcome in order to thrive in their judicial careers? (select all that apply) *

Plusieurs réponses possibles.

- Relocation
- Harassment
- Intimidation
- Security concerns
- Gendered criticism
- Physical threats
- Other

37. Please elaborate

38. Are there any associations, boards or networks that exist for women judges to network and mentor other women judges?*

Une seule réponse possible.

- Relocation
- Harassment
- Intimidation
- Security concerns
- Gendered criticism
- Physical threats
- Other

** During the final review of the report, it came to our attention that the responses to this inquiry were erroneous, thus prompting all respondents to select "other" in this category. It was not feasible to rectify this error at the time of its discovery.*

39. Please elaborate

PART III: THE ADVANCEMENT OF WOMEN, IN NUMBERS, TO SENIOR POSITIONS IN THE PROFESSION

40. What negative attitudes or antecedents affect women's ascent to leadership in the Judiciary in your country? (Select all that apply)*

Plusieurs réponses possibles.

- Religious
- Traditional
- Cultural
- Pre-colonial antecedents
- Other

41. Please specify

42. If you are a woman judge, how confident do you feel that you will be able to progress professionally without gender discrimination?

Plusieurs réponses possibles.

- Not confident
- Nervous
- Unsure
- Hopeful
- Confident

43. Please explain

44. Are there any specific unconscious bias trainings offered in law school and/or as part of continuing professional development on diversity and about common gender stereotypes? *

Une seule réponse possible.

Yes

No

45. If yes, please elaborate:

46. Does the selection/promotion process to higher courts in your country (High Court, Court of Appeal, Supreme Court/ Supreme Council and/or Constitutional Court) facilitate fair and transparent promotion processes? *

Une seule réponse possible.

Yes

No

47. Please elaborate:

48. Do other actors (e.g. national bar associations, pressure groups, women's movement) play a role in the selection/promotion process for higher courts? *

Une seule réponse possible.

Yes

No

49. If yes, please elaborate:

50. Are women given opportunities for responsibility in judicial administration (that contribute to development and promotion) roles on an equal basis with men? *

Une seule réponse possible.

Yes

No

51. Please explain:

52. Are senior women judges given any advisory/mentorship roles over junior women judges in your country? *

Une seule réponse possible.

Yes

No

53. If yes, please elaborate:

54. Are there any gendered stereotypes that may influence the allocation of judges to particular courts or leadership positions within court administration structures?*

Une seule réponse possible.

Yes

No

55. If yes, please elaborate

56. Have there been any specific changes in the broader political and social context? (e.g. civil war or other forms of conflict) that have influenced the number of women in the highest judicial positions? *

Une seule réponse possible.

Yes

No

57. If yes, please elaborate

58. What challenges do women judges in leadership face in effecting change within the Judiciary?*

59. Please share any other comments about challenges faced by women judges in your country:

Annex 5

Status of ratification of key human rights instruments by study countries

	ICCPR	ICESCR	CEDAW	ACHPR	Arab Charter	Maputo Protocol
Algeria	12 th September 1989	12 th September 1989	22 nd May 1996	1 st March 1987	11 th June 2006	20 th November 2016
Burkina Faso	4 th January 1999	4 th January 1999	14 th October 1987	6 th July 1984	—	9 th June 2006
Central African Republic (CAR)	8 th May 1981	8 th May 1981	21 st June 1991	26 th April 1996	—	
Ethiopia	11 th June 1993	11 th June 1993	10 th September 1981	15 th June 1998	—	18 th July 2018
Kenya	1 st May 1972	1 st May 1972	9 th March 1984	23 rd January 1992	—	6 th October 2010
Lesotho	9 th September 1992	9 th September 1992	22 nd August 1995	10 th February 1992	—	26 th October 2004
Malawi	22 nd December 1993	22 nd December 1993	12 th March 1987	17 th November 1989	—	20 th May 2015
Morocco	3 rd May 1971	3 rd May 1971	21 st June 1993	—	—	—
Mozambique	21 st July 1993	—	21 st April 1997	22 nd February 1989	—	9 th December 2004
Nigeria	29 th July 1993	29 th July 1993	13 th June 1985	22 nd June 1983	—	16 th December 2004
Sierra Leone	23 rd August 1993	3 rd August 1993	11 th November 1998	21 st September 1983	—	3 rd July 2015
Somalia	24 th January 1990	24 th January 1990	—	31 st July 1985	—	—
Tanzania	11 th June 1976	11 th June 1976	20 August 1985	21 st October 1986	—	3 rd March 2007
Uganda	21 st June 1995	21 st January 1987	22 nd July 1985	10 th May 1986	—	22 nd July 2010
Zimbabwe	13 th May 1991	13 th May 1991	13 th May 1991	30 th May 1986	—	15 th April 2008



 **UN** 
WOMEN 
