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<tr>
<th>Abbreviation</th>
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<tr>
<td>ACEODE</td>
<td>Advocates Coalition for Development and Environment - Uganda</td>
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<td>ACCIK</td>
<td>Association of Charitable Children Institutions of Kenya</td>
</tr>
<tr>
<td>AMFPJER</td>
<td>Association of Magistrates and Officers of Entre Rios</td>
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<tr>
<td>AFCHPR</td>
<td>African Court on Human and People’s Rights</td>
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<td>AU</td>
<td>Africa Union</td>
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<tr>
<td>CSO</td>
<td>Civil Societies Organizations</td>
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<tr>
<td>CEDAW</td>
<td>Convention of Elimination of All Form of Discriminations Against Women</td>
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<tr>
<td>CONSAVIG</td>
<td>Council of Notables of the National Commission for the Stipulation of punitive Measures against Gender Violence</td>
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<tr>
<td>SJD</td>
<td>Degree in Juridical Science</td>
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<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<tr>
<td>ECA</td>
<td>Economic Commission for Africa</td>
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<tr>
<td>FIGO</td>
<td>Federation of International Obstetrics and Gynecology</td>
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<tr>
<td>FIDA</td>
<td>Federation of Female Lawyers - Kenya</td>
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<tr>
<td>FGM</td>
<td>Female Genital Mutilation</td>
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<td>GBDV</td>
<td>Gender Based Discrimination Violence</td>
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<td>GBV</td>
<td>Gender Based Violence</td>
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<td>IAWJ</td>
<td>International Association Women Judges</td>
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<td>ICCPR</td>
<td>International Convention on Civil and Political Right</td>
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<td>IDLO</td>
<td>International Development Law Organization</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal of former Yugoslavia</td>
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<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<td>JHC</td>
<td>Judge of High Court</td>
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<td>JSC</td>
<td>Judicial Service Commission</td>
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<td>KWJA</td>
<td>Kenya Women Judges Association</td>
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<td>NGEC</td>
<td>National Gender and Equality Commission</td>
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<td>NITA</td>
<td>National Institute of Trial Advocacy</td>
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<tr>
<td>NGOs</td>
<td>Non-governmental Organizations</td>
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<tr>
<td>NALEAP</td>
<td>National Coordination of National Legal Aid and Awareness</td>
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<td>NCAJ</td>
<td>National Council on the Administration of Justice</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>SGBV</td>
<td>Sexual Gender Based Violence</td>
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<td>SCSL</td>
<td>Special Court for Sierra Leon</td>
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<td>TAWJ</td>
<td>Tanzania Association of Women Judges</td>
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<tr>
<td>FIDA-Uganda</td>
<td>Uganda Association of Women Lawyers</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UADER</td>
<td>Universidad Autonoma de Entre Rios</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNEP</td>
<td>United Nations Environmental Projects</td>
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<td>UNICEF</td>
<td>United Nations International Children Emergency Fund</td>
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<tr>
<td>UGANET</td>
<td>Uganda Network Association on Law, Ethics &amp; HIV/AIDS</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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PROFILE OF MAIN PAPER CONTRIBUTORS

Hon. Lady Justice Dr. Esther Kisaakye Kitimbo is a Justice of the Supreme Court of Uganda. She is the President of the National Association of Women Judges in Uganda and the Chairperson of the Judicial Training Committee in the Judiciary of Uganda. She holds a Bachelor of Laws Degree (LLB. Hons. – Second Upper) from Makerere University in Kampala, Uganda; a Diploma in Legal Practice; a Masters Degree in Law from Georgetown University Law Center, Washington, D.C. and a Doctorate degree in Juridical Science (SJD) from Washington College of Law in U.S.A. She is also a former Fellow of the Law and Advocacy for Women Fellowship Program of the Georgetown University Law Center. Prior to her appointment to the Bench, Hon Lady Justice Dr. Kisaakye Kitimbo was a law lecturer at Makerere University, Kampala, Uganda and also practiced law as an Attorney. She is the co-editor of Human Rights of Women and African Experiences, (Nowak M, Kisaakye E, Oberlietner G. (Eds.), Zed Books, 2002. Her working experience spanning over the last 32 years mainly focused on human rights, women’s rights, women’s economic empowerment, family law, health law and HIV/AIDS.. Justice Dr. Kisaakye Kitimbo also served as a Legal Advisor to H.E. the Vice President of Uganda and as the Executive Director of the Uganda Network on Law, Ethics & HIV/AIDS (UGANET). She has held several leadership positions which include Vice Chairperson of Uganda Judicial Service Commission, Board Member of the Uganda AIDS Commission, the Uganda Law Society, the Uganda Association of Women Lawyers (FIDA-Uganda), and the Uganda Network on Law, Ethics & HIV/AIDS (UGANET). She served as a consultant to several United Nations Agencies and human rights NGOs in Uganda and internationally focusing on human rights, law and development.

Hon. Anne A. Amadi is the Chief Registrar of the Judiciary – Kenya. She is an advocate of the High Court of Kenya, holds a Masters in Criminal Justice from Boston University, USA, a Bachelor of Laws degree from the University of Nairobi and a Post Graduate Diploma in Legal Practice from the Kenya School of Law. She holds two other Post Graduate Diplomas, one in Alternative Dispute Resolution from California State University and another in Law of Internal Displacement from the Institute of International Humanitarian Law, San Remo, Italy. She joined the judicial service as a District Magistrate II (Prof.) in 1990 and rose through the ranks to become a Resident Magistrate before joining private legal practice as Sole proprietor at A. A. Amadi & Co. Advocates between 1997 and 2003. Hon. Amadi served at Federation of Women Lawyers - Kenya (FIDA) as Deputy Executive Director between 2003 and 2008 and as the National Coordinator of National Legal Aid and Awareness Programme (NALEAP), Ministry of Justice National Cohesion and Constitutional Affairs, between 2008 and 2011. Until her appointment as the Chief Registrar of the Judiciary, she was working as a Consultant.
Hon. Lady Justice Stella Ogene is currently the President of Customary Court of Appeal, Delta State, Nigeria and Vice President, National Association of Women Judges, Nigeria. She has Bachelor's of Laws degree from University of Lagos and was admitted to the Nigerian Bar in 1981. She has been on the Bench since 1985 till date. She was honoured by the National Judicial Institute in 2009, for her immense contributions towards Judicial Education in Nigeria.

Ms. Zebib Kavuma is an accomplished development Advocate working to improve the status on women in Africa. She has over 15 years’ expertise in diverse development work including gender, reproductive health, and HIV/AIDS. She was appointed as the Country Director of UN Women in Kenya in April 2011, where she oversees gender equality and women’s empowerment programming for the UN in Kenya. An ardent supporter of women’s empowerment, she has worked closely with inter-governmental and national governments, civil society and the private sector to spearhead major social transformation efforts to address the socio-cultural drivers of gender inequality in Kenya and beyond.

Ms. Jane Serwanga is UN Women/ UNDP Gender Specialist, an Advocate of the High Court of Kenya. She has previously served as the Deputy Executive Director and Head of Programmes – Federation of Women’s Lawyers (FIDA) Kenya. She has served as a member of Kenya’s Attorney General’s Task Force on Implementation of the Sexual Offences Act and the National Steering Committee of the National Legal Aid and Awareness Programme. Ms. Serwanga was part of the Equality Effect team that undertook (2010-2013) the landmark ‘160 Girls’ litigation project that sought state accountability in cases of sexual violence. Ms. Serwanga is certified as a trainer in the National Institute of Trial Advocacy (NITA) ‘learn by doing’ method. She has served as the local coordinator and faculty member of Lawyers Without Borders trial advocacy training programs for Kenyan trial lawyers since 2008. As a member of the Coalition for an Effective African Court, she has trained lawyers on the African human rights systems and public interest litigation in various African countries. Ms. Serwanga holds a Bachelor’s of Laws (LLB) degree from Makerere University (Uganda), a post graduate diploma in Legal Practice from Kenya School of Law, and a Masters of Law (Human Rights and Democratisation in Africa) degree from University of Pretoria (South Africa). She is certified in provision of Mediation and has recently taken an interest in human rights and the extractive industry.

Ms. Patricia Kameri-Mbote is a Professor of Law and former Dean at the School of Law, University of Nairobi. She holds a Juridical Sciences Doctorate from Stanford University having previously studied law at the University of Nairobi; Warwick; and the University of Zimbabwe. She is a Senior Counsel and has been engaged in research and teaching for 28 years at various Universities around the world – Nairobi, Kansas, Stellenbosch, and Zimbabwe. She serves on various national, regional and

Hon. Lady Justice Dr. Susana E. Medina has been the President of International Association of Women Judges (IAWJ) since 2016. She is the director of the Dr. Juan Bautista Alberdi Institute of Judicial Training and Improvement of the Province of Entre Ríos. She is currently the Vice-President of the High Court and President of the Labor Chambers. Dr. Medina is also a member of the Committee on Access to Justice of the Supreme Court of Justice of Argentina and has implemented the programs “La Justicia va a los barrios” (which brings service closer to people within city limits), “Oficina Flotante e Itinerante” (which takes the same service to the southern islands of Entre Ríos). Dr. Susan Medina was designated a Member of the Council of Notables of the National Commission for the Stipulation of Punitive Measures against Gender Violence (CONSAVIG), by the Ministry of Government, Justice and Human Rights. She is a member of the Association of Magistrates and Officers of Entre Ríos (AMFPJER), the Argentinean Association of Labor Law, and Co-founder of Argentinean Association of Victimology. She is also a former professor at the Universidad Autonoma de Entre Ríos (UADER). She has authored numerous books on gender issues and has taken part in national and international conferences as a lecturer and organizer.

Ms. Lisa Davis is the Executive Director for the IAWJ. Ms. Davis is an international human rights lawyer with over 20 years of global project management and legal reform experience. She has extensive experience in executive leadership of international advocacy and development organizations in women’s rights and in the design of strategies, training, and support for those within the justice sector and frontline human rights defenders. Prior to IAWJ, Ms. Davis was part of the executive team at Freedom House, a democracy promotion organization, where she advised organizations and staff on international legal issues and as the Director of Rule of Law programs, developed a signature portfolio of programs to support
human rights defenders in over 30 countries. She served as the technical director for USAID funded global rule of law and human rights (RIGHTS) program, leading consortia of implementing partners. In all her international experience, Ms. Davis designed strategies to promote women’s rights, including drafting and advocating for new legislation, research, and human rights documentation and support strategic litigation on women’s issues. She has led advocacy delegation before international and US agencies, including the United National, Organization of American States, US Congress and States Department.
FORWARD

On behalf of Kenya Women Judges Association (KWJA), I would like to take this opportunity to thank the International Association of Women Judges (IAWJ) for having given KWJA the opportunity to host the 2017 IAWJ- Africa Region Conference that took place in Nairobi Kenya from 16th -20th May, 2017.

The IAWJ international biennial and region biennial conferences have become regular events that IAWJ members look forward to as providing opportunity to renew old acquaintances, make new friendships as well as engage in serious discussions on important topical issues. The IAWJ 2017 Africa region conference that was themed “Women Judges Enabling Sustainable Development Goals: Opportunities, and Challenges,” presented another such unique opportunity for IAWJ members from Africa and other countries to engage in thought provoking discussions on their judicial experiences and share strategies in using the sustainable development goals in promoting human rights, gender parity and access to justice. The presentations made at the conference, which took place in Nairobi Kenya from 16th – 20th May 2017, were passionate, captivating and inspiring, and elicited animated and thought provoking discussions. I also thank UN Women Kenya Country Office for technical and financial support including their contribution in presentations, preparation and printing of this Compendium. UN Women is the UN organization dedicated to gender equality and the empowerment of women.

In this compendium, the papers presented by the rich blend of authors have been reproduced and immortalized. The authors have examined how women judges can utilize their judicial powers to make rulings and declarations that advance the sustainable development goals, particularly goal 5 that seeks to enhance gender equality. The papers presented in this compendium leave no doubt that gender equality and women empowerment are critical factors in the achievement of sustainable development goals, and that women judges can positively impact the achievement of SDGs by using their positions to eliminate discrimination and gender based violence. The recommendations and action point that were made at the conference are pertinent to the women Judges using the opportunities they have as individuals and as associations to impact the achievement of sustainable development goals by elimination of discrimination against women and girls, and realization of gender equity and equality.

I thank all the presenters and all the delegates who attended the conference for their presence and robust participation.

Hon. Lady Justice Hannah Okwengu, EBS
Judge Court of Appeal & Chairperson
Kenya Women Judges Association
ACKNOWLEDGMENTS

Kenya Women Judges Association (KWJA) acknowledges with gratitude the personal support from the Hon the Chief Justice of the Republic of Kenya Mr. Justice DK Maraga, the Deputy Chief Justice Lady Justice Philomena Mbete Mwilu, and the Chief Registrar of the Judiciary Hon. Anne Amadi. The support from the International Association of Women Judges (IAWJ); The Judiciary; and International Development Law Organization (IDLO) the Equality Now; Association of Charitable Children Institutions of Kenya (ACCIK); and Kenya Tourism Board (KTB) in providing the human and or financial resources was critical to the success of the 2017 IAWJ Africa Region conference., and is much appreciated. KWJA thanks all the presenters for their erudite and thought provoking presentations that are compiled in this compendium.

We also acknowledge the financial and technical resources from UN Women for supporting the preparation, presentations and printing of this compendium. The UN Women funds were provided under Strengthening Electoral Processes in Kenya (SEPK) project which is being implemented by UNDP, UN Women and UNOHCHR. SEPK project is designed to strengthen and develop sustainable and effective election institutions, systems and processes including strengthened electoral justice and increased compliance with the electoral framework in a manner that promotes gender equality and women empowerment.

Also acknowledged is the time and effort expended in organizing the conference and compiling the compendium by the KWJA Executive Committee and the KWJA secretariat.
CHAPTER ONE

Women Judges Enabling Sustainable Development Goals: An Introduction

1.0 Background

The International Association of Women Judges (IAWJ) was founded in 1991 as a forum through which women judges from all over the world can convene, share experiences and seek solutions that will collectively influence global and domestic jurisprudence. The IAWJ currently comprises over four thousand members representing over ninety countries. The IAWJ holds a global convention once every two years and continental (regional) conventions once every two years. The Kenya Women Judges Association (KWJA) is an affiliate of the IAWJ and was selected to host of the 2017 Annual Africa Regional Conference of the IAWJ. The conference theme being “Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies”. This was the second time KWJA was hosting an IAWJ Conference since its inception 23 years ago.

The 2017 IAWJ-Africa Region Conference was at Safari Park Hotel, Nairobi Kenya between the 16th to 20th May, 2017. The conference provided a platform for women Judges from Kenya, Uganda, Tanzania, Ivory Coast, Ghana, South Africa, Botswana, Nigeria, Benin, Zambia, Trinidad and Tobago, Argentina, USA, and Mexico, to deliberate on issues and opportunities for women in the justice system; Gender vulnerability in conflict situations; Emerging issues in legislation on SBV; Gender issues in electoral process; Women leadership (in general), and women leadership in the judiciary.

Conference Objectives:

The overall objective of the Conference was to offer a forum for comparative inquiry into the special roles played by women judges in promoting global and municipal development as judges.

Specifically, the conference was to provide a platform for participants to:

i. Probe into the socio-economic and legal factors that influence gender-based discrimination and violence against women in Africa, and propose to IAWJ advocacy mechanism to be employed.

ii. Analyse emerging trends on gender-based discrimination and violence against women; assess these trends impact, and the projection of Sustainable Development Goals in Africa.

iii. Showcase, discuss and benchmark emerging jurisprudence, policy interventions as well as research undertaken towards ameliorating gender-based discrimination and violence against women in Africa.

iv. Recommend mechanisms on how women judges can take leadership roles in addressing structural gender equality gaps, access to justice, and attainment of Sustainable Development Goals (SDGs) for women and children in Africa.

v. Foster networks, partnerships, and mobilize resources for sustainable implementation of IAWJ programs and recommendations from the 2017
Conference Compendium

Objective (3) of the IAWJ 2017 conference required presentation of papers that would showcase emerging jurisprudence, policy interventions as well as research undertaken towards ameliorating gender-based discrimination and violence against women in Africa. These papers have been compiled to form the conference compendium. The compendium is organized as follows:

Chapter Two: “Opening remarks”;
Chapter Three: “Women in Justice System: The poverty Equation”;
Chapter Four: “Gender Vulnerability in Conflict Situations”;
Chapter Five: “Emerging Issues in the Implementation of Legislation on Sexual Gender Based Violence: Good Legislation, Absurd Results”;
Chapter Six: “Emerging Gender Issues in the Electoral Process”;
Chapter Seven: “Mobilizing Positive Masculinity for Women Empowerment”;
Chapter Eight: “Women in Leadership: Towards Sustainable Stakeholder Engagement and Partnerships”;
Chapter Nine: “Women in the Judiciary” and
Chapter Ten: Closing remarks.

Each chapter has a thematic paper presentation, followed by summary of the paper(s) by panel discussants save for Chapter two, seven and ten. The compendium annex 1 contains the 2017 IAWJ -Africa Regional Conference resolutions.
CHAPTER TWO

Opening Remarks

The International Association of Women Judges (IAWJ) conference opening remarks were delivered by Hon. Chief Justice David Maraga; and H.E. Uhuru Kenyatta- President, the Republic of Kenya.

Hon. Justice David Maraga, LLM, EGH (Chief Justice -Kenya; President - The Supreme Court of Kenya)

The theme of this Conference, Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies, is an apt one, as are the topics that are lined up. Despite the Economist Magazine upbeat assessment in ‘Africa Arising’, most part, Africa remains the face of poverty and conflict. Worse, this poverty and insecurity is highly feminized. Tragically, there is gender inequality in both opportunity and misery. Women receive less opportunities when they arise, but receive more misery when they occur. Yet data shows that educating a woman yields higher economic dividends for a family and a nation. Therefore, achieving Sustainable Development Goals is the first step in ensuring gender equality.

The SDG No. 16 focuses on Peace, Justice and Strong Institutions, which means, the path to achieving this goal includes investing in a strong and independent Judiciary. The involvement of women is critical to the realisation of all these three elements of peace, justice and strong institutions. Therefore, gender vulnerabilities in accessing justice, either because of cultural reasons, physical distance, or inhibiting provisions of the law, greatly impede the attainment of development goals. We must recognise that discrimination against women in law – and in the administration of justice – undermines the development potential of Africa.

Illustratively, in a recent Criminal Justice Sector Audit Survey conducted by the Kenya’s National Council on the Administration of Justice and Legal Resources Foundation, it was established that women are inordinately affected compared to men. This is in regards to arrests related to acquisition of licences for small women enterprises, such as selling vegetables, brewing traditional liquor, and picking firewood. As such, this deepens poverty conditions of women, families and societies. We must also pay attention to the misery and suffering that conflict inflicts on women, and, admittedly, in a rather disproportionate manner. Deaths, rape, separation from their children are experiences that deepen women’s misery in conditions of conflict. Africa has a duty to build institutions that can peacefully mediate differences before they graduate into full blown conflicts.
It is vital that we promote women’s participation in electoral politics and leadership generally. The opportunity to lead must, however, be accompanied by the removal of artificial and cultural barriers that women face. These include physical and emotional violence that are routinely served to women who dare. The law has a responsibility to protect the weak and it is my opinion that Judiciaries should embrace the principle of responsibility to protect in this regard. The Kenya Women Judges Association (KWJA) strong leadership in the hosting of this Conference provides a platform for members to dialogue on how to enhance gender equality. The Judiciary of Kenya and I are particularly proud to be associated with the KWJA on this auspicious occasion. Just like in many other parts of this great continent, the women of Kenya still have to deal with harmful traditional practices and persistent misogyny in almost all spheres of life. Our case data shows that sexual and gender based violence is perilously rearing its ugly head. The economic cost of rape, domestic violence and harmful cultural practices such as wife inheritance are all contributing to the feminization of poverty. The current Constitution of Kenya (Articles 21, 27, 38, 40 and 60) and many other Statutes, elaborates rights and protections for all persons, including marginalised groups such as women and children. It also guarantees access to justice through an independent Judiciary to which the members of the KWJA belong. The Judiciary, therefore, has a leading role in developing jurisprudence that will continue championing gender equality and thus play its part in enabling the attainment of the related Sustainable Development Goals.

I am proud to report that when one examines the jurisprudence that is emanating from our Courts on social and economic rights, the Kenyan Judiciary has been very progressive. We have an enabling constitutional regime of rights and a courageous team of judges who are breathing life to the dry letter law! Kenya’s Bill of Rights jurisprudence in the last five years is the best example of how human agency that is progressive can interface with the dry letter law to produce positive development and political outcomes for society. At an institutional level, the Kenya Judiciary has made tremendous progress in advancing gender equality. Achieving gender parity has been one of our objectives in the Judiciary transformation work that we began five years ago. According to the latest institutional demographic survey (2016), out of 4326 employees (Judges, Magistrates, and Staff) in the Judiciary, 2032 are women. This, in the ratios of men to women, is about 53% to 47%. We are tantalizingly close to achieving full parity of 50:50, and, I am sure, that in the next few years, this shall not only be achieved but also surpassed if the overwhelming number of new female advocates I admit is anything to go by.

In Kenya, five years ago there was no female Court of Appeal Judge; today, out of 20 judges in that Court, 7 are women. Currently, of the 157 judges that we have, 66 are women while 91 are men. This means that women judges constitute 42% of the total number of judges in our Superior Courts. In the magistracy, out of a total of 422 magistrates in service today, 214 are male while 208 are women. This means that we have achieved the 50:50 gender parity with the magistracy. This is impressive. In terms of gender composition, the Judiciary is far ahead of the two other arms of government although I am sure they will also catch up soon. The judicial strength of women judges should
begin to show - and it already does, by the way - on the quality and character of our jurisprudence. Not that gender should compromise the law or undermine your oaths of office, but the perspectives of your social realities may and should enrich and develop the law in directions unseen, ignored or undermined.

I am sure most of you followed the confirmatory hearings of US Supreme Court Justice, Sonia Sotomayor, whose famous ‘Latina Judge’ speech became a centre piece of those hearings. She said:

‘Our gender and national origins may and will make a difference in our judging. Justice O’Connor has often been cited as saying that a wise old man and wise old woman will reach the same conclusion in deciding cases...I am not so sure that I agree with the statement. First, as Professor Martha Minnow has noted, there can never be a universal definition of wise. Second, I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life’

I am sure that there are varied views to this position but I believe that, in the main, Justice Sotomayor is right: where you sit – your history, your sociology (and may I say, within the context of this Conference, your gender) – the whole gamut of your experience - influences what you see and how you see them, your fidelity to the law notwithstanding. These influences need not and should not necessarily be malignant or unjust – and neither should they compromise the rule of law and agress its application. They should not intervene in bending or upending the law; but they can bring an illuminating perspective or a body of knowledge to an underlying injustice in the law. They can therefore inject dynamism in judging that liberates rather than contracts our jurisprudence and human potential.

On the issue of two-thirds gender, we have that “progressive approach” may sometimes emerge as a convenient device of the advantaged for prolonging an injustice or a deprivation especially with respect to the realisation of socio-economic rights. African Courts have a jurisprudential opportunity or nightmare – depending on your judicial philosophy – with respect to superintending the realisation of socio-economic rights. One thing that is clear though is that the absence of these rights, have not necessarily made Africa’s development outlook better! Could the strict enforcement of these rights force better use and governance of public resources? Are African governments likely to be more prudent and eliminate corruption if tougher enforcement of the social and economic rights by courts were to emerge? Can courts, through rendered decisions, create structural disincentives to economic malfeasance by states? Administratively, the Judiciary in Kenya has gone even further: you may be happy to learn that, from 2011, the Judiciary infrastructure policy ensures that our court houses have special facilities for women which include lactating rooms, and nursing rooms for mothers, as well separate males and females. The Judiciary’s Bail and Bond Policy Guidelines is gendered.

In conclusion, IAWJ conferences are an important catalyst to the efforts to re-energize towards completely eradicating all forms of discrimination and violence against women and girls. The opinions, insights and recommendations
of women in leadership shared in this conference will be particularly valuable. Certainly, the road to equality should not be hewn by women alone; it requires everyone. Both men and women must internalize the benefits and champion the course; this is especially so for men in the Justice Sector. That is why the Judiciary Partnered with UN Women to launch the “He for She” Campaign because “Gender Equality is Justice”. I am proud to associate with the Judges who signed up to be champions for gender equality led by my predecessor, Dr. Willy Mutunga. His Excellency the President himself is a “He for She” Champion and we are honoured to have his support for this conference and for the many initiatives taken by the Executive through the National Gender and Equality Commission (NGEC) whom we work very closely in the NCAJ special working Group on SGBV.

His Excellency Hon. Uhuru Kenyatta, C.G.H, President and Commander in Chief of the Defence Forces of the Republic of Kenya

It is a pleasure for me to join you at this important Conference, the 2017 Africa Regional Conference. First, let me take this early opportunity to welcome those of you who have come from other countries to Kenya. When you are through the Conference, I urge you to take a day or so to see a bit of our beautiful country. Hon. Judges, as Jurists, you have traveled a long way since the formation of the Kenya Women Judges Association in 1993. Our country Kenya has also become transformed in that same period. Today, we are a vibrant multi-party democracy with an independent judiciary. These are great victories for our people, achieved through peaceful reforms that we cannot separate from your steadfast conviction that the Rule of Law must be protected and deepened.

We are, therefore, grateful for your predecessors: Justices Effie Owuor, Joyce Aluoch and Rosslyn Nambuye, and others who stood with them as pioneers, in founding the Kenya Women Judges Association. Your cause not only advanced the position of Kenya’s female jurists, but has also stood up for the principle of gender equality, which is fundamental to our progress as a people and as a country. You have enriched citizenship and the structure and conduct of government.

In Kenya, we live in the expectation of decency and generosity from each other, but are reassured, knowing that the law and its institutions and practitioners will be an accessible resort, should we need protection. Law limits the abuse of power by limiting the uses and arbitrariness of that power. It protects minorities and individuals. It should allow those with the least among us to be able to be made whole against abuses by those with the most.

The law, properly institutionalized and accessible to all, is fundamental to attaining the yearning for “justice as shield and defender,” that we sing of in our national anthem.

I know justice has not yet been done to the satisfaction of our women. They are still under-represented in the legislature and in many other public and private
decision-making and governance forums. But as Kenyans we are agreed, if we are to live up to our promise to conquer poverty, disease and ignorance, we must embrace gender equality. We have come a long way since the founding of our nation and there is a long way still to travel to reach our destination. Women and girls in Kenya still have trouble getting their rights adjudicated and enforced by our justice system. The same is true of much of Africa, and, indeed, much of the world. Women and girls still face particular challenges in regard to access to the formal justice system, as well as to our informal and traditional dispute-resolution mechanisms. We are still contending with discrimination and domestic violence against women and girls.

We will not be as prosperous as we hope, or as fair as we aim to be, if half the population is disadvantaged and discriminated against. That is why I have insisted that my Administration must further the cause of gender equality, and the empowerment of women. We established a fully-fledged State Department of Gender Affairs; we have funded initiatives to equalize socio-economic opportunities for women such as the Women Enterprise Fund and the Uwezo Fund. And, we have rolled out a programme for the provision of free maternity services in public hospitals. We have also backed policy and legislation whose aim is to honor our commitment to gender equality and the empowerment of women.

The passing of the Prevention of Domestic Violence Act of 2015, and the National Policy on Prevention and Response to Gender Based Violence 2014, are proof our commitment, as is the representation of women in the top leadership of the Executive Branch. We are passing laws, we are crafting legislation, but we must aim to do more to implement the fine ideas and sentiments that they express. The Judiciary is a point of strength in this regard. It is among the most improved institutions regarding the ratio of men to women. The number of women judges and magistrates present today proves the point. Upstanding and professional female magistrates and judges are proof to our young men and women, that equality of opportunity is open to all Kenyans.

You are role models to the many young women who look to those of you in this room as the giants on whose shoulders they will one day stand. Yet, even as we count our blessings and achievements, no institution has achieved its full potential. The Judiciary, like other branches of government, needs to be bold in challenging corruption, and especially the abuse of the judicial process to escape accountability. Those that abuse judicial processes are often compromising and undermining public resources and public trust. They are reversing the very solutions that this conference seeks to identify and deliver. Your leadership is needed by Kenya, by all of Africa, and the World, if we are to build the equality and fairness that all those millions of young girls and boys need to have productive and happy lives. You are equal to the challenges that face us today, we, as Africans of the present generations, are equal to the historic task of lifting our nations and peoples. You have a chance during this conference to embrace fresh and bold ideas. Do so, guided by a spirit that is simultaneously urgent and practical.

In conclusion, I wish to assure you that I will be open to your recommendations.
and initiatives. I will continue to run an Administration in which gender equality and fairness is at the core of our pursuits. The Executive Branch of Government will support your work as Judges, and as a Judiciary. I will urge the legislature and the political class that occupies it, to be similarly engaged with your great mission — particularly on the issue of gender in representation, and the two-third rule. I am convinced to reach Africa’s shining destiny of prosperity and security for all, we must simply have women as equal partners in leading and governing ourselves. Girls must have the same opportunity and protection, as boys. Economic freedom must know no gender. We are headed in that direction, and I am proud to say that my Administration will continue to pull hard, to lead in this regard, and to listen closely to women from all walks of life. With those remarks, it is now my pleasure to declare the 2017 Africa Region Conference, officially open.
CHAPTER THREE

Women in Justice System: The poverty Question

(JSC-Uganda) Hon. Lady Justice Esther Kitimbo Kisaakye

3.1 Introduction
Despite the global commitment to gender equality in the Sustainable Development Goals (SDGs), women still form the majority of the world’s poor. Thus, it is not sufficient to approach the problem of gendered poverty merely as one of development, but also as a justice issue. An impartial justice system is necessary to ensure that there is no miscarriage of justice and re-victimization of women. To address these issues, it is necessary to recognise that equality is universally recognised as a human right. Therefore, gender equality must start with the dismantling prejudicial presumptions about women and men, including the need to stop perpetuating misguided ideas of what women should or should not be or do, based solely on the fact of being female. This paper elucidates the plight of women in the justice system, and the nexus between access to justice and poverty, and the role judicial officers could play to mitigate this challenge.

3.2 Gender Inequality
Gender inequality manifests itself in various forms, and significantly inhibits women’s ability to bootstrap out of poverty. Women challenges in accessing justice exacerbates and perpetuates structural injustices particularly unequal access to economic resources; unequal work payment in comparison to male counterparts; disparities in the social constructs on roles of women as regards to child rearing, and caring for the elderly and the sick. These socially constructed roles are unpaid, limiting women’s scope to meaningfully engage in economic activities compared to their male counterparts. Thus, many aspects of women’s lives are based on responsibility, care and interdependence. Similarly, violence against women and girls not only violates their fundamental human rights, but subjugates women to poverty. Poverty can either be absolute or relative. Absolute poverty is concerned with ability to meet basic needs such as food, clothing, and shelter. The concept of absolute poverty is not concerned with broader quality of life issues or with the overall level of inequality in society. However, concept of absolute poverty fails to recognise that individuals have important social and cultural needs. Relative poverty on the other hand refers to the economic status of other members of the society: people are poor if they fall below prevailing standards of living in a given societal context.

According to the UNDP (2016), over 700 million people in the world live in extreme poverty, and survive on less than US Dollars 1.90 purchasing power parity (PPP) per day. Another 800 million people are susceptible to a range of social, economic and environmental shocks that could push them back into poverty. Whilst most analysts agree that there is no single root cause of all poverty, Borger (2013) argues that poverty is precipitated by things such as war, political instability, national debt, discrimination and social inequality. As such, the face of poverty is feminized. Worldwide, women living in poverty earn on average slightly more than 50 per cent of what men earn, and lack access to critical resources such as credit, land and inheritance. In other instances, women labour goes unrewarded and unrecognized. The United Nations Development Programme (UNDP, 2016) notes that:

“The world has achieved remarkable gains in human development over the past two decades. Extreme poverty has significantly reduced, access to primary education and health outcomes has improved and substantial inroads have been made in promoting gender inequality and the empowerment of women. ... Yet, despite these significant gains, extreme poverty remains a key challenge ...”

The United Nations Sustainable Development Goal 1 aims at alleviating extreme poverty. However, this cannot be realized when majority of women are socially excluded from opportunities and capabilities that they need to improve their lives. Therefore, gender-sensitive interventions are crucial in all sectors, and are necessary for successfully addressing the problem of extreme poverty affecting women. As such, there is need for long-term investments in women’s access to productive assets, health services, education, and meaningful employment.

7. UNDP support to the implementation of sustainable development goal 1. Available at: www.undp.org/content/.../Sustainable%20Development/1_Poverty_Jan15_digital.pdf.
8. See USAID Gender and extreme poverty, September 2015 issue
3.3 Courts Role in Ending Extreme Poverty

Over the years, policy and legislative interventions in many countries have been developed to address poverty, however, judicial interventions on the same is not always obvious. First and foremost, this is due to the legal interpretivism nature of courts. Courts rely on the spirit and letter of the law, and less on judicial activism when adjudicating their functions. This notwithstanding, courts have the capacity to render judgements that advance the course of gender equality and women’s empowerment. Superior courts like court of appeal and supreme court’s decisions and declarations have far reaching implications on society beyond legal disputes before the courts. For instance, rulings on cases like marital property, refund of bride price and maternal mortality have significantly impacted women lives in Uganda as demonstrated in the following cases:

The case of Julius Rwabinumi v Hope Bahimbisomwe, Civil Appeal No. 10 of 2009

In 2013, the Supreme Court of Uganda rendered its decision in the case of Julius Rwabinumi v Hope Bahimbisomwe, Civil Appeal No. 10 of 2009, which involved questions of ownership and division of property on divorce. A unanimous supreme court ruling declared that on divorce, a spouse can share property acquired during the marriage or before the marriage, so long as the spouse can prove they contributed either to the property acquisition (monetarily or in kind childcare and other household services during the subsistence of the marriage) or to its development. As such, the ruling bound all lower courts in Uganda dealing with similar cases. This ruling strengthened women’s equal access to justice, as had earlier rulings in 2003 in a case between Association of Women Lawyers and Others vs. Attorney General, Constitutional Petition No. 2 of 2003. In this case, the court had ruled that Ugandan women can successfully seek for, and be granted divorce on an equal basis as men.

The case of Tropical Bank vs. Grace Muhwana, Supreme Court Civil Appeal No. 04 of 2011

In 2011, the supreme court of Uganda rendered a ruling in the case of Tropical Bank vs. Grace Muhwana, Supreme Court Civil Appeal No. 04 of 2011, where, a wife successfully sued Tropical bank for wrongfully selling off her matrimonial home to recover moneys the bank lend to company owned by the husband. The bank was ordered to refund the wife her 45% share of the value of the home.

10. Uganda Legal Information Institute. Available at: http://www.ulii.org/node/15805
11. Uganda Legal Information Institute. Available at: http://www.ulii.org/node/15734
Customary marriage is recognized by law in Uganda. However, before recognition, it is required that the groom must first pay bride price to the bride’s parents. Similarly, before the marriage is legally dissolved, the girl’s parents must pay back the bride price they had received. It therefore followed that if woman experienced irreconcilable differences or abuse in such a marriage, she would in effect be kept in “marital bondage” with limited divorce options, unless she or her family could refund the bride price paid for her marriage. In the case of Mifumi (U) Ltd & Anor. Vs. Attorney General, Constitutional Appeal No. 02 of 2014, the court ruled that demand for return of bride price before dissolution of the marriage was unconstitutional since it violated the right of women to equality and equal treatment under the law.

The case of CEHURD v. Attorney General, Constitutional Appeal No. 1 of 2013.

In 2013, the supreme court of Uganda ordered a constitutional Court to hear a petition challenging government’s inaction over the high maternal mortality rate alleged resulted from frequent medical supplies stock outs and inadequate budgetary allocations to maternal health. Preliminary, the constitutional court had summarily dismissed the petition on grounds that it raised a political question, with no constitutional or legal merit. However, the supreme court ordered the court the constitutional court to hear the petition, which in turn, opened the door for individuals and/or interest groups to engage the court over matters previously considered exclusive to executive government’s jurisdiction. The ruling was so significant in that it did not only force the government to engage on the case of high maternal mortality, but accountability on citizens right to health and other socio-economic rights as summarized by the following quote:

“...by holding that the political question doctrine has limited applicability in Uganda, the Supreme Court has emphasized that governmental policy, acts, and omissions in the health and other sectors are subject to judicial review to ascertain their constitutionality. In so doing, the judiciary has protected access to courts and taken another step towards recognizing the justiciability and enforceability of the right to health and other socio-economic rights. The case also restores confidence to potential ESCR litigants who had been discouraged by the precedent set by the Constitutional Court. Therefore, Judges have the duty to use judicial power to achieve good governance and to attain sustainable development goal 1 (ending extreme poverty). In

as much as one would argue that the justice system is the mechanism for
upholding the rule of law, and dispensing justice for all; however, the courts
need to be mindful of the multi-faceted discrimination and socially constructed
norms that inhibit women’s access to justice (long distance to courts, inability
to hire a lawyer or pay legal fees, language constraints, lack of awareness of
legal rights and modes of enforcing such rights). As such, Judges should not be
“judicially blind” to the inequality and discrimination that perpetuate the cycle of
poverty for women and girls. Similarly, Judges should utilize legal provisions in
their National constitutions, national laws and international and regional human
rights instruments to administer judgements that will end socially constructed
discrimination against women, gender based violence, unequal access to justice
and socio-economic resources. Discussants country level perspectives by are
presented in Box 1.

14. Hallward & Tazeen (2012). Empowering Women: Legal Rights and Economic Opportunities in
**BOX 1: Discussants Country Perspectives**

**Hon. Lady Justice Joaquine De Mello (JHC-Tanzania)**

In Tanzania, the challenges of women access to justice are mostly exacerbated by illiteracy, poverty, and inequality. Statistical data shows that Tanzania, just like most African countries, women’s matrimonial violence abuse and denial of property rights contributes to higher levels of poverty among the women. Tanzania Association of Women Judges (TAWJA) has worked towards strategic jurisprudence to ensure women access to justice mechanisms are enhanced, equality and property rights are enhanced, and that government and other stakeholders provide legal aid to women living in poverty. This will not only enhance their human rights awareness, but also their livelihood. The latest trends in Tanzania have begun showing a change in traditional norms of subjugating women.

**Hon. Justice Clara B. Ogunbiyi (JSC-Nigeria)**

In Nigeria, the odds against women are multifarious, and of different faces. About 70% of the population live below poverty line and women share the larger percentage of this burden. Women judges are among the privileged few and should help provide a solution through the privileges they access. Of late, court pronouncements have become more powerful as women judges utilized their platforms to bring gender advance gender equity and equality. CSOs, media and other stakeholders play a complementary role of sensitizing the public on basic human rights and how to protect them. More can be done to hold states to account on human rights and give fair and balance judgement. Nigeria adopted The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1970s providing venues for the rise of women’s rights activists, including Nigerian Human Rights Commission.

**Hon. Justice Olivia Hungbo (JHC Benin)**

Justice Hungbo noted that access to justice for women in Benin has been inhibited by poverty and other social economic disadvantages. As such, majority of women in Benin are poor and cannot access finances. Violence against women and girls gets perpetuated in different dimensions including psychological, Sexual, and economic spheres. One of the ways in which women judges can help is in providing judicial support to women. Secondly, women judges can help alleviate the burden of poverty on women by engaging in Judicial activism both corporately and as individuals. Authoritative declarations and rulings from the bench can go a long way in curbing entrenched patriarchal norms that subjugate women to poverty and discrimination.
Hon. Lady Justice Hellen Omondi (JHC-Kenya)
In Kenya, offences that women face are more related to social economic factors, or economically driven hardships. This includes violations of brewing liquors licenses, petty stealing, and offences under forest act, loitering for immoral purposes, inability to meet bail and bond terms. In most cases, women under these categories of crime are usually driven by the burden of poverty and lack of access to justice. In as much as there has been significant improvement in Kenya on gender equality, women still face challenges achieving gender equality. For instance, the constitution of Kenya (2010) makes provision for the two-thirds gender rule in all appointive and elective positions. However, political parties and state agencies have not been observing law as women are still under-represented. On the legal front, women still have challenges accessing the legal system for representation, in addition to high cost of court fees, intimidating court language and setting. Equally, the available alternative dispute resolution mechanism is mostly male dominated, making it difficult for women to seek justice from these tribunals.

3.4 Conclusion
This paper has examined the plight of women in the justice system, and the nexus between access to justice, poverty, and the role of judicial officers to end gender based discrimination. Sample cases and court rulings drawn from Ugandan context have also been presented. Judicial activism at individual and cooperate level will go a long way in reducing gender based inequality. Lack of physical access to justice system, high cost of court fees, use of official language, intimidating court setting, court delays, male dominated alternative dispute resolution mechanism equally inhibit women access to justice and gender equity. There is also need for Judges to provide authoritative rulings particularly on matters of women discrimination, inequality, and violence against women and girls.
CHAPTER FOUR

Gender Vulnerability in Conflict Situations

Hon. Anne Amadi (Chief Registrar – Judiciary, Kenya)

4.1 Introduction
In many conflict settings in the world, women and girls continue to experience gender-targeted violence such as rape, sexual slavery, and a host of other human rights abuses perpetuated by militias, and military campaigns. This notwithstanding, history shows that survivors of sexual and gender based violence in conflict situations still face significant barriers in accessing justice. Factors such as poor investigations, corruption and flimsy prosecution of sexual violence precipitates environments where women are vulnerable to violence and abuse. Men and women experience conflicts in different ways. In most instances, conflict, particularly war, is inherently masculine and patriarchal. War precipitates gender and sexual based violence. Equally, in war, rape is used as a weapon of war against women and girls. While men too are victims of sexual violence in conflicts, sexual assaults against women is more prevalent and predictable than assaults against men. This paper provides an overview of conflict related sexual violence against women, judicial rulings from international criminal tribunals (International Military Tribunals of Nuremberg and Tokyo; International Criminal Tribunal of former Yugoslavia (ICTY) and Kenyan post-election violence of 2007-2008. The role of judges in addressing sexual violence, judicial reforms at national and international levels is also discussed. Finally, recommendations on mechanisms to enhance women’s empowerment, legal redress and restorative justice are presented for women who have experienced conflict related gender and sexual based violence.

4.2 International Tribunals

International Military Tribunals of Nuremberg and Tokyo

The Nuremberg trials were a series of 13 trials carried out in Nuremberg, Germany, between 1945 and 1949 to prosecute high ranking Nazi Party officials and military officers indicted on charges of crimes against peace and crimes against humanity. In the trial, crimes against humanity were defined as “murder, extermination, enslavement, deportation or persecutions on political, racial, or religious grounds. However, Sita Balthazar observed that despite the widespread sexual violence during the World War II, the Statute of the Nuremberg Tribunal did not make any mention of rape or sexual abuse. Rape

was not enumerated as a crime against humanity or as a war crime. During the trial, sexual crimes, along with pillage, were viewed as inevitable aspects of war, and therefore un-punishable. Prosecutors shied away from the subject of sexual crimes as it was perceived as too distasteful, too atrocious to prosecute, and or impossible to prevent. Even though evidence showing prevalence of rape, forced prostitution, forced sterilization, forced abortion, pornography, sexual mutilation and sexual sadism existed, the court failed to give directions on this matter and as such, the tribunal missed the opportunity to make a difference in the lives of women and girls who had been violated.

Unlike the Nuremberg tribunal, the Tokyo Tribunal established on January 19th, 1946 included rape among the crimes in the indictments. However, the existence of gender specific crimes such as rape was not recognized as atrocities deserving prosecution. Thus, rape was only a charge under prohibitions against “inhumane treatment and as rape as an act of violence. For instance, Japanese military engaged in sexual slavery known as “comfort women” of about 200,000 women mostly from China and South Korea. These women were forced into the Imperial Japanese Army’s brothels before and during the World War II. No action was taken to prevent it, nor to punish the officers. In her book Rape under International Humanitarian Law: The Legacy of Nuremberg, Patricia Viseur Sellers argues that although humanitarian law has prohibited sexual violence against women for more than a century, customary international law has historically ignored and failed to punish gender based crimes.

The International Criminal Tribunal of Rwanda (ICTR)

The United Nations Security Council established the International Criminal Tribunal for Rwanda (ICTR) to “prosecute persons responsible for genocide and other serious violations of international humanitarian law between 1 January 1994 and 31 December 1994. The ICTR opened in 1995 indicting 93 individuals considered responsible for serious violations of international humanitarian law committed in Rwanda. Individuals indicted include high ranking military and government officials, politicians, businessmen, as well as religious, militia, and media leaders. In as much as ICTR is celebrated as the first ever international tribunal to deliver verdicts in relation to genocide, and the first international tribunal to define rape in international criminal law, the tribunal did not go far enough to punish perpetrators of sexual violence. Binaifer Nowrojee, in her publication, “Your Justice is too slow”, offers an examination of international justice from the perspective of survivors of rape during the Rwanda genocide. Binaifer notes that by the time ICTR was celebrating the 10th anniversary;
about ninety percent of the tribunal’s convictions had nothing to do with rape, or sexual violence. Lack of such convictions in the face of evidence and affidavits on sexual violence and rape in Rwanda genocide could be considered appalling. The rape of Tutsi women was widespread. The tribunal heard that sexual violence and rape was used to humiliate and degrade Tutsi women. This notwithstanding, Jocelyn Campanaro argues that measures to prevent or punish sexual based violence and/or rape have been extremely ineffective, or completely non-existent.

In the subsequent cases at the ICTR, Judges could no longer ignore sexual violence and rape as more victims emerged to testify. The Coalition of Women’s Human Rights in conflict situations filed an amicus curiae brief, urging the ICTR to amend the tribunal statute and indictment guidelines to include sexual violence. Following this development, Akayesu, a former mayor of Taba, was the first to be tried and convicted of genocide, including rape of Tutsi women. As such, the ICTR conviction of Akayesu was celebrated as precedent for expanding the meaning of rape to include forced nudity. The Trial Chamber observed;

“The incident described by witness KK which the accused ordered the interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal in front of a crowd constitutes sexual violence. The Tribunal notes in this context that coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or in the military presence of interahamwe among refugee Tutsi women.”

In another ICTR case, Pauline Nyiramasuhuko was the first woman to be charged with genocide and to be convicted of rape and sexual violence. In her indictment, it was argued before the court she conspired and connived with militias to rape and kill the Tutsi’s. To do this, she gathered Tutsi women together by lying that they were going to help distribute humanitarian aid. Pauline’s son, Arsen Ntahobali, a military man, was also charged and convicted on different counts of rape and sexual violence against women.

The International Criminal Tribunal for former Yugoslavia (ICTY).

27. ICTR op cit.
In May 1993, the United Nations Security Council (UNSC) established the International Criminal Tribunal for former Yugoslavia (ICTY) in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina. Reports depicting horrendous crimes, in which thousands of civilians were being killed and wounded, tortured and sexually abused in detention camps and hundreds of thousands expelled from their homes, caused outrage across the world and spurred the UN Security Council to act. The ICTY was the first war crimes court created by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. The key objective of the ICTY was to try those individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property and other crimes listed in the Tribunal’s Statute. In as much as ICTYs mandate included prosecution of sexual violence against women, a significant development in the recognition and protection of women’s rights in times of war, fewer cases of rape and sexual violence against women were prosecuted. For instance, Dusco Tadic, a Serb descent, and a citizen of former Yugoslavia was the first individual to be charged with rape as a war crime for his participation in the torture of 12 women detainees at the Omarska Detention Camp, including gang rapes. However, the charges were withdrawn because the witness to the case was too afraid to testify for fear of reprisals. Nonetheless, Tadic was subsequently convicted but on sexual assaults against men.

In another similar case, Dragan Nikolic, a Serb run Susica Camp commander in Bosnia Herzegovina was accused of torturing Bosnian Muslims and non-Serb migrants. Under Nikolic’s instruction, women were raped and sexually abused; however, the prosecutor had not brought these charges before the court irrespective of witness statements and evidence. As such, in a bid to protect women’s rights and dignity against sexual based violence and inhuman treatment, the court observed as follows:

“the Trial Chamber feels that the prosecutor may be well advised to review these statements carefully with a view to ascertaining whether to charge Dragan Nikolic with rape and other forms of sexual assault, either as a crime against humanity or as grave breaches or war crimes.”

The courts activism on prosecution of gender crimes demonstrated the tribunal’s willingness and preparedness to develop jurisprudence on war crimes to include gender related sexual crimes. Similarly, a case against Anto Furundzija, a military

28. Prosecutor v Pauline Nyiramasuhuko (ICTR)-96-4T
32. ICTY. Available at: http://www.icty.org/en/press/judgement-case-prosecutor-v-dragan-nikolic
police unit commander in the former Yugoslavia charged with violations of laws or customs of war for his involvement and subsequent failure to stop or curtail the sexual assault of Bosnian Muslim women. In this case, the trial chamber broadened the definitions of rape to include forced oral or anal sexual acts, and thus, subsequently convicted Furundzija based on victim’s testimony. However, the defence counsel attempted to discredit the ruling on appeal, arguing that one of the trial Judges, Florence Mumba, had previous worked as a women’s rights activist, and thus, had compromised her ability to deliver an impartial ruling. The appeal lacked merit and was dismissed. This case illustrates how gender discrimination may not only be directed at female victims and witnesses, but also on women judges based on gender, expertise and experience.

The Special Court for Sierra Leone (SCSL)

The Special Court for Sierra Leone (SCSL) was established on 14th August 2000, after an agreement between United Nations and the government of Sierra Leone. The SCSL was formed following prolonged civil conflict (1991-2002) that was notorious for gender based crimes such as gang rapes, sexual slavery and forced marriage. The court was set to charge those who bore the greatest responsibility for the atrocities. In one of the cases before the court, Prosecutor v Foday Sankoh and three others, the prosecutor sought to amend the indictments to include sexual violations against women. However, one of the Judges (female) declined offers to the amendments on the pretext that the accused defence would not have time to prepare its case. Further, the Judge argued that in any case, the violation in question were committed by the Civil Defence Forces against their own women, and thus, did not constitute war crime. The social construct within Sierra Leone was that rape is not considered a serious offence. In fact, women “were regarded as war rations”, just as soldiers and militias would take crops from the field to sustain themselves, women were treated the same way. This case illustrates the frustrations women face in conflict situation, where the societal norms trump the rule of law. The case further illustrates the reluctance of some judges to pay attention to gender crimes before them, regardless of the circumstances that would justify due consideration based on the unique situation of women.

33. In Re Dragan Nkolic (1995) ICTY NO IT-84-2-R61 Decision of Trial Chamber 1
34. ICTY, Anto Furundzija v Prosecutor (2000) IT-95-17/1-A
35. UN Security Council resolution 1315 (2000)
37. Special Court for Sierra Leone Prosecutor v Issa Hassa Sesay and three others, Case No, SCSL 04-15-A
Kenya Post-Election Violence of 2007/2008

The 2007-2008 Kenya post-election violence was instigated by disputed election between President Mwai Kibaki who was declared the winner of the presidential election held on December 27, 2007. Supporters of Raila Odinga (Kibaki’s Opponent) alleged electoral manipulation, resulting in post-election conflict. During the conflict, gross sexual violence including rape was experienced in different communities. To this, the Director of Public Prosecution (DPP) acknowledged that in as much as there was significant sexual violence during the conflict, prosecuting SGBV was majorly hampered by poor investigations and lack of tools and facilities to collect and preserve evidence. Worse still, our prosecutors lacked appropriate training and skills. Out of 6,081 files relating to the violence, only 24 were prosecuted, Out of the 24, only 11 related to SGBV, to which Amnesty International’s Secretary General Salil Shetty noted:

“Six years after post-election violence rocked Kenya, victims are still awaiting justice. It is vital that their voices are heard and urgent action is taken”

In the Kenyan 2007/2008 cases that were taken to the International Criminal Court (ICC), witnesses were allowed to give in camera testimonies or and have their identities redacted and voices and images scrambled for protection. However, it’s worth noting that the two that were at the ICC, only one had charges relating to sexual violence. Issues and recommendation emerging from this paper are presented in Box 2.

BOX 2: Discussants Country Perspectives: Gender Vulnerability in Conflict

Hon. E. Juma (SPM - Kenya),
In Kenya, gender vulnerability in conflict situation was experienced particularly in the 2007/8 post-election violence where women IDPs found themselves living in IDP camps under deplorable conditions. Similarly, women from of Turkana and other drought prone regions in Kenya are extremely vulnerable to conflict and violence over resources. In as much as Art 27 (equality and freedom from discrimination); Art 28 (inherent dignity) of the Constitution of Kenya; and the Protection Against Domestic Violence Act of 2015 seek to cushion women and promote gender equity, implementation of these laws have not yet been effective. On the SGBV front, the court has in recent times asserted its authority to stop the vice. Some of the notable cases include:

Cause Number 441 of 2013, Industrial Court in Mombasa
Employer made sexual advances to employee and forced the watching of sexual encounters between him and his wife. In this case, the court ruled that;

‘He injured her inherent dignity and assaulted her modesty, by demanding the Claimant have sex with him; watch him mate with his wife so she could learn how to do it in the absence of his wife; and by asking the Claimant to remove the coffee cup from his penis. She was all the more vulnerable because of her gender, race and social standing.’

Cause Number 927 of 2010, Industrial Court in Nairobi
Claimant was employee of the respondent. Respondent made sexual advances to claimant during business trip. Respondent physically abused her and terminated her employment when she rejected his advances. Respondent had sued for sexual and physical violence and unlawful termination. Court relied on UN Declaration on Elimination of Violence against Women definition of Violence against Women and ruled that there was gender based violence.

Hon. Lady Justice Henrietta Wolayo (JHC – UGANDA)
Uganda has experienced different forms of conflict at different times. This includes: National Resistance Army War (1981-86); Lord’s Resistance Army War in Northern Uganda (1986 to approx. 2004); The Teso insurgency (1988-92); These wars had devastating impact on women including Rape, sexual slavery, forced prostitution, widowhood, forced marriage, incest, child defilement and internal displacement. Some of the challenges women face in access to justice includes non-prosecution of cases; stigma by the community; Domestic violence, a common occurrence in areas affected by the war, dis-inheritance among others.
Although since Uganda has experienced relative peace for more than two decades, mechanisms for addressing discriminatory treatment, and violence against women is still lacking forceful and effective enforcement. There is need to integrate constitutional and international standard of gender equity in the judicial process.

4.3 Conclusion
This chapter has examined gender vulnerability in conflict situations. Importantly, how the international tribunals (International Military Tribunals of Nuremberg and Tokyo; International Criminal Tribunal of former Yugoslavia (ICTY)) were used to try war crimes.

However, these tribunals did not have women Judges or prosecutors thus adversely affecting cases, judgements and rulings before the courts. These institutional failures demonstrated the discriminatory tendencies against women in conflict situations. Women judges should take lead in the discourse to address challenges within local jurisdiction to prosecute gender crimes. There is need for creation of the International Crimes Division within national courts that can respond to sensitivities around sexual violence cases.

Recommendation: There is need to adequately recognize the legal protection of women against sexual violence in situations of conflict. Courts should be willing and prepared to develop jurisprudence around war crimes that include gender crimes.
CHAPTER FIVE

Emerging Issues in the Implementation of Legislation on Sexual Gender Based Violence: Good Legislations, Absurd Results

Lady Justice Stella Ogene

5.1 Introduction
In Africa, particularly in Nigeria, gender based discrimination and violence (GBDV) is rooted in diverse challenges emanating from socio-cultural, economic, religious and legal perspectives. Discrimination and Violence Against Women impacts on application of the law. This is further compounded by the cultural diversity of the nation that precipitate a cross-current of customary practices in defiance of legislation against GBDV. A Cross-current “is a current in a river or sea that flows across another’s current.” This definition equally covers conflicting ideas and traditions. Customary law on the other hand is made up of rules of conduct, customs and usages which govern the indigenous people of Africa and not forming part of the common law adopted from colonial administration. Customary law regulates the lives and transactions of the indigenous people. It is organic and not static. This paper focuses on discrimination and violence against women; the impact and application on law; emerging issues on legislation on sexual gender based violence (SGBV) and the nexus with sustainable developmental and gender equality. This paper also examines customary jurisprudence on custody of children under customary law and child marriage through the lenses of national legislation, and International Conventions on women’s rights.

5.2 Violence against Women (and Children)
Violence against women is one of the most widespread and socially tolerated of human rights violations cutting across borders, race, class, ethnicity and religion. The impact of gender-based violence (GBV) is devastating. Individual women who are victims of such violence often experience life-long emotional distress, mental health problems and poor reproductive health, as well as being at higher risk of acquiring HIV and are intensive long-term users of health services. In addition, the cost to women, their children, families and communities is a significant obstacle to reducing poverty, achieving gender equality and ensuring a peaceful transition for post-conflict societies. This, in conjunction with the mental and physical health implications that gender-based violence impacts on a state or region’s ability to develop and construct a stable, productive society, or

41. Collins English Dictionary
42. United Nations Economic Commission for Africa African Centre for Gender and Social Development (ACGSD)
reconstruct a country in the wake of conflict. Gender-based violence in Africa is a complex issue that has as its root the structural inequalities between men and women that result in the persistence of power differentials between the sexes. Women’s subordinate status to men in many societies, coupled with a general acceptance of interpersonal violence as a means of resolving conflict, renders women disproportionately vulnerable to violence from all levels of society. In 1993, the UN Declaration on the Elimination of Violence against Women offered the first official definition of gender-based violence:

Article 1: Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.

Article 2 of the Declaration states that the definition should encompass, but is not be limited to, acts of physical, sexual, and psychological violence in the family, community, or perpetrated or condoned by the State, wherever it occurs. These acts include: spousal battery; sexual abuse, including of female children; dowry-related violence; rape, including marital rape; female genital mutilation/cutting and other traditional practices harmful to women; non-spousal violence; sexual violence related to exploitation; sexual harassment and intimidation at work, in school and elsewhere; trafficking in women; and forced prostitution.

Additionally, the 1995 Beijing Platform for Action expanded on this definition, specifying that gender-based violence includes violations of the rights of women in situations of armed conflict, such as: systematic rape, sexual slavery and forced pregnancy, forced sterilisation, forced abortion, coerced or forced use of contraceptives, prenatal sex selection and female infanticide. It further recognised the particular vulnerabilities of women belonging to minorities: the elderly and the displaced; indigenous, refugee and migrant communities; women living in impoverished rural or remote areas; and women in detention. Despite the global attention on SGBV and discrimination, the vice is still largely hidden in Africa. Several reasons including predominance of patriarchal structures across Africa, cultural norms; the stigma attached to female victims of violence which has resulted in very low rates of reporting; and poor mechanisms for reporting violence against women and girls. As such, attention globally over the last two decades; the scourge of violence against women in Africa particularly is still largely hidden. A number of reasons explain this phenomenon: The predominance of the system of patriarchy across Africa has meant that women are still perceived and treated as subordinate to men; violence against women is accepted as the cultural norm in many societies and is often condoned by community and sometimes state leaders. The stigma attached to female victims of violence has resulted in very low rates of reporting; and often if women do

43...
44. In 1993, the UN Declaration on the Elimination of Violence against Women: Available at http://www.un.org/documents/ga/res/48/a48r104.htm
45. Ibid
report violence against them, they are ostracized by authorities.

In the Nigerian context of violence, SGBV and discrimination has over the years, been characterized and precipitated by harmful practices and archaic customs at times anchored in customary law. This includes: Depriving widows of their inheritance and custody of their children; dehumanizing widowhood practices; and child marriage. The widely celebrated case of little Miss Ese Oruru is a case in point. Ms. Oruru who was 13 years old at the time, was abducted by a man named Yunusa Dahiru, raped, forcibly Islamized and married off without her parents’ consent. Five months later, the girl was rescued from her marriage and returned to her family. However, by this time, she was five months pregnant. Ms. Oruru’s case highlights how customary norms within given societies can be harmful to women. The other SGBV in Nigeria is the female genital mutilation (FGM). FGM is widely practiced in Nigeria, and with its large population, Nigeria has the highest absolute number of cases of FGM in the world, accounting for about one-quarter of the estimated 115–130 million circumcised women worldwide.

Female genital mutilation (FGM) is recognized worldwide as a fundamental violation of the human rights of girls and women. It reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against women. It involves violation of rights of the children and violation of a person’s right to health, security, and physical integrity, the right to be free from torture and cruel, inhuman, or degrading treatment, and the right to life when the procedure results in death. Furthermore, girls usually undergo the practice without their informed consent, depriving them of the opportunity to make independent decision about their bodies. In Nigeria, a multidisciplinary approach is needed to tackle this deep-rooted legendary practice of FGM, particularly, legislation and laws against the practice. Secondly, there is a need for legislation in Nigeria with health education and female emancipation in the society. Improvement in education and social status of women and increased awareness of complications of FGM, enhances the chances of women rejecting the practice.

The World Health Organization (WHO), the United Nations International Children Emergency Fund (UNICEF), Federation of International Obstetrics and Gynaecology (FIGO), African Union (AU), the Economic Commission for Africa (ECA) are among the organizations championing eradication of FGM in the Nigerian society. Equally, the 1995 Beijing conference that called for the eradication of FGM has been used by women activists in calling for enactment and enforcement of legislation against FGM. However, it should be noted that there was no federal law prohibiting the practice of FGM in Nigeria, until 2015

when the Violence Against Person’s (Prohibition) Acts (VAPP), 2015 was passed into law.

5.2.1. The Role of African Customary Law in Sexual and Gender Based Violence

African customary laws existed in most African states before the advent of European colonial administrations. In Nigeria, the British policy was concerned with preserving local laws and indigenous institutions compatible with its colonial rule. Consequently, this fostered the continuation of customary law, regardless of their inherent consequences. Although English Law formed a substantial part of Nigerian Law, customary law and the sharia law were also adopted since 1863. The Nigerian Law, which has been built on English Law, co-exists with about 350 customary laws, subject to the test of validity. Many of Nigerian customary laws are fraught on the basis that they are replete with a lot of gender imbalances. Despite the variations in the Nigerian customary laws on the issue of violence against women, most of the customary laws in Nigeria tend to agree in many respects. However, other aspects of the Nigerian customary law violate women’s widowhood right. Most traditions deny women the right to inheritance with many subsequently rendering them pauperised after the death of their husband. The exclusionary treatment is entrenched in virtually all facets of social relationships mostly defined by Nigerian customary laws. Thus, it could be argued forcefully that customary laws are patriarchal in nature, and thus, from a holistic perspective, tend to favor men, and male values in the society.

5.2.2 Socio-Economic and Legal Catalysts for Sexual and Gender Based Violence

Nigeria, like most African societies thrives on patriarchy as mainstay for the perpetuation of gender based discrimination against women. To emphasize this point, we can look at the guild systems in Benin Kingdom that forbid women from participating in bronze casting and thus excluding them from economic opportunities like their male counterparts. Similarly, based on Customary law, women cannot ascend to the throne as the Oba of Benin. In Urhobo and Ibo lands, it is considered a taboo for a woman to climb a palm tree to harvest palm nuts or tap wine. These ‘age-long’ traditions are retrogressive, discriminative and ultimately, repugnant to the 21st century modernized culture. Most Nigerian traditional families still don’t believe in educating the girl child. This is premised on the fact that the girl will be married off one day, and is not worth educational investment like the boys. Violence against women shows that it occurs within the broad context of unequal power relations between men and women. Lack of economic independence reduces women’s capacity to fend for themselves, inadvertently increasing their vulnerability to abuse and discrimination.

52. Ibid
53. Ibid
Opportunities for advocacy against sexual and gender based violence includes the following:

**Massive Sensitization**

Through massive sensitization, gender equality will reduce violence against women and girls which will in turn contribute to economic efficiency. Developing policies and legislation on gender violence does enhance equality which enhances economic productivity, and improve development outcomes. Conversely inequality and unequal power relations fuel gender based violence. The World Bank report on tackling gender based violence and gender equality is smart economics and has implications for progressive development. In my view, sensitization of communities and policy makers on the negative impact of SGBV should start with women leaders. High profile stakeholders like FIDA should be utilized. For improved advocacy, the following sensitization mechanisms should be considered:

a) Developing summaries of the CHILD RIGHTS LAW; printing and distributing to schools during sensitization visits  
b) Building partnerships with all stakeholders  
c) Trainings and Capacity Building of women in communities on their rights  
d) Training of Stakeholders in the justice sector on how to utilize international instruments in addition to local laws to advance justice for women

**5.2.3 Impact of SGBV on Sustainable Development Goal in Africa.**

Ending violence against women, the most pervasive human rights violations in the world requires the development of integrated approaches and new forms of collaboration, with governments, stakeholders and development agencies. The United Nations Sustainable Development Goals adopted in September 2015 include a target to end gender-based violence by 2030. The SDG 5 aims at achieving gender equality, an empowerment of all women and girls. Assuring women’s rights through legal frameworks is the first step in attaining goal 5, and addressing gender discrimination. According to UNDP progress report on goal 5, significant achievements have been made globally to advance empowerment of women and girls. As of 2014, 143 countries guaranteed equality between men and women in their constitutions, while 52 countries have yet to make this important commitment. In 132 countries, the statutory legal age of marriage is equal for women and men, while in another 63 countries, the legal age of marriage is lower for women than for men.

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57. Ibid
As stated, one of the objectives of SDG 5 is to end violence against women and girls. Violence against women and girls violates their human rights and hinders development. Most such violence is perpetrated by intimate partners. A study by UNDP (2005 – 2015), in 52 countries, revealed that 21 percent of girls and women aged between 15 and 49 experienced physical and/or sexual violence at the hands of intimate partners. Additionally, human trafficking disproportionately affects women and girls, since 70 per cent of all victims detected worldwide are female. According to the UNDP statistics, 37 per cent of women in Sub-Saharan Africa are married before their eighteenth birthday. Most of these early marriages do experience higher rates of domestic violence, abuse, sexual violence, and other forms of inhumane treatment. Child marriage for instance, prevents girls from pursuing their dreams and in most cases, endangers the survival and development of the girl child. Ultimately, child marriages deny victims formal education opportunities which in the long run, affect their economic and social status.

In Nigeria for instance, some communities demand as much as one million Naira (N1, 000, 000.00) for dowry, making the wife feel she is the husbands’ property, unable to leave the marriage even in the face of severe domestic violence. The challenges facing Africa’s quest to achieve SDG 5 by 2030 are numerous. The negative impact of traditional beliefs, cultural norms, negative customary laws, and governments inability to actualize development of tangible legislation and laws protecting women and girls against discrimination and SGBV are just but few. Finding solutions to reduce and respond to gender-based violence is not only vital to the lives and well-being of women, girls and societies throughout the world, but to the successful implementation of the Sustainable Development Goals.

5.3 Emerging Jurisprudence
Policy Intervention that ameliorates gender based discrimination and violence against women in Africa in this paper is done with specific reference to Nigeria. However, emerging legal provisions in other countries jurisprudence are is also highlighted. Some of the court rulings on gender equality include the following:

Tanzania court in Ephram v Pastory (Civil Appeal No. 701989) held that the Haya customary law which stipulates that females have no right to sell clan land was discriminatory and in contravention of CEDAW, UDHR, ICCPR and AFCHPR

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59. Sustainable Development Goal 5: UNDP
61. Ibid
63. Ibid
Ugandan Constitution 1995, Article 33(6) which prohibits laws, cultures, customs or traditions which are against the dignity, welfare or interest of women and which undermine their status. Article 31(2) also mandates parliament to make laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental right over their children.

In Nigeria, the Enugu State Government passed a law prohibiting widows to cut their hair, or any part of the body, or be remarried by relation upon the demise of a partner - Fundamental Rights of Widows and Widowers and for other related matters Enugu State of Nigeria No.3 2001. This was a fundamental win for women’s rights and gender equality against subjective cultural norms. The Bayelsa developed the State Child’s Right Protection Law 2016; Oyo State developed Widow Empowerment Law, 2002; Edo State Inhuman Treatment of Widow (Prohibition) Law, 2004; and finally, Violence Against Person’s (Prohibition) Act (VAPP), 2015. Prior to the VAPP Act, there was no Federal Law specifically addressing sexual harassment and domestic violence in Nigeria.

The Constitution of Ghana (1992) Article 12(2) of the Constitution (Non-discrimination) was patterned after Article 1 of CEDAW. Equally, women’s rights provisions in Article 27(2) and (3) and property right of spouses contained in Article 22(1) and 22(2) and (3) were patterned with Article 1 of CEDAW;

Other major cases that the appeals court upheld in Nigeria include the repugnancy of native law and customs which discriminate against women). The court ruled in favor of the plaintiff’s (Woman) entitlement to the properties Asika V. Atuanya (2008) of their husbands against the tradition of the Onitsha people. In another landmark case, Dominic Nzemeke & Anor V. Ibrahim Okonkwo Chiemeke Appeal No. DCCA/15A/2012(unreported) where the 2nd Appellant’s 4 children born years after she separated from her husband (now deceased), were being claimed by estranged deceased husband’s family (even though he was not their biological father). The case was built on customary premise that the dowry paid by the deceased was not refunded under customary law. The appeal ruling declared the custom repugnant to natural justice, equity and good conscience, and upheld the right of the mother to keep her children . In another case, Anekwe Chiweze v. Mrs. Maria Nweke (SUIT NO. SC. 129/2013) reported in (2014) LPELR 22 697 delivered by Justice Ogunbiyi: In the case, the widow, Mrs. Maria Nweke, had in 1991 instituted a case at the Awka Division of the Anambra State High Court. Among other claims, she asked the court to declare that she was the person entitled to statutory right of occupancy of a parcel of land situated at Amikwo village. She also urged the court to restrain the defendants from trespassing on the said land. The defendants, Onyibor Anekwe and Chinweze, were the descendants of Anieke Nwogbo, the half-brother of the plaintiff’s husband, Nweke Nwogbo. Their father, Nwogbo Okonkwo Eli, had died

64. Appeals Court Ruling. Available at: http://lawreport.allfwlr.com/index.php/cases/detail?tokz=3706
outside the home town of the parties. She also stated that the Ozo Awka society arbitrated in the dispute and agreed with her that she had a right to remain on the land. But the defendants disagreed. They argued that by the Native Law and Custom of Awka people, the land was inherited by their father as the first and only surviving son. The trial court and the Court of Appeal ruled the case in favour of the plaintiff. Justice Ogunbiyi stated thus:

"Any culture that disinherits a daughter from her father’s estate or wife from her husband’s property by reason of God instituted gender differential should be punitively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband’s brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning. It is indeed more disturbing especially where counsel represent such perpetuating clients though learned, appear comfortable in identifying, endorsing and also approving of such demeaning custom” P. 241-244, Paras C-B.

Discussants country perspectives from Cote d’Ivoire, South Africa, Kenya and Uganda are presented in Box 3:

65. Ibid
BOX 3: Discussants Country Perspectives: Implementing Legislation on SGBV

Cote d’Ivoire: (Justice Collette E. Attokpa)
Cote d’Ivoire has domesticated international legislations to show its commitment towards fighting sexual and gender based violence. These include the African Charter on Children Rights, and local legislations particularly addressing rape, sexual harassment, prostitution among other sexual offences. Despite all the interventions, sexual violence is increasing. Family members and teachers have continued to commit these offences and participate in covering the evidence. Militias too have continued to commit sexual based offences especially during war.

Justice M. Victor (JHC-South Africa),
South Africa’s progressive legislations against gender discrimination include: Domestic Violence Act, Criminal Procedure Act, Criminal Law Amendment Act, Firearms Control Act and Anti-Trafficking Act. The Minister of Women in the Presidency partnered with South African Chapter of IAWJ, and in dialogue with stakeholders and NGO’s in every province, created 16 days of activism against women abuse. Eminent challenges like police pace in expediting justice, victim’s family compromised offender, and lack of resources should be addressed. It might be the time we considered domestic violence register.

Uganda- Hon Lady Justice Stella A. Amoko (JSC)
Uganda has numerous stakeholders, agencies and associations dealing with SGBV, however, the vice is still prevalent. Circumstantial evidence can now be used in a court of law. Further, defilement has death sentences attached. One of the major challenges of dealing with SGBV is minimal funding, poor record keeping, corruption, lack of data and poverty. Uganda is seeking to introduce SGBV division in courts, while at the same time, lobbying for legislation on sexual offenses bill. There is need to train judicial officers on cases related to SGBV for courageous decisions and rulings.

Zambia- Hon. Lady Justice Sharon. K. Newa (JHC)
There were 4,998 cases of Gender Based Violence reported countrywide during the first quarter of 2016 compared to 4,615 cases of Gender Based Violence reported in the first quarter of 2015. This translates into a 7.7% increase; out of which 72.5% were women victims, while 27.5% were men victims. The SGBV Act (2017) came into effect in March to provide for victims’ protection, and activism on GBV. The Act created categories responsibilities that were passed to the police religious leaders, teachers among others. The Act empowers magistrates to request a custody order on any weapons of violence, and the ability to issue a protection order during the trial.
BOX 3: Discussants Country Perspectives: Implementing Legislation on SGBV

Kenya- Hon. Lady Justice Jessie Lesiit (JHC)

THE SEXUAL OFFENCES ACT NO 3 OF 2006
This is an Act of Parliament in Kenya that provides for a wider definition of sexual offences, types of sexual offences, preventive and protective measures in cases of sexual assault and other connected purposes. The Sexual Offences Act introduced new sexual offences that were hitherto not criminalized by the Penal Code. Examples: Sexual assault - (Section 5), compelled or induced indecent acts, - (Section 6), acts which cause penetration or indecent acts committed within the view of a child or person with mental disabilities - (Section 7), gang rape - (Section 10), indecent act with child - (Section 11), indecent act with adult - (Section 11A), promotion of sexual offences with a child – (Section 12), child sex tourism - (Section 14), child prostitution - (Section 15), child pornography - (Section 16), incest - (Sections 20 and 21), sexual harassment - (Section 23), sexual offences relating to position of authority and persons in position of trust - (Section 24), deliberate transmission of HIV or any other life threatening sexually transmitted disease - (Section 26), administering a substance with intent - (Section 27), cultural and religious sexual offences - (Section 29). The Act included new provisions for Graduated Sentences; Provisions on Juristic persons; Mandatory minimum sentencing; Vulnerable Witnesses; Consent has been defined; Either male or female can be a sexual offender:

CASE HIGHLIGHT: Maurice Orata Mombo v Republic Appeal 189 of 2011 [2013]
The complainant stated that he was 17 years of age and was sentenced and convicted for defilement. On appeal, the Court stated that, the prosecution is required to prove beyond reasonable doubt the age of the complainant especially where the stated age is just around the age of majority. From the facts and evidence placed before the magistrate, the boy was 17 years, yet was convicted as an adult. In an attempt to preserve the case, the appellate Court reduced the sentence to fifteen (15) years’ imprisonment, the minimum sentence for defilement under the Sexual Offences Act. Such failure may be material and fatal especially where the child in question is close to the majority age

Case highlight: Jacob Odhiambo Omumbo v Republic, Criminal Appeal No.80 of 2008,
The Court of Appeal relied on the evidence of a child of tender years as the basis for conviction of an accused in a defilement case. Medical evidence - this is another source of key evidence for proving the offence (e.g. evidence of penetration) and also linking the suspect to the offence. Medical Reports, P3 Forms and PRC Forms are crucial in this respect. For this to be useful to the Court, they need to be sufficiently filled to provide the requisite evidence to support the prosecution.
The effectiveness of the evidence presented in court is highly dependent on the safeguards taken in handling the evidence between the police investigators, the medical experts, the forensic experts and eventually the prosecutors; Lack of uniformity in the drawing of charges between Police Stations, lack of training for framers of charges, incidence of defective charges, confusion in combination of offences to show aggravation, confusion on choice of offence to charge.; Where both the victim and offender are age mates and children, and the result of most cases the Boy child is always the one charged even where the victim was older.

5.4 Conclusion
Women judges can bridge the gender equality gaps through bold and enforceable judicial pronouncements. Judgments and rulings remain one of the powerful tools judges can utilize to remedy SGBV and discrimination against women. There is also need for judges to continue holding regional /zonal conferences from time to time with other stakeholders such as Executive and Legislative Arms of Government. Other institutions such as the Prisons, Police, National Agency for the Prohibition of Traffic in Persons (NAPTIP), Road Safety, Non-Governmental Organizations and Civil Societies should also be included in judicial conferences. There is need to create synergy between all stakeholders towards achieving SDGs by 2030. Some of the tangible recommendations strengthening the judicial systems in dealing with emerging issues include defining the role of IAWJ and associated chapters in dealing with violence against women; defining the role of the Police; strengthening the Legal Framework, developing Special Courts; establishing Gender Recovery centres for survivors of SGBV; and finally developing Community Mobilization and Training programmes to engage communities.
CHAPTER SIX

Emerging Gender Issues in the Electoral Process

Ms. Jane Serwanga (UN Women/UNDP-Gender Specialist)

6.1 Introduction

Participation of all categories of people in elective politics is a hallmark of democracy. Democratic elections are a critical element in providing voice and space for women and men to exercise their right in choosing the type of leadership that they want. The ideals of democracy demand that there be equal participation of women and men and equal participation in the integrity of the electoral process and outcome. Women’s equal participation in all aspects in the electoral process and subsequently in leadership supports their participation in formulation and implementation of laws and policies that enhance gender equality and women’s empowerment. Where there is inclusion of women in leadership, there is increased equity and strengthened democracy.

The robust legal and normative framework at national, regional and international level, gives rise to legal obligation to states. The framework has contributed to significant gains of formal equality for women in leadership. However, there exist barriers. Domestic responsibilities, prevailing cultural attitudes regarding the roles of women; limited financial resources to undertake effective campaigns, lack of family and community support and electoral violence are barriers to women’s effective participation. Of all these, violence against women in elections (VAWE) is of greatest concern. Even though electoral violence is recorded against both women and men, women are disproportionately affected, simply because they are women. Women suffer higher vulnerability for electoral violence which brings to the fore pervasive discriminatory practices that curtail increased women’s political participation and bars attainment of women’s quest for substantive equality in leadership and decision making.

66. Gabrielle Bardall Gender-Specific Election Violence: The Role of Information and Communication Technologies “Violence against women in elections (VAWE) refers to any random or conspiratorial act to discourage, suppress, or prevent women from exercising their electoral rights. This includes women’s participation as voters, candidates, party supporters, election workers, observers, journalists, or public officials. VAWE may take place in both public and private spheres. Like other common forms of election violence, VAWE is commonly perpetrated by political opponents and party militants; however, it may also be perpetrated by family members, domestic partners, religious leaders and the media.” http://www.stabilityjournal.org/articles/10.5334/sta.cs/

This sub theme addresses emerging gender issues in electoral processes. This paper mainly focuses on how women fair in political participation; examines barriers to effective women participation; law advancing women’s leadership and participation; how the law can be used to prevent and protect women in situations of electoral violence and finally how women judges can play a critical role in realization of Sustainable Development Goals.

Focus will be on a comparative study of various gender concerns that arise before, during and after elections in various jurisdictions and whether the law has been instrumental in preventing and protecting women as well as punishing the perpetrators of these offences. The role of state and non-state actors before, during and after the conflict should also be addressed and how they were instrumental in mitigating and alleviating the situation.

6.2 How Women Fair in Political Participation

Africa’s post-colonial state has progressively registered slight improvement in women’s participation in the electoral process and leadership. There is increased visibility of women as voters, candidates and election officials. Still, representation by women in most African states remains way below the desired 30% critical mass is required to result in notable change in decision making. Women’s participation in governance and decision-making positions remains below the AU’s 50% gender parity principle. Current (2017) global rankings on representation of women in politics and decision making place Rwanda as the global lead with 61.3% of women in the Lower House and 38.5% women in the Upper House. Senegal (42.7% in the Single House) and South Africa (42.1% in the Lower House and 35.2% in the Upper House) are the only other two states currently ranked among the top ten globally. Overall, there is stagnation in the number of women holding leadership positions in executive government and in legislatures. Data from the Inter-Parliamentary Union shows that 17 countries have a woman as Head of State and/or Head of Government compared to 19 in 2015. Globally, the average number of women in national parliaments increased to 23.3% in 2016 from 22.6 per cent in 2015. The greatest increase recorded is that of Women Speakers of Parliament presently at an all-time high of 19.1%.

The quest for women’s political participation arises as a matter of law. This is predicated on the understanding that women and men should be equally represented in the political office. There are arguments that have been advanced to make this case. First, it is that the decision-making space should be reflective of the population. Since women comprise about half the population, they should be proportionally represented in the political arena. Second, is that given that men and women have different lived realities, then these must be represented

to inform the policy and legislative agenda. Third, having both women and men in decision making will allow for articulation of the interests of each. Fourth, for women to ably represent their interest, certain levels of representation must be achieved. Fifth, is that if women have role models in that sphere, then more will be encouraged to participate. Finally, there is the argument that equal representation of women and men upholds democratic governance. To achieve the Sustainable Development Goals, including increased gender equality, there must be increased participation of women at all positions of leadership. Where women’s growth in representation is limited, the progress towards realizing the Sustainable Development Goals will also be limited.

6.3 Barriers to Effective Women Participation

An array of socio-economic and legal factors perpetuates discrimination and violence against women in elections. A country’s electoral system affects women’s participation. Rwanda (63.8%); Sweden (43.6%) South Africa (42.1%) and Finland (41.5%) are among the highest ranked globally in women’s representation. What these countries have in common is that the electoral system applies proportional representation leading to an increase in women’s representation. Countries such as Kenya which apply the first-past-the-post (FPTP) electoral system have difficulty in achieving fair representation of women. FPTP is often characterized by unfair tactics and at times, violence. The Kriegler (Independent Review Commission on Post-Election) Inquiry noted that women are discouraged from participating in political processes owing to “sexist tactics and violence to keep women out of the race.”

Political parties are organized in a manner that presents limitations and challenges to women. Lack of clear rules for party nominations enhance favouritism and thus, nominations thrive on horse trading with male dominated party leadership structures. The traditional role of women as caregivers means that in most societies women’s socially ascribed roles as unpaid caregivers, results in limited and certainly lower earnings than men. Where women are selected as candidates, many find they lack in knowledge and skills to mobilize financial resources for their campaign activities yet, political campaigns require immense financial input. Owing to limited experience on navigation of political space, many women candidates find that they have not built a strong network of individuals or groups with political knowledge and influence, yet success in these processes requires great reliance on use of one’s social capital. Negative and often misinformed public perception on women’s leadership is compounded by negative media publicity, which further entrenches stereotypes on women’s ability to lead. Against this backdrop, it is critical that existing opportunities are

73. Inter-Parliamentary Union, “World Classification,” Women in national parliaments, based on information provided by national parliaments as of 1 June 2016.
identified and harnessed to address these challenges and achieve gender parity.

**Manifestation of Violence Against Women**

But by far, engendered violence is the biggest barrier. Violence affects both men and women. In most instances as women voters are uniquely and disproportionately affected by the culture of electoral violence perpetrated by candidates and political actors. A study by International Federation for Electoral Systems (IFES) found that the women often hold back from political participation for fear of political attacks. Those who venture experience intimidation and harassment. Some women candidates and political activists have suffered sexual violence and sexual harassment and in other cases, women aspirants have suffered withdrawal of access to financial resources, limiting their ability to participate in elective politics. This culture of electoral violence against women is deemed to be a derivative of a patriarchal culture; an entrenched violent political culture and impunity to the rule of law resulting in low levels of implementation of law.

In other spaces, the culture of violence is traced back to the colonial period where force was used by the colonial master to quell resistance to colonial rule. This is thought to entrench a culture of state sanctioned violence by act or by omission. Cases have been reported of women being raped to cause fear and humiliation among dissidents or to cause them to confess alleged membership to liberation movements. Kenya’s Truth, Justice and Reconciliation Commission (TJRC) report indicates that sexual torture was used to humiliate and extract information from women and men during the Shifta War.

However, in the case of electoral violence, this has now become a feature both at the hands of state agents and at the hands of third parties. Re-introduction of multi-party politics in the early 1990s seems to have made electoral violence a pre-dominant feature of Kenya’s elections. The 1992, 1997 and 2007 general elections were all marked with electoral violence. Following the disputed 2007 elections, violence of a proportion that had hitherto not been witnessed marked the darkest period in Kenya’s electoral history. More than 1,333 lives were lost, over 650,000 were displaced. Over 900 cases of sexual violence were reported to have occurred. The Waki Commission reported cases of rape, gang rape, sexual mutilation, and various forms of genital violence. In some cases, victims of sexual violence contracted HIV/AIDS after being sexually assaulted. The Commission findings are that women and girls suffered disproportionately from these attacks, even though cases of violence against men and boys were also recorded.

75. The Effect of Violence on Women’s Electoral and Political Participation in Bangladesh
76. International Foundation for Electoral Systems, The Effect of Violence on Women’s Electoral and Political Participation in Bangladesh,
78. Ibid
As above, 725.
While the post-election violence in Kenya may be argued to be a characteristic of period of breakdown of law and order, it largely points out to the pervasive patriarchal culture, prevalent in most African States. Patriarchal cultures view a woman as a subservient to a dominant male. Thus, this culture is responsible for women’s rights violations including harmful cultural practices, domestic violence and exclusion of women from leadership and decision making. Gendered electoral violence is a testament to the unequal relations between women and men often found in patriarchal communities. It is a form of gender-based violence that is grounded on gender discrimination. This pervasive culture is well served in situations where there are acts or omissions of the state during peace and in times of conflict.

But by far, engendered violence is the biggest barrier is gendered electoral violence this sentence requires correction. Violence affects both men and women. In most instances women are uniquely and disproportionately affected by the culture of electoral violence as voters perpetrated by candidates and political actors. A study by International Federation for Electoral Systems (IFES) found that the women often hold back from political participation for fear of political attacks. Those who venture experience intimidation and harassment. Some women candidates and political activists have suffered sexual violence and sexual harassment and in other cases, women aspirants have suffered withdrawal of access to financial resources, limiting their ability to participate in elective politics. This culture of electoral violence against women is deemed to be a derivative of a patriarchal culture; an entrenched violent political culture and impunity to the rule of law resulting in low levels of implementation of law.

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82. Ibid
83. The Effect of Violence on Women’s Electoral and Political Participation in Bangladesh
85. Ibid
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6.4 The Law Advancing Women’s Leadership & Participation

The principle of women’s participation in leadership and elective politics is anchored in a robust legal and normative framework. The Beijing Platform for Action (1995) reaffirmed that exclusion of women from formal politics is detrimental to achievement of democratic ideals. It emphasized that “women’s equal participation in decision-making, apart from being a demand for justice or democracy, can also be a necessary condition for women’s interests to be considered to realize the goals of equality, development and peace (Para 181).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls on States parties “to take all appropriate measures to eliminate discrimination against women in the political and public life of the country”. The CEDAW Committee’s General Recommendation No. 23 (regarding the participation of women in political and public life) calls on States parties to ensure

87. As above, 725.
90. Ibid
that national constitutions and laws are aligned to CEDAW and underscores states parties’ obligation to take all necessary measures, including temporary special measures, to achieve the equal representation of women in political and public life. Similarly, the UN Security Council Resolution 1325 (2000) on women, peace and security, affirms the important role of women in the prevention and resolution of conflicts and in peacebuilding. It stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, as well as the need to increase their role in decision-making.

The General Assembly Resolution 58/142 (2003) on women and political participation urges Governments, the UN system, NGOs and other actors to develop a comprehensive set of policies and programmes to increase women’s participation in decision-making. The level of participation including in conflict resolution and peace processes should be able to address the existing obstacles facing women in their struggle for participation.

The International Covenant on Civil and Political Rights (ICCPR) acknowledges the right to effective remedy where covenant rights or freedoms have been violated, even where the violation has been committed by persons acting in an official capacity. Article 2 calls on states parties to ensure where such a claim is present; a competent judicial, administrative or legislative authority will determine the claim. The African Charter on Human and People’s Rights and the Rights of Women in Africa (Maputo Protocol, 2003), the Solemn Declaration on Gender Equality in Africa (2004), the African Union Gender Policy are among instruments that underscore commitment by African States towards gender equity and equality in representation of women and men. The Sustainable Development Goals, specifically Goal Number 5, calls for gender equality and empowerment of all women and girls. Key to achieving this is to promote women’s political participation and leadership throughout the pre-election, election and post-election phases and support to more women to get on ballots, attain political office and go to polls to vote.

International and national laws are therefore useful and necessary tools towards seeking increased women’s participation and addressing the barriers, including violence that may come in to curtail the quest. These give rise to attainment of formal equality. However, change must be fundamental, and must be seen to realize accountability. Change must be realized in the values of the people, in the attitudes of the people. “Right now, the woman who gets raped is the one who is stigmatized and excluded for it. Beyond laws, we should get social sanctions on the side of the woman. We need to get to a point where the victim receives the support of the community, and the man who rapes is the one who is stigmatized and excluded and penalized by the whole community.”

### 6.5 Law as an Instrument in Preventing and Protecting Women in Situations of Electoral Violence

Jurisprudence, legislative and policy interventions can ameliorate gender based discrimination and violence and promote women’s participation in the electoral process. In EIPR and Interights v. Egypt (2013), the ACHPR pronounced itself on the matter and found that states must protect women against sexual
harassment and other forms of gender-based violence experienced in the public sphere. The four women applicants were journalists at a demonstration by opposition members in protest of President Mubarak’s authoritarian rule. Some were covering the event; others were attending the demonstration and one was on her way to an English class. During the protest, state police together with rowdy thugs assaulted the women journalists and warned them against taking part in political events. They attacked the women, tore their clothes, molested them and verbally abused them, while calling them ‘sluts’ and ‘whores’, while inappropriately touching their private parts. The Commission recognized gender based violence as a form of discrimination against women. The decision underscored the obligation of the state to address sexual violence that occurred in public spaces and found the state liable for failure to protect the women journalists from violations. This failure was found to amount to violation of the women’s right to equality and non-discrimination, right to dignity and protection from cruel inhuman and degrading treatment and their right to express and disseminate opinions within the law. The decision found that failure to protect the women from acts of third parties in an environment where acts of sexual violence often went unpunished, amounted to failure to protect the women from violence.

On 27th May, 2013, a Kenyan High Court delivered a landmark constitutional ruling where a group of young girls successfully challenged the Kenya government on its inaction regarding sexual abuse of children, known as defilement. In the case, C.K. et al v The Commissioner of Police et al, Petition No. 8 of 2012, the High Court granted judgment for the petitioners in a constitutional claim challenging the failure of the Kenyan police to conduct prompt, effective, proper and professional investigations into complaints of sexual abuse against the 160 girls who had been defiled. The court ruled that police failure to follow Kenyan laws including the Sexual Offences Act, 2006 and the Police Act deprived the petitioners of equal protection and benefit of the law, contrary to article 27 (at pp 26-27). Articles 48 and 50 were found to obligate the state “to ensure access to courts is not unreasonably or unjustifiably impeded and in particular where there is legitimate complaint, dispute or wrong that can be resolved by the courts or tribunals” (at p 30). The judge held that the police failure “to conduct prompt, effective, proper, corrupt free and professional investigations into the petitioners’ complaints, and demanding payments as preconditions for assistance violated petitioners right to access to justice and right to have disputes that can be resolved by the application of law decided in a fair and in public hearing” (at p 31). The state’s duty to protect children from abuse, codified in article 53 of the Constitution, as well as the state’s duty to ensure proper investigations of such abuse, were found to be supported by commentary from the UN Committee on the Rights of the Child as well as case law, the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The Convention on the Elimination of All Forms of Discrimination Against Women, The Convention on the Rights of the Child, and the African Charter on Human and Peoples Rights. On a systemic level, it was argued that the police inaction had created a climate of tolerance and impunity that allowed perpetrators to

91. Dr. Denis Mukwege Mukengere, director of Panzi hospital in Bukavu in the Democratic Republic of the Congo.2013,720
continue to commit acts of violence without fear of legal consequences, contrary to the girls’ rights under the Constitution and international law.

International Courts and Tribunals have recognized sexual violence as an international crime. The Rome Statute of the International Criminal Court recognizes rape and sexual violence as a crime against humanity. But this has not always been the case. Prior to the development of law, sexual violence in conflict situations was a rampant practice that was ‘normalized’. Accusations of mass rapes arose during World War II but the courts set up to address war crimes did not recognize sexual violence as a crime. However, the matter of widespread rape of women in the in the former Yugoslavia, was brought before the UN Security Council. The Council, in 1992 declared the “massive, organized and systematic detention and rape of women” an international crime. The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY, 1993) recognized rape as a crime against humanity in cases of armed conflict as against civilian populations. Later, rape was declared a war crime and a crime against humanity by the International Criminal Tribunal for Rwanda (ICTR, 1994). The ICTR proceeded, in 1998 to find former mayor Jean-Paul Akayesu guilty of rape as a crime that perpetrated genocide.

6.6 Women Judges and Realization of Sustainable Development Goals

Achieving SDGs will be realized in part by ensuring women’s participation at all decision-making levels. By the same token, women judges are called to serve a special role in advancing equity and equality for women. Increase in the number of women judges ought to infuse judicial reasoning with the lived realities of women. It is argued that if women judges are effectively sensitized and equipped with knowledge of contextual realities and gendered violence uniquely impacts women; and when they have deep appreciation of de jure protection offered by the robust body of law, they will likely improve judicial reasoning. Where this has been done, there has been improvement of protection of women’s human rights and improved justice sector outcomes for women.

Women judges increase the judiciary’s diversity and contribute to a bench that is highly representative of the society. Women in the judiciary ought therefore to be alive to the unique quality that they bring in, even as they seek to expand their appreciation of the situation of women both in law and in fact. Women judges can apply mechanisms that overcome the structural gender equality gaps to enhance access to justice and stimulate attainment of sustainable development goals, particularly for women and children. As such, the following

should be considered:

1. Women judges must be aided with knowledge and information that deepens their appreciation of the wide protection available under the robust body of national, regional and international law. This will help them deliver substantive and not just formal equality that strives to see that human rights commitments are upheld. The judge has a role to give purposeful interpretation to the Constitution. The judge will be well guided as to the obligations arising for the state by ensuring a deep understanding of the works of treaty monitoring bodies including interpretative guides set out in General Recommendations, General Comments and writings of mandate holders/ special rapporteurs on the Rights of Women. Reliance of these interpretative guides will help in redressing the plight of the disadvantaged; redress stigma, prejudice or violence; enhance voice, participation; accommodate differences through structural change.

2. Recognition that women suffer multiple levels of oppression (intersectional discrimination). Judgments should accordingly reflect and address this reality through pronouncements in judgements that can then be extracted to aid legislative reform. Mildred Mapingure 93 case is instructive. The Zimbabwe Supreme Court found the state liable to compensate a survivor of rape following state failure to render services sought following a rape.

3. Enforcement of the due diligence standard for violence against women in assessing state responsibility to eliminate violence against women. The standard is set out in the Declaration on the Elimination of Violence against Women (1993). States are urged to “exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.” This has been reiterated by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) thus: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence”. This standard aids in appreciation of state accountability in situations where the duty bearer is deemed to have failed in its obligation.

4. Purposeful interpretation of the Constitution and international instruments. Judges ought to interpret the Constitution in a manner that seeks to ensure that the law protects the vulnerable and that decisions send out a strong signal that courts will not uphold discrimination and violence against the vulnerable. The South African Court in Carmichele v. Minister Safety and Security & Another stated that “the courts are under a duty to send a clear message to the accused, and to other potential rapists and to the community.

Discussants perspective on experiences from election petition delivered by Hon Judge Patricia Fikirini (Tanzania) and Hon. Lillian Arika (SPM -Kenya) is summarized in Box 4

95. CEDAW General Comment 19
BOX 4: Discussants Country Perspective: Gender Issues in Electoral Processes

Tanzania: (Hon Judge Patricia Fikirini)
On 25 October 2015, general elections for the presidential, parliamentary and councillors’ seats were held throughout Tanzania, following a two-month campaign period which concluded on the 24 October 2015. From 26 October 2015, the constituency Returning Officers announced the election results, of which 53 were petitioned. Election petitions emanate from the election process, which is whereby citizens vote for their leaders into office. Any one aggrieved with the outcome has a right to challenge the results in Court. In this Election petition, the petitioner had two sets of claims. The first set included utterances of defamatory statements, insinuation of adultery, name calling and intent to exploit and take advantage of the difference in sexes during the campaigns. While the second set covered irregularities that allegedly emerged at 21 polling stations during the counting, tallying and recording the results. Despite the service of two advocates and a stock of 43 witnesses, no plausible evidence was presented. Out of 43 witnesses, only 9 testified, and out of the 9, only 1 testified in relation to the irregularities at a particular polling station. Neither the complaint forms nor forms carrying disputed entry were tendered through this witness, instead the advocate tried to tender those forms through the petitioner. The Court had to reject admission of those forms as she was not a competent witness to tender them. Had the complaint forms regarding the irregularity evidence been tendered, the possibility of there being a good case would not have been farfetched.

In another election petition case, the petitioner and her party secretary at different times reported abuse, use of defamatory statements and threats posed to her supporter during campaign rallies as required by Regulations 5.3 - 5.7. The Returning Officer was joined in the petition as 2nd respondent and she appeared as a witness. When she was confronted with a question as to how she attended to the complaints lodged by the petitioner and her party secretary. Her response was she received the complaint letters but she argued that when she received the letter she was not acting in her capacity as chairperson of the “Election Ethics Committee”. There was no evidence that the complaints were dealt with. My concerns were that aspirants, their parties or supporters might have been denied an opportunity to be heard due to uncertainty on the secretary’s capacity. As such, the petitioners lost the case on such technicality.

Hon Lilian Arika (Senior Principal Magistrate-Kenya)
One of the emerging issues in the Kenya electoral process is that fewer women can challenge elections results in court due among other things, lack of finance, lack of effective legal representation, lack of representation in party leadership among others. Representation of women in political party leadership and parliament is still low despite the creation of special seats in parliament for women.
The Constitution of Kenya (2010) obliges the State to take legislative and other measures to implement the principle of 2/3 gender rule; which stipulates that in elective or appointive positions, members of the same gender must not be more than two-thirds (2/3). The Judiciary has recently pronounced judgment calling upon the Kenyan Parliament to enact legislation to implement the principle of the 2/3 gender rule. Secondly, one of the other emerging challenges facing women in election processes is electoral violence. Unless these challenges are addressed, women will continue being disenfranchised at the plebiscite

6.7 Conclusion
This paper mainly focused on how women fair in political participation; examines barriers to effective women participation; law advancing women’s leadership and participation; how the law can be used to prevent and protect women in situations of electoral violence and finally how women judges can play a critical role in realization of Sustainable Development Goals. However, participation of women in political processes has been limited. Lack of clear rules for party nominations, enhances favourism, and cronyism that discriminates against women candidates. Similarly, the paper has presented case examples of how the courts have used the law to deal with the violation of women rights. The African Charter on Human and People’s Rights and the Rights of Women in Africa (Maputo Protocol, 2003), the Solemn Declaration on Gender Equality in Africa (2004), the African Union Gender Policy are among instruments that underscore commitment by African States towards gender equity and equality in representation of women and men. Finally, Women in the judiciaries ought to be alive to the unique quality that they bring in, even as they seek to expand their appreciation of the situation of women both in law and in fact.

98. Section 9 (1) of the Local Authorities (Elections) Act, Cap. 292. R.E. 2015
100. Ibid
101. Ibid
102. Ibid
103. Form No. 16 –this is a form to be filed by a candidate or agent if satisfied or not at the counting of votes.
104. Form 21B is used in recording the number of registered voters, those who voted, votes counted, spoiled votes and what each aspirant got.
106. GN No. 294 of 2015
107. The National Elections Act,
CHAPTER SEVEN

Mobilizing Positive Masculinity For Women Empowerment

Ms. Zebib Kavuma (UN Women-Kenya Country Director)

7.1 Introduction
Positive masculinity is defined as bringing men as advocates for women’s right and as change agents of gender inequality. Positive Masculinity is a Process. Negative socialization of men and boys is done through a long process, therefore, to de-construct the attitudes and beliefs, interventions require time and resources to achieve. Positive masculinity is among key strategies adopted by numerous human development agencies in a quest to enhance and achieve gender equality within, and outside of the Justice sector. To effectively mobilize positive masculinity, a context of gender inequality should be established including key gender gap indicators. Though much has been achieved in the last two decades to close persistent gender gaps such as parity in girl’s primary school enrolment, other areas like women’s economic empowerment appear to be slipping backwards. The World Economic Forum Gender gap report of 2016 indicates that empowerment of women and girls represent the single most opportunity for human development and economic growth. Despite this and many organizations working to address the issues, the situation worsened during 2016. Some of the gender disparity statistics from the Global Gender Gap Report includes the following:

- Women own only 20% of the land globally
- Worldwide, almost one-third women who have been in a relationship has experienced some form of violence by an intimate partner.
- Women and girls account for three quarters of all trafficking victims.
- Globally, women and girls continue to lack access to essential health services and information. In low and middle-income countries, complications from pregnancy and childbirth are a leading cause of death among girls aged 15 to 19.
- Girls and women represent two-thirds of the world’s illiterate population.
- While more girls are attending primary school than ever before, gaps persist between girls’ and boys’ attendance in many regions.
- Globally, women devote 1 to 3 more hours per day to housework than men and dedicate 2 to 10 times the amount of time per day to care-work of children, elderly, and the sick compared to men.
- The global gender pay gap is 23% and will persist for the coming 70 years. By one estimate women earn 77 cents for every dollar a man earns.

110. Ibid
• Women comprise only 21.8 percent of national parliaments around the globe, despite virtually no legal restrictions on women running for public office. Parity in politics will take at least 50 years (World Economic Forum Global Gender Gap Report, 2015)
• In the United States, women are just 4.6 percent of Fortune 500 CEOs and hold only 16.9 percent of Fortune 500 board seats.
• Economic gender equality might not be achieved for another 170 years

The World Economic Forum report similarly notes that equality for women in the labour force would add $28 trillion to the global economy by 2025. Providing girls with just one extra year of secondary education can increase their potential income by 15-25%. But outdated norms and gender stereotypes are impeding our own ability to achieve the systemic change required. The same stereotyping affecting women more broadly is holding back the global economic growth and social progress that will come from increased gender equality and women’s empowerment. This paper explores how positive masculinity can be harnessed to contribute to women’s empowerment and what the judicial sector and prosecutors can do to enhance gender equality.

7.2 Positive Masculinity Contribution to Women Empowerment

There is no single version of masculinity that is found everywhere. Constructions of masculinity differ from one culture to another and from one historical moment to another. Furthermore, multiple masculinities (defined either as identities or as patterns of practice) are found even within one culture or organization. Patterns of masculinity can be understood at the individual level but it is important to recognize that they also exist at the level of social collectives. Masculinities can be institutionalized in organisations or informal groups and expressed and shared cultural forms (myths and folklore, mass media, social stereotypes). This collective reality is an important reason why change in gender practice among men and boys is hard to start simply by persuasion. There is need for a more deliberate effort to bring about desired social transformation.

In Kenya like in the rest of the world, women continue to champion the struggle for gender justice. Women have made progress but progress has been very slow. Breaking the glass ceilings of policy and decision making positions and/or addressing persistent inequalities is proving complex and cannot be achieved by leaving men out of this conversation. Bringing men as advocates for women’s right and as change agents for gender inequality. Over the last decade, there has been recognition of the need to work with men and boys to promote gender justice globally. The idea of working with men has been expanded to promoting social, political and economic issues affecting women. As the impact of engaging

111. Ibid
men and boys becomes evident from different interventions globally, there is need for a more coherent approach for positive masculinity particularly for gender justice. Such interventions demand transformation of gender relations and norms. This includes actively engaging men and boys to change negative attitudes that perpetuate violence against women and girls. Gender sensitive men and boys are advocates for changing stereotype harmful gender norms perpetuated through socialization.

In most patriarchal societies, power is concentrated or vested in the male gender. Therefore, mobilizing positive masculinity is key to achieving women’s empowerment. Achieving gender equality requires sensitization and mobilization of men to the realities of socio-economic impact women can bring to the society. This includes providing women with decision making space in politics, corporate and other spheres of life. Women contribution to development is a win for both men and women. Thus, mobilizing positive masculinity will not only guarantee women socio-economic empowerment, but also societal advancement. Importantly, since men are usually the perpetrators of violence against women, enhancing positive masculinity will provide significant reduction in the vice.

UN Women recognizes the pivotal role that men play in realizing gender equality. Thus, working with men and boys on positive masculinity is one of the ways to transform patriarchal cultural norms stifled against women empowerment. One of the initiatives for enhancing outreach on positive masculinity is the UN Women He-For-She Campaign. This campaign allows men the opportunity to enrol to support gender equality and women empowerment initiatives. Similarly, UN Women has utilized National Male Engagement Alliance (NAME) to enhance response and prevention mechanism for gender based violence survivors. The NAME campaign is done in partnership with cultural and religious leaders to advance mentorship programs and initiatives to boys.

Mobilizing Positive Masculinity
The HeforShe campaign was officially launched in Kenya in 2014 by H.E. President Uhuru Kenyatta. The president committed to the lead role of HeforShe champion declaring “I am HeforShe because Gender Equality is not only a woman’s issue; it is a human rights issue that requires my participation”. Following the national launch, there have been other mini-launches at agency and institutional levels. This includes the HeforShe launch at the Supreme Court of Kenya. The main aim of the HeforShe campaign is to mobilize men as change agents and advocates of gender equality and women’s rights. The campaign has both online and offline platforms. Just two years after official launch globally, HeforShe has exceeded expectations mobilizing close to 1.4 billion men around the globe, who committed to become champions. The seven principles for male champions are stated as follows:

1. Believes: that discrimination against women and girls is wrong; that violence against them is unacceptable; and that they should have equal access to social, political and economic opportunities.
2. Understands: that standing up for gender equality is standing up for humanity.
3. Encourages: women and girls to seek social and economic opportunities.
4. Speaks: when he sees any forms of discrimination, whether interpersonal or institutional.
5. Leads: by setting an example in his family and community by enacting equality in everyday actions.
6. Challenges: other men and boys if he sees them acting or speaking in a way that is discriminatory or harassing to women and girls.
7. Supports: other men and women as they work for a world in which discrimination and violence against women is eliminated.

The HeforShe campaign focuses on three key strategies: (a) raising men’s awareness on gender inequalities; (b) recruiting men as advocates for gender equality and (c) demanding from men concrete commitments. Globally, the campaign launched the first initiative referred to as Impact 10x10x10 with the aim to effect change from the top down. Impact involves opinion leaders committing to implement concrete measures within their organizations and beyond. Impact’s “champions” are influential figures in their fields, such as heads of State, high-level executives, and university professors, Hollywood celebrities and other movers and shakers within society. Notable personalities include Rwanda’s President H.E. Paul Kagame, Japanese Prime Minister Shinzo Abe, Anthony Jenkins, CEO of Barclays, and John G. De Gioa, President of Georgetown University. Under the program, heads of State promote gender equality and launch a nationwide HeforShe campaign; companies sign the Women’s Empowerment Principles, measure and publicly report on progress to achieve gender equality, and use the HeforShe API to mobilize employees globally; and universities implement mandatory gender sensitization on campus, and work with other universities to address gender-based violence. For example, the University of Waterloo has recently announced the creation of a HeforShe IMPACT Scholarship for female students who apply to science, technology, engineering and math programs, a $288,000 commitment. The campaign does not only benefit women, but also liberates men from the impacts of the patriarchal stereotype and expectation.

In Kenya, organizations such as Caritas Nairobi and Trademark East Africa have pledged to achieve concrete commitments listed below;
Caritas Nairobi – HeforShe commitments

1. Mobilizing the 8,000 Catholic men association members to join the HeforShe campaign and seek signatures as commitment from the men. Caritas Nairobi and UN-Women will gather the support of all catholic men in the ADN through signatures committing to promote gender equality. The campaign will promote participation of the young men so that the HeforShe agenda may be sustainable. The Catholic Men Association (CMA) will be at the forefront of the campaign as and will advocate to putting an end to gender based violence in the archdiocese of Nairobi.

Organize HeforShe panel discussions in All 13 Deaneries in the Archdiocese of Nairobi to sensitize Parishioners on election issues and GBV

Caritas Nairobi and UN Women will carry out a series of discussions in selected parishes covering all the 13 deaneries in the ADN. The discussions will target both men and women and civic education will be a key topic. Using the church’s various pastoral groups such as the youth, the catholic women association and catholic men association among other groups, key ambassadors will be identified to head the HeforShe agenda in the church.

Trademark East Africa – HeforShe commitments

1. Develop and launch an innovative male-focused gender mainstreaming curriculum for border agencies.
Trade Mark East Africa and UN Women will develop an innovative new curriculum to educate and empower men as gender equality advocates. Together the two will develop a suite of education tools for its employees and partners to drive awareness and to define why gender parity matters, and what we can all do to achieve it.

2. Launch an Inclusion Index to further increase women in leadership roles with two key TMEA partners.
Trade Mark East Africa and UN Women will conduct an employment survey of the representation of women across all levels, with a specific focus on women in leadership. Based on the insights from this evaluation, each TMEA partner will be able to develop tailored interventions to address any potential barriers.

UN Women - National Male Engagement Alliance Initiatives

National Male Engagement Alliance (NAME) is a network of organizations working around male engagement in gender equality initiatives. Some of the interventions include working with religious and cultural leaders to not only facilitate change of opinions and practices around gender inequalities, but also to

help re-align alternative justice mechanisms that are fair and just in promoting gender equality, and not further violate the rights of women and girls. It is critical to note that access to formal justice mechanisms in Kenya is still a challenge, and that most survivors of GBV find it easier to engage the alternate dispute resolution mechanisms, on non-sexual violence cases. Therefore, NAME is essential in engaging custodians of culture to promote positive masculinities. Other initiatives include the Vunja Kimya Initiative (break the Silence) working now with 11 Universities in Kenya and having both female and male students as champions for gender equality.

7.3 Justice Sector and Gender Inequalities

Over years of enhanced sensitization of gender equity and equality in the Kenya patriarchal societies, slowly and steadily, communities are embracing women’s participation in decision making both at the community and national level. In the just concluded political party nominations, Turkana, a highly structured patriarchal community, two women were successfully nominated at the party primaries to battle out with men (Ms Leah Nachere beat 4 men to clinch the Jubilee ticket for Lake Zone ward, while Ms. Margret Ayanae won herself a Ford Kenya ticket for Lokichar ward after beating her male opponent). The success of these two women was made possible courtesy of advocacy and lobbying process by male champions on women’s rights.

To play an effective role in advancing women’s rights and equality, the judicial system has a role to play. This includes the following interventions:

1. The judicial system and structures: There is need for judiciary officials to deal with their negative biases against survivors of violence and violence against women in general. There is need for a deliberate action to address societal and structural issues that perpetuate gender inequalities. It is important for prosecutors/magistrates and judges who are male dominated to have a full appreciation of the gendered nature violence against women and girls. There is need to monitor the effectiveness of protection measures and recommend institutional reforms where systemic failures become apparent.

2. There is a high rate of early termination of cases by SGBV survivors who cease to show up in courts to avoid secondary victimization. Therefore, mechanisms for protecting survivors of violence against women from traumatization in courts should be established and adopted.

3. The judicial system should apply fair and consistent procedures on SGBV cases, while at the same time strengthen links and cooperation with agencies and institutions dealing with violence against women and girls.

4. Hire more women Judges and Magistrates and increase proportionally the number of court stations with preference being given to hard-to-reach areas including the establishment of mobile courts.

118. An access to Justice mapping study undertaken by UNWOMEN 2015
5. Establish special courts to try GBV related cases that are adequately spread to serve the optimum number of survivors and/or promulgate policy interventions capping the duration of trying GBV cases.

6. Strengthen the court users’ committees (CUCs) so that jointly, and through a multi-sectoral approach, cases can be fast tracked as well as strengthening the judiciary’s role in prevention of SGBV.

7. There is need to examine and strengthen loopholes that allow cases on SGBV to be dropped. Such loopholes include: victim’s decision not to report to the police; police’s judgment on what constitutes evidence; insufficient evidence; early withdrawal; termination of the case by prosecutors;

There is also need for the judiciary to strengthen male champions who can act as agents of justice for survivors of violence. This should include testifying as witnesses, supporting the survivors to overcome the stigma, and delivering authoritative rulings against gender based violence. Women Prosecutors can play key role in ensuring that survivors of violence are informed of the criminal justice process and their rights as victims, among others ensuring that the survivors are aware of their rights to legal aid in those jurisdictions that allow victims to have their own lawyers. There is also need to have male paralegals recruited within communities, particularly in traditional patriarchal communities to provide training and sensitization to SGBV victims.

119. See UN Women SGBV Secondary Victimization
7.4 Conclusion
This paper has examined how positive masculinity can be harnessed to contribute to women’s empowerment. This includes how the judicial sector can enhance gender equality and contribute towards eradication of gender based violence and discrimination of women. Thus, the paper has presented the concept of positive masculinity as a process that could be used to deconstruct negative socialization of men and boys (attitudes and beliefs) to transform patriarchal cultural norms stifled against women’s empowerment. Some of the initiatives presented for positive masculinity include the HeforShe campaigns; National Male Engagement Alliance (NAME) initiatives, and the engagement of multi-sectoral approach including judiciary, police, prosecutors, development agencies and NGOs to eradicate gender based discrimination, and violence against women and girls.
8.1 Introduction

Over the past decades, women representation in leadership has continued to be a major challenge not only in the developing world, but also in the developed nations. Despite significant advances in education, and political participation, women remain underrepresented in leadership positions in the corporate business sphere and politics across the globe. But what difference do women in leadership make? Why should we be concerned to have women in leadership? The participation of women in leadership is significant to the success and sustainability of the world economy. As such, enabling women and girls represents the single biggest opportunity for human development and economic growth. Women’s representation in leadership will not increase substantially without major changes in the culture, policies, and practices of the organizations where women learn and work. Gender parity is a step forward for everyone in ensuring women have a stake at the decision table as men. The presence of individual women in leadership may not bring about women empowerment, since women integrate into mainstream institutions. As such, the onus on women leaders is to create an environment that revolutionalizes leadership and drastically changes the outcomes of the leadership itself, as a mechanism to justify representation and non-discrimination by participation.

Political representation of women has been at the heart of feminist movements and the quest for gender equality. The thrust of liberal feminist movement was to get women to the public sphere as women challenged their relegation to the private sphere as appendages of males who made decisions for women in the public sphere. Gender as a social construct of masculinity and femininity, has informed the different roles, realms of operations and division of labor men and women engage in, and their perception of leadership. As such, the challenge of subjugation of women and minorities is one that many countries have had to confront. Subjugation is necessitated by existing laws and policies that perpetuate patriarchal norms within society. There is need therefore, to ensure that measures such as affirmative action are introduced to level the playing field. As Frene Ginwala notes:

The seeds of democracy lie in the principle that the power to make decisions about people’s lives, society and their country, should derive from a choice by those who will be affected. For many centuries, the basis of this legitimacy was limited and many were excluded from making a choice: slaves, those without property or formal education, those not “civilised” or not part of the dominant culture or religion in society, people of colour, of a particular race, of ethnic group, indigenous people of countries and overwhelmingly, women.

Affirmative action in leadership also ensures that all members of the society are given a chance to play a role in decision making processes. Women are slightly more than half the population, and therefore, democracy dictates that they should form part of leadership. Women comprise only 21.8 percent of national parliaments around the world which indicated gross underrepresentation in political leadership and decision making. Laws in several African countries restrict women’s full enjoyment of equal rights, especially in marriage. In fifteen African countries, women lack the freedom to choose their domicile, in 35 African countries women are obliged to obey their husbands, while in nine other African countries women are not obliged to apply for a passport in the same way as their husbands. Astoundingly, women constitute two-thirds of Agricultural labor force in Africa, produce majority of Africa’s food yet, the only constitute 15% of leaders in agriculture and or as owners of means of production. Furthermore, the customary land tenure systems widely exclude women from ownership or control of land or restrict their right to inherit land, making divorced and widowed women particularly vulnerable to dispossession, even in situations where the formal legal system and state policies provide for gender equality.

Furthermore, women’s landholdings tend to be smaller and of poorer quality than those held by men. Women have less access to essential inputs such as land, credit, fertilisers, new technologies and extension services. Thus, their yields tend to be significantly lower than men’s. This kind of inequality has serious consequences on women’s economic empowerment and food security. The African Development Bank report, notes that while African women are highly entrepreneurial and own a third of all businesses across Africa, up to a high of 62% in some African countries, they “tend to be necessity entrepreneurs rather than opportunity entrepreneurs.” By deduction, most of these women entrepreneurs are driven into small business by the lack of economic alternatives. Significantly, lack of access to credit and financial infrastructure is a big constraint for women entrepreneurs. This is in turn is linked to the absence of clear laws and policies to level the playing field for women. However, there has

125. Ibid
127. Ibid
129. Ibid
have been an increase from the international community and regimes for countries to eradicate discrimination against women, and adopt inclusive governance that guarantees the place of women at the decision table. As such, all African countries except two have ratified CEDAW and the Maputo Protocol. Equally, many countries have made constitutional legislation or policy that guarantees equality. This chapter therefore examines women in leadership in the political spaces, parliament, cabinets, and the judiciary and the role of law in shaping jurisprudence in promoting and protecting the rights of women and girls.

8.2 Women in Leadership

Women form slightly more than half of the population and therefore, democracy dictates that they also form part of the leadership. Engaging women in leadership ensures social benefits in a society by enabling the society to use the potential of its entire people both men and women. In his remarks at the 6th Global Entrepreneurship Summit in Nairobi, the US President Barak Obama noted that it is foolhardy to play with only half of the team. If women’s perspectives are not brought to the decision table, there is a problem. Women leadership forestalls discrimination and boosts the status of women and as such, it is important that the law should facilitate women’s participation in leadership positions, particularly in Africa. In most instances, states inadvertently undermine the process of enhancing women’s role in leadership when they advise women to proactively seek leadership roles, without addressing policies and practises that are embedded with patriarchal societies.

8.2.1 Women in Political Leadership

The road to gender equality has been long and arduous for women’s movements globally. While progress has been made over time, a lot remains to be done for women representation in elective and appointive positions. The increase in women’s representation in the National Assemblies has been mainly due to a quota system. Some of the countries such as Kenya and Uganda have created special seats for women through the Constitution, while Tanzania and Ethiopia have used political party quotas. For instance, the Constitution of Kenya, promulgated on 27th August 2010, is a milestone in addressing the issue of affirmative action, not only for women but for many excluded groups including minorities, persons with disabilities and the youth. The necessity and provision for affirmative action measures ensures the representation of women and other socially excluded groups and is also a clear recognition of the hurdles women face in a patriarchal society like Kenya and an acknowledgement of the many inequalities that exist. One of the most glaring impediments to women’s participation in electoral politics and governance is the organization around formal political units such as political parties whose skewed nomination

130. IDLO, Accessing Justice: Models, Strategies and Best Practices on Women’s Empowerment
rules relegate women to the back as preference is given to men in leadership and flag bearing positions. Indeed, political parties have been referred to as ‘citadels of male political privilege’. This has been further entrenched by the largely adversarial and duel like electoral system of First-Past-the-Post (FPTP) where the majoritarian winner-takes-all principle is used. This explains the use of affirmative action and quotas in many of the African countries to mitigate the impacts of this system.

In arguing a case for quotas in the Pacific Region, Lesley Clark in Affirmative Action–Gender Representation in Parliament: Quotas, Political Parties and Reserved Seats, suggests, among other arguments, that quotas for women do not discriminate, but compensate for actual barriers that prevent women from their fair share of the political seats. She adds that, the presence of women gives greater legitimacy to parliament. Women’s experiences are needed in political life and it is not true that men can represent women in the same way that women can represent other women. Countries that include women in their decision making have an advantage over those that limit themselves to men’s perspectives and solutions and that the leadership style of women which stresses consensus, collaboration and partnership is more likely to avoid intra and inter country conflicts with the resulting economic and social costs.

Scholars such as Kathleen Fallon argue that transition to democracy opened new possibilities for women to fight for political rights in Ghana and elsewhere in Africa. Using proportional representation and party lists in electoral systems offers more opportunities for women to be included in political leadership. In this regard, many scholars note that quotas are often the most immediate and most successful tools for increasing the number of women in national office. These policies have increased women’s representation even in countries that have not been democratic, those that have risen from the ashes (such as Uganda, Rwanda, Mozambique, and South Africa) and those that have had some level of stability (like Kenya and Tanzania). Regarding Kenya, the women’s movement contributed immensely to the adoption of the affirmative action provisions in the constitution.

Despite the significant movements in the political arena, women still face challenges ascending to political leadership. Some of the usual barriers to political participation and leadership for women include military and single party regimes, lack of resources to wage effective campaigns, perceived lack

134. Articles 97 (1) (b)&(c), Article 98 (1) (b)&(c) and Article 177 (1) (b)&(c) deal with these marginalized groups.
138. Ibid
of qualifications and skills, unfavourable and or no media coverage, patriarchal political traditions, dirty politics, resistant political parties, and lack of women as party’s gatekeepers. As such, one could argue that the underlying factor the precipitates women underrepresentation is more to do with political parties than voters. There are few women in leadership positions and in parties, with women confined to the wings. Lack of political will, partisan and fractional politics exacerbates women exclusion despite provision for women spaces in party manifestos. Equally, gender cannot supersede party. The availability of fewer women who would effectively engage in politics, and the recruitment mode of candidates is prohibitive. It could be argued that legal dictates may motivate political parties and other political agencies to address women’s political participation and representation. Sustainability of such efforts, however, requires a belief in the value proposition of women leadership, particularly, consensus that representation of different interest groups in politics is beneficial to democratic process, and to development.

8.2.2 Women in Parliament
In the last 20 years, women in Africa have made great progress in political participation. Africa now boasts of some of the highest levels of women’s representation in national assemblies in the world with women claiming over the 33 percent critical mass representation in several countries. Women representation in parliaments is attributable to the work of African women’s movements and women’s organisations who have successfully lobbied for constitutional reforms. Thus, the emerging visibility of women as political actors and adoption of policies advancing women’s rights is clearly evident as is as indicated in Table 5.1

140. Tripp, n 6; Mi Yung Yoon (2004); Fallon, as above; Gretchen Bauer; and Hannah Briton 2006
143. Ibid
Table 5.1 indicates clearly that African countries have made progress towards gender equality in electoral politics albeit, with mixed results. Countries doing poorly include Kenya, Zambia, Liberia, Ghana, and Congo, among others. These countries have less than 20 percent women’s representation in national assemblies. However, other African countries have good levels of women representation. These include Rwanda (63 percent), South Africa (41.9 percent), Namibia (41.3 percent), Mozambique (39.6 percent), Angola (36.8 percent), Tanzania (36 percent), Uganda (35 percent), Algeria (31.6 percent), Zimbabwe (31.5 percent), Tunisia (31.3 percent), Cameroon (31.1 percent), and Burundi (30.5 percent). In fact, Rwanda is the global leader in women representation in parliament. However, it should be noted that women parliamentarians in these countries have made so much progress through use of quotas and affirmative
action provisions introduced through constitutions.

8.2.3 Women in Cabinets
Globally, cabinets are decision making organs of a state. A survey conducted by UN Women and the Inter-Parliamentary Union shows that Cape Verde has the highest number of women occupying ministerial positions in Africa with nearly half of its 17 ministers being female. Similar study by the Intelligence Transfer Centre in South Africa noted that with nine women Cape Verde is ranked second globally, after Finland, which has 10 of its 16 ministerial positions occupied by women. South Africa is the next highest ranked country in Africa, with 42 percent, or 15 of its 36 ministers being female. Rwanda has 11 of its 31 ministers as women (36 percent), ahead of Burundi, Tanzania and Guinea-Bissau, which all come in the top 20 positions globally as summarized in Table 5.2

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape Verde</td>
<td>53%</td>
<td>Swaziland</td>
<td>26%</td>
</tr>
<tr>
<td>Rwanda</td>
<td>36%</td>
<td>Seychelles</td>
<td>25%</td>
</tr>
<tr>
<td>Tanzania</td>
<td>32%</td>
<td>South Africa</td>
<td>42%</td>
</tr>
<tr>
<td>Kenya</td>
<td>26%</td>
<td>Burundi</td>
<td>35%</td>
</tr>
<tr>
<td>Uganda</td>
<td>30%</td>
<td>Guinea Bissau</td>
<td>31%</td>
</tr>
<tr>
<td>Mozambique</td>
<td>29%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mauritania</td>
<td>27%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Source: Intelligence Transfer Centre, 2015 http://www.intelligencetransferc.co.za/conferences/7th-annual-women-inpolitics-conference/?at 2nd January 2016.)

8.2.4 Women in Judiciaries
African women judges have over the years risen to the upper echelons of judiciaries across Africa. There have been significant advances for women in courts not only in African national courts, but also at the International level. For instance, at the International Criminal Court (ICC), African women judges are accounting for 33% of the total number of women (15 to be precise) to serve on the ICC bench. Equally, the Economic Community of West African States (ECOWAS) has 40% women judges; the East African Court of Justice (EACJ) has 25% and the African Court of Human and Peoples’ Rights (ACHPR) has about 34%. A study by Dawuni and Kang on women in African judiciary between 1990-2014 show that 12 African states have had women in the highest offices in the judiciary including 6 women presidents in constitutional courts (Benin, Burundi, Gabon, Niger, Rwanda, Senegal); 7 Chief Justices (Gambia, Ghana, Liberia, Malawi, Nigeria, Sierra Leone); 2 supreme court presidents.
A study by Dawuni and Kang on women in African judiciary between 1990-2014 show that 12 African states have had women in the highest offices in the judiciary including 6 women presidents in constitutional courts (Benin, Burundi, Gabon, Niger, Rwanda, Senegal); 7 Chief Justices (Gambia, Ghana, Liberia, Malawi, Nigeria, Sierra Leone); 2 supreme court presidents (Guinea-Bissau, Rwanda).

Table 2. Women Leaders in the Judiciary in Africa, 1990-2014.

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>president, constitutional court</td>
<td>1993-2008</td>
<td></td>
</tr>
<tr>
<td>Burundi</td>
<td>president, constitutional court</td>
<td>1998-2013</td>
<td></td>
</tr>
<tr>
<td>Gabon</td>
<td>president, constitutional court</td>
<td>1991-</td>
<td></td>
</tr>
<tr>
<td>Gambia</td>
<td>chief justice</td>
<td>2013-14</td>
<td></td>
</tr>
<tr>
<td>Ghana</td>
<td>chief justice</td>
<td>2007-</td>
<td></td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>president, supreme court</td>
<td>2004-2012</td>
<td></td>
</tr>
<tr>
<td>Liberia</td>
<td>chief justice</td>
<td>1996-2003</td>
<td></td>
</tr>
<tr>
<td>Malawi</td>
<td>chief justice</td>
<td>2013-</td>
<td></td>
</tr>
<tr>
<td>Niger</td>
<td>president, constitutional Court</td>
<td>2007-09, 2010-13</td>
<td></td>
</tr>
<tr>
<td>Nigeria</td>
<td>chief justice</td>
<td>2012-14</td>
<td></td>
</tr>
<tr>
<td>Rwanda</td>
<td>president, supreme court</td>
<td>2004-11</td>
<td></td>
</tr>
<tr>
<td>Senegal</td>
<td>President constitutional council</td>
<td>2002-10</td>
<td></td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>chief justice</td>
<td>2008-</td>
<td></td>
</tr>
</tbody>
</table>

Source:(Dawuni & Kang, 2015.)

Figure 1: Trends of Women Leaders in the judiciary in Africa, 1990-2014
Figure 1 shows that the trend for women in leadership position began to pick up 2002, and was at the highest 2008 with 8 chief justices. In the late 1990’s significant advances for women and black judges was experienced in South Africa with specific goals of transforming post-apartheid judiciary. In as much as there has been needful increase in women at the judiciary, there is need to take stock of the tangible contributions these women have made to advance women’s access to justice, and women’s empowerment.

8.3 The Role of Law

Law is a powerful tool for promoting and protecting the rights of women and protecting the rights of women and girls. Law can be used to reinforce or give permanence to certain social injustices leading to the marginalization of certain groups of people. While law is important in the quest for gender equality, it can also reinforce social injustices. Further, a law providing for de jure equality between men and women does not automatically yield de facto equality. This is particularly the case where the law is gender neutral and operates in a context where gender roles are clearly set out and predetermine people’s experience with and enjoyment of law. Additionally, the structure and administration of law can be problematic in advancing equity and equality in law. For instance, women have been systematically removed from fully participating in the development process despite their active participation in the production processes alongside men. Even where women’s legal rights have been provided for, ignorance of such rights exacerbated by illiteracy ensures that they do not benefit from such provision. The effectiveness of laws in according women equal opportunities with men depends largely on the society’s willingness and ability to enforce such laws. To understand the role of law in women’s lives, one needs to understand not only the intention and rationale behind the law but also the consequences of law on individuals. In many cases, despite the gender neutrality of legal provisions, equal rights and privileges cannot be assumed to have been guaranteed and realized. Gender equality in all realms represents a struggle for scarce resources and power and is vigorously resisted by those already privileged. Globally, the battle of the sexes plays out as women enter diverse spaces that were previously exclusively male. In African for instance, men consolidate their position bastion of authority where they are mostly dominant — politics. They are unwilling to cede ground in this realm and define the rules of the game to their advantage and the exclusion of women. The judiciary has a critical role not only in eliminating legal barriers for women, but also interpreting

155. Ibid.
the law in a forceful and authoritative manner, particularly on matters of gender discrimination.

8.3.1 Feminist Perspectives of Law
Feminism has played a major role in advocating for equality and equity of genders. In this quest, feminists view the law as male and espousing male values. This is because mainstream law leaves out women’s world. It is the case of women’s lives, and men’s laws. Therefore, feminists concern themselves with the facts of women discrimination, causes and consequences. Feminists of law consider the desire for status quo in law and legislation is designed to enforce patriarchal gender inequality. This is not a conceptual necessity; law need not be patriarchal. Law does, however, reflect power relationships between men and women within societies. From a historical context, men and women have been viewed not only as different, but also as unequal in status and in power. Thus, men have usually been as considered as rational, aggressive, competitive, political, dominating leaders; while women have been considered as emotional, passive, nurturing, domestic, subordinate followers. This social construct nuances show how the genders engage in politics, economic, educational and in religious activities. More specifically, the social construction of gender roles in patriarchal societies inhibits effective engagement of women in economic activities, and leadership. There is need for research methods that incorporate women’s world in framing laws. There needs to be a further analysis on ways in which women’s lives are impacted by law. Of particular interest, there is need to examine how the law maintains, legitimizes, and serves the distribution and retention of power in the society.

8.3.2 Feminist Jurisprudence
Feminist jurisprudence provides a critical way of looking at law. For instance, law is a double-edged sword; it can cause domination of women, and empowerment of women. Feminist jurisprudence sees law as sexist; male and gendered. Thus, the language, logic, and structure of law is male created and reinforces male values. Gender neutral laws have, in many instances, resulted in de facto discrimination. As Tove Dahl aptly points out:

...As long as we live in a society where women and men follow different

160. Ibid
paths in life and have different living conditions, with different needs and potentials, rules of law will necessarily affect men and women differently. The gender-neutral legal machinery ... meets the gender-specific reality...

Ngaire Naffine, in her argument for feminist jurisprudence notes that gender should be interpreted as the person with the greatest rights, which is usually not the case. She opines that the person with the greatest rights in law does not exist, characterizing that person as follows:

the abstract individual of law is not a prototypical person... he is an idea of humanity... He has the social and physical characteristics and the moral qualities considered ideal by those who find themselves reflected in this image. The ‘ideal type’ of legal person...possesses at least three essential qualities which match those of the socially powerful. One pertains to sex, a second to class, a third to gender. The legal model of the person... is a man, not a woman... a successful middle-class man, not a working-class male... a middle-class who demonstrates ... a form of ‘emphasized’ middle-class masculinity... and he evinces the style of masculinity of the middle classes.

In examining Ngaire’s statements above, it is clear that the measures of equality in law are most often measured on male standard. Consequently, attainment of equality for all human beings requires more than normative legal provisions in bills of rights and international instruments, and conscious and consistent deconstruction of patriarchal underpinnings of law. This is the way to create and enhance equality. The feminist scholars discount the social contract theory, which presupposes an agreement between equals in a society arguing that there is ‘a historically located man’ in mind in the theory. They contend that Locke’s theory has an economic proprietor in mind, the Hobbesian Man is an entrepreneur, and Gauthier’s is a Robinson Crusoe and so on. Not surprisingly, and given the patriarchal orientation of the rules of the game, women’s performance in politics and other economic affairs has been dismal in the last 50 years compared to men.

Discussants perspective on women in judiciary by Lady Justice Martha Koome (Kenya) is summarized in Box 5
**BOX 5: Women Leadership: Stakeholder Perspective**

**Lady Justice Martha Koome (Kenya)**
One of the greatest challenges facing is administration of justice particularly to vulnerable women. For instance, a woman would be denied inheritance, just because she is a woman; A woman should not be denied a share of matrimonial properties because she is a woman; why do we still have Female Genital Mutilation (FGM) prevalent in the face of such severe laws that addressing FGM? The problem lies with the judges, magistrates and other leaders who are not using their leadership positions as agents of change, or not interpreting the law to solve social problem. One of the best-case examples of a magistrate who used her authority to punish injustice for sexual violence was recorded in Tharaka. A Senior Magistrate in charge of Court in Tharaka where FGM is prevalent issued a warrant of arrest of a Chief officer in charge of a police station for aiding and abetting the commission of crimes against girls who were circumcised. Such a bold and proactive move would send a serious warning to perpetrators of SGBV and provide precedence and leadership towards curbing the menace.

One opportunity available for enhancing leadership in judiciary is the adoption and utilization of Court Users Committees (CUCs) entrenched in Article 10 of Kenya constitution. CUCs are a great forum that bring together all the actors in the administration of justice such as; The Law Society, Police, Prison, State Law Office/AG, Department of Public Prosecution, Civil society organizations, Department of children, Probation Local Leaders, chiefs, and county leaders. CUCs do help in enhancing good governance, integrity, transparency and participation of the people who get affected by decisions of the court. Africa Region shall not lament over challenges in administration of justice, but rather stand boldly to share our respective experiences of leadership and courage we took in various jurisdictions to ensure discrimination and gender based violence against women and girls is eradicated.

**8.4 Conclusion**
Achieving gender equity in leadership is not an easy task. It requires broad and concerted efforts by various actors and institutions. Despite the significant movements in the political arena, women still face challenges ascending to leadership. Some of the barriers to political participation and leadership for women include military and single party regimes, lack of resources to wage effective campaigns, perceived lack of qualifications and skills, unfavourable and or no media coverage, patriarchal political traditions, dirty politics, resistant political parties, and lack of women as party’s gatekeepers. This in turn hinders women’s participation in other realms of leadership. This chapter has explored the importance of women in political leadership, judiciary and in cabinets. The role of law, and feminist jurisprudence in promoting and protecting the rights of women and girls; their participation in leadership and decision making both in appointive and elective offices has also been discussed. It has decried the less
than optimal participation of women in leadership and identified law as a pathway towards sustained participation of women in leadership. Additionally, organized groups such as the International Association of Women Judges can contribute to women’s ascent to leadership by raising the issue and demonstrating best practice internationally and demonstrating the value that women leaders add to the administration of justice.
CHAPTER NINE

Women Leadership in Judiciary

SECTION I: Equality in the Judicial System
Hon. Susana Medina (IAWJ President)

9.1 Introduction
This paper is divided into two sections: Section I is presented by Hon. Susana Medina on equality in the judicial system, while section II is presented by Ms. Lisa Davis. This section provides statistics on women in the highest courts globally in comparison to men while highlighting recommendations. A higher presence of women jurists is vital to ensuring the implementation and safeguarding of equality rights. Courts that operate free of gender bias and other forms of discriminatory practices can be powerful drivers of social change. Enhancing gender diversity in the justice system helps maintain public confidence, reduces barriers to women’s access to justice, such as stigma associated with reporting violence and abuse, and ensures a more balanced approach to enforcing the law.

9.2 Equality
Equality between women and men is a human rights issue and its achievement is a requirement for economic development and social peace. Women continue to encounter obstacles in trying to bridge the inequality gap. Gender stereotypes, lack of opportunities, balance between family life and working life are some of the challenges women face when seeking equality in the judicial system compared to their male counterparts. Women in judiciary careers are not exempted and are underrepresented. Statistics of women in almost all international and regional courts and in high responsibility decision-making bodies has a negative impact on the achievement of equality. By 2015, only 17 percent of the main international courts positions were held by women. Over the same period, the regional human rights courts had 25 percent women representation at the bench.

The following statistics show the number of women representation at international courts: The Inter-American Court of Human Rights has one (1) woman of its seven (7) members; The United Nations International Court of Justice, has fifteen (15) members, only three (3) of them are women; The Court of Justice of the European Union is composed of forty (40) members, of whom only seven (7) are women; The European Court of Human Rights is composed of 47 judges, of whom only sixteen (16) are women; The Human Rights Committee of the United Nations, made up of eighteen (18) members, nine (9) of them are women; The Committee on the Elimination of Racial Discrimination, has eighteen (18) members, seven (7) of whom are women; The Tribunal for the
Law of the Sea, has twenty-one (21) members, only one (1) of them is a woman; The International Criminal Court is made up of eighteen (18) members, only six (6) are women.; The Secretary-General of the United Nations has never been under the leadership of a woman. Part of these statistics are presented in Tables 7.1 -7.3

Table 7.1: International Tribunals

<table>
<thead>
<tr>
<th>Year</th>
<th>Tribunal</th>
<th>Current Members</th>
<th>Current Women (%)</th>
<th>Total Historical # of members</th>
<th>Total # of Women (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945</td>
<td>International Court of Justice</td>
<td>15</td>
<td>3 (20%)</td>
<td>106</td>
<td>4 (3.77%)</td>
</tr>
<tr>
<td>2002</td>
<td>International Criminal Court</td>
<td>18</td>
<td>6 (33%)</td>
<td>40</td>
<td>14 (35%)</td>
</tr>
<tr>
<td>1994</td>
<td>International Tribunal for the laws of the Sea</td>
<td>21</td>
<td>1 (5%)</td>
<td>40</td>
<td>1 (2.5%)</td>
</tr>
<tr>
<td>1995</td>
<td>International Criminal Tribunal for Rwanda</td>
<td>10</td>
<td>2 (20%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1993</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
<td>17 Permanent Judges</td>
<td>2 Permanent Judges (11.7%)</td>
<td>51 Permanent Judges (11.7%)</td>
<td>9 Permanent Judges (17.6%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 Adhoc Judges</td>
<td>35 Adhoc Judges</td>
<td>1 Adhoc Judges</td>
<td>14 Adhoc Judges</td>
</tr>
</tbody>
</table>

Total 81 permanent positions 14 (17%) 237 28 (11.8%)

Source: Qual Campaign for Gender Parity (2016)
Table 7.2: Regional Human Rights Tribunal

<table>
<thead>
<tr>
<th>Year</th>
<th>Tribunal</th>
<th>Current Members</th>
<th>Current Women (%)</th>
<th>Total Historical # of members</th>
<th>Total # of Women (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>International Court of Human Rights</td>
<td>7</td>
<td>0 (0%)</td>
<td>35</td>
<td>4 (11%)</td>
</tr>
<tr>
<td>1959</td>
<td>European Court of Human Rights</td>
<td>45</td>
<td>14 (31%)</td>
<td>175</td>
<td>35 (20%)</td>
</tr>
<tr>
<td>2004</td>
<td>African Court on Human and People’s Rights</td>
<td>11</td>
<td>2 (18%)</td>
<td>22</td>
<td>4 (18%)</td>
</tr>
<tr>
<td></td>
<td><strong>Total - 63</strong></td>
<td><strong>16 (25.4%)</strong></td>
<td><strong>232</strong></td>
<td><strong>43 (18.5%)</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: Qual Campaign for Gender Parity (2016)

Table 7.3: Regional Courts

<table>
<thead>
<tr>
<th>Year</th>
<th>Tribunal</th>
<th>Current Members</th>
<th>Current Women (%)</th>
<th>Total Historical # of members</th>
<th>Total # of Women (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952</td>
<td>European Court of Justice</td>
<td>28</td>
<td>5 (17.8%)</td>
<td>95</td>
<td>8 (8.842%)</td>
</tr>
<tr>
<td>1979</td>
<td>Court of Justice of the Andean Community</td>
<td>4</td>
<td>2 (50%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1907</td>
<td>Central American Court of Justice</td>
<td>6</td>
<td>2 (33%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>Caribbean Court of Justice</td>
<td>7</td>
<td>1 (14%)</td>
<td>10</td>
<td>2 (20%)</td>
</tr>
<tr>
<td>1991</td>
<td>ECOWAS Community Court of Justice</td>
<td>7</td>
<td>1 (14%)</td>
<td>17</td>
<td>5 (29.4%)</td>
</tr>
<tr>
<td>1999</td>
<td>East African Court of Justice</td>
<td>10</td>
<td>1 (10%)</td>
<td>23</td>
<td>4 (17%)</td>
</tr>
<tr>
<td></td>
<td><strong>Total - 63</strong></td>
<td><strong>12 (19.35%)</strong></td>
<td><strong>145</strong></td>
<td><strong>19 (13%)</strong></td>
<td></td>
</tr>
</tbody>
</table>
The examples above show the need to take positive actions to address the gender imbalance at international courts. In general, the “glass ceiling” still exists for women in judiciaries. The higher you go on the judicial pyramid, the lesser women judges’ representation one finds. As indicated earlier, increasing gender balance on highest court benches helps to preserve the legitimacy of the courts as representative of the societies that they serve and enables courts to understand the real-world implications of their rulings. The contribution of women is an essential complement to equitable, inclusive, and complete decisions that improve women’s quality of life. Judging from a gender perspective not only guarantees diversity in representation, but also enriches content of court decisions. It is important that judicial decision making process be balanced, informed, and without stereotypes or gender biases.

In this regard, IAWJ should champion for gender equality and gender balance in all Judiciaries. IAWJ should also advocate for equality of gender in all aspects of life: social, political, cultural and, fundamentally, in the judicial sphere. Feminine view in judicial areas should not be underestimated since women are mostly the victims of gender based injustices. The IAWJ should enhance specialized training and dialogue to empower women judges to fight for their own spaces, break the glass ceiling and achieve greater gender equity, and in turn rule in favor of women rights recognition. Women Judges must be mirrors where other women can look for courage and inspiration to represent other women who are more than 50% of the world population and but continue to be treated as a minority.

SECTION 2: Women Trailblazers in the Judiciary
Lisa Davis (IAWJ Executive Director)

9.3 Introduction
In recent decades, the number of women in the judiciary has significantly increased worldwide. But women are still vastly underrepresented in top-ranking judicial positions including on High Court benches and other senior roles in the legal profession. This means that women still face obstacles ascending to the highest courts. Increasing gender balance on high court benches helps to preserve the legitimacy of the courts as representative of the societies that they serve and enables courts to understand the real-world implications of their rulings.

9.4 Women Trailblazers in the Judiciary
Women trailblazers in the judiciary refers to women who have made important contributions to the law and to women in the profession: chosen primarily for their accomplishments and contributions, to the judicial system. Under the IAWJ, two women judges stand out for serving as presidents of IAWJ: Laetitia Kikonyogo (2002-04) Deputy Chief Justice of the Supreme Court of Uganda and Eusebio Munuo (2012-14) Court of Appeals of Tanzania (ret) Justice Munuo
helped to establish and build Tanzanian IAWJ chapter from nonexistence into a powerhouse. Justice Kikonyogo established the first IAWJ conference in Africa, held in Entebbe. Other women who have held leadership mantle include: Justice Carmen Argibay from Argentina, a founding member and past-president of IAWJ. As a young lawyer, she represented clients who were in disfavor with the government- at a time when she knew well that her job was dangerous, but she chose to do it anyway. She was detained by the Argentine government, but later became the first woman nominated to the Supreme Court. Her stand on issues like abortion and religion earned her criticism that eventually cost her career.

Similarly, IAWJ has over the years been grateful to the leadership of Lady Justice Roselyn Nambuye from Kenya. Her quest to study law and represent women from a young age was commendable. She has demonstrated her leadership skills with courage both in the IAWJ biannual conferences and in different roles assigned. In Panama in 2008, when US immigration officials delayed two of the three panellists on the Jurisprudence of Equality Program, Justice Nambuye rescued the conference by organizing her Kenyan delegation, and other African members into a spontaneous program that was enthusiastically received at the conference. Most recently, she served as one of the judges on the moot court panel at the D.C. biennial, forcefully defending her position in dissent.

In 2008 in Mumbai, Magistrate Chauhan cleared a backlog of almost 1500 cases under the Immoral Trafficking Prevention Act through her leadership which earned her recognition from US Department of State as an anti-trafficking “hero”. As such, it is evident that women Judges represented from different countries have exercised leadership at the higher levels. Women Judges have stood for the rule of law and the independence of the judiciary; faced down corruption and worked under challenging circumstances, yet, with heads high and unflappable smiles. Women judges matter for both democratical reasons and instrumentalist reasons. When women judges reach leadership positions or band together in associations, they start initiatives that advance the course of gender equality in the societies they serve.

Discussants perspective on women in judiciary by Lady Justice Nambuye (Kenya); Lady Justice Mugambe (Uganda); Lady Justice Morenikeji Ogunwumiju (Nigeria); and Lady Justice Roydah Kaoma (Zambia) is summarized in Box 6
BOX 6: Discussants Perspective: Women Leadership in Judiciary

Summaries

Lady Justice Nambuye (Kenya)
At independence, there were no Kenyan women magistrates or judges in the Judiciary system. Reforms that set the pace for women into the judiciary leadership include the Kwach committee set up by Hon. Chief Justice Z.R. Chesoni which recommended the creation of specialized divisions and increase of opportunities for women. Hon. Mr. Chief Justice J.E. Gicheru E.G.H. (Rtd) recommended open competition for all cadres of jobs within the Judiciary. Ouko Task Force of 2007 recommended the establishment of an expanded, well empowered and independent JSC that saw inclusion of women. The Kenyan 2010 Constitution contributed to increased leadership opportunities for women in the Judiciary. Some of the Iconic women pioneers in Kenyan Judiciary include: Hon. Lady Justice Effie Owuor, JA (Rtd) first Kenyan Woman judge in 1983; Hon. Lady Justice Joyce Aluoch in 1985; Hon. Lady Justice Roselyn Naliaka Nambuye 1991; Hon. Lady Justice Mary Ang’awa (Rtd); Hon. Sarah Ondeyo Omolo (Rtd) and Hon. Lady Justice Jessie Lessit

Lady Justice Mugambe (Uganda):
In Uganda, the top-level leadership in judiciary is led by men; the CJ DCJ historically and present. Out of 12 judges of court of appeal 4 are women; Out of 41 deputy registrars 24 are women. There is need for women Judges to strategize on how to champion for leadership spaces in Ugandan Judiciary.

Lady Justice Morenikeji Ogunwumiju (Nigeria):
In Nigeria, significant improvements have been made including the senior positions in the judiciary. Women in Nigeria have broken the glass ceiling as statistics indicate that out 60 judges, 45 are women. All the states and federal courts made a fast-tracking provision for sexual offences and abuse cases. Family courts and judges dedicated to focus on children and women issues have also been set up. Participation of women has brought confidence in the bar, and therefore, women judges should continue to uphold ethical standards, remain incorruptible and show gracious leadership.

Lady Justice Roydah Kaoma (Zambia):
Women Judges have the mandate to give direction and offer leadership in Zambia. In Zambia, The Chief Justice is Woman; Supreme Court has 13 judges; Constitutional Court has 13 judges 6 male 4 females, the president is woman; Appeal Court has 8 Judges, 4 males, 4 female and president a woman; The High court 50 judges, female 23, male 20; Subordinate courts have 120 male judges, and 71 female judges. Some of the major achievements in Zambia include: all superior courts are headed by women; there is improved training for judges and judicial officers and finally; there is improved relations with the civil society and other stakeholders who have contributed to the current leadership structure in the Zambian judiciary.
9.5 Conclusion
This paper has presented an overview of equality of women in the judicial system and has provided statistics of how women leadership is represented at the highest courts in some African countries. The paper has also presented eminent women judges who have made it to the highest courts. This chapter concludes by noting that for women to reach the highest echelons of judiciaries, they should band together and champion for equity and equality both in the elective and appointive positions within the judiciary. Women judges should continue upholding highest ethical standards within the judiciary, and remain incorruptible, rule with grace, while at the same time, defend gender equity and equality within judiciary with courage and firmness.
CHAPTER TEN

Closing Remarks

The International Association of Women Judges (IAWJ) conference closing remarks were delivered by Deputy Chief Justice of Kenya Hon. Lady Justice Philomena Mwilu

Hon. Lady Justice Philomena Mbete Mwilu, MGH (Deputy Chief Justice and Vice President- The Supreme Court of Kenya)

Over the last three days, women judges and magistrates from across the region and the globe, ably facilitated by a panel of distinguished presenters, discussants and experts, have engaged in positive and constructive interaction and discourse on the opportunities and challenges we face as women judges regarding our role in enabling the attainment of the 2030 Agenda for Sustainable Development and the sustainable development goals (SDGs) contained therein. The themes and topics that will be discussed, debated and interrogated for three days shall be crucial in setting the agenda, not just for IAWJ and our respective local chapters, but for the wider law and development strategies at a municipal, regional and global level.

The themes at this year’s Regional Conference enabled us to better appreciate the nexus between our roles and experiences as women judges, and the sustainable development goals. Women judges have a unique position in promoting human rights, gender parity, access to justice for women and the elimination of all forms of gender violence and discrimination. During the adjudication of disputes brought before us, particularly in matters involving family, property, succession and matrimonial causes, we see not only the barriers and specific obstacles women face in accessing justice, but the systemic and structural discrimination engendered by our legal, cultural and societal frameworks. Women living in poverty experience discrimination and disempowerment more so due to their financial constraints. Further, these difficulties are compounded with lack to minimal access to justice mechanisms on cases of abuse and human rights violation.

The relationship between the discrimination and marginalization of women that will be canvassed over the next few days - the simply appalling levels of violence and discrimination women continue to endure; the specific and more acute impacts of poverty on women and the lack of adequate healthcare; the specific targeting of women as a strategy in conflict situations - the relationship between these aspects of discrimination and marginalization and the SDGs and development of our societies as a whole is now widely acknowledged. Our understanding and knowledge is deepened through engagements such as these.
But the critical aspect that this conference will highlight is our role as women judges, not women jurists. Female jurists continue to face obstacles both in the Bar and on the Bench. In addition to sexual harassment and numerous ubiquitous forms of discrimination we face in the workplace, another one oft-cited challenge faced by women judges is the non-support they receive to enable them balance their profession and family responsibilities.

Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) not only requires the removal of legal and other barriers to women’s participation in the Judiciary but requires a range of practical and structural measures, including temporary special measures, to ensure women’s equal enjoyment in practice of the right to hold judicial office. It is the inherence of equal justice in a diverse society that those administering justice reflect and embody that diversity: “women who are bound by the justice system should be participants in it at all levels”. Societies in which women are excluded from public life and decision-making cannot be described as democratic.

Increased judicial diversity enriches and strengthens the ability of judicial reasoning to encompass and respond to varied social contexts and experiences. In my view, without full and equal representation of women in the judiciary, the overall quality of judicial decision making is impoverished, and this impacts generally and specifically in cases particularly affecting women. Lack of diversity in judiciaries can undermine public confidence in the judicial process. Deficits in women’s full and equal participation in the judiciary may take different forms in different legal systems. In some cases, gender diversity among judges is significantly low across the board. In others, female representation drops significantly when considering appellate courts and leadership roles. In some contexts, the presence of women judges may be highly concentrated in courts with limited or specialized jurisdiction, or may be excluded from handling certain matters.

Improving the situation requires action in a range of spheres. Judicial structures, roles and functions, appointment procedures, and terminology vary from country to country and within regions. Context is therefore vital and women’s participation within any judicial system cannot be viewed in the abstract. As the obstacles and challenges faced by women vary, at least in nuance and contour, so too must opportunities and strategies for change be tailored to the specific jurisdiction. The Judiciary in Kenya has taken steps to ensure that the composition of the institution reflects the composition of society. Increased diversity within a judiciary enables the institution better respond to the diverse contexts and situations within which matters for adjudication arise.

I look at us gathered here today proudly as we serve as examples and role models to the girl child and those who aspire to become lawyers, magistrates and judges, and women in leadership generally. As the retired Associate Justice of the US Supreme Court, Sandra Day O’Connor once said:

‘As women achieve power, the barriers will fall. As society sees what women can do, as women see what women can do, there will be more women out there doing things, and we’ll all be better off for it.’
I pay tribute to those brave, ambitious and hard working women judges and jurists who knocked down the closed doors and broke glass ceilings for us to get where we are at now, especially for us lady African jurists. By reflecting on those who have gone before us, we are reminded of just how far we have come and the exceptional things women in power can achieve. We must now carry the baton and work ceaselessly to identify and remove obstacles, change attitudes and increase the opportunities for those who now look to us for guidance and inspiration. I commend the Hon. Lady Justice Hannah Okwengu JA, the Chair of KWJA, and her secretariat for their hard work and commitment in organizing and hosting this Conference. I thank all our development partners for their continued assistance and support to the Judiciary and generally in enhancing the rule of law in Kenya.
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APPENDICES
APPENDICE 1: RESOLUTIONS
THE 2017 INTERNATIONAL ASSOCIATION OF WOMEN JUDGES (IAWJ) AFRICA REGION CONFERENCE, 16 – 20 MAY 2017, NAIROBI, KENYA.
CONFERENCE RESOLUTIONS AND RECOMMENDATIONS

The 2017 IAWJ Africa Region Conference was held between 17th to 19th May, 2017 at Safari Park Hotel, Nairobi, Kenya. The conference was themed: “Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies”

The conference provided a platform for women Judges from Kenya, Uganda, Tanzania, Ivory Coast, Ghana, South Africa, Botswana, Nigeria, Benin, Zambia, Trinidad and Tobago, Argentina, USA, and Mexico, to reflect on their roles and identify opportunities and strategies through which the women judges can use their position to achieve sustainable development goals. The deliberations focused on issues covering Women and the justice system: the poverty question; Gender vulnerability in conflict situations; Emerging issues in the Implementation of Legislation on SGBV; Emerging Gender Issues in the Electoral Process; Sustainable Stakeholder Engagement and Partnerships through Women Leadership; and Harnessing Women Leadership in the Judiciary.

The conference resolved and recommended:

1. THAT women in Sub-Saharan Africa and other parts of the world still suffer poverty and social-economic disparities due to lack of access to resources, poor access to justice, discrimination, and cultural and traditional prejudices. National Chapters of IAWJ Africa Region shall lobby for policy and legislative interventions to remove the stated barriers with a view to facilitating women’s socio-economic empowerment.

**ACTION by:** - National Chapters of IAWJ in Africa Region
- IAWJ
- Stakeholders

2. THAT women Judges are decision makers and change agents in the Society. They should be strategic and exercise judicial alertness in dealing with matters brought to court to underscore women empowerment and eradication of poverty thereby enabling the realization of SDGs in their respective countries.

**ACTION by:** - Women Judges
- National Chapters of IAWJ in Africa Region
- IAWJ

3. THAT National Chapters of IAWJ Africa Region in collaboration with their judiciaries and other stakeholders shall put in place programs that provide Women judges with knowledge and information that will
deepen their appreciation of national, regional and international law, so as to enable them achieve substantive equality by inter alia giving their national Constitutions a purposeful interpretation, and ensuring that human rights commitments are upheld and that the law protects the vulnerable.

**ACTION by:** Women Judges  
- National Chapters of IAWJ in Africa Region  
  - IAWJ  
  - Judiciaries

4. **THAT** women Judges acknowledge that women suffer discrimination, gender based violence and harmful cultural practices that affect the achievement of sustainable development. Women Judges shall therefore endeavor to develop jurisprudence and make pronouncements in judgements that influence legislative reforms, and send out a strong signal that courts will not uphold discrimination or gender based violence against the vulnerable.

**ACTION by:**- Women Judges  
  - National Chapters of IAWJ in Africa Region  
  - IAWJ

5. **THAT** National Chapters of IAWJ Africa Region shall engage in programs that facilitate access to justice and empower women and children.

**ACTION by:** - Women Judges  
  - National Chapters of IAWJ in Africa Region  
  - IAWJ

6. **THAT** Women Judges shall maintain networks with a view to sharing knowledge and best practices in dealing with GBV.

**ACTION by:**-National Chapters of IAWJ in Africa Region  
  - IAWJ  
  - Women Judges

7. **THAT** National Chapters of IAWJ Africa Region shall engage their national judiciaries to ensure that security of judges handling election petition and sensitive cases is enhanced.

**ACTION by:**-National Chapters of IAWJ in Africa Region  
  - National Judiciaries

8. **THAT** women Judges shall identify and actively involve male role models to champion the advancement of gender equality, cultural change and other themes mooted by IAWJ.
ACTION by: -Women judges
   - National Chapters of IAWJ in Africa Region

9. THAT IAWJ and National Chapters of IAWJ Africa Region shall develop a network of women partners and stakeholders for purposes of mobilizing financial resources to advance their objectives.

ACTION by: -National Chapters of IAWJ in Africa Region
   - IAWJ

10. THAT IAWJ and National Chapters of IAWJ Africa Region shall encourage the documentation of best practices and successes of women judges as a way of encouraging other women judges, and the girl child.

ACTION by: - National Chapters of IAWJ in Africa Region
   - Women Judges
   - IAWJ

11. THAT National Chapters of IAWJ Africa Region shall each endeavor to develop a compendium of judgements on landmark decisions and share with other jurisdictions so as to facilitate the improvement of jurisprudence of equality and human rights.

ACTION by: -National Chapters of IAWJ in Africa Region
   - IAWJ
   - Women Judges

12. THAT National Chapters of IAWJ Africa Region shall lobby their national judiciaries to establish GBV court divisions so as to expedite access to justice in GBV cases.

ACTION by: - National Chapters of IAWJ in Africa Region
   - Women Judges
   - IAWJ

13. THAT National Chapters of IAWJ Africa Region shall each compile statistics of women Judges in leadership positions from their countries; their appointments and contribution to justice system and forward to IAWJ to build a database that will provide comparative analysis and learning.

ACTION by: National Chapters of IAWJ in Africa Region
   IAWJ

14. THAT National Chapters of IAWJ Africa Region and Women Judges shall promote the candidacy and nomination of many and diverse women judges in Africa to the international and regional courts with a view to
increasing its numbers in those courts.

**ACTION by:** - National Chapters of IAWJ in Africa Region
   - Women Judges
   - IAWJ

**SIGNED**

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**DATE**

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**Hon. Lady Justice Hannah Okwengu,**
**Judge of Appeal & Chairperson**
**Kenya Women Judges Association**

**EBS  Hon. Dr. Susana Medina**
**President**
**International Association of**
**Women Judges Association**