INTERNATIONAL ASSOCIATION OF WOMEN JUDGES AND KENYA WOMEN JUDGES ASSOCIATION

THE 2017 IAWJ-AFRICA REGIONAL CONFERENCE

Conference Report

THEME:
Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies

Hosted by Kenya Women Judges Association
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INTERNATIONAL ASSOCIATION OF WOMEN JUDGES AND KENYA WOMEN JUDGES ASSOCIATION

THE 2017 IAWJ – AFRICA REGIONAL CONFERENCE

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# Table of Contents

Introduction ................................................................................................................................. 3  
Session 1: Opening Ceremony .................................................................................................... 5  
Session 2: Women in the Justice System: The Poverty Question ........................................... 7  
Session 3: Gender Vulnerability in Conflict Situation ............................................................ 11  
Session 4: Emerging Issues in the Implementation of Legislation on Sexual and Gender Based Violence: Good Legislation, Absurd Results? ................................................................................................................... 14  
Session 5: Gender Issues in the Electoral Process ................................................................. 19  
Session 6: Women in Leadership: Towards Sustainable Stakeholder Engagement and Partnerships .......................................................... 22  
Session 7: Women Leadership in the Judiciary ................................................................. 24  
Conclusion ..................................................................................................................................... 27  
Annexures .................................................................................................................................... 29
Introduction

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 the 2017 IAWJ Africa Region Conference. The conference themed “Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies”. This was the second time KWJA hosted an IAWJ Conference since its inception 23 years ago.

The 2017 IAWJ-Africa Region Conference was held from 16th to 20th May, 2017 at Safari Park Hotel, Nairobi Kenya. 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 the role of women judges in enabling sustainable development goals. This was done through addressing the following topics: Women in the justice system: the poverty question; Gender vulnerability in conflict situations; Emerging issues in legislation on SGBV; Gender issues in the electoral process; Women in leadership: Sustainable stakeholder engagements and partnerships; 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 with specific reference to their roles as judges.

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

i. Probe the outstanding social, economic and legal factors that continue enabling gender-based discrimination and violence against women in Africa and frame issues for renewed deliberation and improved advocacy by the IAWJ, its chapters and members in Africa.

ii. Analyze emerging trends in the prevalence and manifestations of gender-based discrimination and violence and assess the impacts of these trends on the projection of Sustainable Development Goals in Africa.

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

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

v. Foster networks, partnerships, and mobilize resources towards the sustainable implementation of the recommendations and programs of the IAWJ, its chapters and members in Africa.
Session 1: Opening Ceremony

Welcome Remarks:

**Hon. Lady Justice Hannah Okwengu EBS – KWJA Chairperson**

Lady Justice Hannah Okwengu welcomed His Excellency the President of the Republic of Kenya Uhuru Kenyatta and introduced Women Judges from 10 African countries and Argentina, Mexico, Trinidad & Tobago and USA who had attended the conference. She explained that Women Judges had converged to discuss their role in enabling the achievement of Sustainable Development Goals.

**Hon. Susana Medina -IAWJ chairperson**

Hon Medina thanked the KWJA chairperson for the invitation to attend the conference and expressed her excitement to be in Nairobi for the second time. She noted that the current membership of IAWJ was 5000 members and that the African Region has major presence in IAWJ.

**Hon. Mr. Justice David Maraga EGH, Chief Justice and President of the Supreme Court of Kenya,**

Hon Mr. Justice David Maraga thanked the president for accepting to open the conference and the delegates for their attendance noting that this was a sign of their commitment to gender equality. He noted that despite the upbeat assessment of The Economist magazine in its Africa Arising Edition, for the most part, Africa remains the face of poverty and conflict, and that poverty and insecurity is highly feminized. He underscored the need to continue to empower women in order to achieve sustainable development goals and acknowledged that statistics have shown that educating women can yield higher economic dividends for a family and nation. Achievement of all SDGs is important and requires strong institutions like the Judiciary. In fact SDG number 16 focusses on peace, justice and strong institutions. The involvement of women is critical to the realization of all these three elements of peace, justice and strong institutions. Discrimination against women in law and in the administration of justice undermines the development potential of Africa.

Further, Hon Mr. Justice Maraga cited a recent survey by the National Council on Administration of Justice and Legal Resources Foundation which established that women are affected by arrests that relate to acquisition of licenses for small enterprises such as selling vegetables, brewing traditional liquour, picking firewood etc. This deepens poverty of women, families and societies. Additionally conflicts inflict pain and misery to women including death and rape, and even separation from children and loved ones. Africa therefore has a duty to mediate differences before they become full-blown conflicts.

He underlined the need to promote women’s participation in electoral politics and leadership in general noting that this must be accompanied with a commitment to remove cultural barriers. He
congratulated KWJA for their leadership in hosting the conference and outlined the progress that has been made in promoting gender equality in the judiciary in Kenya. In conclusion he called upon both men and women to champion the cause for gender equality.

Keynote Address


His Excellency President Uhuru Kenya welcomed participants to Kenya and reported that Kenya had achieved much in the rule of law. He acknowledged that the law remains the most useful tool for protection of minorities as well as individuals and that justice has not yet been done to the satisfaction of women and girls who still remain under represented. Women and girls in Kenya still face particular challenges in the realization of their rights. Domestic violence and discrimination against girls and women are some of the unique challenges the country continues to fight.

The president outlined measures that have been implemented to empower women and girls. He noted that the Judiciary was the most improved institution in the ratio of men to women. Gender equality must be embraced in order to achieve sustainable development. Women judges are role models to young women who are looking up to them to lead the way. The president through the executive promised to address the issues raised on gender representation and the work of judges. He expressed his readiness to receive the recommendations of the conference and promised to support the outcome.
Session 2: Women in the Justice System: The Poverty Question

Session chair: Lady Justice Mwambachanda, Judge of the High Court of Zambia

Session presenter: Justice Dr. Esther Kitimbo Kisaakye (Justice of the Supreme Court of Uganda)

Panel discussants: Hon. Lady Justice Joaquine De Mello (Judge of the High Court of Tanzania); Hon. Justice Olivia Hungbo (Judge of the High Court of Benin); Hon. Justice Clara B. Ogunbiyi (Justice of the Supreme Court, Nigeria) and Hon. Justice Hellen Omondi (Judge of the High Court of Kenya)

Hon. Justice Dr. Esther Kitimbo Kisaakye – (JSC Uganda)

Hon. Justice Dr. Kisaakye thanked KWJA for hosting the IAWJ conference, and noted that the question of poverty affects women both in absolute and relative ways. She further noted that absolute poverty was the inability of women to access basic nutrition while on the other hand relative poverty refers to lack of access to minimum living standards as prescribed by the government.

According UNDP, over 700 million people in the world live in extreme poverty while another 800 million people are susceptible to a range of social, economic and environmental shocks. She further noted that the causes of poverty included; war and political instability, vulnerability to natural disasters; and national debt. At the individual level, the causes included discrimination and social inequality, gender wage gap, women’s prevalence in low-paid occupations, and lack of work-family support.

Hon. Lady Justice Dr. Kisaakye noted that women constitute a disproportionate percentage of the world’s poor, often referred to “feminization of poverty” and others observe that poverty has a female face. As such, Gender inequality manifests itself in various forms, which include women’s unequal access to economic resources and assets; and through discrimination against women at home, and in the workplace. This is done through unequal pay and opportunity, vulnerable employment disproportionate burden of unpaid work such as caring for children, elderly and the sick. Persistent and widespread violence against women and girls has a disproportionate impact on women in natural disasters and environmental degradation.

In addressing the question of poverty, Hon. Lady Justice (Dr) Kisaakye posited that poverty stood prominently in 2015 through the introduction of sustainable development goals (SDGs) by which the United Nation (UN) intended to address this issue.

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1 Goal 2: Focuses on eradication of hunger; Goal 3: attainment of good health and well-being; Goal 4: Quality of education; Goal 5: Gender Equality; Goal 6: Clean Water and sanitation; Goal 7: Affordable clean energy; Goal 8: Decent work and economic growth; Goal 9: Industry, Innovation and infrastructure; Goal 10: Reduced Inequities; Goal 11: Sustainable cities and communities; Goal 12: Responsible consumption and production;
Some of the interventions suggested to enhance equality and realization of SDGs included policy, legislative, educational and judicial interventions. Hon. Lady Justice Dr. Kisaakye equally noted that over and above policy and legislative mechanisms, there was need for women judges to utilize their judicial platforms to pronounce authoritative court rulings that would safeguard and improve the lives of women. To this end, it was argued that courts of law had the capacity to use rulings to enhance the lives of women and other marginalized groups in society. The following are some of the case studies from Uganda on examples of judicial interpretation that empower lives of women and gender equality:

- **Case of Julius Rwabinumi v Hope Bahimbisomwe, Civil Appeal No. 10 of 2009**, which involved questions of ownership and division of property on divorce. It was declared that on divorce, a spouse can share in the property which was acquired either during the marriage or before the marriage, if she or he can prove that she or he contributed either to its acquisition or to its development.

- **The case of Tropical Bank vs. Grace Muhwana, Supreme Court Civil Appeal No. 04 of 2011**, in which the wife successfully sued the bank for wrongfully selling off her matrimonial home to recover moneys it had lent to a company which held a Power of Attorney which had been unilaterally granted by the husband.

- **The case of bride price refund, Mifumi (U) Ltd & Anor. Vs. Attorney General, Constitutional Appeal No. 02 of 2014**, decided in 2015, which declared the practice unconstitutional.

- **The Case of CEHURD v. Attorney General, Constitutional Appeal No. 1 of 2013**, on Government’s inaction over the high maternal mortality rate, alleged to result from frequent stock-out of medical supplies and inadequate budgetary allocations to maternal health. As such, it was noted that the court should also use constitutional power within their various jurisdictions to advance good governance and sustainable development.

Justice Dr Kisaakye concluded that the courts have the power and choice to uphold justice and apply the law towards poverty alleviation especially on women related issues, and that there is need for judicial alertness.

**Panel Discussion**

**Hon. Lady Justice De Mello, Judge of High Court Tanzania**, asserted that there is a general sense that women are left as the most poor compared to men, influenced by different factors. There have been various interventions put in place but with little support from men. Literacy levels among women play a role since more women are illiterate further accelerating poverty and inequality. Statistical data shows that there are common areas like matrimonial violence and property rights that are outwardly a contributing factor. Strategic jurisprudence is therefore required. In practice Tanzania Women Judges Association (TAWJA) has worked towards strategic jurisprudence. TAWJA is grateful to the government for legal aid and civil society for their support and awareness.

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Goal 13: Climate action; Goal 14: Life below water; Goal 15: Life and Land; Goal 16: Peace Justice and strong institution; Goal 17: Partnership for SDG goals
respectively. There are trends and patterns of representation in Tanzania showing improvements but the traditional trends still persist. She recommended that these traditional prevalent trends should be checked, so as to get rid of them.

Hon Justice Clara B. Ogunbiyi (JSC-Nigeria) explained that odds against women are multifarious, and of different faces. However many of the issues raised in the conference have been raised before in other fora. Unfortunately conference declarations are yet to yield significant results for women. In Nigeria, over 70% of the population live below poverty line and women form the larger proportion of this group. Women judges are among the privileged few and should help provide a solution through the privileges they access. Court pronouncements are powerful. Women Judges should use this to make powerful and effective decisions. World development report of 2012, articulated that courts are powerful agents of change especially on gender equality related cases with pronouncement backed with state support. To this effect, courts have exclusive rights to interpret the constitution and the onus rests more on the judiciary than any institution.

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 CEDAW in 1970s and since then, there has been emergence of advocacy groups including the Nigerian Human Rights Commission.

Hon: Justice Olivia Hungbo, Judge of the High Court of Benin observed that access to justice for women is inhibited by poverty and other socio-economic disadvantages. Three quarters of women are poor materially and cannot access finance. Furthermore, violence against women has been perpetuated in psychological, sexual, and economic spheres. Women judges can help in two ways: first is through judicial support guided by understanding the legal text and international norms, which will enable them administer justice. Second, judge’s role is also in creating awareness about law. Through Judicial activism, women judges should therefore: participate in sensitization, and creating awareness among the masses and disseminate existing norms.

Hon. Lady Justice Hellen Omondi, Judge of the High Court of Kenya noted that access to justice, women in justice system, and the poverty question is a more related subject, and that there should be focus on courts and other actors in the justice system. She also observed that offences that face women are more related to socio-economic factors, or are economic hardship driven. These include offences like brewing liquor, petty stealing, offences under the Forest Act, loitering for immoral purposes. Challenges facing women clients include, lack of physical access to justice system, high court fees, inability to meet bail and bond terms, intimidating official language, intimidating court setting, relationship and cultural aspects, court delays, and inequality in ADR process driven by largely male elders.
**Plenary discussions: Key issues and recommendations**

In response to a question on judicial activism, whether the same was compatible with the roles of judges and the civil society activism, it was clarified that there is opportunity in judicial activism but it must be grounded in the constitution, or international human rights arguments, and have legal basis. Some participants expressed the view that women judges are ready for judicial activism. It was also noted that international human rights instruments can complement national laws especially where there are gaps on the national laws. Women judges were urged to help raise the bar when interpreting national laws, as there was need to adopt international standards as a measure for domestic legislation.

It was pointed out that training of judges and magistrates on emerging issues (affecting women) was crucial. In addition, Judges need to understand how society is structured – women are not as poor as projected but rather issues like unpaid labour to women and other injustices are committed against women. Further women judicial officers can help advance women socio-economic rights especially on laws that discriminate women like customary law. This can be done through open approach of the law. On strategic litigation Justice De Mello suggested that an African Compendium on some of the judicial pronouncement on women rights should be compiled. This can borrow from a practice already in place by Tanzania Association of Women Judges (TAWJA).

In case of divorce, sharing of property in case of substantial contribution need not be monetary as women may not participated directly in creating wealth but facilitated the man and this qualify them as shareholders in the property.
Session 3: Gender Vulnerability in Conflict Situation

Session Chair: Hon lady Justice Imani Aboud (Judge of the High Court of Tanzania).

Session Presenter: Hon Anne Amadi, (Chief Registrar Judiciary, Kenya)

Panel Discussion: Hon Lady Justice Henrietta Wolayo (Judge of the High Court of Uganda), Hon. Justice Marie C Koffi (Cote d’ Ivoire), and Hon. Elizabeth Juma (Senior Principal Magistrate – Kenya)

Hon Anne Amadi, (Chief Registrar Judiciary, Kenya)

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 abuse, as part of militia and military campaigns. Throughout history, survivors of sexual and gender based violence in conflict situations have faced significant barriers in accessing justice due to among other things poor investigation and prosecution of sexual violence. **Hon Anne Amadi**, the Chief Registrar of the Judiciary in Kenya discussed the role that women judges can play in addressing gender vulnerability in conflict situation noting that although significant progress has been made in the last 20 years in prosecuting sexual and gender based violence in conflict settings, women and girls survivors of SGBV face significant barriers in accessing justice. She noted that prosecution of sexual violence before international tribunal was initially weak with the first two post war international criminal tribunals of Nuremberg and Tokyo failing to recognize rape as prosecutable offences despite widespread acts of rape committed by both sides to the conflict. This, coupled with lack of women judges, prosecutors or decision makers in these two early tribunals, created legal and institutional failures that denied women legal protection against sexual violence in conflict settings. However, international tribunals have become proactive in prosecuting sexual violence and recognizing rape as prosecutable offence. The International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were among other first tribunals to found accused persons guilty of rape as a crime against humanity and as a crime of genocide respectively. In **Prosecutor v Anto Furunzija**², ICTY found the accused guilty of rape for his involvement and failure to stop or curtail the sexual assault of Bosnian Muslim women while in **Prosecutor v Jean Paul Akayesu**³ the ICTR was proactive in calling for amendment of the original charge to include rape as a crime of genocide. The ICTR went on to find the accused guilty of rape and expanded the meaning of rape to include forced nudity. Hon Amadi attributed these successes not only to the treaty recognition of rape but also presence of women in decision making roles within these tribunals such as Justice Florence Mumba who was one of the Judges sitting at ICTY. However, Hon Amadi noted the challenges in prosecuting perpetrator of sexual violence during the conflict in Sierra Leone and the 2007/8 post-election violence in Kenya where judges may be reluctant to pay attention to gender related crimes or poor investigations and prosecution skills may undermine access to justice for survivors.

² ICTY, Anto Furundzija v Prosecutor (2000) IT-95-17/1-A
³ ICTR Prosecutor v Jean Paul Akayesu (ICTR)-96-4T
Panel discussions

**Lady Justice Henrietta Wolayo** noted that Uganda has faced challenges in prosecuting sexual violence committed in conflict situation such as the National Resistance Army War (1981-86), the Lord’s Resistance Army War in Northern Uganda (1986 to approx. 2004) and the Teso insurgency (1988 -92). She further explained that the enactment of Amnesty Act undermined prosecution of perpetrators of sexual violence committed during the LRA War in Northern Uganda from 1986 – 2004. The Judiciary in Uganda has established the International War Crimes Division in the High Court to deal with challenges of prosecuting international war crimes in Uganda. In order to improve knowledge and skills among judges in addressing gender equality in the judicial process, the commonwealth secretariat launched the Judicial Bench Book on Violence Against Women in Commonwealth East Africa.

According to **Hon Elizabeth Juma**, Kenya has suffered different forms of conflict including election related violence, and resource based conflict. During the 2007 post-election violence at least 900 women and girls were raped but many incidences of sexual violence went unreported. In additional to judicial and legislative interventions to strengthen response to SGBV, the judiciary in Kenya has also intervened in some cases, and has found the state guilty for failing to conduct proper investigations in regard to complaints of SGBV leading to lack of prosecution⁴. **Hon Marie C. Koffie** also highlighted the challenges some of the consequence of conflicts in Cote d’Ivoire and the intervention that government and development partners pursued to among other things, strengthen the judiciary and other institutions in order to ensure access to justice for women and children.

**Plenary discussions: Key issues and recommendations**

The conference noted that gender vulnerability in conflict situations is exacerbated by among other things poor investigations and prosecution of sexual violence, cultural, physical and economic barriers to access justice, stigma and discrimination against survivors of sexual violence, denial of justice, and lack of reparations schemes for survivors. In order to reduce gender vulnerability in conflict situations, the panelist and participants made several key recommendations including the following:

1. States should reform and strengthen their national legislation to outlaw all forms of sexual and gender based violence in line with minimum regional and international standards. The law reform process should ensure adequate and meaningful participation of all women and girls in particular survivors of sexual and gender based violence.

2. Judges, in particular women judges, should lead national discourse on addressing gender vulnerability in conflict situations. Women judges should proactively develop and enhance

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national jurisprudence on sexual violence as an international crime in line with emerging progressive jurisprudence in international tribunals.

3. States should ensure that there is a gender-sensitive justice system that would enhance access to justice for women and girls in conflict situation. The justice system should ensure accessibility by victims and witnesses by among other things eliminating filing fees, be responsive to the circumstances of the victims and witnesses, deal promptly with the cases of sexual violence and provide adequate protection, support and reparations for survivors and witnesses.

4. Specific measures, including affirmative action measures, should be implemented to increase women participation in the justice sector and ensure equal representation of men and women in the judiciary.

5. Training and capacity building for all justice sector actors including judicial officers, police, prosecutors, and lawyers on international human rights standards.

6. Transitional justice mechanisms should consider among other things creating special courts to deal with sexual violence and adopting mixed model of court with input from both the domestic and international courts. Women and girls should also be included in peace process.

7. Mobilization of adequate financial and technical resources towards supporting legal, medical and other needs of women in conflict settings.

8. Public awareness campaign on rights of women and girls in conflict situation
Session 4: Emerging Issues in the Implementation of Legislation on Sexual and Gender Based Violence: Good Legislation, Absurd Results?

Session Chair: Hon. Lady Justice Roselyn Korir, Judge of the High Court of Kenya

Session Presenter: Hon. Lady Justice Stella Ogene, Judge of the High Court of Nigeria

Panel Discussants: Justice Collette E. Attakpo (Cote d’Ivoire), Justice M. Victor (Judge of the High Court of South Africa), Hon Lady Justice Stella A Amoko (Justice of Supreme Court of Uganda), Hon. Lady Justice Jessie Lesiit (Judge of the High Court of Kenya) & Lady Justice Sharon K Newa (Judge of the High Court of Zambia)

Hon. Lady Justice Stella Ogene—(JHC- Nigeria)

Cross-currents of Custom as Catalyst for Gender Based Discrimination and Violence against Women in Nigeria

Hon Lady Justice Ogene started her presentation by noting that gender based discrimination and violence is rooted in diverse challenges emanating from social-cultural, economic, religious and legal perspectives. This compounded by the cultural diversity, precipitate a cross-current of customary practices in defiance of legislation that militate against implementation and sustainable development- particularly for women in Nigeria. Hon Lady Justice Stella Ogene’s paper examined customary jurisprudence on custody of children under customary law and child marriage in the context of Nigeria and moderated by national legislations and international conventions on women’s rights. She stated that customary law regulates the lives and transactions of the indigenous people, it is organic and dynamic.

Violence against women and children is perpetuated through domestic violence, armed conflicts, wars, political violence, social or economic. In Nigeria, customary laws, constitute violence against women and children though harmful practices and archaic customs, like depriving widows of their inheritance, child marriage and female genital mutilation. Like many other African states, Nigeria thrives on patriarchal society and most perpetuate gender based discrimination against women where they are forbidden from taking leadership positions and some economic activities.

Issues for renewed deliberation and improved advocacy

In Justice Ogene’s view massive sensitization will reduce violence against women and girls and in turn contribute to economic efficiency as the World Bank acknowledges that gender equality is smart economics and has implications for progressive development. This means that there is need to engage stakeholders in the justice system for capacity building and training.

On assessment of the impact of G.B.V. on Sustainable Development Goal in Africa, Judge Ogene identified child marriage as denying the victim access to formal education and therefore directly
affecting their social economic status. Traditional beliefs, religious beliefs, opposition from some of the male folk and government’s inability to checkmate certain policies of some governmental institutions were some of the challenges faced in achieving SDGs.

**Emerging Jurisprudence:**

Finally Judge Ogene identified the following positive developments:

- **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 hairs or any part of the body, or be remarried by a 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.*

- **Violence Against Person’s (Prohibition) Acts (VAPP), 2015.** The Act reflects all types of violence including spouse battery, forceful financial dependency and use of substances to attack unsuspecting victims, widowhood practices, female circumcision, and political violence.

In conclusion, Judge Ogene urged women judges to note that bold and enforceable judicial pronouncements are a pace setter in asserting the need for equality

**Panel Discussion:**

**Justice Collette E. Attakpo (Cote d’Ivoire)**

In Cote d’Ivoire gender based violence has been on the rise in different parts of the country. The violence and discrimination is manifested in different ways but common to the experiences of other African countries. In an effort to counter violence against women, policies and other legal interventions have been established led by the provisions in the constitution. The legislations particularly address rape, sexual harassment prostitution among other sexual offences. The country has domesticated international legislations to show its commitment towards fighting sexual and gender based violence including the African Charter on Rights and Welfare of the Child.

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.
In conclusion she lamented at government’s failure to have a strategic plan on dealing with women issues since GBV cases and impunity were on an upward trend. Maputo protocol has not yet been realized and much is supposed to be done by women judges.

Justice M. Victor (JHC-South Africa),

Sexual and Gender Based Violence Legislative Responses in South Africa

The session so far proposes, activist judges to be objective and activist jurisprudence that incorporates international treaties and also fearless challenge to retrogressive customary law.

Sexual and gender based violence is lethal, devastating and affects family members negatively. South Africa’s’ progressive legislations include: Domestic Violence Act, Criminal Procedure Act, Criminal Law Amendment Act, Firearms Control Act and Anti-Trafficking Act.

In the case of Naidoo v. Minister of Police and Others 2016 (1) SACR 468 (SCA), the police failed in their duty by refusing to accept charge of domestic violence by a complainant and requiring her first to obtain protection order. The Minister was ordered to pay R 280 000 to the plaintiff. A study conducted by Medical Research Council, University of Cape Town and Open Society Foundation, and statistics from National Mortuary Based Sample and Autopsy Reports 1999 to 2009 showed that non intimate homicide was down, intimate femicide and rape homicide was up and that in 1999, a woman died every 6 hours at the hands of boyfriend and husband. The research further reported the highest per capita rates of rape reported in the world. High levels of violence made women accept coercive sex as a norm. The approach enquired to understand why progressive laws were failing or is it hard to legislate social change? However, legal, social and cultural strategies are required.

The Minister of Women in the Presidency partnered with South African Chapter of IAWJ in dialogue with stakeholders and NGO’s in every province on 16 days of activism against gender based violence. Eminent challenges like police pace in expediting justice, a compromised offender by victim’s family, and lack of resources should be addressed. It might be the time we considered domestic violence register.

Hon Lady Justice Stella A Amoko (JSC- Uganda)

Uganda has many different stakeholders and associations dealing with SGBV, however, this and many other interventions have not solved the problem. The situation is rather better now that circumstantial evidence can now be used in a court of law and defilement is punishable by death sentence.

In dealing with the challenges of SGBV, media too should engage and play a bigger role in this campaign. Open courts have been challenged undermining privacy. Other challenges include minimal funding, poor record keeping, corruption, lack of data and poverty.

Lady Justice Stella Amoko recommended the creations of an SGBV division in the courts and lobbying for the enactment of a sexual offender’s bill. Training of judicial officers on cases related to SGBV and courageous decisions on SGBV matters should also be encouraged.
Hon. Lady Justice Jessie Lesiit (JHC-Kenya)

Proving the age of the victim especially in remote areas has been a challenge. In some instances, the parents of the victim are unable to establish their age. In such cases, the courts require guidance since the age of the victim has to be established scientifically.

Adolescent sexuality is one of the other challenge. Boys bear the punishment even when adolescents may have had consent in indulging in underage sex. DNA profiling and lab facilitation is key in fastening the administration of justice. The process is expensive and therefore facilitation is required.

Statistics of SGBV offenders need to be maintained for follow up and measurement

What can IAWJ do?

Women Judges should consider participation in sensitization of SGBV issues and address stereotypes. She gave examples of decisions made in the High of Kenya that reflected prejudice and cultural attitudes of the judicial officer that was discriminatory and promoted sexual gender violence. She applauded the work done by Court User Committees (CUCs) in Kenya in disseminating information and sensitizing the community.

Lady Justice Sharon K Newa (JHC-Zambia)

In Zambia, SGBV cases have increased up to 4998 in 2017. GBV related murders had also increased from 18 to 24. The capital city Lusaka had recorded the highest number of these cases. Courts had delivered severe sentences to the offenders but this had not had any quantifiable impact in restraining the offenders. An SGBV Act was enacted to address some of these challenges. The Act provides for protection order. Certain categories of groups have been given responsibilities to assist and advice survivors of SGBV e.g. police religious leaders, teachers etc. The Act enhances access to justice by enabling environment to launch a GBV case and also sets out a wide range of conduct of the suspect. It empowers the magistrate to request a custody order on any weapons like firearms and the court may issues a protection order during the trial or apply order of separation.

Benefits of the legislation

- Allows certain people to make applications on behalf of a victim
- The victim can access medical service free of charge
- There are 2 fast track courts
- Makes provision for video conferencing
- Mediation is acceptable in the Act.
- GBV fund provides for material support.

Despite all these positive changes, few cases were being filed because of minimal sensitization and awareness and this had been identified as an area for improvement. Going forward, there will be continued collaboration and coordination with all stakeholders.
**Plenary discussions: Key issues and recommendations**

There was concern expressed that in some cases traditional healers have posed a challenge in cases where they take advantage and abuse their “patients’ under the guise of healing hence the need for protection of girls and women from abuse by traditional healers. It was also noted that cases of incest are common and stiff penalties should be considered in order to discourage potential offenders.

Also although there are good and comprehensive legislations on SGBV, SGBV cases continue to increase. Therefore, extra interventions apart from the law should be explored. There should be dialogue on criminalization of sexual relationship between adolescent minors since only boys were bearing the brunt of the offence even when both agree.
Session 5: Gender Issues in the Electoral Process

Session Chair: Hon Lady Justice Faith Mwondha, Justice of the Supreme Court of Uganda

Session Presenter: Ms. Jane Serwanga, Gender specialist, UNDP/UN Women

Panel Discussion: Hon. Lillian Arika, Senior Principal Magistrate and the Secretary, Judiciary Committee on Election, Kenya), Hon. Lady Justice Patricia Saleh Fikirini, Judge of the High Court of Tanzania, Hon. Justice Mariama Owusu, Justice of the Court of Appeal in Ghana, and Hon. Justice Uwani Ab’Aji, Justice of the Court of Appeal in Nigeria.

Ms Jane Serwanga, Gender Specialist, UNDP/UN Women

Ms Serwanga highlighted generally why political participation of women was necessary. Focusing on achieving Sustainable Development Goals, she pointed out that specifically Goal Number 5 on realizing gender equality and empowerment of all women and girls requires among other things promotion of women’s political participation and leadership throughout the pre-election, election and post election phase. In this regard support to more women to get on ballots, go to vote, and attain political office was crucial Ms Jane Serwanga discussed the plight of women experiencing violence during the electoral process noting that despite the entrenchment of formal equality for women in leadership, violence against women is the greatest barrier to women’s effective participation. This was because women suffer higher vulnerability, as electoral violence 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.

Ms Serwanga explained that principles of women’s participation in electoral process are anchored in the Beijing Platform for Action (1995), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Security Council Resolution 1325 (2000); the African Charter on Human and People's Rights; and the Rights of Women in Africa (Maputo Protocol, 2003) yet representation by women in most African states remains way below the desired 30% critical mass that is required to result in notable change in decision making.

According to Ms Serwanga, a country’s electoral system affects women’s participation. For instance, Rwanda (63.8%); Sweden (43.6%), South Africa (42.1%) and Finland (41.5%) that are among the highest ranked globally in women’s representation, apply proportional representation leading to an increase in women’s representation. Countries such as Kenya that apply the first-past-the-post (FPTP) electoral system, have difficulty in achieving fair representation of women. Unfair tactics, and at times violence often characterize FPTP electoral system. Recognizing that jurisprudence, legislative and policy interventions can ameliorate gender based discrimination and violence, and promote women’s participation in the electoral process, Ms Serwanga highlighted cases before national and international tribunals where judges have addressed issues of violence against women including EIPR and Interights v. Egypt (2013) among other cases. She concluded that women judges
have a special role to play in the realization of SDGs. Women judges, should therefore be effectively sensitized and equipped with knowledge of contextual realities and how gendered violence uniquely impacts women; and that a deep appreciation of *de jure* protection offered by the robust body of law, will improve judicial reasoning.

**Panel discussion**

Hon Lillian Arika explained that Kenya has established the Judiciary Committee on Elections (JCE) that is mandated to provide a sustainable mechanism to assist the Judiciary continuously prepare for and discharge its mandate on election dispute resolutions. The need for such committee was informed by the experience of the 2007 post-election violence, which was partly blamed on lack of confidence in the judiciary to impartially and timely resolve election related dispute. **Hon Lillian Arika**, the Secretary to the JCE outlined the achievements of the JCE. She also listed the progress made and challenges faced in promoting participation of women in the electoral process in Kenya.

Fewer women are able to challenge results of elections in court due among other things lack of finance. Representation of women in political party leadership and parliament is still low despite the creation of special seats in parliament that are reserved for women. Violence against women is another major challenge facing women aspirants and candidates. Women political leaders have played a leading role in advocating for affirmative action for women in the political arena. The Constitution of Kenya obliges the State to take legislative and other measures to implement the principle of *no more than 2/3 of members* of elective or appointive bodies shall be the same gender. The judiciary has recently pronounced judgment calling upon the Kenyan parliament to enact legislation to implement the principle of the 2/3 gender rule. Judges Fikirini, Ab’Aji, and Owasu also highlighted similar challenges faced by women candidates and political aspirants in Tanzania, Nigeria and Ghana. Generally, lack of financial resources to successfully mount an election campaign, or to contest election results, and weaknesses in evidence collection and prosecution of election petitions are key challenges that need to be addressed. However, Ghana is among few countries where women have risen to the upper echelons of the judiciary with the current Chief Justice and also the Head of the Electoral Commission both being women. **The panellists** called upon women judges to support and champion the cause of increasing women representation in the electoral process.

**Plenary discussion: Key issues and recommendations**

It was agreed that women judges can play a critical role in translating formal equality into substantive equality and ensuring state accountability for its international obligations, including prevention of violence against women, security for judicial officers presiding on election cases and other sensitive cases, The Conference recommended that:

1. The judge has a role to give purposeful interpretation to the Constitution, and women judges should be provided with knowledge and information that deepens their appreciation of national, regional and international law. This will help them deliver substantive and not just formal equality that strive to see that human rights commitments are upheld.
2. Women Judges should acknowledge that women suffer multiple levels of oppression (intersectional discrimination and address this reality through pronouncements in judgements that influence legislative reforms.

3. Women Judges should enforce due diligence standard in cases of violence against women, in assessing state responsibility to eliminate violence against women in line with the Declaration on the Elimination of Violence against Women (1993).

4. Women Judges should 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.

5. Security of judges handling election petition should be enhanced taking into account the sensitivity of the cases and level of security threats facing judicial officers.

6. Women aspirants should be provided with adequate financial support to enable them to effectively participate in the electoral process and to improve representation of women in governance.

7. Women aspirants should also be provided with legal support and training and capacity building to be able to successfully challenge unfair electoral outcomes in court.
Session 6: Women in Leadership: Towards Sustainable Stakeholder Engagement and Partnerships

Session chair: Hon Justice Binta Nyako, JCA, Nigeria

Session presenter: Prof Kameri Mbote, Immediate Former Dean Faculty of Law, University of Nairobi

Panel Discussants:
- Hon Lady Justice Martha Koome, JCA, Kenya
- Hon Justice Sabore K Guiro, Cote d’Ivoire

Women in Leadership – Towards Sustainable Stakeholder Engagement – Prof Kameri Mbote

Participation of women in all leadership levels is vital to the success and sustainability of the world economy. Proactive leadership needs to promote and include women, as gender equality is one of the goals’ that rears its head in all the other seventeen goals. Prof Kameri Mbote challenged women to revolutionize leadership and dramatically change the outcomes to justify representation and non-discrimination by participation. Individual women’s presence may not bring about women empowerment since women integrate into mainstream institutions. Women leadership ensures social benefits since it enables society to utilize the potential of all its people, both men and women. Prof Kameri Mbote noted that women have made significant progress in the judiciary in countries such as Gambia, Ghana, Gabon, and Senegal where women have served as Chief Justices or President of Constitutional Court but in some countries representation of women in the judiciary is low. There are fewer women in high court and majority of women are concentrated in the magistracy. Similar trends may be observed in political and executive representation in parliament and cabinet as well as in economic spheres.

The law is seen by the feminist school of thought as a double edged sword: it may be a powerful tool for promoting rights of women and girls but it may also reinforce social injustice and marginalize women. She called for measures to change dominant narrative and patriarchy to ensure optimal participation of women. She recommended among other things the enactment of laws for equal treatment of men and women, enactment of quotas in political systems, and use of measures beyond the law such as building alliances and partnership for women empowerment.

Panel discussion

Lady Justice Martha Koome stated that beyond the formal spaces in political leadership, academia corporate world, business and civil society organizations, women also silently occupy other unrecognized positions in their communities including their homes, social structures such as religious networks and in the informal sector. She urged women in the judiciary to leverage their power and authority to influence substantial social transformation noting that judges, magistrates and other leaders are not using their leadership positions as agents of change, to interpret the law in solving social problems such as female genital mutilation. She singled out the Court Users Committee model in Kenya as a sustainable platform
for networking and stakeholder coordination that should be embraced by members of the judiciary. Judges can leverage their power and authorities of convening CUC’s and get every actor to deliver on their mandate as per the Constitution and the law by gently reminding them of the responsibilities bestowed upon them by the Constitution. **Hon Justice Sabore** noted that gender equality has a running theme in all 17 sustainable development goals. She discussed the measures that have been pursued by the Ivory Coast government to integrate SDGs in national development policies and affirmed that SDG’s cannot be achieved without gender equality.

**Plenary discussion: Key issues and recommendations**

The plenary acknowledged the need to celebrate and profile women’s achievement in the judiciary and other spheres of life. The key recommendations of the sessions included the following:

**Women judges and their national and regional associations should**

1. Develop strong working relationship or an understanding with the legislature and the executive
2. Build sustainable partnership and engagement with all justice sector actors through multi-stakeholder platforms such as Court Users Committee
3. Mobilize financial resource for sustainable partnership and networking
4. Raise awareness and profile best practice examples of work of women judges in leadership
5. Lobby for Government and Legislature to:
   - (i) adopt national laws for equal treatment of men and women taking into account historical disadvantages
   - (ii) adopt and implement affirmative action policies for women in the electoral processes by among other things providing for quotas & regulation of political parties to ensure compliance
Session 7: Women Leadership in the Judiciary

Session Chair: Hon. Justice Shane Kgoele, Judge of the High Court of S. Africa
Presenters:
- Hon Susana Medina - IAWJ President
- Ms. Lisa Davis - IAWJ Executive Secretary

Panel Discussion: Hon. Lady Justice R. Nambuye (Justice of the Court of Appeal of Kenya), Hon Lady Justice L Mugambe Judges of the High Court of Uganda), Hon Justice Morenikeji Ogunwumiju (Justice of the Court of Appeal of Nigeria) & Hon. Lady Justice Roydah Kaoma (Justice of the Supreme Court of Zambia)

Hon Susana Medina - IAWJ President

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 compared to their male counterparts. Women in judiciary careers are not exempted and under representation 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.

Hon. Medina pointed out that statistics have shown that:

- The Inter-American Court of Human Rights has one (1) single 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 out of its eighteen (18) members, only six (6) are women.
- The Secretary- General of the United Nations was never under the leadership of a woman.

The above examples show that it is necessary to take positive actions to redress the gender imbalance. Women judges have the opportunity to make their voices heard and further enforce the conventions their countries have ratified. IAWJ must lead and contribute to breaking the glass ceiling
towards gender balance in all Judiciaries. IAWJ demands a true participation of women in all aspects of life: social, political, cultural and, fundamentally, in the judicial sphere and in institutions and organizations which have the capacity to make decisions with international impact. Feminine view in judicial areas should not be underestimated since women are mostly the victims of gender based injustices.

Specialized training and dialogue to share the challenges faced by women is very important to promote a greater understanding and commitment to gender equality. The impact of these activities has been demonstrated in many judicial decision signed by male and women judges who have attended trainings organized by the IAWJ.

Hon Medina concluded that Judges must be mirrors where other women can look, and that they must represent other women who are more than 50% of the world population but still continue to be treated as a minority.

Ms. Lisa Davis -IAWJ Executive Secretary

Ms Liza Davis opened her presentation by recognizing the leadership of some of women judges who have served IAWJ. Two African Women judges have served as presidents of IAWJ: Laetitia Kikonyogo (2002-04) Judge of the Supreme Court of Uganda and former Deputy Chief Justice, and Eusebio Munuo (2012-14) retired Judge of the Court of Appeal of Tanzania. Retired Justice Munuo helped to build the Tanzanian chapter from nonexistence into a powerhouse. Some of the IAWJ members who have exercised leadership- in the decisions they rendered include 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 this was dangerous. She was detained and later became the first woman nominated to the Supreme Court. Her stand on issues of abortion and religion earned her criticism and cost her a lot in her career. IAWJ was 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 at IAWJ biennial conferences and in different roles assigned. 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”.

Ms Lisa noted that women judges represented in different countries have exercised leadership to get where they are and must be recognized; that women judges have stood up for the rule of law and the independence of the judiciary; that some have faced corruption and worked under challenging circumstances, with heads high and unflappable smiles; that women judges matter for both democracy reasons and instrumentalist reasons; that when women judges reach leadership positions or band together in associations, they start initiatives that may be different from those started by male judges such as: when women judges set the agendas for national judicial training institutes, they may prioritize issues different from those that would be prioritized in their absence; and that when women judges monitor prisons, the things they notice/ask questions about may be different than the things their male counterparts notice.
**Panel Discussion:**

**Hon. Lady Justice R. Nambuye (JCA Kenya),**

**Women in Leadership in the Judiciary- The Kenyan Case**

Kenyan judiciary is 129 years old with its roots both in the colonial and post-colonial era. This has shaped the justice system. Post-colonial Judiciary and recruitment was done through advertisement and invitation to attend interviews. Promotion was by way of recommendations through section/station heads and approval by the JSC. In the colonial and post-colonial Kenya, men have dominated the top leadership of the judiciary, all chief Justices have been men. At independence, there were no Kenyan women magistrates or judges in the judiciary. Appointment of women judges and magistrates has been slow over the years and one of the reasons was failure to prioritize it.

Reforms that set the pace for women to make it into leadership position within the Judiciary include, the Kwach committee which recommended the creation of specialized divisions, and increase of man power and this saw the dawn of opportunities for women. **Hon. Mr. Chief Justice J.E. Gicheru E.G.H. (rtd)-** recommended open competition for all cadres within the Judiciary. Ouko Task Force of 2007 recommended the establishment of an expanded, well-empowered and independent JSC.

The promulgation of Kenyan 2010 Constitution contributed to increased leadership opportunities for women in the Judiciary. Matters of appointments and employment opportunities have not been guaranteed in the constitution.

Some of the Iconic women pioneers in Kenyan Judiciary include;

- Hon. Lady Justice Effie Owuor, JA (rtd) she was sworn in as the first Kenyan Woman judge in 1983
- Hon. Lady Justice Joyce Aluoch followed two (2) years later 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
- Women in Kenyan judicial system have proved themselves to be up to the task.

**Hon Lady Justice L Mugambe (JHC –Uganda),**

The issues of women in the judiciary have been revolving around the same topics. In Uganda, at administrative level, the top-level leadership is all led by men, historically and present. Currently, some of the statistics show that out of 12 judges of court of appeal 4 are women; out of 41 deputy registrars 24 are women. Women need to realize that the odds will be against them and achievement of equality may not be easy. Women should respect fellow women leaders and the people they lead. Women judges need to strategize when seeking leadership positions because their male counterparts are said to be dictatorial at times. In conclusion, she said that women judges should have clear values set to uphold justice.

**Hon Justice Morenikeji Ogunwumiju (JCA-Nigeria)**
Nigeria has had improvements in achieving equality in the judiciary. Women have continued to hold senior positions in the judiciary. Women in Nigeria have broken the glass ceiling as statistics indicate in Lagos state out of 60 judges, 45 are women. The head of training institute is also a woman. All the states and federal courts made fast tracking of courts in relation to offences affecting women especially on rape and kidnaping a priority. Jurisprudence of equality programme was launched which further involve men in the gender programmes.

Stakeholders and NGOs have been of great help including the police and FIDA. Some states have set up family courts and also judges dedicated to focus on children and women issues. Participation of women has brought confidence in the bar. Women judges should continue to uphold ethical standards, remain incorruptible and show gracious leadership.

Hon. Lady Justice Roydah Kaoma (SCJ Zambia)

Women Judges have the mandate to give direction and offer leadership and leadership positions must be awarded on merits but not favour. Stakeholder partnership should be cultivated.

Statistics for Zambia

- The Chief Justice is a Woman, Supreme Court has 13 judges
- The Constitutional Court has 13 judges, 6 male 4 female, the president is a woman.
- Appeal Court has 8 Judges, 4 male 4 female and president female
- The High court 50, female 23, male 20
- Subordinate courts 120 male 71 female

Achievements

- Women head all superior courts.
- Current Woman CJ has improved the working of the courts and increased court annexed mediation.
- There is improved training for judges and judicial officers.
- Created high court divisions for various departments
- Civil society has led to changes in the justice system

In her conclusion Lady Justice Kaoma stated that stereotypes against women must be discouraged and women Judges should aim to become role models and mentor young leaders in partnership with other stakeholders. Sustainable development is possible only if attainment of gender equality is achieved. Many women in leadership positions have proved themselves fully capable to the world.

Conclusion

During the conference closing session, participants read out and adopted the conference resolution. The Conference was official closed by Hon Lady Justice Philemona Mwilu, MGH, Deputy Chief Justice
of the Republic of Kenya who also launched the KWJA strategic plan for 2017-2021. In her closing remarks the Deputy Chief Justice noted that increased judicial diversity enriches and strengthens the ability of judicial reasoning to encompass and respond to varied social contexts and experiences. Without full and equal representation of women in the judiciary, the overall quality of judicial decision making is impoverished, and this impacts generally and also specifically in cases particularly affecting women. Lack of diversity in judiciaries can undermine public confidence in the judicial process. The Deputy Chief Justice recognized all women judges and jurists who knocked down the closed doors and broke glass ceilings for us to get where we are at now, especially lady African jurists and challenged the participants to carry the baton and work ceaselessly to identify and remove obstacles, change attitudes and increase the opportunities for those who now look to them for guidance and inspiration.
Annexures

- Conference Programme
- Conference Resolutions and Recommendations
- Conference Papers

1) Presentation #1: Women in the Justice System: The Poverty Question - Justice Kisaakye, Justice of the Supreme Court of Uganda/President, National Association of Women Judges - Uganda

2) Presentation #2: Gender Vulnerability in Conflict Situations: Do Women Judges have a Role? - Hon. Anne Amadi, Chief Registrar of the Judiciary of Kenya

3) Presentation #3: Cross-currents of Custom as Catalyst for Gender Based Discrimination and Violence against Women in Nigeria - Hon. Justice Stella Ogene, Customary Court of Appeal, Delta State, Nigeria


5) Presentation #5: Women in Leadership – Towards Sustainable Stakeholder Engagement - Prof. Patricia Komeri-Mbote

6) Presentation #6: Women Leadership in the Judiciary - Susana Medina, IAWJ President

7) Presentation #7: Gender Vulnerability In Conflict Situations: The Uganda Experience - Hon. Lady Justice Henrietta Wolayo, High Court Of Uganda

8) Presentation #8: Genre Et Vulnérabilité En Période De Conflits Armés- Madame Marie Chantale Koffi Magistrat Côte D’ivoire


11) Presentation #11: Mobilizing Positive Masculinity for Women’s Empowerment - Zebib Kavuma Country Director UN Women Kenya

12) Presentation #12: Sexual and Gender Based Violence Legislative Responses in South Africa – Judge Margaret Victor

13) Presentation #13: Emerging Gender Issues in the Electoral Process - Lillian Arika Secretary Judiciary Committee on Elections

14) Presentation #14: Women In Leadership: Towards Building Sustainable Networks And Partnerships - Hon Lady Justice Martha Koome, Judge of Appeal, Kenya

15) Presentation #15: Emerging Gender Issues In The Electoral Process: Experience From Election Petition - Judge. Patricia. S. Fikirini

16) Presentation #16: Femmes Et Leadership Pour Un Engagement Des Parties Prenantes Et Un Partenariat Durable

17) Presentation #17: Women In Leadership In The Judiciary- The Kenyan Case - Hon. Lady Justice Rosleyn Naliaka Nambuye Judge Of Appeal, E.B.S

18) Presentation #18: Closing Remarks - The Hon. The Deputy Chief Justice Of The Republic Of Kenya And Vice President Of The Supreme Court, Lady Justice Philomena Mbete Mwili

19) Presentation #19: Remarks - Chief Justice Hon. Justice David K. Maraga

Conference Programme

16th to 20th May 2017, Nairobi, Kenya

THEME:
Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges, Strategies
Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges, Strategies

16th to 20th May 2017, Nairobi, Kenya

THEME:

Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges, Strategies

Kenya Women Judges Association

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome note</td>
<td>4</td>
</tr>
<tr>
<td>International Association of Women Judges Officials</td>
<td>5</td>
</tr>
<tr>
<td>Executive Committee Members</td>
<td>7</td>
</tr>
<tr>
<td>List of Planning Committee Members and Stakeholders who Supported the Conference</td>
<td>13</td>
</tr>
<tr>
<td>List of the Secretariat &amp; Volunteers</td>
<td>14</td>
</tr>
<tr>
<td>National Anthem</td>
<td>15</td>
</tr>
<tr>
<td>Programme</td>
<td>16</td>
</tr>
<tr>
<td>Kenya Judiciary</td>
<td>20</td>
</tr>
<tr>
<td>Facilitators</td>
<td>21</td>
</tr>
</tbody>
</table>
On behalf of the Kenyan Judiciary, it is my great pleasure to welcome all the distinguished participants to the 2017 International Women Judges Association (IAWJ) African Regional Conference. The success of this conference could not have been possible without your participation. We are honoured by your presence and look forward to uplifting and empowering interactions.

Enjoy your stay with us!

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On behalf of Kenya Women Judges Association I take this opportunity to extend a word of welcome to all the delegates who have travelled from far and wide to attend this 2017 IAWJ Africa Regional Conference. The IAWJ international and regional Biennial conferences have become regular events to look forward to. They are indeed opportunities to renew old acquaintances and make new friendships as well as opportunities for serious discussions on important topical issues.

This year the theme of the Conference “Women Judges Enabling Sustainable Development Goals: Opportunities, Strategies and Challenges”, presents a 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. I am sure the discussions will be interactive and interesting.

In addition to the ambience, the conference venue Safari Park Hotel provides an excellent opportunity for delegates to sample and enjoy the tourism experience and hospitality of Nairobi city dubbed the city in the sun. Please take advantage and enjoy the flora and fauna of Nairobi, Kenya. “Karibuni sana”
Dr. Susana E. Medina is the Director of the Dr. Juan Bautista Alberdi Institute for Judicial Training and Improvement of the Province of Entre Ríos. She is currently the Vice-President of the High Court and President of the Labour Chamber. Since 2016 she has been the President of the International Association of Women Judges, an organization where she has previously held the positions of Vice-President, Treasurer and Regional Director for Latin America and the Caribbean.

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 the service of justice closer to people within city limits), “Oficina Rural Móvil” (which takes the service of justice to the countryside) and “Oficina Flotante e Itinerante” (which takes the same service to the southern islands of Entre Ríos).

Hon. Susana 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 Argentinian Association of Labour Law, and co-Founder of the Argentinian Association of Victimology. She is also a former professor at the Universidad Autónoma de Entre Ríos (UADER), Universidad Nacional del Litoral (UNL) and Escuela Superior de Oficiales de la Policía de Entre Ríos. She has authored numerous works on gender issues and has taken part in national and international conferences as a lecturer and organizer.
Lisa L. Davis, J.D., LL.M. 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 the organization and staff on international legal issues, and as Director of Rule of Law programs, developed a signature portfolio of programs to support human rights defenders in over 30 countries. She served as Technical Director for two USAID funded global rule of law and human rights (RIGHTS) programs, leading consortia of implementing partners. In all of 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 of strategic litigation on women’s issues.

She has led advocacy delegations before international and US agencies, including the United Nations, Organization of American States, US Congress and State Department.

INTERNATIONAL ASSOCIATION OF WOMEN JUDGES BOARD DIRECTORS

1. Justice Joan Charles Judge Trinidad and Tobago;
2. Hon. Binta Nyako Vice President IAWJ Judge Nigeria;
3. Hellen Ogunwumiji Judge of Appeal Nigeria;
4. Hon. Imani Aboud High Court Judge Tanzania;
5. Graciella Medina Judge Argentina;
6. Hon. Margarita Beatrice Lunar Amos Supreme Court of Mexico.
Hon. Lady Justice Hannah Okwengu is a Court of Appeal Judge and has been the Chair of Kenya Women Judges Association since July 2015. She has previously served as Treasurer and Vice Chair of the Association. Judge Okwengu is the holder of an LLM degree from Queen Mary University of London, an LLB (Hons) from the University of Nairobi, a Diploma from the Kenya School of Law, and a Certificate in Management from University of Bradford. She has worked in the Judiciary since 1983 rising through from Resident Magistrate to Chief Magistrate, before being appointed a Judge of the High Court in 2003. Prior to her appointment as a Judge she worked as Assistant Director in charge of Prosecutions in the former Kenya Anti-Corruption Authority, a position she held for 2 years.

In addition to her judicial duties Judge Okwengu has been the Executive Secretary of the Auctioneers Licensing Board, Vice Chair and Treasurer of Sheria Sacco and is currently the Chair of the Judiciary Technical Committee developing a Criminal Procedure Bench Book. She has attended many seminars and workshop locally and abroad.

Hon. Lady Justice Jessie Lesiit left the Kenya School of Law in 1982 and was admitted to the Roll of Advocates in 1983 after which she served as a Magistrate for 20 years moving up the ranks. During this time, she gained experience in various areas. In 1995, she was a Joint Secretary of the Task Force that looked into the Laws relating to Auctioneers, Court brokers, Bailiffs and related activities and in 1998 she was a Joint Secretary of the Committee on the Administration of Justice which was chaired by Mr. Justice (Retired) Richard Kwach.

Her expansive work in the legal profession is felt by many as she has rendered sterling service to the Government and people of Kenya. Since her appointment as a Judge, Justice Lesiit has served in various leadership capacities including: Resident Judge, Meru, Presiding Judge Criminal Division and Presiding Judge of the Milimani Commercial & Tax Appeal Court.

With regards to reforming the Justice system, Justice Lesiit has greatly contributed to law reform and growth of jurisprudence in this country: She currently serves as the Presiding Judge of the Criminal Division of the High Court at Nairobi and is the current Vice Chairlady of the Kenya Women Judges Association (KWJA).
Lady Justice Lydia Achode’s career began on the bench as a District Magistrate II (Prof.) at the Kericho Law Courts in 1986. Two years later she was promoted to the post of Resident Magistrate – Makadara Law Courts in Nairobi where she served in this capacity from 1988 to 1994. In 1994 she was transferred to Mombasa Law Court as a Senior Resident Magistrate. While there, her hard work and due diligence were again recognized and led to her promotion to Principle Magistrate in the year 2000 and to Senior Principal Magistrate in 2004. In the same year she was appointed as the Chief Court Administrator.

In September, 2011, Lady Justice Achode was appointed to the bench as a Judge of the High Court. Prior to her appointment to the Bench she was the Registrar of the High Court of Kenya.

In January, 2016, Chief justice Willy Mutunga appointed Lady Justice Achode as the deputy judge of the Anti-Corruption and Economic Crimes Division of the High Court which was established on December 11, 2015.

Justice Lydia A. Achode is experienced in the areas of Civil and Criminal Law and Procedure, Commercial Litigation, Taxation Law, as well as Gender and Family Law having routinely adjudicated on these areas of law for a period spanning over twenty years.

Among the many feathers on her hat she serves as the Treasurer of the Kenya Women Judges Association, a role she plays as diligently as ever. Her key competencies include; integrity, ethics, leadership, teamwork, training, recognition, communication and continuous improvement.

Hon. Christine Njagi is a Resident Magistrate serving at the Milimani Law Courts, Criminal Division.

She was employed into the Judiciary in 2013 and has served at the Kwale Law Courts where she has been engaged in various Corporate Social Responsibility activities that have benefited both her and the community she serves. She has passion for children and gender issues and, together with her colleagues from the Kwale Law Courts, has been involved in delivering sanitary towels, baby cots, soaps, slippers, food, toys and personal effects to the Kwale GK Men and Women Prisons and the Children’s home.

Hon Njagi is an environmentalist and has been continuously involved in tree planting and activities that support environmental conservation and protection. As she strives to uphold the vision of the Sustainable Development Goals she combines these two passions to ensure that the environment is conserved and that women and children also have access to clean and healthy environments.

She has also attended Court User Committees where by joint effort communities have been sensitized on issues of gender, sexual based violence and children rights. She encourages children, women and men to also know their rights by distributing copies of the Constitution and sensitizing them on their rights and responsibilities under the Constitution of Kenya 2010.

Hon. Njagi is a member of the Kenya Magistrates and Judges Association and is currently the Vice Secretary of the Kenya Women Judge’s Association.

Last but not least, she loves the Lord Jesus Christ as her personal Saviour.
Hon. Sharon Mwayuli is a Resident Magistrate, currently deployed as a Deputy Registrar at the Judicial Review & Constitutional and Human Rights Divisions of the High Court in Milimani.

She was admitted to the bar in 2009 having completed her undergraduate and post graduate diploma in law at Moi University and The Kenya School of Law respectively.

Before joining the bench, she had over five years cumulative volunteer experience in civil society working on projects that focus on Human Rights, Development, Gender, Youth and Women programming.

She is currently pursuing her Masters Degree in Gender and Development studies at The University of Nairobi and serves as the Vice Secretary at the Association.

Hon. Irene Marcia Kahuya holds a Master of Laws from the University of Haifa having obtained the same in the year 2016. She received her Undergraduate in Law from Moi University, Kenya in the year 2006. Thereafter, she joined the Kenya School of Law and obtained a Diploma in Law in the year 2007 and was admitted into the Roll of Advocates in 2008 and joined the Kenya Judiciary in June 2010, as a District Magistrate (II) Professional and has since risen through the ranks within a span of five years.

Currently she is a Senior Resident Magistrate stationed at Machakos Law Courts and the current Vice- Treasurer of the Kenya Women Judges Association and has worked closely with other stakeholders in upholding basic human rights for all that appear before her.

Hon. Elizabeth Juma is a Senior Principal Magistrate at the Kibera Law Courts. She holds a Bachelor of Laws – LLB Degree and is currently pursuing a Master of Laws – LLM Degree.

Her legal career began when she was admitted to the bar of advocates in 1997 after which she practiced as an advocate for 7 years. She thereafter joined the Judiciary and has served as a Magistrate for 12 years. Hon. Juma is a steadfast Christian and a member of the Seventh Day Adventist Church.
Hon. Lady Justice Jacqueline Kamau has been an astute member of the Kenya Women Judges Association. She was admitted to the bar as an advocate of the High Court of Kenya in 1993. After admission she practiced law at the firm of M/S Mereka & Co Advocates before joining Madison Insurance Company in 1995 where she worked as an Assistant Legal Officer for 5 years. During her private practice, she studied and graduated with a Master of Sociology degree.

She has provided excellent leadership and service in various capacities such as being:
the immediate Chair of the Chartered Institute of Arbitrators (K) Kenya prior to joining the Judiciary
the current Chair of the Kenya Magistrates and Judges Association (KMJA-Coast Region)
a Chartered Arbitrator in Kenya and an accredited tutor of the Chartered Institute of Arbitrators (K) Kenya and its headquarters in London, UK.
a member of the Conciliation panel of the International Centre for Settlement of Investment Disputes (ICSID) that was established pursuant to the ICSID Convention
a member of the Integrated Court Management Committee that is charged with the responsibility of automating the Kenya Judiciary and that of the Mediation Committee

She is currently the Presiding Judge of the High Court of Kenya based at Voi in the Taita Taveta County, Coast Region.

Hon. Dr. Julie Oseko is a professional lawyer, legal consultant and distinguished academic with over 20 years legal and managerial experience. An expert in Public Law. She is currently the Chief Magistrate at Malindi Law Courts. Previously she worked as Project Liaison at Judicial Performance Improvement Project (JPIP), a World Bank Program spearheading special programmes in the Kenyan Judiciary. She has worked as an Assistant to Director at the Judiciary Training Institute (JTI). She has lectured at the University of Leicester University in the UK; the Kenya School of Law, Kenyatta University, Jomo Kenyatta University and Catholic University of Eastern Africa. Her works have been cited widely, the most recent being in a book “Back From the Brink” Published by Koffi Anaan and the Panel of Eminent Personalities.

Dr. Oseko holds a Ph.D in Constitutional Law from the University of Leicester in the UK, a Masters degree in Public International Law (LLM) and Bachelor of Laws (LL.B) from the University of Nairobi. She is a Certified Public Secretary (CPS (K) and is an Advocate of the High Court of Kenya. She is a mentor to many young women lawyers. She is Listed as Counsel at the International Criminal Court (ICC). She is member of Federation of Women Lawyers (FIDA Kenya ); International Commission Jurists (ICJ Kenya) and Society of Legal Scholars (UK)
Hon. Lady Justice Roselyn Nambuye, EBS
Judge, Court of Appeal
Member of Executive Committee

Hon. Lady Justice Roselyn Nambuye is a holder of an LLB Honours degree from the University of Nairobi and an LLM from the same university. She has completed the course work for a second Masters degree in Conflict Management and is in the process of finalizing the project paper.

Judge Nambuye has worked in the Kenya Judiciary for the last 40 years during which period she has risen to the position of a Court of Appeal Judge. She has rendered numerous decisions and has contributed to the growth of jurisprudence in the High Court and the Court of Appeal. She is a founder member of the Kenya Women Judges Association and a member of the Kenya Judges and Magistrates Association amongst others. She has travelled widely attending local, regional and international conferences and workshops and presenting papers on various topics.

Hon. Lady Justice Grace Ngenye’s, Judge
Member of Executive Committee

Judge Grace Ngenye’s career in the Judiciary began in July 2002 as a District Magistrate II (Prof). She rose through the ranks of magistracy up to the position of a Senior Principal Magistrate. She became a judge in August, 2012. Currently, she is serving as a Judge in the Appeals Section of the Criminal Division, High Court at Nairobi. Before joining the Judiciary, she had worked in private legal practice and UNHCR as a Sexual Gender Based Violence Consultant. She was admitted to the Roll of Advocates on 11th January, 11996.

The judge is a graduate of the University of Nairobi with LLB Honours Degree. She has a Master in Business Administration (HRM) Degree from Kenyatta University. She is trained in Civil land Human Rights at Fredrick Nauman Stiftung Institute in Germany. She has served as a Vice Treasurer of KWJA. Currently, she is a member of the Executive Committee of KWJA. She has a passion in contributing to achievements of KWJA’s objectives. She has special focus on sexual gender based violence, Human and Children’s rights. She has a wide experience in criminal, civil and family Law. She is a member of FIDA (K), Kenya Institute of Human Resources and is a Certified Public Secretary (CPS).
Lady Justice Jamila Mohammed is a Judge of the Court of Appeal in Kenya and a member of the Executive Committee of the Kenya Women Judges Association (KWJA).

Her areas of particular interest are gender empowerment, conflict resolution, environmental law, the law relating to wildlife, international humanitarian law and international criminal law. Justice Jamila was a Judge of the Interim Independent Constitutional Dispute Resolution Court in respect of the Constitutional Review Process in 2010.

Justice Jamila is the Chairperson of the Kenya National Committee on the Prevention and Punishment of the Crimes of Genocide, War Crimes and Crimes against Humanity and All Forms of Discrimination a Committee established under the auspices of the International Conference on the Great Lakes Region (ICGLR). She previously served as the Vice-Chairperson of The Federation of Women Lawyers (FIDA-Kenya) and was a member of the Kenya National Committee on the formulation of the Kenya National Action Plan on UN Security Council Resolution (UNSCR) 1325 on Women, Peace and Security.

OTHER MEMBERS

Hon. Rose Makungu
Member of Executive Committee

Hon. Lady Justice Roseline Korir
Member of Executive Committee
<table>
<thead>
<tr>
<th>PARTNER / ORGANIZATION</th>
<th>REPRESENTATIVE</th>
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<tbody>
<tr>
<td>Office of the Director Public Prosecutions</td>
<td>Ms. Christine Nanjala</td>
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<tr>
<td>Attorney General’s Office - DOJ</td>
<td>Ms. Christine Agimba</td>
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<tr>
<td>Ministry of Foreign Affairs</td>
<td>Ms. Beatrice Mwaura</td>
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<tr>
<td>Ministry of Tourism</td>
<td>Ms. Lillian Moraa</td>
</tr>
<tr>
<td>Kenya Airports Authority</td>
<td>Ms. Margaret Munene</td>
</tr>
<tr>
<td>Inspector General’s Office</td>
<td>Ms. Terry Muchemi&lt;br&gt;Ms. Rhoda Kinanu&lt;br&gt;Mr. Shariff H. Abdalla&lt;br&gt;Mr. Eshiphan Gichohi</td>
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<tr>
<td>Kenya Tourism Board</td>
<td>Ms. Hellen Omukoko</td>
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<tr>
<td>United Nations Development Program</td>
<td>Ms. Zainab Ali&lt;br&gt;Mr. Rowland Cole&lt;br&gt;Ms. Jane Serwanga</td>
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<tr>
<td>UN Women</td>
<td>Ms. Zebib Kavuma</td>
</tr>
<tr>
<td>National Gender and Equality Commission</td>
<td>Ms. Stephanie Mutindi&lt;br&gt;Ms. Jerono Adhiambo</td>
</tr>
<tr>
<td>Judiciary</td>
<td>Hon. Anne Amadi&lt;br&gt;Ms. Joy Bigambo&lt;br&gt;Mr. Qatamur Barako&lt;br&gt;Mr. Richard Otene&lt;br&gt;Ms. Jerusha Gichohi</td>
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<tr>
<td>Judiciary Training Institute</td>
<td>Dr. Steve Ouma&lt;br&gt;Dr. Fridah Githiru&lt;br&gt;Ema Orua</td>
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<tr>
<td>Department of Immigration</td>
<td>Ms. Rosemond Cheboi</td>
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<tr>
<td>Brand Kenya Board</td>
<td>Ms. Ruth Chitwa&lt;br&gt;Mr. Richard Kropp</td>
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<td>Judiciary Performance Improvement Project</td>
<td>Ms. Nancy Kanyago</td>
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<tr>
<td>Equality Now</td>
<td>Ms. Faiza Mohamed</td>
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<tr>
<td>International Development Law Organization</td>
<td>Ms. Kimberly Brown</td>
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<tr>
<td>International Commission of Jurists</td>
<td>Ms. Anita Nyanjong’</td>
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### Secretariat

<table>
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<tr>
<th>NAME</th>
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<tbody>
<tr>
<td>1 Hon. Christine Njagi</td>
<td>Secretary - Kenya Women Judges Association</td>
</tr>
<tr>
<td>2 Hon. Sharon Mwayuli</td>
<td>Vice Secretary - Kenya Women Judges Association</td>
</tr>
<tr>
<td>3 Hon. Monica Munyendo</td>
<td>Judiciary Training Institute</td>
</tr>
<tr>
<td>4 Ms. Angelica Omondi</td>
<td>Programs Officer – Kenya Women Judges Association</td>
</tr>
<tr>
<td>5 Mr. Richard Otene</td>
<td>Judicial Service Commission</td>
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<tr>
<td>6 Mr. Qatamur Barako</td>
<td>Judiciary - Protocol Office</td>
</tr>
<tr>
<td>7 Ms. Joy Bigambo</td>
<td>Judiciary - Office of the Chief Registrar</td>
</tr>
<tr>
<td>8 Ms. Jerusha Gichohi</td>
<td>Judiciary – Directorate of Public Affairs and Communication</td>
</tr>
<tr>
<td>9 Mr. John Muriuki</td>
<td>Judiciary – Directorate of Public Affairs and Communication</td>
</tr>
<tr>
<td>10 Jenniffer Chacha</td>
<td>Judiciary - Secretary in the Court of Appeal</td>
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</tbody>
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### Volunteers

<table>
<thead>
<tr>
<th>NAME</th>
<th>DESCRIPTION</th>
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<tbody>
<tr>
<td>1 Rose Kinyua</td>
<td>Volunteer-Kenya Women Judges Association</td>
</tr>
<tr>
<td>2 Anne Mwangi</td>
<td>Volunteer-Kenya Women Judges Association</td>
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<tr>
<td>3 Millicent Mwai</td>
<td>Volunteer-Kenya Women Judges Association</td>
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<tr>
<td>4 Caleb Simiyu</td>
<td>Volunteer-Kenya Women Judges Association</td>
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<tr>
<td>5 Ekusi Lore</td>
<td>Volunteer -Kenya Women Judges Association</td>
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<tr>
<td>6 Olive Mumbo</td>
<td>Volunteer -Kenya Women Judges Association</td>
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<tr>
<td>7 Angela Kamau</td>
<td>Volunteer -Kenya Women Judges Association</td>
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<tr>
<td>8 Samira Ally Tiffow</td>
<td>Volunteer -Kenya Women Judges Association</td>
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<tr>
<td>9 Cindy Wakio</td>
<td>Volunteer -Kenya Women Judges Association</td>
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<td>10 Judy Muthoni</td>
<td>Volunteer- Kenya Women Judges Association</td>
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<td>11 Freyda Konno</td>
<td>Volunteer- Kenya Women Judges Association</td>
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<td>12 Rosario Kamuti</td>
<td>Volunteer- Kenya Women Judges Association</td>
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<td>13 Christabel Irago</td>
<td>Volunteer- Kenya Women Judges Association</td>
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<td>14 Isabel Gakuo</td>
<td>Volunteer- Kenya Women Judges Association</td>
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<tr>
<td>15 Catherine Gatetua</td>
<td>Volunteer- Kenya Women Judges Association</td>
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<tr>
<td>16 Joyce Mbaluto</td>
<td>Volunteer- Kenya Women Judges Association</td>
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<tr>
<td>Kenya National Anthem</td>
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<tr>
<td><strong>Swahili lyrics</strong></td>
<td><strong>English lyrics</strong></td>
</tr>
<tr>
<td><strong>First stanza</strong></td>
<td></td>
</tr>
<tr>
<td>Ee Mungu nguvu yetu</td>
<td>Oh God of all creation</td>
</tr>
<tr>
<td>Ilete baraka kwetu</td>
<td>Bless this our land and nation</td>
</tr>
<tr>
<td>Haki iwe ngao na mlinzi</td>
<td>Justice be our shield and defender</td>
</tr>
<tr>
<td>Natukae na undugu</td>
<td>May we dwell in unity</td>
</tr>
<tr>
<td>Amani na uhuru</td>
<td>Peace and liberty</td>
</tr>
<tr>
<td>Raha tupate na ustaw</td>
<td>Plenty be found within our borders.</td>
</tr>
<tr>
<td><strong>Second stanza</strong></td>
<td></td>
</tr>
<tr>
<td>Amkeni ndugu zetu</td>
<td>Let one and all arise</td>
</tr>
<tr>
<td>Tufanye sote bidii</td>
<td>With hearts both strong and true</td>
</tr>
<tr>
<td>Nasi tujitoe kwa nguvu</td>
<td>Service be our earnest endeavour</td>
</tr>
<tr>
<td>Nchi yetu ya Kenya</td>
<td>And our homeland of Kenya</td>
</tr>
<tr>
<td>Tunayoipenda</td>
<td>Heritage of splendour</td>
</tr>
<tr>
<td>Tuwe tayari kuilinda</td>
<td>Firm may we stand to defend</td>
</tr>
<tr>
<td><strong>Third stanza</strong></td>
<td></td>
</tr>
<tr>
<td>Natujenge taifa letu</td>
<td>Let all with one accord</td>
</tr>
<tr>
<td>Ee, ndio wajibu wetu</td>
<td>In common bond united</td>
</tr>
<tr>
<td>Kenya istahili heshima</td>
<td>Build this our nation together</td>
</tr>
<tr>
<td>Tuungane mikono</td>
<td>And the glory of Kenya</td>
</tr>
<tr>
<td>Pamoja kazini</td>
<td>The fruit of our labor</td>
</tr>
<tr>
<td>Kila siku tuwe na shukrani</td>
<td>Fill every heart with thanksgiving.</td>
</tr>
</tbody>
</table>
MASTER OF CEREMONY: Dr Julie Oseko (CM-Kenya) / Hon Christine Njagi

7.30a.m – 8:15a.m  Arrival and Registration - Secretariat

8.30a.m – 8.40a.m  Opening Prayers: Hon. Lady Justice Grace Ngenye
Opening Address:

8.40- 10.30  
Session 2: Women in the Justice System: The Poverty Question
Moderator / Session
Chair: Lady Justice Maria M. Kawimbe (JHC-Zambia)
Presenter: Hon. Lady Justice Dr. E. Kisaakye (JSC-Uganda)

Panel Discussion: Hon. Lady Justice Joaquine De Mello (JHC-Tanzania), Hon Justice Olivia Hungbo (JHC Benin), Hon Justice Clara B. Ogunbiyi (JSC-Nigeria), & Hon. Lady Justice Hellen Omondi (JHC-Kenya)
Plenary Session

10.30a.m – 11.00a.m  Tea Break

11.00a.m.-1.00p.m  Session 3: Gender Vulnerability in Conflict Situations
Moderator / Session
Presenter: Hon. Anne Amadi, (Chief Registrar Judiciary, Kenya)
Chair- Hon lady Justice Imani Aboud (JHC-Tanzania).

Panel Discussion: Hon Lady Justice H Wolayo (JHC-Uganda), Hon. Justice Marie C Koffi (JCA Cote d’Ivoire), & Hon. E Juma (SPM-Kenya),
Plenary Session.

1.00p.m – 2.00p.m  Lunch Break

2.00p.m – 4.00p.m  
Moderator / Session
Session 4: Emerging Issues in the Implementation of Legislation on Sexual Gender Based Violence: Good Legislation, Absurd Results?

Chair: Hon. Lady Justice Roselyn. Korir, (JHC-Kenya)  
Presenter: Hon. Lady Justice Stella Ogene –(JHC- Nigeria)

Panel Discussion: Justice Collette E. Attokpa (Cote d’Ivoire), Justice M. Victor (JHC-South Africa), Hon Lady Justice Stella A Amoko (JSC-Uganda), Hon. Lady Justice Jessie Lesiit (JHC-Kenya) & Lady Justice
Sharon K Newa (JHC-Zambia)

Plenary Session

<table>
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<th>Time</th>
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<tr>
<td>4.00 p.m. - 4.30 p.m</td>
<td>Tea Break &amp; End of Day One</td>
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<tr>
<td>7.00 p.m. - 9.00 p.m</td>
<td>Welcome Dinner</td>
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<tr>
<td></td>
<td>“Mobilizing Positive Masculinity for Women’s Empowerment”</td>
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<td></td>
<td>Address by Ms. Zebib Kavuma – Kenya Country Director UN Women</td>
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<td>Launching of “The Stalkers” a book written by Lady Justice Ruth</td>
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<td>Sitati (JHC) a member of KWJA, on cases of Gender based violence</td>
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**Day 3:** Thursday, 18\(^{th}\) May 2017

**MASTER OF CEREMONY:** Hon Lady Justice L. Achode

<table>
<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>7.30 a.m. - 8.30 a.m</td>
<td>Registration</td>
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<tr>
<td>8.30 a.m. - 10.00 a.m</td>
<td>Session 5: Emerging Gender Issues in the Electoral Process</td>
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<tr>
<td>Moderator / Session</td>
<td>Presenters: Ms. Jane Serwanga – Gender specialist -UNDP/UN</td>
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<td>Chair: Hon Lady Justice F Mwondha (JSC-Uganda)</td>
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<td>Panel Discussion: Hon. Lillian Arika(SPM-Kenya), Hon. Lady Justice P.</td>
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<td>Fikirini (JHC-Tanzania), Hon. Justice Mariama Owusu (JCA-Ghana) &amp;</td>
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<td></td>
<td>Hon. Justice Uwani Ab’Aji (JCA-Nigeria)</td>
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<td></td>
<td>Plenary Session</td>
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<tr>
<td>10.30 a.m. - 11.00 a.m</td>
<td>Tea Break</td>
</tr>
<tr>
<td>11.00 a.m. - 1.00 p.m</td>
<td>Session 1: OPENING CEREMONY &amp; KEY NOTE ADDRESS</td>
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<td>Anthem</td>
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<td>Entertainment</td>
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<td></td>
<td>Welcome Remarks:</td>
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<td></td>
<td>- Hon. Hon.Lady Justice Hannah Okwengu EBS -KWJA Chairperson</td>
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<tr>
<td></td>
<td>- Hon. Susana Medina -IAWJ chairperson</td>
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<td>- Hon. Mr Justice David Maraga EGH, Chief Justice, Kenya</td>
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<td></td>
<td>Keynote Address: - CHIEF GUEST</td>
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<td>- Group Photo</td>
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<td>- Regions</td>
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<td>- Entire Delegation</td>
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<tr>
<td>1.00 p.m. - 2.00 p.m</td>
<td>Lunch Break</td>
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</table>
2.00p.m- 4.00p.m

Session 6: Women in Leadership: Towards Sustainable Stakeholder Engagement and Partnerships

Chair: Justice Binta Nyako (JCA – Nigeria)

Presenter: Prof. P. Kameri Mbote Immediate Former Dean Faculty of Law University of Nairobi

Panel Discussion: -Hon. Lady Justice M. Koome (JCA Kenya), Uganda, & Hon. Justice Sabore K Guiro (Cote d’Ivoire)

Plenary Session

4.00p.m – 4.30p.m Tea Break and End of Day Two: M

4.30pm – 5.30p.m I.A.W.J. Africa Region members (closed door) Meeting
Hon. Justice Imani Aboud , Hon. Justice Binta Nyako Hon. Justice Shane Kgoele

Day 4: Friday, 19th May 2017:

MASTER OF CEREMONY : Hon Lady Justice J. Kamau / Hon Sharon Mwayuli

8.30a.m –10.30a.m Session 7: Women Leadership in the Judiciary

Session Chair
Hon.Justice Shane Kgoele ( HC-S. Africa)

Presenters: Hon Susana Medina -IAWJ President Ms. Lisa Davis -IAWJ Executive Secretary


Plenary Session

10.30a.m – 11.00a.m Tea Break

11.00 a.m. – 12.30p.m Closing ceremony

11.00 a.m. Reading and adoption of conference Resolutions

11.30 a.m. Presentation & Launching of KWJA 2017-2021 Strategic Plan

12.00 noon Closing address: Hon.Lady Justice Philomena Mwilu MGH- Deputy Chief Justice Kenya

Vote of Thanks:
Hon. Lady Justice Jamila Mohammed (JCA-Kenya)

1.00p.m – 2.p.m Lunch

FREE AFTERNOON/ SHOPPING /TOUR
6.00p.m – 9.30p.m
GALA DINNER

Anthem
Dinner & Closing Addresses
Vote of Thanks
Entertainment

DAY 5  Saturday 20th May 2017 - DEPARTURE
END OF CONFERENCE
David Kenani Maraga is the Chief Justice and President of the Supreme Court of Kenya. Prior to his appointment as CJ, Justice Maraga was the Presiding Judge of the Court Of Appeal at Kisumu and the Chairperson of the Judiciary Committee on Elections. He was also Chairperson of the Tribunal appointed by His Excellency the President of the Republic of Kenya that investigated and ruled on the conduct of a Judge of the High Court of Kenya. Prior to his appointment as Judge of the Court of Appeal, he had served as the Presiding Judge of the Family Division of the High Court of Kenya at Nairobi; and Resident Judge at the High Court of Kenya at Nakuru.

Before joining the Judiciary, Justice Maraga was a legal practitioner for twenty five (25) years in conveyancing, civil and criminal litigation. He also served as the Chairman of the Rift Valley Law Society and as a member of the Constitutional Review Task Force of the Seventh-day Adventist Church, East African Union.

The Hon Chief Justice Maraga holds a Master of Laws (LLM) Degree from the University of Nairobi; a Bachelor of Laws (LLB) Degree from the same University and a Diploma in Legal Practice from the Kenya School of Law. He was admitted onto the Roll of Advocates in October 1978. He is a member of the Law Society of Kenya and the Chartered Institute of Arbitrators, London.

Justice Maraga has been a part-time Lecturer at University of Nairobi on pro bono basis and is an accomplished trainer and facilitator who has facilitated in several capacity-building workshops at the Judiciary Training Institute and the Law Society of Kenya’s Continuous Legal Education (CLE) workshops. He has presented papers in numerous local and international seminars and conducted trainings in Law.

Lady Justice Philomena Mbete Mwilu is an advocate of the High Court of Kenya with over 32 years experience in the legal profession. She holds a Bachelor of Laws (LLB) degree from the University of Nairobi and was admitted as an advocate of the High Court of Kenya in 1984.

She practised law in the firms of Muthoga Gaturu & Company Advocates and later Mutunga & Company Advocates. She thereafter worked as a senior legal manager at Jubilee Insurance Company, served as the Board secretary at the Electricity Regulatory Board, the Deputy Chairperson of the Energy Tribunal, and Director on the Board of Nairobi Water and Sewerage Company before being appointed a Judge of the High Court in 2007.

Lady Justice Mwilu first served in the Commercial Division in Nairobi and later the High Court in Eldoret. She was later transferred to Nairobi where she served at the Criminal Division and subsequently headed the Environment and Land Division of the High Court. In November 2012 Lady Justice Mwilu was elevated to the Court of Appeal where she served as a Judge of Appeal until her appointment as the Deputy Chief Justice. She took the Oath of Office as the Deputy Chief Justice on October 28, 2016. On 3rd May 2017, she was elected by her colleague judges of the Supreme Court to represent them as a commissioner at the Judicial Service Commission.

In discharge of her social responsibility, Lady Justice Mwilu has passionately role-modeled for the girl child and has actively mentored many girls in secondary schools, particularly in Makueni and Machakos counties.
Hellen Amolo Omondi is a judge of the High Court currently serving at Homa Bay. She has previously served at Bungoma, Nakuru, Malindi and Nairobi High Courts. She joined the judiciary in 1985 as a District Magistrate IIInd class (Prof) and rose to the rank of Chief Magistrate-having served in Nakuru, Thika, Machakos and Milimani Commercial Court.

Judge Omondi holds an LLB (Hons) degree from the University of Nairobi, a diploma in Legal Studies from Kenya Scool of Law and a Masters Degree in Women’s Law from the University of Zimbabwe. She also has a Hubert Humphrey Fellowship in Leadership and Professional Development from the University of Minnesota (USA).

She has been a member of the Judiciary Committee on Election Preparations, a trainer in Refugee Law and Protection, and the Sexual Offences Act. The judge is a member of the Advisory Board for the Association of Charitable Children’s Institutions in Kenya as well as the Management Board of Onjiko Kobongo Secondary School, and has served as a past chair of the Auctioneers Licencing Board.

She has published various articles including: - Legal Aspects of Nursing, Child Labour and the Law, Domestic Abuse- A Bridge Over Troubled Waters and Cat Among The Pigeons. She is married with two sons. The judge enjoys poetry, music and gardening.

Hon. Justice Clara Bata Ogunbiyi obtained a Diploma in Law from the Institute of Administration (ABU) Zaria in October 1969 – June 1971, and an LLB. Hons obtained from the same Institution between October 1972 – June 1975. She was called to the Bar in 1976. She obtained a Masters Degree in Criminology at the University of Hull (UK) in 1982 and Post Graduate Diploma in Education (PGDE) University of Maiduguri 2002.

She worked in the Ministry of Justice Borno State as State Counsel in July 1977 and progressively rose through the ranks to the position of Director Civil Litigation (DCL) where she worked until she was appointed as a High Court Judge, Borno State Judiciary in 1984. She was the first female Judge in the entire North East Sub-Region.

She was appointed Justice of the Court of Appeal, in October, 2002, and served as the Presiding Justice of the Court of Appeal Ibadan, Lagos and Jos respectively. She was appointed Justice of the Supreme Court of Nigeria in July 2012.

Her Lordship is a Chairperson and a member of several professional and non-professional bodies.

“Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies.”
Hon. Judge Imani Aboud is currently a Judge incharge of the High Court of Tanzania, Tanga Zone. She has been President of the Tanzania Women Judges Association (TAWJA) from January, 2015 – to date and a member of IAWJ Board of Directors from May 2016. She is also a TAWJA trainer who has been involved in the association's different training programs, including Sextortion. Before she was appointed a Judge in 2006, she was an Assistant Director of the President's Office, Public Service Management. She also worked as a State Attorney at the Attorney General’s Chambers up to 2001.

Hon. Judge Aboud is among the founders of the Commission for Human Rights and Good Governance (CHRAGG) of Tanzania which was established in 2000. She coordinated the Secretariat that laid down the foundation for the establishment of the commission. Hon. Judge Imani Aboud was a Vice Chairperson of the Kenya Independent Review Election Commission (IREC), which was mandated to examine the Kenyan 2007 Elections with the objective of measuring how adequately the legal and Constitutional framework met the standards of the key elections and democratic principles of universal suffrage.

Hon. Judge Aboud was a member of Tanzania taskforce of the Local Government reform and Labour Law Reforms. She also participated in a team which conducted the Public Sector Reform Program (PSRP) in Tanzania specifically focused on system reforms. She also led a Committee which reviewed Tanzania children law, marriage law and inheritance law in 1999. Hon. Aboud is currently a SADC Region Board Member of the Citizen For Justice (CFJ) from April 2016. She also attended the CSW meetings in the UN-New York from 2000 to 2014.

Hon. Lady Justice Roselyne Lagat – Korir holds an LLM (2008) and LLB (1989) degrees from the University of Nairobi, and; a post graduate Diploma in Women’s Law(1996) from the University of Zimbabwe. Prior to her appointment to the Bench in 2011, she served as a Deputy Chief State Counsel, Deputy Public Prosecutor and Legal Researcher. She has extensive experience in development issues in the Governance, Justice, Law and order Sector (GJLOS). She was a member of the Multi - Sectoral Task Force on the Implementation of the Sexual Offences Act (2007-2011). She co-ordinated the Legal Sector Reform Programme (2000-2003); and was Secretary to the Task Force on Laws Relating to Women (1994-1998).

She has practical experience in programme management, co-ordination, training, facilitation, and report writing.
Justice Dr. Esther Kitimbo Kisaakye is a Justice of the Supreme Court of Uganda. She holds a LL.B Hons. Degree – Upper Second); LL.M (Georgetown University) and a Doctorate (SJD) from American University. She has served as a law teacher, legal practitioner, legal advisor, human rights and development consultant, Judicial recruiter and trainer. She has served as the Chairperson, Judicial Training Committee. Currently, she is the President of the National Women Judges Association-Uganda and the Vice Chairperson of the Judicial Action Group (JAG).

Born Helen Moronkeji Adegbie on 23-03-1957. Justice Helen graduated from the University of Lagos in 1977. She was called to the Nigerian Bar 1978. She married Mr. Festus Kokumo Ogunwumiju in1980. She worked in the Ondo State Ministry of Justice as a State Counsel for two years after which she moved to the Legal Aid Council of Nigeria as a Legal Aid Counsel and rose to become Assistant Director, Legal Aid Council in 1988. She joined the Judiciary in 1991 and rose through the ranks as Chief Magistrate; Secretary, Judicial Service Commission, Oyo State; Probate Registrar and Chief Registrar, Oyo State, Nigeria in 1997. She was elevated to the High Court as a judge of Ondo State, Nigeria in 1998. She was further elevated to the Court of Appeal, Nigeria in 2005.

From 2013, she has been presiding Justice, Court of Appeal, Benin now, Enugu Division, in Nigeria. She is a member of several professional bodies and enjoys playing golf, reading novels and sewing.

Lady Justice Mrs. Maria Mapani-Kawimbe was appointed Judge of the High Court of Zambia on 11th May, 2016. She holds a Bachelor’s Degree (LLB) from the University of Zambia, Masters Law Degree in Public International Law with a bias in Human Rights and Humanitarian Law (LLM), from the Raoul Wallenburg Institute, University of Lund, Sweden. Prior to her appointment, she served as Deputy Chief State Advocate in the Attorney General’s Chambers and as a Senior State Advocate in the Office of the Director of Public Prosecutions.

She equally held the following positions in the Ministry of Justice: Deputy Director International Law and Agreements, Director Governance Department in charge of the Access to Justice Programme, National Secretary for the African Peer Review Mechanism and Secretary for the Legal and Justice Reforms Commission. She is currently a Member of the African Union Committee of Experts on the Rights and Welfare of a Child.
Lady Justice Roydah Mwanakulya Chinungi Kaoma obtained her Bachelor of Laws degree from the University of Zambia in 1989 and was admitted to the Bar in 1990. She holds a Master of Laws degree from the University of London and is a trained Court Mediator. She joined the Zambian Judiciary in 1991 as Resident Magistrate, Subordinate Courts. She rose to the rank of Principal Resident Magistrate and magistrate-in-charge, and Deputy Registrar of the High Court. She was appointed High Court Judge in August, 2002. In December, 2008 she was appointed Judge-in-Charge, Kitwe High Court. On 4th October, 2012 she was appointed to act as Supreme Court Judge and was substantively appointed in June, 2014. She is the Chairperson of the Zambia Law Development Commission and current President of the Zambia Association of Women Judges. She is also a member of the International Association of Women Judges and the Commonwealth Magistrates and Judges Association.

Judge Kgoele has been a judge of the High Court of South Africa for almost 9 years. She is a founder member and is currently serving a second term as President of the South Africa Chapter-IAWJ. She started her legal career as a prosecutor and has held the following positions thereafter: Magistrate, Senior Magistrate, Chief Magistrate/Regional Magistrate, a Law Lecturer before her permanent appointment as a Judge. As a law lecturer she was responsible for training all the magistrates both in South Africa and Namibia on Evidence, Social context training, HIV/aids. It was during this period where she served in various committees that were responsible for the production of the Criminal court magistrates Bench book, Customary Marriage Manual, Ethics Manual, Domestic Violence Manual and Child law Manual. She has accumulated a vast experience over the years as a judicial officer in both Criminal and Civil law. She also obtained her Master’s degree (LLM) with UNISA and one of the subject that she did which she is passionate about is Constitutional Interpretation.

Hon. Justice Stella Ogene, Nigerian Citizen, is currently, President, Customary Court of Appeal, Delta State, Nigeria and Vice President, National Association of Women Judges, Nigeria. She has LLB from University of Lagos and called 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.
Hon Justice Martha Koome is a Judge in the Court of Appeal based in Malindi. She has a total of 29 years experience in the legal profession, 15 years as a practicing advocate where she run one of the most successful law firms renown for defending human rights, with a particular emphasize on women and children rights. During her days in private practice she was chairperson of FIDA Kenya, council member of the Law Society of Kenya, founding member and first treasurer of East Africa Law Society upon becoming a Judge she was elected as President of Kenya Magistrates and Judges Association. Justice Koome joined the Judiciary of Kenya in 2003 as Judge of the High Court where she served in various High Court stations until the year 2011 when she was promoted to the Court of Appeal. Justice Koome holds an LLM in Public International Law from the University of London, LLB University of Nairobi and a post graduate diploma in law from the Kenya School of Law.

Hon Justice Mariama Owusu is a Justice of the Court of Appeal in Ghana. She graduated from University of Ghana Legon, where she obtained an LLB Degree and proceeded to the Ghana Law School. She was called to the Ghanaian Bar in 1981. Thereafter she went into Private Practice with Messrs Totoe Legal Services in Ghana. In 1990, she joined the Ghanaian Bench as a District Magistrate. In 1992, she was appointed a Circuit Court Judge. In the year 2000, she was appointed a Justice of the High Court. I was appointed a Justice of the Court of Appeal in 2006, a position she has held to date.

Currently, she is the President of IAWJ-Ghana Chapter, a position she has held since 2014.

Hon Justice Uwani Ab’Aji is the Presiding Justice of the Court of Appeal, Kaduna Division and the current President of the National Association of Women Judges, Nigeria (NAWJN). Her Lordship started off her legal career as a State Counsel in Bornu State. Thereafter, from 1986 she rose through the echelons as a judicial officer after she joined the Yobe State Judiciary as a Magistrate. Her Lordship was elevated to the Higher Bench in 1991, as a Judge of the High Court of Yobe State.

In 2004 she was further elevated as a Justice of the Court of Appeal. Her Lordship holds an LL.B Hons and B.L. she has presented several papers locally and Internationally. Her Lordship is happily married and is blessed with children and grandchildren. Her Lordship loves listening to music and watching documentaries.

"Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies."
Patricia 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.


Hon Mrs Justice Sharon Kaunda Newa obtained her Bachelor of Laws Degree in 1998 from the University of Zambia (UNZA). She was admitted to the bar on 29th April 2005. She started working as a lay magistrate in June 2001, and upon being admitted to the bar was elevated to a Professional Magistrate. In 2006 she was appointed as Chairperson of the Child Justice Forum, She held this position until October 2011 when she was appointed Deputy Registrar of the High Court. Hon Mrs Justice S. Kaunda Newa was appointed Judge of the High Court in May 2016.

She trained as a trainer in child justice administration, as well as in child witness training. Further she participated in the review of child related legislation, which process involved study visits to South Africa and Ghana. Hon Mrs Justice Sharon Kaunda was also part of the team that compiled the training manual for gender based violence (GBV), under the GBV and ASAFER Zambia projects. She trained in advocacy at the National Advocacy Center, in South Carolina USA in May 2010 under the Women Justice Empowerment Programme funded by USAID. In addition she has trained in Jurisprudence of Equality (JEP), and has been a trainer in the application of human rights to cases of sexual and gender based violence, and access to justice. She participated in the formulation of the rules under the Anti Gender Based Violence Act No 1 of 2011, in 2016, and was part of the team that was established to spearhead the launch of the fast track GBV courts in Kabwe and Lusaka in 2016.
Mrs 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 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. Serwanga is an Advocate of the High Court of Kenya, an ardent advocate of human rights and gender justice. She brings on board over ten years experience in continental and national level litigation, advocacy, research and programme management. Her work has seen her engage state, non-state & intergovernmental organisations across Africa to advocate for ratification, domestication and implementation of key AU human rights instruments, including the Protocol on the Rights of Women in Africa and the African Court Protocol. She has led capacity building projects to promote implementation of human rights instruments by lawyers and judges in East Africa. At national level, she has engaged in provision of legal aid and access to justice programming and at one time served on the AGs Task Force for Implementation of the Sexual Offences Act. Ms. Serwanga has served as counsel in litigation teams pursuing gender justice in litigation before national courts and regional bodies. Presently, she serves as Gender Specialist in the UNDP/ UN Women elections project, Strengthening Electoral Processes in Kenya. Ms. Serwanga is the holder of a Bachelors of Laws (LLB) degree from Makerere University (Uganda), a post graduate diploma in Legal Practice from Kenya School of Law (Dip. Law) and a Masters of Law (LL.M Human Rights and Democratisation in Africa) degree from University of Pretoria (SA). She a certified mediator and is a trainer of Trial Advocacy as certified by the National Institute of Trial Advocacy (NITA).

Patricia is a judge of the High Court in Tanzania. Prior to judgeship she was a Trial Attorney at the International Criminal Tribunal for the Former Yugoslavia. Patricia attained her LL.B from the University of Dar Es Salaam, LL.M and MPA from the University of Minnesota. She is also a Humphrey Fellow, member of, the International Women Judges Association, Tanzania Women Judges Association, and the Commonwealth Magistrates and Judges Association.

“Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies.”
Ms Kouruoma Sabore Guiro is currently Deputy Director of Criminal Affairs and Pardons in the Directorate of Civil and Penal Affairs of the Ministry of Justice Human Rights and Public Liberties in Abidjan. In addition she is a Lecturer and a Trainer for the program for strengthening the Judicial System in Cote d’Ivoire Ms Guiro is the holder of a Masters degree in international law and Comparative Environmental Law from the University of Limoges in France. She also holds a Bachelors degree in common law of business and Bachelors in Modern Letters Communication, Environment and Society. Previously she has worked as a counsellor at the Bouarke Court Of Appeal and Court of Appeal of Abidjan. In addition she has worked as a public Prosecutor.

Hon. Emma Collete Attokpa Kouassi is the holder of a Masters degree in law. She is currently working as general Counsel at the General Prosecutor’s office in Abidjan and is also a Lecturer at the National Institute of Judicial Training. She has previously worked as a Judge in the Court of First Instance and the Labour Court of Abidjan and has also been the President of the Chamber of the Court of Appeal of Abidjan.

Ms Kouruoma Sabore Guiro
Deputy Director of Criminal Affairs and Pardons

Emma Collete Attokpa Kouassi
General Counsel

Hon. Emma Collete Attokpa Kouassi is the holder of a Masters degree in law. She is currently working as general Counsel at the General Prosecutor’s office in Abidjan and is also a Lecturer at the National Institute of Judicial Training. She has previously worked as a Judge in the Court of First Instance and the Labour Court of Abidjan and has also been the President of the Chamber of the Court of Appeal of Abidjan.

Hon. Lady Justice Margaret Victor
High Court Judge

Justice Marie Chantal Koffi is a Judge, Deputy Child Protection, Ministry of Justice and Human Rights in Cote d’voire. She is a holder of a Master Degree in judiciary law from Abidjan University. Formerly she has previously worked as an Appellate Court Judge, and a Child Protection Officer with UNICEF. She has attended several local and International trainings and workshops. She has been a member of the African Union Committee of Children Rights and Welfare and is currently a member of Ivorian Women Judges Association and the International Association of Family and Juvenile Judges.

Hon. Lady Justice Koffi Marie Chantal
Judge, deputy child protection, Ministry of Justice and Human Rights

Hon. Lady Justice Koffi Marie Chantal
Judge, deputy child protection, Ministry of Justice and Human Rights

“Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies.”
Thank You
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 socio-economic empowerment.

**ACTION:** 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:** 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.
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:**

Women Judges  
National Chapters of IAWJ in Africa Region  
IAWJ  
Judiciaries

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

**ACTION:**

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:** 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:** 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:** 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:** 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:**  
   *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:**  
   *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:**  
   *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:** 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:** National Chapters of IAWJ in Africa Region

Women Judges

IAWJ

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**SIGNED**

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DATE

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

Hon. Dr. Susana Medina
President
International Association of Women Judges Association
15TH INTERNATIONAL ASSOCIATION OF WOMEN JUDGES  
(IAWJ) 

AFRICAN REGIONAL CONFERENCE 


Women in the Justice System: The Poverty Question 

PRESENTER:

HON. JUSTICE DR. ESTHER KITIMBO KISAAKYE  
Justice of the Supreme Court of Uganda/  
President, National Association of Women Judges - Uganda 

17th May 2017  
Safari Park Hotel, Nairobi, Kenya
Introduction

I would like to thank the Kenya Women Judges Association first, for organizing this important regional Conference and for having chosen a very topical theme and presentations that we will be focusing on in this Conference.

I also thank the organizers of this Conference for extending this invitation to me to share my ideas and thoughts on a very important topic, “Women in the Justice System: The Poverty Question.”

When I received the invitation to speak at this Conference on the poverty Question, I wondered to myself, like many of you attending the Conference may have wondered when you reviewed the programme: what is the Poverty Question?

I am aware that different persons may come to a different conclusion from the one I came to. I therefore found it necessary to lay out at the onset of my presentation what I understood by the phrase “the poverty question” vis a vis women, before proceeding to the other aspects of the presentation.

My research unearthed the following. First, that poverty can either be absolute or relative. Absolute poverty refers to persons who cannot obtain adequate resources, measured in terms of calories or nutrition) to support a minimum level of physical health.
On the other hand, **relative poverty occurs when people do not enjoy a certain minimum level of living standards as determined by a government.**

Secondly, according to the UNDP, 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.

Thirdly, what are the causes of poverty? While most analysts agree that there is no single root cause of all poverty everywhere throughout human history, they have identified some common causes of poverty around the world as including history, **War & political instability**, **Vulnerability to natural disasters; and National Debt.** At the individual level, **Discrimination and social inequality**, gender wage gap, women’s prevalence in low-paid occupations, a lack of work-family support are some of the factors which have been identified as causes of poverty.

Fourthly, women constitute a disproportionate percentage of the world’s poor. This has led some to refer to this phenomenon as the “**feminization of poverty**”, while indeed, others have gone on to observe that “poverty has a female face.”

Many writers agree that the burden of poverty borne by women is “**not only a consequence of lack of income, but is also the result of the deprivation of capabilities and gender biases present in society and government.”**
Gender inequality manifests itself in various forms which include women’s unequal access to economic resources and assets; discrimination against women at home and in the workplace through unequal pay and opportunity and vulnerable employment; women’s disproportionate burden of unpaid work such as caring for children, the elderly and the sick; persistent and widespread violence against women and girls and a disproportionate impact on women of natural disasters and environmental degradation.¹

What is the Poverty Question

In my view, the following quotation from the United Nations Development Programme (UNDP) has rightly summed up the poverty question as follows:

“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 ...”

To me, this quote underscores the underlying dilemma facing not only developing countries but the entire international community. Indeed,
the poverty question stood out so prominently to the international community that in 2015, ending poverty was pronounced by the United Nations as the first goal out of 17 Sustainable Development Goals, otherwise known as SDGs or Agenda 2030.

Time and the scope of this presentation do not permit me to discuss all the remaining 16 SDGs. Since I will be referring to these SDGs at various points, I believe it is important to briefly highlight their focus.

Goal 2 focuses on eradicating hunger
Goal 3 is on attainment of Good health and well being
Goal 4 – focuses on Quality Education
Goal 5 – focuses on Gender Equality
Goal 6 – focuses on Clean Water and Sanitation
Goal 7 – focuses on Affordable and Clean Energy
Goal 8 – focuses on Decent Work and Economic Growth
Goal 9 – focuses on Industry, Innovation and Infrastructure
Goal 10 – focuses on Reduced Inequalities
Goal 11 – focuses on Sustainable Cities and Communities
Goal 12 – focuses on Responsible Consumption and Production
Goal 13 – focuses on Climate Action
Goal 14 – focuses on Life Below Water
Goal 15 – focuses on Life on Land
Goal 16 – focuses on Peace, Justice and Strong Institutions
Goal 17 – focuses on Partnerships for the Goals

Interventions to reduce gender inequality and to improve women’s lives, in my view, can and should take place at various levels. One of the most obvious ones is the grassroots level where interventions directly target an individual woman or groups of women. Other equally important levels of interventions include policy, legislative, educational and judicial interventions.

However, while policy and legislative interventions are more obvious and more commonly discussed in many forums, judicial interventions in the form of court decisions, and their potential in contributing to the uplifting/improving of women’s lives are not always obvious to policy, human rights and women’s rights advocates. This is largely because by their nature, Courts have to be moved by an aggrieved party or parties or an interest group where they are permitted to do so and do not directly step into the arena.

This apparent ‘backbench’ role notwithstanding, courts of law have the capacity to and have indeed changed women’s lives and other marginalized groups, through Court decisions that they render. For example, decisions of superior Courts such as the Constitutional Courts and the Supreme Court in various countries, can have far reaching implications beyond the parties who brought the legal dispute to court. This is particularly true in countries like Uganda which follow
the common law system, where decisions of such superior courts bind lower courts, when they are dealing with a similar subject matter.

Let me illustrate my point with some decisions that have been made by our Supreme Court since I joined the court and in which I had the opportunity to participate in. Each of the cases I have highlighted, dealt with an important area affecting women’s lives, namely rights in marital property, refund of bride price (commonly known as lobola in some communities) and maternal mortality.

**Recognizing women’s right to share in property acquired before or during Marriage**

I will start with the landmark case which recognized women’s right to earn a share in property acquired in marriage based on their non-monetary contributions in the form of childcare and household work.

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. In a unanimous judgment of the Court where I wrote the lead judgment, we declared that on divorce, a spouse can share in the property which was acquired either during the marriage or before the marriage, if she or he can prove that she or he contributed either to its acquisition or to its development.

But even more importantly, we further held that such contribution can be monetary (in cash or kind) or that it can be made through a spouse’s
providing childcare and other household services during the subsistence of the marriage.

The Rwabinumi decision is now the law in Uganda. As I had already observed, the decision binds all lower courts in Uganda which are required to follow it when they are deciding issues of distribution of property ownership in marriage.

Coupled with the achievements made earlier in 2003 in the Constitutional Court in *Association of Women Lawyers and Others vs. Attorney General, Constitutional Petition No. 2 of 2003*, Ugandan women can now successfully not only seek for and be granted divorce on an equal basis as men, but they can also get a fair share of property they either jointly acquired or contributed to its acquisition or improvement in the form of childcare and household services.

The *Rwabinumi* decision was a victory for women in Uganda. For starters, it helped to fill the void that had been left by government’s failure to push through family law reforms proposed since the early 1960s. These efforts date back to over 50 years ago, when women in Uganda began advocating for, among others, a fair distribution of jointly acquired property at the dissolution of their marriage or upon the death of the husband.

The significance of this decision also becomes evident when one takes into account the fact that according to the 2014 Census, women constitute 51% (more than one half) of Uganda’s total population of 34.6 million people.
Another landmark decision of our Court involving property where I, again wrote the lead judgment is *Tropical Bank vs. Grace Muhwana, Supreme Court Civil Appeal No. 04 of 2011*. In this case, a wife successfully sued the Bank for wrongfully selling off her matrimonial home to recover moneys it had lent to a company which held a Power of Attorney which had been unilaterally granted by the husband. We ordered the Bank to refund the wife her 45% share of the value of the home.

_Declaring the Customary law requiring the return of Bride price on Divorce unconstitutional._

Another landmark case for women in Uganda that I wish to highlight is the bride price refund case: *Mifumi (U) Ltd & Anor. Vs. Attorney General, Constitutional Appeal No. 02 of 2014*, which we decided in 2015.

By way of background, Uganda recognizes several types of marriage, which include the customary marriage. Like in several other countries, many Ugandans who reside in rural areas marry under the customary form of marriage. One of the distinguishing features of this marriage applicable to most indigenous tribes in Uganda is the requirement that before the customary marriage can be recognized as validly contracted, the groom must pay bride price to the bride’s parents.

Similarly, before our decision in the *Mifumi* appeal, the customary laws of most tribes in Uganda required that the bride price must be
refunded to the husband before such a marriage can be legally dissolved.

It is also a common practice that once paid, bride price in Uganda is usually shared by the bride’s immediate and/or extended family. In other cases, bride price can also be used by the girl’s parents and/or her brothers to pay for the bride price to the parents of their respective brides.

It therefore followed that if woman experienced irreconcilable differences or abuse in such a marriage, she would in effect be kept in “marital bondage” unless she or her family refunded the bride price which was paid at her marriage.

In the *Mifumi* case, our Court rendered yet another blow to this custom. We held that the demand for return of bride price before a customary marriage could be legally dissolved violated the constitutionally guaranteed right of women to equality and equal treatment with men, before and under the law. We therefore declared the practice unconstitutional.

In my partial dissenting judgment, I further held that the voluntary exchange of gifts between the groom and the bride or her parents and vice versa, either at the time of contracting a marriage or during its subsistence was not unconstitutional. However, I declared that even the demand for and the payment of bride price or “marriage gifts” as they are sometimes referred to, by the groom-to-be to his potential in-laws, was also unconstitutional and should also have been outlawed by
our Court. However, the majority at the Court were not ready to go that far.

_Upholding a Constitutional challenge to high maternal mortality ratio_

The last case I wish to highlight involved yet another aspect of women’s lives - the maternal function and wellbeing.

Uganda has one of the highest mortality rates in Africa and indeed the whole world. According to the latest Uganda Demographic Health Survey (UDHS), Uganda’s maternal mortality rate stood at 336 deaths to 100,000 live births. This was a slight improvement from the position as it stood in 2011, when the maternal mortality rate stood at 430 deaths.

Furthermore, many women have unmet contraceptive needs and get pregnant in and out of marriage against their will. In addition, like many African countries, Uganda has not legislated against marital rape.

In 2015, the Supreme Court of Uganda rendered yet another important and landmark decision in _CEHURD v. Attorney General, Constitutional Appeal No. 1 of 2013_. In that case, where I once again had the opportunity to write the lead judgment, we ordered the Constitutional Court to hear on its merits a Constitutional Petition challenging Government’s inaction over the high maternal mortality rate, alleged to result from frequent stock outs of medical supplies and inadequate budgetary allocations to maternal health.
The Constitutional Court had summarily dismissed the Petition, on grounds that it raised a political question, which the courts had no jurisdiction to look into. Our Court held that no Article in our Constitution is ring fenced to be beyond scrutiny by Courts.

Furthermore, we held that even where such a petition was challenging low or inadequate allocation of funds to the maternal health sector, a matter which had hitherto been held to be in the exclusive realm of the executive arm of government, the Constitutional Court was duty bound to inquire into it and to determine if government’s actions or omissions had violated the Constitution.

In so holding, the Uganda Supreme Court further opened the door for individuals and/or interest groups to file constitutional petitions against the government before the Constitutional Court over matters previously deemed to be in the government’s exclusive jurisdiction, such as budgetary allocations to different sectors.

The following quote provides some useful insight on the significance of the CEHURD case:

“This case is highly significant in a country which, according to the World Health Organization has a MMR of 310 (per 100,000 live births (2010). The litigation and accompanying advocacy have highlighted the large number of preventable maternal deaths and have raised questions regarding governmental obligations to health. Furthermore, 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 discourages by the precedent set by the Constitutional Court.”

As we continue to reflect on Women in the Justice System, it is important that we reflect more broadly on the role that judges can play in enabling the realization of SDGs in our respective countries. As I have emphasized elsewhere, the Constitution has vested a lot of power in judges. As judges, we have the duty to use this power to put our respective countries on the course to achieve good governance and to attain sustainable development and not to derail development. We exercise our power not only through the decisions we render, but also through the process we follow in arriving at that decision.

I have shared the above decisions of the Uganda Supreme Court to demonstrate how we can use our judicial power to begin to make inroads in factors that perpetuate women’s poverty. Like in many of the cases that courts dispose of, our Court could have reached a different decision in each of the above cases I have highlighted. For example, in the Rwabinumi appeal, we did not have to go as far as discussing the issue of women’s non-monetary contribution and pronouncing ourselves on it. But we did.

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See [www.escr-net.org](http://www.escr-net.org), last visited March 2, 2017
Similarly, in the *CEHURD* case, we had the option of upholding the decision of the Constitutional Court and deciding to decline to hear the appeal on grounds of the question of political question and separation of powers. But nevertheless we took a different direction and upheld the supremacy of the Constitution. We also limited the application of the political question doctrine to only those instances where the Executive or Parliament is rightly acting within its respective constitutional mandate.

In the *Mifumi* appeal, again the Court could have chosen to uphold the right to a cultural life and to practice one’s customary law and hence upheld the discriminatory practice of refund of bride price-on those grounds. Instead, the Court chose to uphold the Constitution and the women’s right to equality and declared the practice of refund of bride price unconstitutional.

What do the above cases illustrate? First, these cases illustrate the issue of court’s power and choice. Wherever the opportunity presents itself, it is important that we apply the Constitution and the law in a way that breathes life in the provisions of the Constitution. Secondly, the cases demonstrate the need for judicial alertness. For example, the Rwabinumi appeal was not a constitutional case, but an ordinary divorce appeal filed by an aggrieved husband. Judicial alertness calls for us to develop capabilities to decipher or as others
would say ability to “read between lines” what the case before you is all about?

Thirdly, we need to be strategic. Although we may feel inclined at appellate level to be the writers of the lead judgments in appeals that raise fundamental human rights issues for women, in some cases, we need to bring our male colleagues on board as our allies. The lead judgment in the *Mifumi* appeal challenging the constitutionality of the customary practice of refund of bride price was written by a male Justice of the Court and I settled for a supporting only.

Fourthly, as we seek to enhance women’s access to justice, we need to always remain grounded in the law - the Constitution, Statutes, International Human Rights Instruments and customary law where applicable and consistent. For example, The Constitutional Court had decided the Rwabinumi case partially based on the Bible. However, the Supreme Court finally disposed of the same appeal in a unanimous decision based on, among others, the constitutional right to property.

Eradicating poverty amongst all, but even specifically amongst women will requires us to reflect more on how we approach matters brought before us. As a continent, we have many other progressive decisions other than those I have cited from our Court where courts have declined to uphold discriminatory inheritance laws that favour men over women and where they have upheld the right of a woman or
daughter to sell land she inherited from her father and to be an administrator of the estate of her deceased husband.
Similarly, we have made progress in judicial pronouncements that struck down discriminatory laws.

But as we celebrate our achievements in the law, we need to remain mindful of the unfinished business in eradicating poverty and gender inequalities that perpetuate it and deny women from fully enjoying their Human Rights as guaranteed in the national Constitution and international & Regional Instrument Human Rights Instruments. For as the UNDP has rightly observed:

“Achieving sustainable development requires recognizing women’s contributions and ensuring their equal and meaningful participation in the decisions that affect their lives and communities. When inequalities are addressed and policies reshaped, women and girls can become catalytic agents of change and equal partners with men in the quest to promote growth that is inclusive, just, equitable and sustainable.”

So, we need to reflect further on how we adjudicate on land matters between the poor and the rich. In countries such as Uganda where we have rampant land evictions of the poor who sometime comprise entire villages who do not possess land titles, to what extent are we ready to re-examine some of the age old principles of “bonafide purchaser for value without notice”? Should we continue to allow rich litigants to hide behind this principle, even where there was clear

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3 See United Nations Development Programme, UNDP Support to the Integration of Gender Inequality Across The SDGs Including Goal 5, at 4.
evidence that the land in question was occupied and farmed by the peasants?

When it comes to division of marital property on divorce, how far are we ready to go in crafting orders that will ensure that the divorced wife can realize their share either through retaining the home or sale and division of proceeds?

In matters that involve orders for child maintenance, what can we do to reduce the disproportionate financial burden that usually falls on women either as single parents or as divorcees carry to raise their children? How do we compute the quantum of child support?

Turning to the issue of sexual and gender based violence, how can we make the law work for victims of domestic violence and other forms of violence”?

How are we ensuring that the poor (women and men) inclusive access justice in our Courts and that we have created a conducive Court environment for the poor to present and litigate the claims, without the fear of being saddled with costs of litigation, even for delays of judicial system?

The justice system is the mechanism that upholds the rule of law. Our courts provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner. The courts are supposed to be an impartial forum, dispensing justice for all. However, as we dispense the
law and uphold the rule of law, we need to remain mindful of the multi-layered and multi-faceted discrimination that continues to drive and perpetuate poverty not only amongst the court users but also among the wider communities and countries in which we serve. In addressing the poverty question and what we, as female judicial officers can do to tackle it, we need to look at poverty from two perspectives: the micro level and the macro level.

The micro level focuses on factors that have a very direct impact on the individual, (individual poverty). The macro level, on the other hand, in my view, should focus on at societal level (group poverty affecting women, a country or sub section of them) and the factors that marginalize, disadvantage or exclude or jointly affect groups of persons and create/predispose them to a cycle of poverty.

It is important to not to lose sight of both levels. By so doing we remain alert to addressing not only the more direct forms of individual discrimination that perpetuate individual poverty, but also the more deeply entrenched factors that help to perpetuate group poverty.

We also need to remain mindful of the fact that women constitute the bulk of the poor and that if we do not effectively deal with discrimination against girls, the cycle of poverty will never be broken.

The question that arises is how then do we do it? The first step calls for an examination of how we approach our work and also how we judge. I
am sure each one of us was very excited when we were first appointed and of course every time we rise up in our judicial career, respectively. But as we continue to occupy the honourable position of a Judge or Chief Magistrate or Magistrate, no matter what level you are, there are some fundamental question we need to ask ourselves individually each day and collectively in our forums such as this IAWJ Regional Conference or in our respective National Associations of Women Judges: What difference did I make on the bench, yesterday and/or today? Similarly, we need to pose and answer the question: what difference are we, as women judicial officers making on the bench?

The other fundamental question we need to ask ourselves is can we talk of the rule of law when a substantial part of the population cannot enjoy their rights due to poverty fuelled by inequality and discrimination?

Similarly, can any nation claim to have a functional justice system which in the large part is not accessible by the poor and one which functions in such a way that either the poor have no confidence in it or in the few instances where they interact with it, they either do not get justice or they are not seen to get justice from it?

One of the fundamental principles underpinning a functional justice system is that the law applies equally to every person. However, we all know, that while this is supposed to be the case, there are many factors that often disadvantage the all the poor and especially the female poor
and prevent them from either accessing justice and/or benefitting from the law on an equal basis as rich and the more privileged litigants and/or members of society.

These factors include the following: long distance to courts, inability to hire a lawyer or pay legal fees, language constraints, lack of awareness of their legal rights and modes of enforcing such rights, (ignorance of the law and its procedures), e.t.c.

Given all the above constraints, it is therefore imperative of us as Judicial Officers to know that it cannot just be business as usual. We did not just join the judicial club. The law requires us to be impartial when we are adjudicating on matters before us. However, it is my view that the law does not require us to be “judicially blind” of the poverty, inequality and discrimination that exists in our society and which operate to perpetuate the cycle of poverty in women and girls.

On the contrary, I would argue that imbedded in oath of allegiance and the judicial oath we take on assumption of our judicial office is the duty to do justice to the poor and the marginalized.

We therefore have a duty to dispense Justice to all, and ‘All’ includes the female poor and all the poor. We have a duty to dispense justice on behalf of the people. It therefore follows that if the majority of the population in a given country are women and they also constitute the majority of that country’s poor, then, we hold judicial power and are indeed required to dispense justice on their behalf.
As we do this I would strongly argue that we have three primary sources to turn to.

At the national level, the primary source is the National Constitution. Many, if not all of the Constitutions of the countries represented in this Conference guarantee equal protection of the law and the right not to be discriminated against on basis of sex and or social or economic standing.

The second sources are the laws governing the issue. The third source is the international and regional human rights instruments that our countries have ratified.

The theme of this Regional Conference is “Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies.” calls on us to further reflect on our role in facilitating the achievement of the 17 Sustainable Development Goals also known as Agenda 2030. But as I noted earlier in this presentation, the international community identified ending poverty as the first Sustainable Development Goal. The prioritization of ending poverty by the international community should not be lost to us.

For us, as women judges at all levels, ending poverty is already embedded in our task. As I noted earlier, while there are many causes of poverty, discrimination and inequality constitute two of the fundamental causes of endemic poverty. If we, as female judges resolve to be true to our respective judicial oath and dispense justice to all; and consciously make a choice to breathe life into the non-
discrimination and equality provisions of our Constitutions and all the regional/ international human rights instruments our respective Governments have ratified through the judgments we render; and also be creating a conducive environment for the poor to access justice, we will have gone a long way in contributing to the achievement of not only SDG Goal No. of ending Poverty, but all the remaining 16 Sustainable Development Goals.

I thank you.
GENDER VULNERABILITY IN CONFLICT SITUATIONS: Do Women Judges have a Role?

A PAPER PRESENTED DURING THE INTERNATIONAL ASSOCIATION OF WOMEN JUDGES CONFERENCE HELD IN NAIROBI, SAFARI PARK HOTEL

By

Hon Anne A. Amadi, CBS

17th May 2017
War is an inherently masculine, patriarchal activity, and rape is one of the most extreme expressions of the Patriarchal drive toward masculine domination over women. Sexual violence as a weapon of war targets individuals not only on the basis of group membership but also uniquely on the basis of gender.\textsuperscript{1} Armed conflict is a predictor of sexual violence against women.\textsuperscript{2} History has shown that in times of war or conflict situations, women and girls are targeted for rape and other sexual assaults on the basis of their sex, often irrespective of their age, ethnicity or political affiliation. And throughout history, sexual violence against women has been a standard tool of domination and warfare.\textsuperscript{3}

While men too are victims of sexual violence, sexual assaults against women occur with greater frequency and in a more predictable pattern that assaults against men. Even in situations of unarmed imprisonment.\textsuperscript{4}

Since the Second World War, international criminal tribunals have been established to limit the atrocities associated with conflict situations. This paper provides an \textbf{overview of the of the problem of conflict related sexual violence against women, how the judges in the international criminal tribunals have dealt with the issue of sexual violence and the extent to which victims’ needs have been satisfied by the outcomes of the indictments related to rape.} It examines \textbf{the roles of judges in those}\n
processes and the extent to which international criminal tribunals have taken gender concerns into consideration when addressing sexual violence. It also makes recommendations for possible reforms in national justice institutions to complement the international courts, for the empowerment of women, redress and restoration for those affected by conflict-orchestrated sexual violence. Some of the tribunals we will be discussing in this paper include the International Military Tribunals of Nuremburg and Tokyo, which were the first international criminal tribunals of modern times, the International Criminal Tribunal of former Yugoslavia (ICTY), the International Criminal Tribunal of Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL) and the Kenyan situation during the post election violence of 2007-2008 and which became subject of proceedings before the International Criminal Court.

A literature review of this subject brings out critical observations on the manner in which impunity in sexual violence has been viewed in the past. From a historical perspective, Sita Balthazar\(^5\) observes that that in spite of the widespread sexual violence during the war, the Statute of the Nuremberg Tribunal set up after the Second World War did not make any mention of rape or sexual abuse. Rape was not enumerated as a crime against humanity or as a war crime. She points out that sexual crimes, along with pillage, were viewed as inevitable aspects of war, and therefore unpunishable. Prosecutors also generally shied away from the subject as too

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It was considered something either too atrocious to prosecute or impossible to prevent and therefore unworthy of prosecution.

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.

Observations made by 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 infamous Rwanda genocide and exposes a number of missed opportunities by the ICTR. She observes that by the 10th anniversary of the tribunal, ninety percent of the convictions had nothing to do with rape, against the background of hundreds of thousands of rapes that happened during the genocide. While Jocelyn Campanaro argues that measures to prevent or punish such occurrences have been extremely ineffective, or completely nonexistent.

The International Military Tribunal of Nuremberg was established to bring to justice the masterminds of the Second World War, for the crimes committed under their command. The Nuremburg Charter defined crimes against

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6 Ibid
humanity to include murder, extermination, enslavement, deportation and other “inhuman acts.” While the inclusion of these crimes was a substantive step forward in the development of international law, rape or sexual assaults were not mentioned at all. This was in spite of the numerous report and transcripts containing evidence of vile and tortuous rape, forced prostitution, forced sterilization, forced abortion, pornography, sexual mutilation and sexual sadism. In fact one prosecutor said;

“The tribunal will forgive me if I avoid citing the atrocious details”  

This is a demonstration of the extent to which no efforts were put towards the capacity of prosecutors to prosecute these crimes. In this matter, the court had the power, authority and flexibility to prosecute sex crimes and to give directions regarding proceedings in matters relating to rape. By failing to insist that the details on sexual violence be presented in full, the tribunal missed the opportunity to make a difference in the lives of women and girls who had been violated.

The failure to specifically mention rape in the Nuremberg Charter resulted in the lack of standards or particulars that could be applied in dealing with sex crime, perpetuating the notion that rape was not as grave as other war crimes. The existing gender discrimination and patriarchy could not provide equal opportunity for women to participate at decision making levels hence the absence of their input in a matter gravely affecting them.

11 Ibid.
The International Criminal Tribunal of the Far East (the Tokyo Tribunal) established on January 19th, 1946 and promulgated by the United States Executive Decree was modelled along the Nuremberg one, targeting high level orchestrators of the war. **Just like the Nuremberg tribunal, the Tokyo tribunal failed to enumerate rape as a prosecutable offence.** Japan’s military sexual slavery known as “comfort women” during the Second World War was one of the most horrendous forms of wartime sexual violence against women ever. It is estimated that about 200,000 women mostly from China and South Korea were forced into the Imperial Japanese Army’s brothels before and during the war.¹³ No action was taken to prevent it. The United Nations Human Right Committee which was looking at the issue as part of a regularly scheduled reviews said all reparation claims brought by victims before Japanese Courts had been dismissed and complaints were rejected on the grounds of the Statute of Limitations.¹⁴

**Unlike the Nuremberg tribunal, the Tokyo Tribunal included rape among the crimes in the indictments.** However, the existence of gender specific crimes were not recognized as actual and separate atrocities deserving to be prosecuted as such. **Although rape was only a charge in conjunction with other crimes, a number of defendants were convicted for rape under prohibitions against “inhumane treatment,” “ill treatment” and “failure to respect family honour and rights”, and not as rape as an act of violence.** This, however, established an important

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precedent for future prosecutions. In Re Yamashita,\textsuperscript{15} the Tokyo tribunal found General Yamashita guilty of a rape committed by those under his command, even though he did not commit any rape himself. This set an important precedent for holding military commanders responsible for failing to prevent or punish criminal behaviour about which they should have known. However, none of the victims were called to testify, and the subject of women victimization was only given incidental attention.\textsuperscript{16}

At institutional levels, both tribunals had no women judges, prosecutors or decision makers. In fact, there were a handful of women participating at the lowest levels and hence there was no room for substantive input by women. These institutional failures demonstrated the discriminatory tends against women by the international community, evidenced by the refusal to adequately recognize the need for the legal protection of women against sexual violence in situations of conflict.

The 20\textsuperscript{th} Century saw more violent conflicts and of special mention are the conflicts in former Yugoslavia and Rwanda, among others. In both countries, sexual violence was committed as part of a deliberate system of ethnic cleansing.\textsuperscript{17}

The massive and widespread sexual violence in Bosnia-Herzegovina conflict was a key element in motivating the creation of the International Criminal Tribunal for former Yugoslavia (ICTY). The ICTY was mandated to deal with prosecution of sexual assaults, which was a significant

\textsuperscript{15} In Re Yamashita (1946) 327 US 1,51
\textsuperscript{16} Ibid.
development in the recognition and protection of women’s rights in times of war.\textsuperscript{18}

In \textit{Prosecutor v Dusko Tadic},\textsuperscript{19} Dusko Tadic, a citizen of former Yugoslavia of Serb descent was the first individual to be charged with rape as a separate war crime for his participation in the torture of 12 women detainees at the Omarska Detention Camp, including gang rapes. The charges were however withdrawn because the witness was too afraid to testify for fear of reprisals. Nothing was done to encourage her. The need to deal with fear and trauma of women victims was never addressed.

Although Tadic was subsequently convicted- it was with regards to the sexual assaults against men, and therefore could not support a charge of prosecution on the basis of gender! To its credit, the court recognized the immense suffering borne by the women in the detention camp resulting from sexual assaults.

In Prosecutor v \textit{Dragan Nikolic},\textsuperscript{20} Dragan Nikolic was commander of the Serb-run Susica Camp in Bosnia Herzegovina where Bosnian Muslims and other non Serbs were tortured and terrorized. Under his instruction, all women of all ages were sexually abused in the camp. Although he was not charged with these offences, after hearing evidence from the several witnesses, the court observed

“the Trial Chamber feels that the prosecutor may be well advised to review these statements carefully with a view to

\textsuperscript{18} Patricia Sellers & Kaoro Okuizumi (1997) International Prosecution of Sexual Assaults, 7 Transnational and Contemporary Problems, 45, 47.
\textsuperscript{19} ICTY Prosecutor v Tadic Case No IT-94-1-T ICTY
\textsuperscript{20} ICTY
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.”

This statement was remarkable in its activist concern for the prosecution of gender crimes, demonstrating the tribunal’s willingness and preparedness to develop jurisprudence around war crimes to include gender crimes. This attitude is reflected in the decision by Judge Phillip Waki who chaired the Commission of Inquiry into the Post Elections Violence in Kenya (CIPEV) after the post election violence in Kenya in 2007-2008. Although the mandate of the Commission did not specifically single out gender issues, the commission noted the consistent accounts of sexual assaults, and through consultations with non-governmental organizations created the position of Gender Advisor to the Commission. This was a proactive approach towards ensuring SGBV was given the attention that it deserves.

_Prospector v Anto Furundzija_ was also a case heard by the ICTY. Anto Furundzija was the commander of the military police unit in the former Yugoslavia conflict. He was charged with violations of laws or customs of war for his involvement and failure to stop or curtail the sexual assault of Bosnian Muslim women.

In this case the trial chamber found that the definitions of rape lacked specificity and developed a broader definition that encompassed forced oral or anal sexual acts. The judgment in this case was reached almost

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21 In Re Dragan Nkolic (1995)ICTY NO IT-84-2-R61 Decision of Trial Chamber 1
22 ICTY, Anto Furundzija v Prosecutor (2000) IT-95-17/1-A
exclusively on the testimony of a female victim whose evidence was challenged by the defence as unreliable as a result of her suffering from Post Traumatic Stress Disorder (PTSD).

The accused was convicted in spite of the witness’ difficulty in recalling the details of the rape. The court observed that “there was no reason why a person with PSTD cannot be a perfectly reliable witness”\textsuperscript{24}

The defence counsel attempted to use as a ground of appeal the fact that one of the Judges, Florence Mumba had been a women’s rights activist and therefore likely to be biased. Judge Mumba had served as representative of the Zambian government to the United Nations Commission on the Status of Women (CSW). The appellant argued that since the CSW had participated in the campaign for the reaffirmation of rape as a war crime, “an appearance was created that Judge Mumba had improperly sat in judgement that would advance a legal and political agenda which she helped create whilst a member of CSW”\textsuperscript{25}

This case illustrates how gender discrimination may be directed not just at female victims and witnesses, but also against a woman judge on the basis of her gender expertise and experience. On a positive note, it illustrates the value of gender expertise on the bench, and how women judges can broaden the interpretation of international of international law to cover situations or concepts not expressly addressed in the law.

\textsuperscript{24} Ibid
\textsuperscript{25} Ibid para 164-70
It is worth noting that The ICTY Statute did away with the need for corroboration of a victim’s testimony, while rendering inadmissible the evidence of the victim’s previous sexual conduct. Kenya’s Sexual Offences Act contains similar provisions, recognizing that corroboration is often difficult to achieve given the circumstances under which rape occurs. This was a significant development in the recognition and protection of women’s rights in times of war and conflict.

The ICTR was established by the United Nations Security council in response to the 1994 genocide in Rwanda for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committee in Rwanda between January and December 1994.26 As in former Yugoslavia, thousands of women had been individually raped, gang raped, raped with objects, sexually mutilated and held in sexual slavery. The sole purpose was to terrorize and destroy the Tutsi ethnic Group. The ICTR provided as much scope as the ICTY for addressing sexual violence.

One of the most celebrated cases in the ICTY is Prosecutor v Jean Paul Akayesu27 When the violence began in Rwanda in 1994 after the death of the Rwandan President Juvenal Habyarimana, rape of Tutsi women was widespread.28Tutsi women were targeted on the basis of the genocide propaganda that portrayed them as calculated seductress spies bent on

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26 ICTR Statute, Special Resolution 955, UNSC 49th Session.
27 ICTR Prosecutor v Jean Paul Akayesu (ICTR)-96-4T
dominating and undermining the Hutu. There was also the gender stereotype portraying them as beautiful and desirable but inaccessible to Hutu men whom they allegedly looked down upon. Rape was therefore used to shatter these images by humiliating, degrading and ultimately destroying the Tutsi women.

It was argued before the tribunal that when rape was carried out on a massive and systematic basis for the purpose of producing babies of the ethnic class of the rapist, of destroying the family life of the victims and of cleansing the surrounding area of other ethnic groups, rape becomes genocidal.

Akayesu was former mayor of the Taba Commune in Rwanda was the first to be tried and convicted of genocide as defined by the Genocide Convention 1949. The original charge did not include rape. However, as consistent evidence of massive rape emerged, it became clear to the judges in the ICTR that the matter could no longer be ignored. The Coalition of Women’s Human Rights in conflict situations filed an amicus curiae brief, urging the ICTR to request an amendment to the indictment to include sexual violence.

The amended indictment alleged that Akayesu had full knowledge of, and was sometimes present during the rapes of Tutsi women who had sought refuge at a police station. The decision in the Akayesu case has been celebrated as precedent shattering as it further expanded the meaning of rape to include forced nudity. The Trial Chamber observed;

“The incident described by witness KK n 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 motes 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.”

While this case showcases the indifferent attitude with regards to the prosecution of sexual violence against women, it also demonstrates how increasingly judges in the international criminal tribunals have become proactive in ensuring that sexual violence in conflict situations is not casually excluded from the indictments by the prosecution.

In Prosecutor v Pauline Nyiramasuhuko the accused was the first woman to be charged with genocide and also to be convicted of rape. She was previously a social worker, Minister for development and Family Welfare, and lecturer on women empowerment. Part of Pauline’s indictment was that she gathered Tutsi people from the Butare community after convincing them that it was for purposes of distributing humanitarian aid. They were cut down with automatic weapons, grenades and machetes. She also ordered Hutu men to rape the Tutsi women before they were killed. When the men were fatigued, she provided gasoline from her own vehicle so that the remaining women could be burned to death.

Both Pauline and her Arsen Ntahobali Son, a military man, were charged with different counts of rape and convicted. One young Tutsi woman was raped by Ntahobali, Nyiramasuhuko’s son, with the permission of his mother. They also mounted roadblocks at which they identified, kidnapped,

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29 ICTR op cit.
30 Prosecutor v Pauline Nyiramasuhuko (ICTR)-96-4T
raped and killed the Tutsi. **In this case the tribunal on its own motion also directed the amendment of an indictment to include rape.** While Arsen Ntahobali was charged for his direct participation in the rapes, Pauline Nyiramasuhuko was charged for using her influence to incite those under her authority to commit acts of rape and abuse of women during the Rwanda conflict. Both were also charged with violations of Common Article 3 of the four Geneva Conventions for outrages to the personal dignity, in particular, humiliating and degrading treatment by forcing the Tutsi women to publicly undress before being led to their deaths.\(^{31}\)

The Sierra Leone conflict (1991-2002) became known for gender based crimes such as widespread systematic individual and gang rape, sexual slavery and forced marriage. Rapes were committed with objects such as firewood, umbrellas and sticks, followed by abduction of women and girls and bondage to male combatants in slavery like conditions often accompanied with forced labour.\(^{32}\) Special Court for Sierra Leone was set up in 2002 at the request of the government of Sierra Leone to bring to justice those who bore the greatest responsibility for the atrocities; The Special Court for Sierra Leone became the first international tribunal to complete its mandate in 2013. **This was a mixed tribunal with both international and domestic elements.** The SCSL operated a witness protection programme intended to meet victims’ and witnesses’ needs, including psychological assistance before, during and after trial.

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\(^{31}\) Prosecutor v Pauline Nyiramasuhuko and another (ICTR)-96-4T.

\(^{32}\) Human Rights Watch (2001) Sexual Violence within the Sierra Leone Conflict- www.hrw.org/news
The Sierra Leone conflict was also characterised with widespread sexual violence by both pro-government forces and other militia. In *Prosecutor v Foday Sankoh and three others*\(^{33}\) investigating attorney in this case sought to amend the indictments it include sexual violations but the judge declined on the basis that there would be no time for the defence to prepare its case. The judge (female) also argued that in any case the violations were committed by the Civil Defence Forces against their own women and therefore did not constitute war crime!\(^{34}\) According to the Prosecutor, the issue was further complicated by the fact that rape is not considered a serious offence in Sierra Leone, and indeed women “were regarded as war rations” during the conflict and just as soldiers and militias would take crops from the field to sustain themselves, women were treated the same way. If they captured, kept and fed a women thy viewed themselves as having the right to rape her

**This case illustrates the reluctance of some judges to pay attention to gender crimes before them, regardless of the circumstances that would justify due consideration of the unique situation of women.**

In the Kenya post election violence of 2007/2008, the Director of Public Prosecution (DPP) acknowledged that although 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

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\(^{33}\) Special Court for Sierra Leone  Prosecutor v Issa Hassa Sesay and three others, Case No, SCSL 04-15-A

\(^{34}\) Perrielo, T and Wierda M,(2006)The Special Court for Sierra Leone Under Scrutiny
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.

It is noteworthy that at the International Criminal Court, witnesses were allowed to give in camera testimonies or have their identities redacted and voices and images scrambled for protection. On a positive note too, the prosecution pressed for stringent witness protection measures. It is noteworthy that of the two Kenyan cases, only one had charges relating to sexual violence.

Conclusions and recommendations

Prosecuting sexual violence arising from conflict situations is undoubtedly difficult. A lot of progress has been made in the last 20 years in prosecuting crimes committed disproportionately against women in conflict situations, and women are now getting the deserved attention. Huge gaps still exist that hinder justice for women victims, including cost, distance, technicalities of the processes and other distinctive experiences of women.

To adequately address the issue at hand, what role can women judges play? In order to address the concerns raised regarding the international court processes, what emerges is the need for a justice structure for women victims with attributes that would ensure greater justice for women. These attributes include accessibility by victims and witnesses, responsiveness to the circumstances of the victims and witnesses,
promptness in dealing with the cases and adequate support mechanisms for victims and witnesses.

Majority of judges work within their national jurisdictions. Most crimes associated with non-international armed conflict as those described above have are prosecuted before international courts. **Women judges through their associations can take lead in the discourse on how best to address these challenges within their local jurisdiction.** In Kenya, for example, the Judicial Service Commission initiated discussions around the creation of the International Crimes Division of the High Court. In that regard, **the Kenya Women Judges Association could offer input as to how the division ought to be structured in a manner that responds to all the sensitivities around sexual violence cases.**

There is an opportunity for enhanced effectiveness in prosecuting conflict related sexual violence **through a mixed model of court with input from both the domestic and international courts**
Cross-currents of Custom as Catalyst for Gender Based Discrimination and Violence against Women in Nigeria

Abstract

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In Africa, particularly in Nigeria, gender based discrimination and violence (GBDV) takes roots in diverse challenges emanating from social-cultural, economic, religious and legal perspectives. These are further compounded by the cultural diversity of the nation that precipitate a cross-current of customary practices in defiance of legislation that militate against implementation and sustainable development- particularly for women in Nigeria. The focus is on discrimination and violence against women, impact on application of the
law, emerging issues as a result of implementation of the law or otherwise, and how GBDV can be eliminated to achieve sustainable developmental goals towards gender equality. On this premise, this discourse will deliberate on imports of customary law and the effects on women and children. It examines customary jurisprudence on custody of children under customary law and child marriage, as viewed through national legislation as well as International Conventions on women’s rights and challenges of using legal frameworks to remedy the situation. It is part of our findings that regardless of legislation and international interventions, traditional observances still ricochet in communities that perpetuate acts against all efforts to meet sustainable millennium developmental goals. For progress to be attained, mechanisms of implementation in form of community enlightenment should be put in place by women judges to discuss matters arising.

**INTRODUCTION**

A Cross-current by definition, “is a current in a river or sea that flows across another current.” This definition is further extended to cover “conflicting ideas or traditions” - Collins English Dictionary. Customary law is made up of rules of conduct, customs and usages which govern the indigenous people of Africa and not forming part of the received colonial common law. This law regulates the lives and transactions of the indigenous people. It is organic and not static.
The context of this paper therefore, examines the complex traditional and cultural landscape of Nigeria and how this diversity catalyses Gender based discrimination and violence (GBDV).

**Violence against Women (and Children)**

Once violence against women (VAW) and children is mentioned, one cannot help but think about all the children of the world and women who suffer some form of violence, either physically, morally, spiritually, psychologically, or mentally, due to domestic violence, armed conflicts, wars, political violence, social or economic violence.

In the Nigerian perspective, the context of violence, based on some of our customary laws, constitute violence against women and children.

VAW presents itself in so many ways. Our harmful practices and archaic customs act as Catalysts for Gender based discrimination and violence against Women such as:

- Depriving widows of their inheritance and custody of their children.
- Dangerous widowhood rites, dehumanizing obnoxious and outrageous widowhood practices.
- Child marriage: The widely celebrated case of little Miss Ese Oruru is a case in point. A few days ago, Federacion Internacional De Abogedas (FIDA) also known as the international Federation of Women
Lawyers (FIDA) Delta met with Ese Oruru who is now a teenage mother as a result of her forced marriage and who is still reeling from the aftermath of her ordeal of being made a child bride by force.

- Female genital mutilation /cutting /circumcision.

2.0. **AFRICAN CUSTOMARY LAW AS CATALYST**

Before the advent of European colonial administrations in Africa, particularly in Nigeria, a former British Colony, there was in existence a full system of local customary laws. Further to this, the British policy of preserving local laws and indigenous institutions as far as was compatible with its colonial rule, consequently permitted and fostered the continued administration of customary law. As a result of these historical developments, three categories of legal systems are practiced in Nigeria, comprising of the following:

1. The received English law, which forms a substantial part of Nigerian Laws;
2. The Customary Law which is operational in the southern and some northern states; and
3. The Sharia Law which operates in some northern states.

Although the received English Law forms a substantial part of Nigerian Law due to the close historical link between England and Nigeria, the customary law and the sharia law have developed side by side with the received English Law.
Although the British colonial administration allowed customary law to co-exist with English Law in colonial Nigeria, a lot of judicial hurdles were placed in the path of the former. For example, the customary law sought to be enforced or claimed must not be repugnant to natural justice, equity and good conscience, neither must it be incompatible directly or by necessary implication with any written law for the time being in force. In spite of these provisions put in place by the British to checkmate some of the obnoxious customary practices especially against women, such customs are very much in existence.

Probing the outstanding catalysts of Social, economic and legal factors that perpetuate GBV in Nigeria.

Nigeria, like most African societies thrives on patriarchy as mainstay for the perpetuation of gender based discrimination against women. For instance traditional economy of the guild systems in Benin Kingdom forbid the female in participating in bronze casting. It is also not established for a female to ascend 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 still affect economic progress of women in the sub-region in the 21st century.

From a legal perspective, the wills Act of Nigeria must take into cognizance the traditions of the testator when making a will, for instance, it is only the first son of a deceased who inherits the house (igiogbe) where the father lived and died and was buried. No man can will such home to a female child. Even if it is so stated in the will, the court will set such a will aside. Most Nigerian traditional families still don’t believe in educating the girl child for the simple reason that she will be married out to another family where she would belong. Though we may say the Nigerian system does not usually violate the rights of women, its “body language” condones the behavior which gives male members of family and society authority over the female. E.g women are not supposed to take anyone on bail, though not backed by any law, it is usually the practice.
Issues for renewed deliberation and Improved Advocacy

Massive Sensitization

Through massive sensitization, gender equality will reduce violence against women and girls which will in turn contribute to economic efficiency. Conversely inequality and unequal power relations fuel gender based violence. There are instances of men preventing their wives from seeking gainful employment either based on cultural or religious beliefs which in turn makes the women to become compulsorily financially dependent on the men.

The World Bank says Gender equality is smart economics and has implications for progressive development. It is my view that we have to support high profile stake holders like (FIDA) the International Federation of Women Lawyers for further and wider reach. For further improved advocacy we should do the following:

(a) Printing and distributing Summary of the CHILD RIGHTS LAW to school children during sensitization visits to schools.
(b) Building partnerships with all stakeholders

(c) Trainings and Capacity Building.

(d) Training of Stakeholders in the justice Sector.

Assessment of the Impact of G. B. V. on Sustainable Development Goal in Africa.

Child marriage for instance prevents the girl from pursuing her dreams and in most cases endangers the survival and development of the girl child with the risk of suffering from Visco Vaginal Fistula (V. V. F.). Regardless of the fact that child marriage has its attendant negative consequences, it also denies the victim of any formal education which in turn affects her economical and the social status. Another impact that gender based violence has on women is the outrageous sum of money such as One Million Naira (N1, 000, 000.00) paid as dowry is some communities, e.g. South Eastern State of Nigeria. The woman is regarded as the husband’s ‘property’ which makes the woman unable to leave the marriage in the face of severe domestic violence as she has no means of refund of bride price or dowry. How can a woman who has been forced to become financially dependent on her husband and whose family is indigent be made to refund such an amount of money?
What then can we achieve on the Sustainable Development Goals (S. D. Gs.) which has the set year 2030 as the target.

The Sustainable Development Goals 2015 S. D. G. 5 and 8 focus on achieving gender equality and empowering all girls and women and the promotion of economic growth. Few months ago, I read in the daily newspapers where a Religious Traditional Ruler from Edo State, Auchi to be precise, vowed to carry placard and protest against any law that would ensure gender parity. I am happy that FIDA Nigeria is on top of the matter.

The challenges that we face in achieving the projection of S. D. G. (2030) in Africa are numerous. These are cross-current of customs namely Traditional beliefs, Religious beliefs, opposition from some of the male folk and Government’s inability to checkmate certain policies of some governmental institutions.

This brings to mind the recent decision of the Honourable Justice G. K. Olotu (Mrs) of the Federal High Court, Nigeria in Suit No. FHC/PH/CS/198/2010 between DR. PRIYE IYALLA AMADI VS THE COMPTROLLER GENERAL NIGERIA IMMIGRATION SERVICES AND ANOR where the plaintiff a woman was asked by the Immigration to obtain a written consent from her husband before she could be issued with an international passport. The defendant in his defence made matters worse by stating;

“that a Nigerian woman who consents to marry a Nigerian man is expected to...
1) Obey and consent to the wishes of her husband in matrimonial matters including any temporary or permanent departure from his sight.

2) That Nigerian married women are classified along with minors by the government of the Federal Republic of Nigeria through Nigeria Immigration Services in the category of persons who require the consent of the Head of the Family...

3) That the requirement of consent was put in place to perpetuate the authority of a man over his wife, no matter the status she has attained in the society.

4) That married men are the bread winners of their family ...

7) .... obtaining Nigeria passport is a privilege, therefore the person applying must fulfill all the conditions laid down by sole Agent/Authority of the Federal Republic of Nigeria...

How then can the Federal Government implement the SDGs? These are factors militating against the achievement by 2030. The court however held in the plaintiff’s favour by declaring the practice discriminatory.

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 voided this rule of customary law as being contrary to CEDAW, UDHR, ICCPR and AFCHPR.

Other examples include the Ugandan Constitution 1995 Article 33(6) which prohibits laws, cultures, customs or traditions which are against the dignity, welfare or interest of women which undermine their status. Women also have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

The Ugandan Constitution 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, it is important to mention here that there are a host of States in some parts of Nigeria that do not believe in women or child protection laws such as the Child Rights Act under the cloak of religion or culture as they continue to endorse child marriage but the Federal Government has promulgated the Childs Right Act. 2003
In Nigeria, the Enugu State Government passed a law prohibiting widows to cut their hairs or any part of the body, or be remarried by a relation etc upon the demise of a partner - **Fundamental Rights of Widows and Widowers and for other related matters Enugu State of Nigeria No.3 2001**

The Constitution of Ghana 1992 is even more explicit and these provisions are in furtherance of the obligations imposed by CEDAW which is very commendable. The non-discrimination norm in **Article 12(2) of the constitution was patterned after Article 1 of CEDAW**. Also there are provisions regarding various women’s right contained in Article 27(2) and (3) of the Ghana constitution. The provisions in respect of property right of spouses are contained in **Article 22(1) and 22(2) and (3)**.

**Bayelsa State Child’s Right Protection Law 2016**

**Oyo State Widow Empowerment Law, 2002**

**Edo State Inhuman Treatment of Widow (Prohibition) Law, 2004**

**The Child Rights Act 2003** (which puts the age marriage at 18 years) has been adopted by various States.

**Violence Against Person’s (Prohibition) Acts (VAPP), 2015.**

Prior to the VAPP Act, there was no Federal Law specifically addressing sexual harassment and domestic violence in Nigeria.
This Act reflects all types of violence including spouse battery, forceful financial depency, use of substances to attack unsuspecting victims, widowhood practices, female circumcision, political violence etc.

For the first time we have provisions for comprehensive compensation for victims that is, apart from securing the conviction and sentence of the offenders.

Such comprehensive compensation includes medical treatment, psychological evaluation for the victims etc.

Courts in the FCT of Nigeria are presently applying this Law.

Women judges have in one way or the other ameliorated gender base discrimination and violence by different judicial pronouncements within the confines of the Law e.g. the immigration case cited earlier. On repugnancy of native law and custom which discriminate against women Dentons West(Mrs) JCA in Mrs Pauline Asika & 3 ors V. Charles Chukwuma Atuanya (2008) All FWLR PT. 433 1293, also upheld women’s right.

This paper refers to our own judgment, **Dominic Nzemeke & Anor V. Ibrahim Okonkwo Chiemeke Appeal No. DCCA/15A/2012(unreported)** were 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).

This was on the premise that the dowry paid by the deceased was not refunded under customary law. On appeal, I read the lead judgment holding that such a custom was repugnant to natural justice, equity and good conscience and upheld the appeal.

In Helen Amufa & 3 ors V. Peter Ochonogor & 5 ors reported in Novena University Law Journal Vol. I 2017 particularly at page 272 where the lead judgment was delivered by my humble self and referred to the case of ANEKWE CHIWEZE V. MRS MARIA NWEKE (SUITE NO. SC. 129/2013) reported in (2014) LPELR 22 697 delivered by Ogunbiyi JSC where she 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.

It would interest you to know that C. Ogunbiyi JSC is leading the Nigerian chapter of the Association to this conference.

**Conclusion/Recommendation**

As women judges the major mechanism by which we can bridge the gender equality gaps is by bold and enforceable judicial pronouncements. Our judgments and rulings remain our voice.

We are constrained by virtue of the restrictive nature of our practice of law as judges. Nigeria is a complex society, hence we can not overtly be involved with the public but we can still do a lot by;

(a) Holding Regional/Zonal Conferences from time to time with other stakeholders such as Executive and Legislative Arms of Government, Institutions such as the Prisons, Police, National Agency for the Prohibition of Traffic in Persons (NAPTIP), Road Safety, Non-Governmental Organizations and Civil Societies.

(b) Create synergy between all stakeholders on the way forward to achieving the SDGs by 2030. In doing this we will not fail to reach out to the most vulnerable target of gender-based discrimination and
violence such as children and young persons in secondary and tertiary institutions market women and those at the grass-root.

(c) Female judges who are heads of courts can by way of practice direction, encourage access to justice by minimizing completely or lifting filing fees and other sundry expenses in cases relating to GBDV.

(d) IAWJ, its chapters and members in Africa should device means of raising funds towards achieving the above set goals.
Emerging Gender Concerns in the Electoral Process

This sub theme will address the plight of women experiencing violence and especially SGBV in conflict situations that arise during electoral processes. 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.
A. INCLUSIVE PARTICIPATION A TENET OF DEMOCRACY

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 in men. This lends to 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)\(^1\) is of greatest concern. Even though electoral violence is recorded against both women and men, women are disproportionately affected, simply because they are women.\(^2\) Women suffer higher vulnerability for electoral violence 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.

B. HOW WOMEN FARE 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 that 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

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1 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.”


JR Serwanga
*Emerging Gender Issues in the Electoral Process*
and 35.2% in the Upper House) are the only other two states currently ranked among the top ten globally. Overall, there is a 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. 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 SDGs will also be limited.

C. BARRIERS TO EFFECTIVE WOMEN’S PARTICIPATION
An array of socio-economic and legal factors perpetrate 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

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3 The data has been compiled by the Inter-Parliamentary Union on the basis of information provided by National Parliaments by 1st March 2017. [http://www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm) (accessed 11 May 2017).


7 Inter-Parliamentary Union, “World Classification,” Women in national parliaments, based on information provided by national parliaments as of 1 June 2016.
tactics and at times violence. The Kriegler (Independent Review Commission) Inquiry noted that women are discouraged from participating in political processes owing to “sexist tactics and violence to keep women out of the race.”

The way political parties are organized, may present limitations. Where there is lack of clear rules for party nominations, favoritism thrives and the person who is nominated is the one who has negotiated best with the often-male dominated party leadership structures. The traditional role of women as care givers 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 resource 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 misinformation on women’s leadership compounded by negative media publicity further entrenches stereotypes as to the ability of women to lead. Against this backdrop, it is critical that existing opportunities are identified and harnessed to address these challenges and achieve gender parity.

D. MANIFESTATION OF VAWE

But by far, engendered violence is the biggest barrier is gendered electoral violence. Often rooted in a culture of violence that affects both men and women, evidence indicates that women are uniquely and disproportionately affected by the culture of electoral violence as voters, candidates and political actors. One study 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

8 The Effect of Violence on Women’s Electoral and Political Participation in Bangladesh
9 International Foundation for Electoral Systems, The Effect of Violence on Women’s Electoral and Political Participation in Bangladesh, 2017
indicates that sexual torture was used to humiliate and extract information from women and men during the Shifta War.\textsuperscript{11}

However, in the case of electoral violence, this has now become a feature both at the hands of state agents or at the hands of third parties. Re-introduction of multi-party politics in the early 1990s seems to have made electoral violence a predominant 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, 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.

While this violence 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. This views the woman as a subservient to a dominant male. This patriarchal 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 acts or omissions of the state during peace and in times of conflict.

\textbf{E. 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 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.

\textsuperscript{11} As above, 725.
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 which urged 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, including in conflict resolution and peace processes by addressing the existing obstacles facing women in their struggle for participation.

The International Covenant on Civil and Political Rights, 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 presents, a competent judicial, administrative or legislative authorities while 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 is a call to 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 election phase and support to more women to get on ballots, attain political office and go to polls to vote.

These and many other international and national laws are 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 have to get social sanction 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.”

F. LAW AS AN INSTRUMENT IN PREVENTING AND PROTECTING WOMEN IN SITUATIONS OF ELECTORAL VIOLENCE

12 Dr. Denis Mukwege Mukengere, director of Panzi hospital in Bukavu in the Democratic Republic of the Congo.
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.

Kenya: 160 Girls case that found state liable for failure to conduct investigations and prosecution

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 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.

G. WOMEN JUDGES AND REALISATION OF SDGS
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

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special role. As with political leadership, increased number of women judges ought to infuse judicial reasoning with the lived realities of women. Women judges, where they 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, 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 to overcome structural gender equality gaps to enhance access to justice and stimulate attainment of sustainable development goals, particularly for women and children.

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 strive 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. Mildered Mapingure 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 Committee 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
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 SA 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.”

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14 CEDAW General Comment 19
Women in Leadership – Towards Sustainable Stakeholder Engagement

Prof. Patricia Kameri-Mbote

15th IAWJ AFRICA REGION CONFERENCE
16th – 20th May, 2017
SAFARI PARK HOTEL
NAIROBI, KENYA
Introduction

* Questions:
  * What difference do women in leadership make?
  * Why concern to have women in leadership?
  * Individual women’s presence may not bring about the hoped for empowerment of women since women integrate into mainstream institutions
  * Women leaders must revolutionalize leadership and dramatically change the outcomes to justify representation and non-discrimination by participation
* Political representation of women at heart of feminist movements & gender equality quest
* Argument that democracy has historically served men better than women
* Strict divide between private/reproductive & public productive
  * No place for women in public/politics (public/productive)
  * Political philosophers & thinkers considered women fit only for domestic roles & caring roles as mothers and wives
Gender as *social construct*
- Femininity & Masculinity
- Gender roles and realms of operation
- Gender division of labour
- Translation into powerful/powerless

* Effort to increase women’s representation in politics and decision making core to democratic transitions in Africa

* Despite progressive provisions, women in many countries still struggle to realize rights
* Unambiguous provision on equality in constitutions & laws yet to yield equality & non-discrimination
* Limits of law in mediating between contests
  * Struggle over scarce resources
    * Might is right – how will the weak such as women fare in a 'rule of the jungle' context
* Patriarchal norms exacerbate situation
* Rights not self-enforcing
* Politics a site of contest – citadel of male political privilege
* 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

  * Enables society to use potential of all its people, both men and women
  * Enhance society’s productivity (Obama- It is foolhardy to play with only half a team)
  * Bring women’s perspectives on board
Why Women in Leadership - 2

* Forestalls discrimination & boosts the status of women

* Law should facilitate women’s participation in leadership positions

* What do we lose in not having women in leadership?

* What values would women’s leadership bring to the different arms of government – judiciary; legislature; executive
Women in Judiciaries 2015

- Significant advances for women in higher courts in some countries like Rwanda and Tanzania, with specific policies to bring more women into government, even reaching parity.
- Significant advances for women and black judges in South Africa, with specific goal of transforming post-apartheid judiciary.
- Need to take stock of contributions these women have made.
Women Chief Justices since 2000: Gambia, Ghana, Lesotho, Malawi, Nigeria, Sierra Leone, Zambia

Women Presidents of Constitutional Courts since 2000: Benin, Burundi, Gabon, Niger, Senegal

Delayed indigenization and feminization in some countries, few women on the higher courts but more than half in the magistracy
<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage, Year</th>
</tr>
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<tbody>
<tr>
<td>Rwanda</td>
<td>64 percent, 2013</td>
</tr>
<tr>
<td>Burundi</td>
<td>31 percent, 2010</td>
</tr>
<tr>
<td>Senegal</td>
<td>43 percent, 2012</td>
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<tr>
<td>South Africa</td>
<td>42 percent, 2014</td>
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<tr>
<td>Mozambique</td>
<td>40 percent, 2014</td>
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<tr>
<td>Tanzania</td>
<td>36 percent, 2010</td>
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<tr>
<td>Kenya</td>
<td>23 percent</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>32 percent, 2013</td>
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<tr>
<td>Cameroon</td>
<td>31 percent, 2013</td>
</tr>
<tr>
<td>Tunisia</td>
<td>31 percent, 2014</td>
</tr>
<tr>
<td>Seychelles</td>
<td>44 percent, 2011</td>
</tr>
<tr>
<td>Namibia</td>
<td>41 percent, 2014</td>
</tr>
<tr>
<td>Angola</td>
<td>37 percent, 2012</td>
</tr>
<tr>
<td>Uganda</td>
<td>35 percent, 2011</td>
</tr>
<tr>
<td>Algeria</td>
<td>32 percent, 2012</td>
</tr>
</tbody>
</table>

*Ref: Gretchen Bauer, Political Science and International Relations, African Studies, University of Delaware*
Women in Cabinets in Africa 2015

* Cape Verde: 53 percent  
* Rwanda: 36 percent  
* Tanzania: 32 percent  
* Kenya: 26 percent  
* Uganda: 30 percent  
* Mozambique: 29 percent  
* Mauritania: 27 percent  
* Swaziland: 26 percent  
* Seychelles: 25 percent  

South Africa: 42 percent  
Burundi: 35 percent  
Guinea Bissau: 31 percent

* Women Presidents in Liberia, Malawi & Mauritius Ref: Gretchen Bauer, Political Science and International Relations, African Studies, University of Delaware
Arguments for Gender Parity

* Achieving justice
* Addressing women’s interests
* Enhancing democracy
* Providing role models
Challenges in Political Leadership

*Usual barriers to women’s participation:
  * Military or single party regimes;
  * Lack of resources to stand and wage campaigns;
  * Perceived lack of qualifications and skills;
  * Unfavorable or no media coverage;
  * Patriarchal political traditions;
  * ‘Dirty’ politics no place for women;
  * Women candidates invisibilized;
  * Resistant political parties; and
  * Parties as gatekeepers.
Underlying Factors

* Underrepresentation of women more about political parties than about voters
  * Few women in leadership positions in parties;
  * Women confined to women’s wings;
  * Lack of political will despite manifestos;
  * Highly partisan politics;
  * Highly factional politics;
  * Gender cannot supersede party;
  * Very few women candidates; and
  * Mode of recruitment of candidates
Type of electoral system & gender quota

*Reserved seats*
Burundi, PR (co-optation)
Kenya, FPTP
Rwanda, plus PR LPQ
Tanzania, FPTP
Uganda, FPTP
Zimbabwe, FPTP

*Voluntary party quotas*
Mozambique, PR
Namibia, PR
South Africa, PR

Legislated candidate quotas
Angola, PR
Cameroon, PR
Rwanda, PR
Senegal, PR
Tunisia, PR
Role of Law

* Law a powerful tool for promoting and protecting the rights of women and girls

* Feminism and the power of law
  * Law can reinforce social injustices & marginalise
  * Can lead to gender inequality
  * Can be obstacle to change

* Women and the Law
  * 1. Legal Rules: De jure equality, De facto discrimination
2. Structure & Administration of laws
   * In the shadow of the law
3. Patriarchal social ordering
4. Intention and rationale of law Vs consequences of law
   * Matrimonial property law; joint proprietorship Vs tenancy in common

Law affects men and women differently
* Lead different lives, have different needs
* Gender neutral law / gender specific reality
* Need to eliminate legal barriers

Critical role of the judiciary in interpreting
Feminists Perspectives of Law

* Feminists’ concerns: fact of women’s discrimination; Cause & consequences
* Law as male and espousing male values
* Legal method male
* Mainstream law leaves out women’s world (Women’s Lives, Men’s Laws)
* Need for research methods that incorporate women’s world in framing laws
  * Analysis of ways in which women’s lives are impacted by law
  * How do women use law?
* How does law maintain, legitimate and serve the distribution and retention of power in society?
Feminist jurisprudence as a critical way of looking at law

- Law is double edged
  - Law as cause of domination of women
  - Law as empowerer of women

Feminist jurisprudence sees law as

- Sexist; male and gendered
- Language, logic and structure of law are male-created and reinforce male values.

In most patriarchal societies, women have been excluded from creating laws that define their contribution.
Gender neutral laws - *de facto* discrimination

As Tove Stang Dahl aptly points out

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

*Man of Law* as per Ngaire Naffine not neutral

Not universal, ageless, disembodied, sexless, raceless and classless

The man of law is ‘a man, not a woman... a successful middle-class man, not a working-class male... demonstrates...’ form of ‘emphasized’ middle-class masculinity...’
Locke's theory has an economic proprietor.
Hobbessian Man is an entrepreneur.
Gauthier's is a Robinson Crusoe and so on.
All African countries except two have ratified CEDAW and the Maputo Protocol.

Many countries have also made constitutional, legislative or policy guarantees of equality.

National laws in a number of African countries restrict women’s full enjoyment of equal rights in various fields, putting women, especially married women, in a secondary social status.

In 15 countries on the continent, married women do not have full freedom to choose their domicile.
In 35 countries, women are obliged to “obey” their husband.

In nine countries women are not permitted to apply for a passport in the same way as their husbands.

Women make up two-thirds of the agricultural labour force in Africa and produce majority of Africa’s food but comprise only 15% of leaders in agriculture.

Customary land tenure systems widely exclude women from ownership or control of land or restrict their right to inherit land.
Divorced and widowed women particularly vulnerable to dispossession, even in situations where formal legal system and state policies provide for gender equality.

- Women’s landholdings tend to be smaller and of poorer quality than men’s
- Less access to essential inputs - land, credit, fertilisers, new technologies & extension services
- Significantly lower yields than men’s
- This has serious consequences not only for women’s economic situation but also for food security
* Women are engaged primarily in low-paying occupations or are self-employed in the informal sector with little/no legal protection.

* According to the AfDB, African women are highly entrepreneurial and own a third of all businesses across Africa, up to a high of 62% in some countries.

* But they “tend to be entrepreneurs of necessity, rather than opportunity, driven into small business by the lack of alternatives.”
Lack of access to credit & financial infrastructure is a big constraint for women entrepreneurs

Linked to the absence of clear laws and policies to level the playing field for women
Women’s participation in leadership is not optimal

How do we get optimal participation for women?

What are the challenges?
- Patriarchy
- Dominant paradigms?

Role of law?
- Is law based on particular paradigm?

What other interventions?
- Are these devoid of paradigmatic biases?
* Law – Different laws? Implementation
* Looking at relationships and effect on women’s participation in leadership
* Paradigmatic stance – position from which we look at the world
* Role of allies?
* Groups Versus individuals?
  * Women Groups & Institutional supply – KWJA?
  * Education – Unlearning some and Learning some
Changing the dominant narrative by engaging, challenging & overturning it

* Images – life stories of women leaders

* Lobbying

* Social engineering
  * Socialization
  * Espousing different paradigms/world views
Politics, like law, are masculinized & remain male spaces – women get in on men’s terms

- Rights will not come to women automatically

- Those that have previously enjoyed rights will be hostile to the new claimants of rights

- Rights provided for in constitutions only come alive when implementation occurs

- Example of two thirds rule in Kenya starkly brings reality home

- Actual mechanisms of actualising promised equality wanting
Where the rules of the game remain intact (FPTP; masculinized politics), new players have difficulties in entering the field and competing with old players.

- Marginalized groups such as women cannot compete on an even keel with their male counterparts because of past injustices, cultural and structural constraints.

1. Change rules of Game: Adopt national laws for equal treatment of men and women taking into account historical disadvantages; PR
“if they are not equal, they will not have what is equal, but this is the origin of quarrels and complaints—when either equals have and are awarded unequal shares, or unequals equal shares”

2. Gender one form of marginalisation among many – disability, religion, ethnicity, marginalised communities and regions – where gender is also a variable

Not possible to address gender fully in isolation of the other marginalisation categories

An Equal Opportunities Act defining the different kinds of marginalisation a good point to start
3. Importance of alliances and networks
   * Use measures beyond law to challenge, engage & disarm kings of citadel

4. Intervention thro’ electoral processes providing for quotas & regulation of political parties to ensure compliance
   * Legal requirement of gender ratios for candidates at the nomination stage
   * The same should also be done for religion, ethnicity, disability or any other social category recognized by law as marginalised.
Conclusion

* Gender likely to remain a contested terrain
* Competition for space & power; Power wielders scared of losing power consolidating bastions
* View quotas as floors not ceilings - temporary
* Courts can assist & where experience is absent - affirmative action- chart path
* Conservatism/self censoring by courts can hinder realization of gender equality
Thank You – A luta Continua!
Bado Mapambano!
2017 IAWJ AFRICA REGION CONFERENCE
“Women Judges Enabling Sustainable Development Goals: Opportunities, Challenges and Strategies”

16th-20th May 2017- Nairobi (Kenia)

Women Leadership in the Judiciary

Susana Medina
IAWJ President
Equality between men and women is a human rights issue and a key condition for achieving social justice and a democratic consolidation, as well as a prerequisite for economic development and social peace.
However, women continue to encounter obstacles to their personal and professional full development, and their career within the Judiciary is not exempt from them.
The persistence of gender stereotypes and the consequent lack of opportunities for women professional growth, as well as the difficult balance between family life and working life, are some of the obstacles to tackle in order to reach the gender equity in all countries of the world, with different judicial systems, religions, languages and cultures, and in the five continents across the globe.
The underrepresentation of women in almost all international and regional courts and in high responsibility decision-making bodies have been a constant situation despite important feminist advances in recent decades.
Until 2015, only 17 per cent (17%) of the main international Courts positions were held by women and in the regional human rights courts only 25 per cent (25%). Thus:

1) the **Inter-American Court of Human Rights** has one (1) single woman of its seven (7) members.
2) the **United Nations International Court of Justice**, has fifteen (15) members, only three (3) of them are women.

In its 70 years, this Court has only had 4 women judges of a total of 106 members.
3) The **Court of Justice of the European Union** is composed of forty (40) members, of whom only seven (7) are women.
4) The European Court of Human Rights is composed of 47 judges, of whom only sixteen (16) are women.
5) The **Human Rights Committee of the United Nations**, made up of eighteen (18) members, nine (9) of them are women. It is the only one where there is equality in the distribution of the positions.
6) the Committee on the Elimination of Racial Discrimination, has eighteen (18) members, seven (7) of whom are women.
7) the **Tribunal for the Law of the Sea**, has twenty-one (21) members, only one (1) of them is a woman.
8) the *International Criminal Court* took a step back, moving from a gender parity situation to have, at present, one third of women. Today, out of its eighteen (18) members, only six (6) are women.
9) The Secretary-General of the United Nations was never under the leadership of a woman. This year three women were candidates, all of them with excellent academic training and great experience in handling international issues, and yet a man was chosen, the Portuguese Antonio Guterres. Ever since the UN was founded, in 1945, it has had 9 Secretaries-General, all males.
All these examples show that it is necessary to take positive actions to redress the gender imbalance and the women judges, we are in an excellent condition to make our voice heard and demand that in the Human Rights Courts, which enforce the conventions our countries have ratified, respect the gender balance. They shall give the example with a gender equitable composition of judges.
In general, within the Judiciary, women who aspire to higher office they soon hit the so-called “glass ceiling”. The positions that held the majority of women are in first instances courts, and mainly in family and minors courts and as we ascends in the hierarchical scale, women representation diminishes and to the top of the pyramid arrive the majority men, Such as occurs in the organisms we have just seen.
From the IAWJ we must contribute to break the glass ceiling and contribute to gender balance in all Judiciaries because this, in addition to fair, has the following advantages: it gives legitimacy to the Courts and their decisions; And allows the Courts to fully understand the implications their decisions will have in the real world. Men and women visions are complementary and this enriches all judicial decisions, but also increases public confidence in the justice system, reduces barriers to women's access to justice, and ensures the implementation and safeguarding of equality rights.
From the International Association of Women Judges, we demand a true participation of women in all aspects of life: social, political, cultural and, fundamentally, in the judicial sphere and in institutions and organizations which have the capacity to make decisions with international impact, such as the aforementioned tribunals.
The contribution of women is an essential complement to make fair, equitable, inclusive and complete decisions that improve women's quality of life. Judging from a gender perspective not only guarantees the representative diversity of the other half of the world population, but also enriches the content of the decision, by including a different perspective on the resolution of conflicts.
The lack of a gender perspective in the daily work of agencies and organizations linked to the judicial system contains a general lack of service and prevents women from gaining access to justice for a better defense of their rights.
In recent years, awareness has grown about the need to include the feminine view in judicial areas. Whenever we deal with issues such as gender violence, family violence, sexual violence, human trafficking, sexual and reproductive rights, access to higher positions, labor discrimination, wage gap, among others, an obligatory reference to the specific rights of women is imposed. However, there are still many areas without a gender approach, which is egalitarian and inclusive. And this is unfavorable for women.
It is necessary for us, women judges, to take the lead in this matter to ensure that women who go to court get what they are looking for: justice.

It is important that the judicial decision-making process is balanced, informed and without biases or stereotypes. We know well that even in those countries where the law guarantees women's rights, the judicial system does not always apply the law in a properly or equitably way.
For that reason, I believe that specialized and permanent training and the possibility of a space for dialogue to share the challenges faced by women is very important to promote a greater understanding and commitment to gender equality.
The impact of these activities has been demonstrated in many judicial decisions signed by male and women judges who have attended these trainings organized by the IAWJ. These trainings empower women judges to fight in their own spaces to break the glass ceiling and achieve gender equity and, in turn, rule in favor of women's rights recognition.
That is to say, gender training allows personal growth and institutional empowerment and strengthening, since through their jurisdictional decisions judges favor the recognition of women's rights in their daily lives.
This is the way to achieve true judicial leadership. Judges must be mirrors where other women can look, recognize and feel protected, represented and valued in their dignity.

We know well that men and women are different by nature but equal in rights, dignity and capacity. Women, we are more than 50% of the world's population, we are underrepresented and we must not and can not be treated as a minority.
There is an old Chinese proverb that says, "A woman by a river will never be thirsty, and a woman next to another women will never be alone." The only ones who can change history are us, and we must do it together, because together we are more. It is time to change the history and achieve equity and we, women judges, are in unbeatable conditions to do so. That is the goal of our movement: to lead change so that equity becomes real.
The Association of Women Judges of Argentinian (AMJA) had carried out a campaign for the rights of the women which I am going to share with you now.

Thank you very much.
GENDER VULNERABILITY IN CONFLICT SITUATIONS: THE UGANDA EXPERIENCE

PRESENTER: HON. LADY JUSTICE HENRIETTA WOLAYO, HIGH COURT OF UGANDA
Periods of conflict discussed

- National Resistance Army War (1981-86)
- The Teso insurgency (1988-92)
- Post war conflicts with gendered dimensions manifested in criminal cases, land disputes, inheritance and war crimes.
UN Sustainable Development Goals

- Goal No. 5; Gender Equality
- Goal No. 16; promote peaceful inclusive societies for sustainable development.
International legal framework

• CEDAW
• DEVAW
• Protocol on women’s rights to the Banjul Charter
• UN Security Council Resolution No. 1325 on Women, Peace and Security
National law

• Uganda Constitution
• Justice, law and order strategic plan with its vision as peace and security of the person.
Consequences of war for women in Northern Uganda

- Rape, sexual slavery
- Forced prostitution
- Widowhood
- Forced marriage
- Incest, child defilement
- Internal displacement
Challenges in accessing justice and judicial response

- Non prosecution of perpetuators of rape during war
- Amnesty Act prevented prosecutions
- Establishment of the International war crimes Division of the High Court has addressed this challenge.
Challenges continued

• Cases of abduction not prosecuted because parties now have families.
• Stigma by the community
• Discriminatory treatment of abducted girls is a violation of their right to equal treatment.
Challenges cont.

- Widowhood, inheritance and property rights. Vulnerability addressed through various approaches.
- Commonwealth Judicial Bench book on Violence against Women gives knowledge and skills on addressing gender inequality in the judicial process.
- Suits by war claimants. Women left out.
- Domestic violence, a common occurrence in areas affected by the war.
conclusion

• We need to embrace our role as agents of social change in post conflict period as we integrate constitutional and international standard of gender equity in the judicial process
GENRE ET VULNÉRABILITÉ EN PÉRIODE DE CONFLITS ARMÉS

Présenté par:
Madame Marie Chantale KOFFI
Magistrat
Côte d’Ivoire
La guerre affecte les hommes comme les femmes mais les femmes et les enfants en sont les principales victimes. Le conflit entraîne déplacement des populations, mort d’hommes, enlèvement, disparitions, enrôlement volontaire ou forcé d’enfants. Des femmes ont été associées aux groupes armés selon leur conviction ou par contrainte morale. Les femmes et les communautés obligées de fuir les atrocités de la guerre deviennent des réfugiées et des déplacées.
Ainsi par exemple la guerre a coupé la Côte d’Ivoire en deux parties, une sous contrôle gouvernemental et l’autre sous contrôle de la rébellion.

Les ivoiriens qui ont fui les zones de la rébellion se sont retrouvées dans d’autres localités de la zone sous protection gouvernementale et parfois même hors du pays.

Ainsi des villages entiers de l’Ouest du pays ont été totalement détruits et n’existent plus aujourd’hui. Et certains sont toujours occupé par d’autres personnes.
Les biens immobiliers (maisons et plantations) sont toujours occupées par des ressortissants non ivoiriens.

Les violences se prolongent dans les camps des déplacés et des réfugiés.

Privées du soutien des familles et des communautés, les femmes, les enfants et les personnes âgées deviennent plus vulnérables.
L’absence des commodités et services de base comme l’eau, l’assainissement, la nourriture, les soins de santé aggravent cette vulnérabilité.

Le viol est utilisé souvent comme une arme ou un moyen d’intimidation et cela force les populations à s’enfuir.

Les parties au conflit ne respectent ni les règles du droit international général ni les règles du droit humanitaire ce qui se traduit par le meurtre, viol, attaques contre les populations civiles, enrôlement d’enfants, destruction des infrastructures sanitaires et scolaires.
suite

- Les rôles de genre changent : les femmes et les enfants deviennent chefs de familles
- Les enfants sont séparés de leurs parents
- La pauvreté oblige les femmes et les filles à se prostituer
- La violation du droit international général et du droit humanitaire est sanctionnée par les Tribunaux internationaux et par la Cour Pénale internationale
- L’existence de sanctions ne semblent pas inquiétée les belligérants qui continuent les exactions contre les populations civiles;
- l’intervention des accords de paix ne met pas fin aux violences basées sur le genre et aux violences sexuelles basées sur le genre comme l’on constaté les enquêtes réalisées par les institutions nationales et internationales.
EFFET DU CONFLIT SUR LES RÔLES DE GENRE

- Le genre, construction sociale qui se réfère aux rôles, responsabilités et privilèges attribués par la société aux hommes et aux femmes a été affecté par le conflit.
- Des femmes et des enfants, se sont retrouvées chefs de famille en remplacement des époux ou pères absents, enrôlés comme combattants ou tués.
- Dans leur quête de nourriture, d’eau et de médicaments, ils ont subi des violences sexuelles.
- Les communautés locales, les églises et les mosquées se sont organisées pour accueillir, nourrir, soigner, vêtir, et aider à la reconstitution des familles.
- La communauté internationale ainsi que les ONG ont aussi joué un rôle important dans la prise en charge des populations vulnérables.
Les différentes formes de violences

- La lutte pour la succession a engendré des mécontentements qui ont progressivement conduit au coup d’État de 1999, aux crises de 2002, 2004 et le pays est resté divisé jusqu’à l’élection présidentielle de 2010 qui a abouti à la crise post électorale de 2011.
- Depuis ces périodes les violences qui n’existaient pas auparavant sont constatées en Côte d’Ivoire et prennent les formes suivantes: viol, atteintes graves à l’intégrité physique, meurtre, pillage des biens, usurpation et occupation illégale des maisons et plantations, vol à mains armées etc.
- D’autres fléaux comme la consommation abusive de l’alcool et des stupéfiants, prostitution des adolescents de tous sexes, celle des hommes et celle des femmes s’est empirée.
Une nouvelle forme de délinquance s’est développé parmi les enfants et des jeunes. C’est le phénomène dits des microbes.

Il s’agit soit de jeunes ayant participé aux conflits armés et qui n’ont pas bénéficié d’une prise en charge adéquate soit de très jeunes enfants parfois même âgé de 8 ans qui sont recrutés par des ex combattants qui les forment et les lâchent ensuite dans la rue avec pour mission d’agresser et dépouiller les citoyens.

Ces enfants sont particulièrement violents dans leurs agissements et ils opèrent à l’aide d’armes blanches.

La vulnérabilité économique a aggravée la corruption dans les secteurs de la vie économique et sociale.
CONSÉQUENCES DES VIOLENCES BASÉES SUR LE GENRE ET DES VIOLENCES SEXUELLES

• La santé physique et mentale : grossesses non désirées, Infections sexuellement transmissibles IST, infections au VIH/sida, stérilités, développement des fistules et des incontinences.

• Stigmatisation des enfants nés du viol, marginalisation ou exclusion des victimes de viol.

• Troubles pouvant conduire au suicide et à la dépression.
Actions pour mettre fin aux violences basées sur le genre

- Les accords politiques
- Le renforcement du cadre juridique et institutionnel : facilitation de l’accès à la justice des personnes vulnérables notamment les femmes et les enfants
- La poursuite des auteurs de violences devant les juridictions correctionnelles ordinaires et les cours d’assises
- Développement de programmes de prises en charge psychologique, médicoale des victimes
LA PRISE EN COMPTE DES VICTIMES

- Développement de programme de prise en charge économique des femmes et des enfants et indemnisation des victimes
CONCLUSION

- Les conflits mettent en péril la vie des personnes et des nations.
- Les femmes et les enfants en payent le tribut le plus lourd.
- Il faut :
  - renforcer les dispositifs visant à maintenir la paix, la cohésion sociale et à prévenir les violences.
  - éduquer les populations sur leurs droits et devoirs
- impliquer toutes les couches de la société et spécialement les femmes aux processus de paix et de prise de décisions.
JE VOUS REMERCIE POUR VOTRE AIMABLE ATTENTION
LES VIOLENCES SEXUELLES BASÉES SUR LE GENRE : bonnes législations et résultats décevants

Présenté par:
Madame ATTOPKA KOUASSI Emma
Magistrat
Côte d’Ivoire
DÉFINITION DE LA VIOLENCE SEXUELLE BASÉE SUR LE GENRE

- La violence sexuelle peut-être défini comme un contact sexuel imposé à une personne par la force ou la contrainte morale.

- La violence sexuelle basée sur le genre est une violence dirigée contre une personne à raison de son sexe.

- Les violences sexuelles sont une des formes les plus graves des VBG et spécialement le viol dont les conséquences sur les victimes sont incalculables.
Il existe plusieurs types de violences sexuelles

- Les violences sexuelles traditionnelles comme les mutilations génitales féminines, les mariages précoces ou forcés, les attentats à la pudeur, les viols etc.

- Les formes modernes : la pédophilie, la prostitution enfantine, l’esclavage sexuel, l’incitation de mineurs à la débauche, le proxénétisme etc.
LES CAUSES DES VIOLENCES SEXUELLES BASÉES SUR LE GENRE

- Les rapports de genre et la domination des hommes sur les femmes dans les sociétés et les cultures
- Le besoin d’humilier, d’imposer son autorité ou sa volonté, de punir ou de torturer
- Les violences sexuelles subies par les hommes et par les femmes sont un sujet tabou et les victimes n’en parlent pas par peur de se voir rejeté ou stigmatisé
- Beaucoup de cas de violences sexuelles ne sont pas portées devant les autorités judiciaires ; il ya beaucoup de règlement amiable au détriment des droits des victimes; les violences sexuelles comme les mutilations génitales féminines et les mariages précoces et forcés sont tolérées par les communautés
LES CONSÉQUENCES DES VIOLENCES SEXUELLES

• Elles sont physiques : déchirures plus ou moins graves, hémorragies suite aux viols
• Grossesses non désirées, avortement
• Infection par les IST, le VIH Sida, la syphilis ou l’hépatite
• Traumatismes allant jusqu’au suicide, à la dépression
• Incontinence
• Impossibilité de procréer suite au viol
CONSEQUENCES SOCIALES ET ÉCONOMIQUE DES VIOLENCES SEXUELLES

- Rejet et stigmatisation des victimes de violences sexuelles par les familles et les communautés
- Abandon de l’enfant né du viol
- Abandon des études suite à une grossesse
- Soucis économique : cout des actes médicaux et chirurgicaux, des examens médicaux et du certificat médical
- Cout de l’action en justice pour obtenir la sanction du coupable et le rétablissement de son droit
LES INSTRUMENTS JURIDIQUES RELATIFS AUX VIOLENCES SEXUELLES BASÉES SUR LE GENRE

- Les violences sexuelles portant atteinte aux droits et à dignité des personnes doivent être sanctionnées et les victimes indemnisées
- L’État ivoirien s’est doté d’une législation nationale et a ratifié des conventions pour accroître la protection des victimes de violences sexuelles basées sur le genre
INSTRUMENTS NATIONAUX

- Au plan national le code pénal et diverses lois civiles et pénales permettent de lutter contre les violences sexuelles
- Le code pénal sanctionne en effet : le viol, les attentats à la pudeur, le harcèlement sexuel, l’outrage public à la pudeur, le proxénétisme, l’incitation de mineur à la débauche,
- Les mariages précoces et forcés et les mutilations génitales féminines sont réprimées par une loi de 1998
- Les excès, sévices sont une cause de divorce : loi de 1964 relative au divorce
INSTRUMENTS JURIDIQUES INTERNATIONAUX

- La déclaration universelle des droits de l’HOMME de 1948
- La Convention des nations unies relative aux droits des enfants CDE, 1989 et ses deux protocoles
- La Charte africaine des droits et du bien-être de l’enfant CADBE, 1990
- La Convention des nations unies pour l’élimination de toutes les formes de discrimination à l’égard des femmes CEDEF de 1979
- Le protocole à la CDE concernant la prostitution et la pornographie mettant en scène des enfants
Les résolutions 1820, 1888 des Nations Unies visant à prévenir et à lutter contre les violences

Le statut de Rome de la Cour pénale internationale définissant le viol, la prostitution forcé, l’esclavage sexuel, les grossesses forcées et la stérilisation forcé comme un crime de guerre et un crime contre l’humanité

Les objectifs du développement pour le millénaire et la plateforme d’action de BEIJING visant à lutter contre les violences et les discriminations

INSTRUMENTS JURIDIQUES INTERNATIONAUX (SUITE)
LES LIMITES À LA RÉPRESSION DES VIOLENCES SEXUELLES BASÉES SUR LE GENRE

- Les juridictions nationales et internationales sanctionnent les violences sexuelles basées sur le genre ; cependant cette répression ne permet pas ‘d’endiguer le fléau ni de prendre en compte suffisamment les victimes
- Survivance des violences sexuelles basées sur le genre et accroissement de ces violences pendant et après les conflits
- Le silence des victimes : les victimes de violences sexuelles n’en parlent pas surtout lorsque les auteurs sont des membres de la famille
- L’inceste est gardé sous silence
LES LIMITES À LA RÉPRESSION DES VIOLENCES SEXUELLES BASÉES SUR LE GENRE (SUITE)

- Les victimes de violences reçoivent un mauvais accueil dans les commissariats et les brigades de gendarmerie surtout lorsqu’il s’agit de prostituées, de pédérastes, de violences sexuelles conjugales
- Les familles préfèrent les arrangements amiables au détriment du droit des victimes
- Des violences sexuelles comme les mutilations génitales féminines sont tolérées par les familles et les communautés
LES LIMITES À LA RÉPRESSION DES VIOLENCES SEXUELLES BASÉES SUR LE GENRE (SUITE)

- La correctionnalisation du crime de viol
- L’impunité de certains auteurs spécialement des membres des groupes armés et forces de défense et de sécurité causé par la non dénonciation et la peur des représailles
- La non prise en compte des intérêts des victimes : les certificats médicaux coutent chers, les victimes n’ont pas les moyens et la loi s’arrêtent à la sanction du coupable ; la réparation du préjudice subi par la victime et la restauration de sa dignité ne semblent pas intéressés la société
LES LIMITES ET LES DÉFIS

• La législation nationale a des limites : l’absence de définition des violences sexuelles
• La tolérance sociale des violences basées sur le genre et des violences sexuelles
• L’impunité
• L’absence de mesures concrètes pour endiguer le fléau des violences sexuelles spécialement celles commises sur de très jeunes enfants
• L’absence de répression du tourisme sexuel
• Le peu des moyens des institutions et services sociaux, comité de lutte contre les violences
CONCLUSION

- Les violences sexuelles et spécialement le viol ayant des conséquences importantes sur la santé physique et mentale des victimes et constituant un problème de droit humain il faut prendre des mesures efficaces pour lutter contre ces violences
- La Cote d’Ivoire a entrepris de ratifier les instruments juridiques nationaux afin de les rendre conformes aux standards internationaux et aux conventions ratifiées
- Elle doit Ratifier et Appliquer les conventions ratifiées,
- Respecter les droits des victimes,
- Sensibiliser les populations sur leurs droits,
- Accorder une plus grande attention aux victimes,
- Créer ou renforcer les mécanismes existants de protection
JE VOUS REMERCIÉ POUR VOTRE AIMABLE ATTENTION
EMERGING ISSUES IN THE IMPLEMENTATION OF LEGISLATION ON SEXUAL GENDER BASED VIOLENCE: GOOD LEGISLATION, ABSURD RESULTS

A Presentation by Justice Lesiit
SEXUAL OFFENCES ACT NO 3 OF 2006

This is an Act of Parliament 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.

Prior to its enactment, sexual offences were prosecuted under the Penal Code 43 and in the case of children, under the Children Act.
SEXUAL OFFENCES ACT NO 3 OF 2006

Key highlights of the Act include bringing all sexual offences under it, expanded definition of sexual offences, provision of minimum and maximum sentences and the taking away of the courts discretion in this respect to create a near uniform guide on sentencing in respect of sexual offences. The Act supersedes all other Acts in relation to sexual offences.
At the beginning of 2004, Sexual violence in Kenya had risen to become the second highest reported crime to the police after common assault. This was attributed to; the escalating drug and alcohol abuse, break down in family values, poverty, levels, etc. At the core of this was an underlying lack of respect for the dignity and privacy of women coupled with violence that dominates gender relations.
within the community and essentially accentuate this problem. Thus these laws were Victorian in concept and totally out of sync with modern realities of HIV/AIDS, trafficking, sex tourism and male on male rape.
HISTORY, EVOLUTION AND PROCESS OF THE SEXUAL OFFENCES BILL 2006

The relative increase of women in the 9th Parliament in 2003 opened up possibilities for development of Women friendly legislation, including the Sexual Offences Bill.

The need to enact a comprehensive legislation on sexual offences culminated in the passing of the Sexual Offences Act, Act No. 3 of 2006. It however, was not actualized until Hon. Njoki
Ndungu, as she then was, moved the Sexual Offences Bill in Parliament as a Private Member’s Bill. The Act was finally passed and came into force on 21st July 2006. The Honorable Njoki Ndungu observed then that in order for the SOA to discharge its mandate fully, proper enforcement had to be realized. She emphasized:
“It is not enough to have the law on paper; we need to set up the systems that will ensure its effective implementation.”

The SOA has been lauded as one of the most progressive pieces of legislation in the region. The Attorney General acknowledges the Sexual Offences Act as:
“...a progressive and pioneer legislation in tackling sexual violence in Kenya. It incorporates all forms of sexual violence in one piece of legislation as well as provides progressive provisions for dealing with sexual violence in an integrated fashion to ensure that survivors’ rights are wholly protected.”
HISTORY, EVOLUTION AND PROCESS OF THE SEXUAL OFFENCES BILL 2006

The Act is seen to be progressive because: it created new offences not previously captured in the Penal Code, it introduced stiffer and mandatory penalties, it is responsive and sensitive to victims, it introduced stiffer penalties and provides for greater protection for children (persons under the age of 18 years)
The then existing legal regime was insufficient. The Penal Code which was the primary statute with respect to sexual offences did not provide for all forms of sexual offences. Therefore, such acts could not be prosecuted despite their occurrence.

There was also dissatisfaction with the existing system in that it did not cater for the needs of
victims of sexual offences. The non-recognition of victims of offences was another glaring gap in the law then. It was against this backdrop that the idea of a comprehensive law to deal with sexual offences was mooted and nurtured, culminating into spirited efforts by various stakeholders towards its enactment.
Although various measures have been taken towards the implementing the Act, there have been absurdities in the law as well. These absurdities include the establishment of a task force that was mandated to develop a National Policy on the Implementation of Sexual Offences Act, 2011. It is absurd because the task force was established after a realization that the Sexual Offences Act had been passed
HISTORY, EVOLUTION AND PROCESS OF THE SEXUAL OFFENCES BILL 2006

before the enactment of the implementing policy. To remedy the situation, the Attorney General appointed a multi-sectoral Task Force on the Implementation of the Sexual Offences Act.

- The proposed Policy framework is still in draft form and has not been officially published. to
However, the Sexual Offences Amendment Bill 2016, makes reference to Section 46 of the principal Act where it is proposed to amend the National policy framework. The said section requires that;

46. The Minister shall-
prepare a national policy framework to guide
secure acceptable and uniform treatment of all sexual related offences including treatment and care of victims of sexual offences;

Although the act was very good, it needed some rules and regulations that would create systems for effective implementation of the Act. Regulations have therefore been formulated and
HISTORY, EVOLUTION AND PROCESS OF THE SEXUAL OFFENCES BILL 2006

published to facilitate the implementation of the Act. These include the following:

- The Sexual Offences Regulations, 2008
- The Sexual Offences (Dangerous Offenders DNA Data Bank) Regulations, 2008
- The Sexual Offences (Medical Treatment) Regulations, 2012.
- The Sexual Offences Rules of Court, 2014 by the Chief Justice pursuant to Section 47A of the Act.
The Sexual Offences Act has itself undergone certain modifications to enhance its effectiveness. Some of the key amendments include the modification of the transition clause which had initially provided for retrospective application of the Act, improvement of definitions of certain offences such as gang rape, and the repeal of Section 38 of the Act which was seen as a claw-back clause in that it provided that persons who
were found to have made false allegations of sexual offences would be liable to the same punishment prescribed for the offence in question.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

- The Sexual Offences Act sought to address the major shortfalls that were existing before its enactment with regard to responding to incidents of sexual offences. Its enactment resulted in key changes, in response to the gaps within the Penal Code. Some of these are highlighted below:
Introduction of new forms of sexual offences:

- The Penal Code on its part provided a very limited range of sexual offences - therefore, certain acts which were essentially sexual offences, could not be prosecuted because the law did not recognize them.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

- Offences provided for in the penal code included: rape, defilement and attempted defilement of a girl under the age of 16 years (Section 145), defilement of idiots or imbeciles (Section 146), detention of females for immoral purposes (Section 151), male person living on earnings of prostitution and soliciting, woman living on earnings of prostitution or
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

aiding prostitution, keeping or managing a brothel, conspiracy to defile (section 157).

- 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
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

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
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

offences 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).
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

Graduated Sentences

- The Act introduced graduated sentences for sexual offences committed against children. i.e. Defilement of a child below 11 years punishable by life imprisonment; defilement of a child between 12 and 15 years punishable by imprisonment of a term not less than 20 years.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

and defilement of a child between the age of 16 and 20 years punishable with an imprisonment term of not less than 15 years.

Provisions on Juristic persons

The Sexual Offences Act also recognized the role played by juristic persons in the commission of sexual offences. Ordinarily,
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

under the law both natural and juristic persons can be criminally liable for offences committed in their respective capacity. The Sexual Offences Act heightened this recognition and this is reflected in the sentencing provisions for the appropriate sentences. This recognition is important since it creates in the mind of investigators and prosecutors the issues to look out for when investigating and prosecuting sexual offences.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

Mandatory minimum sentencing

One of the strengths of the SOA is the minimum sentences that it lays down, as mandatory, where an accused is found guilty of any charge. The Act introduced the aspect of minimum sentencing. The rationale for this approach to sentencing was that previously, persons convicted of sexual offences would easily get away with very lenient sentences.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

Strengths of the Act and Recognition of support for victims of sexual offences

The Act has several provisions which the Courts and persons handling cases of sexual violence can invoke for purposes of preserving the needs of victims. Such provisions include:

- Use of intermediaries
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

Provisions that the court can make use to protect vulnerable witnesses during the trial process under e.g. Section 31. allowing such witness to give evidence under the protective cover of a witness protection box;, directing that the witness shall give evidence through an intermediary, directing that the proceedings may not take place in open court, prohibiting the publication of the identity of the complainant or of the complainant’s family.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

Vulnerable Witnesses

The Act makes provision for the concept of “vulnerable witnesses.” under Section 31 of the Act. The provision states that:

“The court, in criminal proceedings involving the alleged commission of a sexual offence, may declare a witness, other than the accused, who is to give evidence in those proceedings a vulnerable witness if such witness is .–
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

The alleged survivor in the proceedings pending before the court;

- A child; or
- A person with mental disabilities.

The declaration of vulnerability is made by the court on its own initiative or on request by the prosecution or any witness other than the accused.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

The court may accede to this request or take the said initiative if, in its opinion, the witness is likely to be vulnerable on account of *inter alia* age, intellectual, psychological or physical impairment, trauma, the relationship of the witness to any party to the proceedings, the nature of the subject matter of the evidence or any other factor the court considers relevant.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

- Upon declaration of a witness as a vulnerable witness, the court is mandatorily required to direct that such witness be protected by one or more of the following measures:
  - Allowing such witness to give evidence under the protective cover of a witness protection box;
  - Directing that the witness shall give evidence through an intermediary;
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

- Directing that the proceedings may not take place in open court;
- Prohibiting the publication of the identity of the complainant or of the complainant’s family, including the publication of information that may lead to the identification of the complainant or the complainant’s family; or
- Any other measure which the court deems just and appropriate
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

Consent has been defined
The Sexual Offences Act did away with the ingredient of consent for sexual offences committed against children, in recognition of the fact that a child has not capacity in law to consent to a sexual act. The Penal Code provided for certain offences that would presume presumed a person under the age of 18 years could consent to a sexual act.
HIGHLIGHTS OF THE SEXUAL OFFENCES ACT

Either male or female can be a sexual offender:
The Sexual Offences Act is neutral on the gender, recognizing that both males and females can be victims as well as perpetrators of sexual offences. Previously, rape and defilement were only applicable to men but under the new Act women too can be charged for the offences.
EMERGING ISSUES IN THE TRIAL PROCESS

Establishing the elements of the offence

The ingredients of the offence need to be properly set out in accordance with the definition of the offence. E.g. Failure to include the term ‘unlawful’ which forms part of the elements of the offence of sexual assault.
EMERGING ISSUES IN THE TRIAL PROCESS

Age Assessment in Offences against Children

The Sexual Offences Act provides for graduated sentences for the offence of defilement. The need to ensure that the age of the child is proved in court has been the subject of courts in emphasizing the need for purposes of sentencing.
EMERGING ISSUES IN THE TRIAL PROCESS

Case highlight: In *Joel Omino Ngutu v Republic* High Court Criminal Appeal 10 of 2013 [2013] eKLR, the court noted,

“No age assessment was done on the PW1 and no other evidence like birth certificate or postnatal clinic card for the PW1 was produced. Age in defilement charge is material and it ought
EMERGING ISSUES IN THE TRIAL PROCESS

to have been proved scientifically and not by common sense like in the present case.........That lapse however only become more relevant in the sentencing because the exact age of the victim is material.”
EMERGING ISSUES IN THE TRIAL PROCESS

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.
EMERGING ISSUES IN THE TRIAL PROCESS

In *Maurice Orata Mombo v Republic* High Court Criminal Appeal 189 of 2011 [2013] eKLR, the complainant stated that she was 17 years of age. “The Court stated that, the prosecution is required to prove beyond reasonable doubt the age of the complainant especially where the age is just around the age of majority.
From the facts and evidence placed before the magistrate, I am not satisfied that the age of the alleged minor was proved. The Court quashed the conviction for the offence of attempted defilement and set aside the sentence imposed.
Corroboration of Evidence

When the circumstances do favour, the trial Court can, in light of the proviso to Section 124 of the Evidence Act, wholly rely on the sole testimony of the victim of a sexual offence to convict the accused person if the court believes the witness and upon recording reasons for that reliance. It is not enough for the trial court to simply note that it is satisfied that the witness is telling the truth.
Case highlight: Jacob Odhiambo Omumbo v Republic, Criminal Appeal No.80 of 2008, where 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.
EMERGING ISSUES IN THE TRIAL PROCESS

Evidence to Prove the Offence and Link the Accused to the Offence

- 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 offender. 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.
EMERGING ISSUES IN THE TRIAL PROCESS

Protection of victims of offences in the trial process.

The Act has provision that would enable the Court to take up measures to preserve the needs of the victim of the offence during the trial process, as opposed to simply focusing on the prosecution of the case. It is therefore important to note that the role of prosecution of a sexual
offence is not purely towards prosecution of an offender but also for the protection of the interests of the victim. The trial Court has been empowered in this respect and therefore needs to keep this in mind. Such provisions include:

- Power to declare a witness a vulnerable witness on the basis of which the court will issue appropriate protective orders (Section 31),
EMERGING ISSUES IN THE TRIAL PROCESS

- Power to hear evidence concerning the impact of the sexual offence that is the subject of a trial process which can among others be important for the court for purposes of imposing an appropriate sentence, the extent of the harm suffered by the person concerned. For this reason, the Court can request for a victim impact statement (Section 33(b)).
EMERGING ISSUES IN THE TRIAL PROCESS

- The Court can disallow questioning of a witness with respect to previous sexual history or conduct that is unrelated to the subject matter in court (Section 34),

- The Court, can make an order for the treatment of a victim of sexual offence. This is important in that it recognizes that the impact of sexual offence on the victim and that the
EMERGING ISSUES IN THE TRIAL PROCESS

Purpose of the trial is not simply to secure a conviction (section 35(2))

- A trial Court, besides convicting a person, may, in the appropriate cases, declare a convicted person a dangerous sexual offender. (Section 39)

- The interests of the victim also need to be taken into consideration in determining applications for bail pending trial.
EMERGING ISSUES IN THE TRIAL PROCESS

Challenges:-

- With regards to the age of victim, the challenge is in remote areas where there is no doctor available to carry out the assessment at the appropriate time. There is also a lacuna in age grouping under section 8 between ages 11 to 12, and 15 to 16.
EMERGING ISSUES IN THE TRIAL PROCESS

- 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 offences to show aggravation, confusion on choice of offence to charge.
EMERGING ISSUES IN THE TRIAL PROCESS

- Where both the victim and offender are age mates and children, Boy child always the one charged even where the victim was older. Could it be a case of criminalizing “bad manners?”

- Culture; definition of Child different, in many cultures girl of 12 years old considered ready for marriage or wife material, betrothal of girls
before age of maturity, where there is abuse of criminal process when settling scores e.g where the in-law does not pay dowry and a report of defilement is made against them.

- Delay; Any delay in sexual offences cases where the offender is a child. The challenge of sentencing him as a child where there’s lapse
of time, where it is perceived to be against public opinion, further, no institution may accept him as the age at the time of committal determines admission.

- Investigations; Very many challenges yet to be overcome e.g. collection of evidence and exhibits, visiting of crime scenes, forensic
• Labs decentralization resulting in delays, delay due to lack of facilitation and also lack of proper infrastructure; Use of technology, DNA not adequate or thorough, lack of trained Staff (doctors) to fill P3 Forms.
STRATEGIES

Role of KWJA

Within the judiciary, the Kenya Women Judges Association a potentially significant actor in reforming the judiciary from within, using their flagship programme on Equality of Jurisprudence could be upscaled and supported so that it becomes integrated as a core curriculum within the Judiciary.
STRATEGIES

- Training Institute. This could entail support to highlight and document subordinate court decisions on SGBV which would provide a good basis for training the magistrates and judges as these decisions would be assessed for their compliance to gender sensitivity and respect for women’s rights. This is a KWJA strategy to overcome some of the challenges we are having.
STRATEGIES

Role of the Police

Within the police force, the gender desks present an opportunity for improved service provision for SGBV survivors. Whilst resource constraints plague the police force, interventions such as the gender desk should either be properly resourced or removed altogether, as they undermine the very objective they were set up to resolve.
STRATEGIES

A systematic process of ensuring that the problem of SGBV receives high priority could be reflected through the establishment of a special squad on SGBV as well as seniority of officers assigned to manage the desks. Officers who are to manage a gender desk should be of a specified rank and with specialized training on handling gender based crimes. The section should be well resourced as other special squads such as flying squads, narcotics etc.
STRATEGIES

Strengthening the Legal Framework

The Legal Framework; Although the Sexual Offences Act has remedied some of the gaps with respect to articulating sexual violence crimes offences such as marital rape and domestic violence continue to rage unabated and the law has not sufficiently addressed or recognized it as a crime. Further, even where laws are present, the social, cultural
environment may hinder women’s ability to seek protection or claim their rights.

The experiences relating to sexual harassment demonstrate this. In order for the legal framework to respond to all forms of SGBV, it is necessary that a Family Relations bill dealing with domestic violence be enacted.
STRATEGIES

The provisions of rape in the Sexual Offences Act also require to be expanded and anticipate necessary ingredients, proof and punishment for marital rape.

Special Courts

In order to enrich the jurisprudence around SGBV, it is recommended that special courts be
STRATEGIES

established to handle sexual and gender based violence. Such special courts may be in a position to hand out severe punishments to perpetrators and significantly reduce the levels of impunity.
STRATEGIES

Gender Recovery centres for survivors of SGBV

Within the medical sector, Kenya has a model gender recovery centre for survivors of SGBV at the Nairobi Women’s Hospital. One of the recommendations of the Waki Report directed towards the Government was the establishment of gender violence recovery centres as departments in every public hospital with their own staff, facilities, and budget.
STRATEGIES

Community Mobilization & Training

There are several organizations which are conducting community mobilization and awareness on gender and rights throughout the country. The awareness campaigns should be intensified and widely disseminated, allowing communities to know where and how to contact organizations that can offer assistance.
STRATEGIES

There is also need to identify content and develop a curriculum for systemic nationwide training and mobilization on SGBV’s. This will allow survivors to seek advise and report violations. This systemic nationwide training could be cascaded down to the local level in the community.
STRATEGIES

Strengthening the weak linkages

It would be prudent for all actors in the chain of evidence to develop stronger linkages and coordination mechanisms so as to effectively protect survivors of SGBV. For instance, the weak links between the health personnel and the police with respect to the P3 form which is the backbone of evidence in court needs to be addressed. The constraints of having few police
STRATEGIES

doctors clearly undermines this process. It is recommended that the police recruit additional police doctors who can complete the P3 form within a reasonable period of time and with sensitivity to the SGBV survivor. The government should consider empowering doctors with powers to complete the P3 forms. Such delegation of powers should also be accompanied with strict procedures open to scrutiny and regular monitoring so as not to undermine the credibility of reports by non-police doctors.
STRATEGIES

Education
There is need for culture and attitudinal change with regard to the offences.
Inter-agency collaboration amongst actors in the SGBV sector are also recommended so as to ensure harmonized intervention.
STRATEGIES

In terms of empowering survivors, agencies working on SGBV should design innovative ways for survivors to tell their stories. Creation of space for survivors’ voice will significantly inform agencies on the appropriate strategies that are required to support survivors of SGBV. Through collective voice, fora of survivors of SGBV may be able to organize themselves without fear and begin movement. Building or campaigns to end SGBV.
DATA

The Kenya Police Crime Report and Data for 2007 immediately after the SOA was enacted indicated that there were 876 cases of rape, 1,984 cases of defilement, 181 cases of incest, 198 cases of sodomy, 191 cases of indecent assault and 173 cases of abduction reported in 2007. The following is a schedule of offences and punishments under the Sexual Offences Act 2006.
# Schedule of Offences and Punishments Under the Sexual Offences Act 2006 Provision

<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>Sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3</td>
<td>Rape</td>
<td>Imprisonment for not less than 10 years and may be enhanced to Imprisonment for Life.</td>
</tr>
<tr>
<td>Section 4</td>
<td>Attempted Rape</td>
<td>Imprisonment for not less than 5 years and may be enhanced to Imprisonment for Life.</td>
</tr>
<tr>
<td>Section 5</td>
<td>Sexual Assault</td>
<td>Imprisonment for not less than 10 years and may be enhanced to Imprisonment for Life.</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Penalty</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------------------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>Section 6</td>
<td>Compelled Or Induced Sexual Acts</td>
<td>Imprisonment for not less than 5 years</td>
</tr>
<tr>
<td></td>
<td>Acts that Cause Penetration or Indecent acts done</td>
<td></td>
</tr>
<tr>
<td></td>
<td>within the view of a Child or a Mentally Disabled</td>
<td></td>
</tr>
<tr>
<td></td>
<td>person</td>
<td></td>
</tr>
<tr>
<td>Section 7</td>
<td></td>
<td>Imprisonment for not less than 10 years</td>
</tr>
<tr>
<td>Section 8</td>
<td>Defilement</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Of a child of 11 years or less is imprisonment for</td>
<td></td>
</tr>
<tr>
<td></td>
<td>life.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Of a child of 12-15 years imprisonment is not less</td>
<td></td>
</tr>
<tr>
<td></td>
<td>than 20 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Of a child of 16 –18 years imprisonment is not less</td>
<td></td>
</tr>
<tr>
<td></td>
<td>than 15 years</td>
<td></td>
</tr>
</tbody>
</table>
### Section 9

**Attempted Defilement**

- Of a child of 11 years or less imprisonment for not less than 15 years
- Of a child of 12-15 years imprisonment of not less than 10 years
- Of a child of 16 –18 years imprisonment of not less than 5 years

### Section 10

**Gang Rape**

- Imprisonment for not less than 15 years and may be enhanced to Imprisonment for Life.

### Section 11

**Indecent Act with a Child**

- Imprisonment for not less than 10 years
<table>
<thead>
<tr>
<th>Section 12</th>
<th>Promotion of Sexual Offences with a Child</th>
<th>Imprisonment for not less than 5 years.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 13</td>
<td>Child Trafficking</td>
<td>Imprisonment for not less than 10 years, and if a Juristic person a fine of not less than 2 Million Kenyan Shillings.</td>
</tr>
<tr>
<td>Section 14</td>
<td>Child Sex Tourism</td>
<td>Imprisonment for not less than 10 years, and if a Juristic person a fine of not less than 2 Million Kenyan Shillings.</td>
</tr>
</tbody>
</table>
### DATA

<table>
<thead>
<tr>
<th>Section</th>
<th>Offense</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 15</td>
<td>Child Prostitution</td>
<td>Imprisonment for not less than 10 years.</td>
</tr>
<tr>
<td>Section 16</td>
<td>Child Pornography</td>
<td>Imprisonment for not less than 6 years, or to a fine of not less than 500,000 Kenyan Shillings, or both.</td>
</tr>
<tr>
<td>Section 17</td>
<td>Exploitation of Prostitution</td>
<td>Imprisonment for not less than 5 years, or to a fine of not less than 500,000 Kenyan Shillings, or both.</td>
</tr>
<tr>
<td>Section 18</td>
<td>Trafficking for Sexual Exploitation</td>
<td>Imprisonment for not less than 15 years, or to a fine of not less than 2 Million Kenyan Shillings, or both.</td>
</tr>
</tbody>
</table>
THE 2017 INTERNATIONAL ASSOCIATION OF WOMEN JUDGES AFRICA REGIONAL CONFERENCE

Mobilizing Positive Masculinity for Women’s Empowerment

Zebib Kavuma
Country Director
UN Women Kenya
1. Facts and figures: Gender inequalities
2. Positive masculinity
3. Mobilizing Positive Masculinity for Gender Equality
4. Recommendations
“The 2030 Agenda for Sustainable Development is anything but business as usual. We need not incremental change, but bold change. We need an earthquake that will tilt the system altogether, because little and incremental steps will not give us the world that we want.” Phumzile Mlambo-Ngcuka, Executive Director, UN Women
1. Facts and Figures: Gender Inequalities
Facts and Figures: Gender Inequalities – Women in the Global Workforce

**Current Trajectories:**

81 years = parity in women’s participation in the economy


---

**Women in the workforce by sector**

- 13.5% - industry
- 61.5% - services
- 25% - Agriculture

---

**US$28 trillion**

The boost to the global annual GDP by 2025, if women played an identical role to men in labour markets.
It is valued at 10% to 39% of GDP (can contribute more than manufacturing or commerce to the economy)

75% of the world’s total unpaid care work is undertaken by women
• Global average: women only make 77 cents for every $1 men earn

• Global gender pay gap on average is 23%:
  ➢ Sweden and France 31% less than men
  ➢ Germany 49% less than men
  ➢ Turkey 75% less than men

Gender pay gap will persist for 70 years
Facts and Figures: Gender Inequalities – Education & Skills

Current Trajectories:

95 years = parity in girls lower secondary education for poorest 20% (Education For All Report, 2014).

• 63% of the world’s adult illiterate population are women (UNESCO 2015)

• 103 million youth worldwide lack basic literacy skills and 60% of them are women (UNDP 2015)

The poorest young women in developing countries may not access universal literacy until 2072 (UNESCO 2014)
It will take 50 years to achieve **parity in politics**

There are also very few **female mayors**: in most regions in the world, fewer than **one in 10 cities** has a woman as a mayor.
In 1993, the UN General Assembly Declaration on the Elimination of Violence against Women provided a framework for action on the pandemic.

But more than 20 years later, 1 in 3 women still experience physical or sexual violence, mostly by an intimate partner.
The world’s most powerful companies are mostly run by men.

There were only 26 female CEOs (5.2%) in 2014 Fortune 500 companies, and only 54 (5.4) in the top 1000.

In 1995 there were no women CEOs in the top 500.
Facts and figures: Gender Inequalities – Women’s Access to Justice

4 billion people around the world live outside the protection of the law mostly because they are poor or marginalized.
In Jordan, men are 3 times more likely than women to report having a legal dispute in the last five years.

In some legal settings, the testimony of a woman is not given equal weight as that of a man.

In the Solomon Islands, 67.9% of women over 30 years old reported dissatisfaction with police when reporting violence.

Lack of Access to Justice can perpetuate gender inequality.

Lack of Access to Justice can affect women’s economic empowerment.

Lack of Access to Justice can exacerbate violence against women and girls.
2. Positive Masculinity
1. Discriminatory laws, policies and gender blind budgets
2. Gender bias in justice institutions supported by gender stereotypes
3. Women’s lack of empowerment due to to higher levels of illiteracy and a general lack of knowledge of their rights and related institutions.
4. The ‘high’ cost of accessing justice
Positive Masculinity

- **Multiplicity**: Constructions of masculinity differ from one culture to another, and from one historical moment to another.

- **Collectively**: Patterns of masculinity can be understood at the individual level but it is important to recognize that they also exist at institutional and organizational levels.

- **Social Learning**: Unlike the popular belief, women too are deeply involved in this process of masculinity as mothers, relatives, friends, partners, colleagues.

- **Positive Masculinity is a Process**: Negative socialization of men & boys is done through a long process. To de-construct the attitudes and beliefs, interventions require **time** and **resources** to achieve.
Why is it Important to Involve Men?

- Most societies in the world are patriarchal
- Men continue to dominate different sectors of socio-economic welfare and development
- Most positions under their watch impact on development and the lives of both men and women
- As the most perpetrators, men and boys have a responsibility to end all forms of violence on women and girls to create equal societies
- Alternative dispute resolution mechanisms favour men and survivors are pushed out of formal justice mechanisms for an ‘out of court settlement’
3. Mobilizing Positive Masculinity for Gender Equality
HeForShe is a solidarity movement that calls upon 1 billion men and boys to stand up against the persisting inequalities faced by women and girls.

Objectives

1. AWARENESS | Education & Sensitization
2. ADVOCACY | Impact through Policy & Programming
3. ACTION | Fundraising & Other Actions

LAUNCH: H.E. THE PRESIDENT FOR THE REPUBLIC OF KENYA
November 2014
Results to date: Global level

1. Mobilized 1.3 billion online, and thousand offline, activists to champion UN Women and gender equality

2. Engaged students from more than 100 universities in more than 50 countries who have launched HeForShe activities on their campuses to promote gender equality

3. Continues to generate new conversations on masculinity, gender equality and the new face of feminism in a multitude of online and offline forums
1. Enlisted the commitment of H.E. President Uhuru Kenyatta who became the first HeForShe Champion for Kenya

2. Organized 17 Launches reaching more than 11 counties and the residents of Nairobi city

3. One of the launches was organized in partnership with the Supreme Court of Kenya

4. Programmatic interventions at national and county levels

Results to date: Kenya level
HEFORSHE LAUNCHES IN KENYA

NATIONAL LEVEL

KENYA RED CROSS SOCIETY

SAFARICOM

KENYATTA UNIVERSITY

UN AGENCIES

SUPREM COURT

TURKANA

TRADE MARK EAST AFRICA

KAKUMA REFUGEE C
COUNTY LEVEL LAUNCHES

TURKANA  
VIHIGA  
UASIN GISHU  
KILIFI  
GARISSA  
MOMBASA  
NYAMIRA  
SIAYA  
MIGORI  
MARSABIT
Matatu and Bodaboda Association Launch (20 November 2016)
Sign up TODAY

--Join the HeForShe Solidarity Movement!
--Become an Instant Champion for Gender Equality!

https://twitter.com/HeForSheKenya

Kebedech.Nigussie@unwomen.org
• Engaging duty bearers to increase their understanding and commitment to addressing Sexual and Gender-Based Violence (SGBV), with linkages to HIV and SRHR as part of the national gender agenda

• Scaling up services and interventions that reduce gender-related risks and vulnerabilities to HIV & AIDS infections, including encouraging men to take more responsibility for their own sexual and reproductive health, and increasing men’s understanding of, and support for, women’s access to contraception of their choice

• Engaging with men and boys to transform negative cultural practices and religious beliefs that perpetuate SGBV
• Promoting **women’s political participation** in elective positions and build political parties capacities to embrace women leadership

• Working with **cultural and religious leaders** to address negative socio-cultural practices that negate gender equality (e.g. **Meru Nchuri Ncheke and the Luo Council of Elders**)

Programmatic Interventions by UN Women: National Male Engagement Alliance
4. Recommendations
Recommendations

1. Exercising **judicial discretion** in releasing perpetrators on cash bail or bond terms

2. Monitor the **effectiveness of protection measures** and recommend institutional reforms where systemic failures become apparent

3. **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

4. 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. As a lesson learnt from Kenya, **strengthen the court users committees** so that jointly, through a multi-sectoral approach, cases can be fast tracked as well as strengthening the judiciary's role in prevention of SGBV

7. Strengthen the **linkage** between key stakeholders (religious, cultural and government institutions) and other service providers in the approach to women’s rights

8. Strengthen the **capacity** of service providers (magistrates, prosecutors, and others) in access to justice realization
Thank You
Sexual and Gender Based Violence
Legislative Responses
in South Africa

Judge Margaret Victor
17 May 2017
TRENDS OF IN THIS SESSION SO FAR

• Activist Judges admonished to be objective
• Activist Jurisprudence e.g. Grootboom case
• Incorporating International Treaties in Jurisprudence to make issues justifiable
• Fearlessly Challenging Customary Law
  – Bride price
  – Maternal mortality
  – Nzemeke vs Chiemeke custody of children
SEXUAL AND GENDER BASED VIOLENCE

- Domestic and family violence is pervasive and frequently lethal
- Challenges society at every level.
- Devastates its victims physically, emotionally, spiritually and financially.
- It threatens the stability of the family and negatively impacts on all family members S vs Baloyi
SOUTH AFRICA
PROGRESSIVE LEGISLATION

- DOMESTIC VIOLENCE ACT
- CRIMINAL PROCEDURE ACT
- CRIMINAL LAW AMENDMENT ACT
- FIREARMS CONTROL ACT
- ANTI TRAFFICKING ACT
STATE OF THE ART LEGISLATION

- Murder
- Rape
- Human Trafficking
- Physical Abuse
- Sexual Abuse
- Psychological Abuse
STATE OF THE ART LEGISLATION

- Harassment
- Stalking
- Economic Abuse
- Damage to Property
- Entry into complainant’s residence without consent
- Imminent Harm
• Domestic violence — Police — National instruction imposing duty on members of Police to render assistance to victims of domestic violence
• Police failing in their duty by refusing to accept charge of domestic violence by complainant and requiring her first to obtain protection order.

• The Minister ordered to pay R280 000 to the plaintiff
STATE OF THE ART LEGISLATION

- Restraining order
- Arrest
- Imprisonment
- Payment of maintenance
- Not enter common home
STATISTICS IN SOUTH AFRICA

SCIENTIFIC STUDY

STUDY BY MEDICAL RESEARCH COUNCIL, UNIVERSITY OF CAPE TOWN & OPEN SOCIETY FOUNDATION

National Mortuary Based Sample and Autopsy Reports 1999 to 2009

Non Intimate Homicide down
Intimate Femicide up
Rape homicide up
• 1999 a woman died every 6 hours at the hands of boyfriend and husband now 1 every 8 hours
• History of intimate partner violence prior to Femicide – hardly any
• Femicide rate probably higher because in 20% case no perpetrator identified
STATISTICS SOUTH AFRICA

• Highest per capita rates of rape reported in the world
• Research shows violence so endemic women and accept coercive sex as normal
• Systemic sexist behaviour normalised
• Patriarchal Power normalised
STATEGIES

• Progressive laws failing?
• Cannot legislate social change
• Transformation way society thinks
• Multiplicity of strategies
  – Legal
  – Social
  – Cultural
WOMENS DIALOGUE IN SOUTH AFRICA

• Minister of Women in the Presidency
• Partnered with South African Chapter - IAWJ
• Dialogue with stakeholders and NGO’s in every province. Supported by the Premiers of the Provinces i.e. at the highest level
• Held during period of activism of 16 days of abuse against women.
• What do judges do if other institutions such as Police don’t progress matters at a reasonable pace
• What do judges do if victim families compromise with offender
• What do judges do if there are a lack of resources
• What do judges do if they feel overwhelmed by lack of resources
Lack of Resources

NECESSITY IS THE MOTHER OF INVENTION

Research data base
www.saflii.org
NAME AND SHAME

HAS THE TIME COME FOR A
DOMESTIC VIOLENCE REGISTER
Emerging Gender Issues in the Electoral Process

LILLIAN ARIKA
Secretary Judiciary Committee on Elections
18th May 2017
When you see the following photographs, what comes to the eye of your mind

A picture is worth a thousand words, but the memories are priceless.
It does not choose class, anyone can be affected
Where did these people get the basins and gunias to put up a home
“If your dreams do not scare you, they are not big enough.”

- Ellen Johnson Sirleaf
2007/08 marked dark history for Kenya and low confidence in the Judiciary esp. in electoral matters.

The 2010 Constitution and the 2013 elections provided an opportunity to regain public confidence.

JWCEP unveiled on May 10, 2012 and had 9 months to execute a mandate that ordinarily takes the 5 year electoral cycle.

Reconstituted as **Judiciary Committee on Elections** on 17th Aug 2016.

JCE TERMS OF REFERENCE

- Legal and administrative arrangements on EDR
- Training programme on EDR
  - (all EDR Trainings in 2017 had component of Gender)
- Monitoring and evaluation of EDR Process
- Stakeholder engagement
- Information to the public on EDR
<table>
<thead>
<tr>
<th>No.</th>
<th>Position</th>
<th>Petitions Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Governor</td>
<td>24</td>
</tr>
<tr>
<td>2.</td>
<td>Senator</td>
<td>13</td>
</tr>
<tr>
<td>3.</td>
<td>Member of National Assembly</td>
<td>70</td>
</tr>
<tr>
<td>4.</td>
<td>Women Representative</td>
<td>9</td>
</tr>
<tr>
<td>5.</td>
<td>County Assembly Representative</td>
<td>67</td>
</tr>
<tr>
<td>6.</td>
<td>Speaker of County Assembly</td>
<td>5</td>
</tr>
</tbody>
</table>

Grand Totals: 188
Elected Women in 2013 – Summary

- National Assembly - 16 women elected out of 290
- Women Reps: 47 women out of the total 47 Counties
- County Assembly Ward Reps.
  85 women out of 1,450
- Governors – no woman elected
  (6 vied out of 237)
- Deputy Governors
  6 women elected out of 47
- Senate – no woman elected
- FIDA-KENYA’s Audit on 2013 General Elections: women’s continued discrimination in politics: see
### Women representation in political parties’ top leadership

<table>
<thead>
<tr>
<th>Position</th>
<th>Women</th>
<th>Men</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party Leader</td>
<td>1</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>Chairperson</td>
<td>7</td>
<td>50</td>
<td>57</td>
</tr>
<tr>
<td>Treasurer</td>
<td>20</td>
<td>35</td>
<td>55</td>
</tr>
<tr>
<td>Secretary General</td>
<td>12</td>
<td>45</td>
<td>57</td>
</tr>
</tbody>
</table>

Source: RPP, 2014
Since independence in 1963, women have not fared well in elective positions. Use of female quotas: reserved Parliamentary seats for women has led to more female leaders (South Africa, Rwanda, Burkina Faso, Sudan, Mozambique).

It was not until the 2007 elections that we started to see some good participation of women in politics.

- 2002: 6 women out of 44 aspirants made it
- 2007: 15 women, 6 more nominated (269 aspirants)

Women have only fared better in the lower level offices, but still has the lowest female representation in Parliament in East Africa at 19%.

Flower girls in delegation?

Strong women are frowned upon by society

Data on Youth and PWDs???
KENYA: HOW DID WE REACH HERE

- **Why women:** they bring different styles and approaches, not just about numbers. Their influence is seen in changed policy priorities and legislation: Kofi Annan
  - 1996: Hon Charity Ngilu: motion on need for Kenyan Parliament to **implement Beijing Platform**
  - 1997: Hon. Phoebe Asiyo: tabled the 1st **affirmative action legislation** (collapsed before it was passed)
  - COK (Amendment Bill) 2007: Hon. Martha Karua sought to **create 50 automatic seats for women** in the 10th Parliament and additional constituencies in the County
  - COK 2010: Article 27 (8): the State shall take legislative and other measures to implement the principle of **no more than 2/3 of members** of elective or appointive bodies shall be the same gender
Towards the 2017 General Elections in Kenya

- Country already in election mood; party primaries ongoing
- Although each election year there are reports of violence, 2017 has **more vicious attacks** being meted out against female candidates in particular in 2017
  - Hon. Millie Odhiambo: terrifying, death to a bodyguard, arson
  - Anne Kanyi aspirant Tetu MP: attacked by masked men with bars and metal bar
- This is in addition to intimidation, financial challenges to mount elegant campaigns, emotional abuse, sexual slurs
- **Enforcement of Code of Conduct!!** Who should be moved?
- Sad: Book Title: “*A journey of Courage: Kenyan Women’s Experiences of 2002 Elections*” Same situation 15 years later in 2017!!!
- Female Candidates Did Very Well in Party Strongholds
Aspirants for Women Rep positions in 2017

Webster Wenchuli

Woman Rep
Bungoma 2017
Embrace Women for posterity

Jubilee
Tuko Pamoja

MARTIN SANKALE LEMAYAN
THE WOMEN REPRESENTATIVE OF KAJIADO COUNTY 2017
Nikona Umama Lakini Tuko Pamoja
What needs to be done

- **IAWJ**: Sub-theme of Conference. Excellent
- **DPP**: Has situation room and Election prepared unit
- **Media**: shapes voter interest and attitude towards particular candidates, esp women candidates. Need focus on message, not on personality
- **NGEC**
- **Police** (Election preparedness unit and ESAP 2017)
- **Civil Society**: voter education
- **Development Partners**: IDLO, UNDP, ICJ
- **Registrar of Political Parties**
  - we celebrate her role.
  - Proposal that funding to political parties be pegged on gender performance: 15% of the fund would be proportionately distributed among parties based on the number of candidates of the party from special interest groups elected
- **PPDT**: playing an important role in 2017 elections, which has gender component from the party primaries
THE KENYAN JUDICIARY: Progressive Judgements

- **In the Matter of the Advisory Opinion on the Principle of Gender Representation in the National Assembly and the Senate AP No. 2 of 2012.** The Supreme Court held by a majority that this principle was to be progressively realised over a period of time. The government was given a timeline of 27th August 2015 to come up with legislation to give effect to the principle.

- **Centre for Rights Education and Awareness & 2 Others v The Speaker The National Assembly & 2 Others, High Court Petition No. 371 of 2016.** The court found that the National Assembly and the Senate have failed in their joint and separate constitutional obligations to enact legislation necessary to give effect to the principle which failure amounts to a violation of the rights of women to equality and freedom from discrimination and a violation of the constitution.

  - The Court gave a period of 60 days for compliance, failure to which the Chief Justice could be petitioned to advise on dissolution of Parliament.
• From the appeals filed at High Court out of the decision of PPDT on party primaries, less than quarter are women complainants: and we ask where are the female leaders.
• Case for reduced filing fees for Article 100 Group? (DPP and ODM has this for nominations)
• 92 special Magistrates on lection Offences Gazetted: average of 1-2 in each County: where are the complainants??
• Power in the hands of the gazetted Election Courts in 2017: arise female Judges and Magistrates
• Hon Chief Justice Passionate about EDR
• JCE working round the clock to ensure we succeed as a Judiciary
The face of our future; they will make decisions that affect my life when I am 90 years
THANK YOU FOR YOUR ATTENTION
WOMEN IN LEADERSHIP:

TOWARDS BUILDING SUSTAINABLE NETWORKS AND PARTNERSHIPS

A Paper presented during the 15th International Women Judges Association Conference for Africa Region held in Nairobi Kenya at the Safari Park Hotel on the 16th to 20th May, 2017

By Hon Lady Justice Martha Koome, Judge of Appeal, Kenya
INTRODUCTION

The topic of Women in Leadership is very broad and general. I wondered how to break it down, knowing the outstanding credentials and academic excellence of the main speaker, Prof. Patricia Mbote, a distinguished Scholar per excellence. I knew she would cover the broad areas of leadership such as Women in political leadership, academia corporate world, business and civil society organizations. But beyond these formal spaces that are most coveted and talked about, we know women silently occupy other unrecognized positions in their communities including their homes, social structures such as religious networks and in the informal sector.

I will concentrate on women in leadership in the Kenyan Judiciary and I will do so in this format:-

1. I will argue we judges and magistrates are in leadership occupy positions and we have an opportunity to inculcate values through our judgments
2. We have the power of convening stakeholders both horizontally and vertically
3. Building networks and partnerships is an absolute constitutional imperative as we do not serve ourselves. We serve litigants and they must regularly consult and give them an opportunity to participate

OPPORTUNITIES OF LEADERSHIP IN THE JUDICIARY

Having had the privilege to serve my country as a legal practitioner and in the Judiciary for the last 30 years - I would like to share my experiences on leadership spaces we occupy as judges and magistrates and provide examples on practical networks and partnerships that I have seen work in advancing access to justice.

Most of us judges and magistrates manage court stations some of which cover a huge population of people in what we call territorial jurisdictions. These judicial officers are held in very high esteem; they are opinion shapers and so
forth. I strongly believe that we can leverage our power and authority that we yield to influence substantial social transformation.

Before I get into practical examples – I would like to reiterate that the violations that we continue to see in our society are because of lapses in leadership – for example, cases of sexual violence will be poorly investigated, or no investigations at all; the victims of violence will be worn out coming to court year in year out to give evidence in court as the cases are adjourned severally. Law enforcement agents such as the Chiefs and the police will condone some crimes such as Female cuts or even advice parties to settle; Chiefs with collusion with some family members will deliberately fail to disclose the existence of female heirs in an estate of a deceased person so as to deny them their rightful share of inheritance. Sometimes, we judicial officers will interpret the law and deny deserving parties’ justice. The examples are many where
justice fails due to lack of leadership by those who are charged with the responsibility or through errors of omission or commission.

I cannot fathom why in Kenya today a woman would be denied inheritance rights: why a woman should be denied a share of matrimonial properties. Similarly, I do not understand why FGM is still prevalent in the face of such severe laws that address FGM. We have a great Constitution and I dare say we have great laws. The problem is judges, magistrates and other leaders are not using their leadership positions as agents of change, to interpret the law in solving social problems. If we, as Judges, took charge of the immense power of convening to, for example, a Senior Magistrate in charge of Court in Tharaka where FGM is prevalent, issued a warrant of arrest of a Chief or officer in charge of a police station for aiding and abetting the commission of crimes against girls who are circumcised, such a bold and proactive move would send a serious warning and provide precedence and leadership towards curbing the
menace. This is the kind of authority that is bestowed upon us as State Officers under Article 73 of the Constitution. We are supposed to act in that;-

1. Is consistent with the purposes and objects of the Constitution,
2. Demonstrates respect for the people,
3. Brings honour to the nation and dignity to the office; and
4. Promotes public confidence in the integrity of the office.

**On building sustainable stakeholder engagement and partnerships:**

Several of you, dear colleagues, have heard me speak in the past about the Court Users Committees— but my passion for sharing this model as a sustainable network is the potential it has in creating a platform for increased co-ordination in a sector that is sometimes disjointed. Justice is like a chain link and any weak link will affect the strength of the whole chain. The premise of the Court Users Committee is to bring together all the actors in the administration of justice together, to examine, discuss and share the challenges and determine the roles
and responsibilities of each actor in ensuring there is efficient delivery of services to litigants. This is a great forum that brings 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, county leaders and the list is elastic because each CUC has different participants who express an interest in the administration of justice.

The platform brings together all actors to increase efficiency within the chain of justice – and as you all know from your experience we need all these actors to co-ordinate their activities for efficiency. It matters not that you are a good judge or magistrate if the other actors are inefficient; that will affect the delivery of justice. From my experience, using this forum in Nakuru and Kitale Law Courts, where I served with some of the delegates present in this conference, we set up an excellent Child Protection Network; regular trainings on emerging
issues that we came across from our judgments and rulings that we felt were not progressive other initiatives. Inasmuch as we as the Judicial Officers would like to take the glory for this initiative – the successes were anchored on all actors coming together towards one goal. However, this was only made possible because I, as the Presiding Judge, took on the position of leadership.

Providing leadership is sometimes difficult, it is not a walk in the park; from my experience, it was challenging as you are bringing competing interests, divergent views, and institutions with budget constraints. Building partnerships is lengthy process that may sometimes derail you from what is your “core work”. It is also very important to explain to every stakeholder on the ground rules that cases are never discussed in the forum but merely the process and systems. The presiding Judge and Magistrate has to control the proceedings do not touch judicial independence. This forum is worth embracing because failure
to address the systemic brokenness in the system will continue to make the judiciary lag behind in taking on our leadership roles.

This value of partnerships through Court Users Committees is entrenched in the Constitution, Article 10 provides for, good governance, integrity, transparency and participation of the people who get affected by decisions we make among others. The JSC Act, section 34 also provides for the setting up of National Council on the Administration of Justice which is cascaded to the court level as the Court Users Committee that are chaired by Judges, heads of divisions and magistrates who head court stations.

As leaders, we should be concerned about making our society free from violence where everybody lives in dignity. Majority of stakeholders are persons or groups who are directly or indirectly affected by the decisions we make as well as those who have an interest in a just, safe country, where the rule of law is protected and promoted.
VERTICAL COLLABORATION AND PARTNERSHIPS

It is important to have a working relationship or an understanding with the legislature and the executive. Over the years, the judiciary has been on the receiving end through all manner of accusations by Parliament. We have been accused of interfering with their operational independence in law making. I recall a few years ago, the Hon. Chief Justice convened a meeting with members of the Senate when the Judiciary explained the fundamental principles of judicial independence of judges and magistrates in decision making.

I submit we judicial officers can implement the Constitution, our laws and policies to protect and promote human rights and we can engender values in our judgments that can contribute tremendously to sustainable development. We can leverage our power and authorities of convening CUC’s and get every actor to deliver on their mandate as per the Constitution and the law by gently reminding them of the responsibilities bestowed upon us by the Constitution. In
conclusion, I am highly hopeful that during the next Regional Conference of IAWJ, we, from the Africa Region shall not lament over these challenges, we are not “crybabies” any more, we will stand in a high platform to share our respective experiences of bold steps each one of us took in leadership in our various jurisdictions.

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In an endeavour to achieve Sustainable Development Goal 5; gender equality and the empowerment of women and girls should be paramount. Participation of women and girls in decision making bodies should be both encouraged and enhanced. Running for office is one of the many ways of empowering oneself and providing a public platform to impact change. However, experience shows that women and girls continue to encounter barriers while in pursuit of leadership position through elective offices.
On 25 October 2015, general elections for the presidential, parliamentary and councilors’ 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.

I adjudicated one petition which consisted of three aspirants two of whom were males and one female. The 1st respondent was declared the winner. Displeased with, the manner in which the election campaigns were conducted and the irregularities during the vote counting and tallying, the female aspirant petitioned the results in Court. She engaged two advocates, though one joined at a later stage. She however lost the petition.

Prior to the October 2015 elections, the government, various organizations, non-governmental and civil society based groups, raised awareness on the upcoming elections through various platforms. Topics covered included knowledge in policy and decision making, information on laws including


2 Section 9 (1) of the Local Authorities (Elections) Act, Cap. 292. R.E. 2015
human and women’s rights, election laws and regulations, as well as resources and support management, to mention a few. In spite of these, much more needs to be done not only to raise awareness and educate the community but also in creating an environment to achieve gender parity.

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. Unlike civil matters, in election petition the standard of proof is that of beyond reasonable doubt and lies upon the one who alleges. Courts which are entrusted with mandate of handling election petitions have to be cautious and interfere only when the petition before the Court has been proved as required by the law. In light of the standard of proof requirement, proper preparation including collection of evidence and its presentation before the Court ought to be carefully handled and professionally done.

The decision stemming from a well prosecuted case, resonates the promotion of rule of law, as well as guidance for women and girls from marginalization and discrimination based on sex, which culminates into
them giving up on holding or running for a leadership position in the public space.

In this Election petition, the petitioner had two sets of claims. The first set included utterances of defamatory statements\(^3\), insinuation of adultery\(^4\), name calling\(^5\) and intent to exploit and take advantages on difference in sexes\(^6\) during the campaigns. While the second set covered irregularities 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, but no plausible evidence was presented. Out 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\(^7\) nor forms carrying disputed entry\(^8\) were tendered through this witness, instead the advocate tried to

\(^3\) Testimonies of PW3, PW4, PW5, PW6, PW7 and PW8.

\(^4\) Ibid

\(^5\) Ibid

\(^6\) Ibid

\(^7\) Form No. 16 –this is a form to be filed by a candidate or agent if satisfied or not at the counting of votes.

\(^8\) Form 21B is used in recording the number of registered voters, those who voted, votes counted, spoiled votes and what each aspirant got.
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.

Gauging evidence from irregularities relying on documents is different from oral evidence. With the latter, each witness could have differing experiences although all could claim to have attended the same campaign rally; while with the former reliance is on factual documents. Although no explanation was demanded by the Court but it was a disturbing experience for such opportunity to be lost and especially when this was followed by an abrupt close of the petitioner’s case. This certainly raised concern.

From the conduct of the petition, it is evident there is need for more keenness in preparation, collection of evidence and prosecution of petitions. There is also a necessity for providing sufficient information and

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knowledge on the Election laws\textsuperscript{10} to the community and aspirants in particular.

The shortcomings experienced made me wonder if it had anything to do with the advocates’ lack of right prepping of the witnesses and proper presentation of the evidence. As for the irregularities claim, 35 witnesses were earmarked but only 1 came to testify. This made me wonder as to the whereabouts of the other 34 agents and the contested forms they handled? Why were they, not summoned? Was it out of choice or sheer coincidence? Could it be they had lost interest in the case? If so what could be the cause? Was it financial constraint since the petitioner was the one to incur costs, for would be witnesses, so that they can come to Court, as well as their affidavits which were to be prepared and filed prior to their day in Court? All these concerns and others not mentioned are in my view in need of answers and solutions to move forward.

Women Judges and other judicial officers are expected to weigh in through the decisions and orders they make. The decisions promoting rule of law,

positively contributing to the achievement of increased opportunities and empowerment of women and girls, should be a norm rather than a rarity. In order for this demand to be realized a need for proper presentation of evidence before the Court is inevitable.

A strong statement in the form of a judgment, ruling or order is crucial in this regard, not only to share the outcome but also to inform the public that Courts are devoted to see any one, especially women aspirants, are treated fairly and with the appropriate respect. Such reaction and action will definitely encourage and inform women and girls that the Courts are accessible to them as well, especially in the challenging of the outcome of any contested election. However, it is essential as seen in this instance for the petitioner to follow the election rules and to prepare her case accordingly.

Generally there are a number of observers during the election campaigns and voting process, but the government has vested all the powers under the National Electoral Commission (NEC). With the advance in technology, recorded campaigns both audio and video should be the norm under NEC supervision. So far only big campaign rallies get the full attention while
small ones depend on individual efforts. Individual video and phone recording as well as taping was used in the 2015 elections, but the authenticity of what was recorded can easily be challenged, especially before the Courts of law. With that predicament, it is thus imperative that the NEC, which is funded by the government, should be responsible for all recordings in campaign rallies as well as being the sole custodian of these recordings. If the NEC had taken the initiative of creating the recordings, they could have then been produced in Court as evidence by either party.

Additionally, the accessibility and transparency of such recorded evidence should be a right for any citizen and should be available at minimal fees or free of charge. Having such a mechanism in place would assist women and girls in easily placing before the Court the evidence of use of abusive language, innuendos, name calling, intimidation, physical encounters and so forth in course of finding the truth in any challenged election outcome.

Currently individual aspirants, their supporters or parties are the ones recording the events. The danger of presenting individual recordings, include the possibility of doctoring to suit one’s interest. A centrally controlled recording, in this instance by the NEC can avert this danger.
Again, the exercise might be calling for major investment but at this juncture I urge on the focus and importance of the tentative achievement as vital, as opposed to what is to be invested in terms of finances. Though there is no conclusive data that women or girls are most affected when running for elective office, however, societal norms and patriarchy contribute to hindering them to seize the opportunity of running for leadership position in the public space. Also important to note, had the services of the NEC, included provision of recorded material and support, proof of her case would have been fulfilled easier.

Financial investment in any elections is extensive. For women it is more challenging as most are not economically capable in comparison to their male counterpart. This fact can easily discourage a woman even where there is opportunity.

In ensuring that women and girls are brought seriously on board, and in the endeavor to achieve goal 5 of Sustainable Development Goals of gender equality and empowerment, concerted efforts must be made. With the United Nations leading the way, all women and girls, in this instance aspiring for electoral office should seize the opportunity. Establishing of a
funding mechanism to assist women and girls running for elective office should be considered as one of the steps in the right direction. Possibilities include the fund being maintained as a microfinance institution whereby women and girls can secure a loan at affordable interest rates. Financial services can allow the possibility of hiring good advocates, where election prosecution is necessary. Paying for security costs will require money, preparation and collection of evidence including witnesses, likewise. Since election petitions are involving and time consuming, advocates need to be adequately remunerated and all these costs are borne by the petitioner.

Alternatively, legal groups established to focus on defending the marginalized including women and girls should take it upon themselves to fully defend any woman or girl vying for electoral office especially those without sufficient funds.

Knowledge on election laws and regulations such as “Maadili ya Uchaguzi wa Rais, Wabunge na Madiwani ya Mwaka 2015 Tume ya Taifa ya Uchaguzi\textsuperscript{11}” is equally crucial. Creation of these regulations has seen the

\textsuperscript{11} Maadili ya Uchaguzi wa Rais, Wabunge na Madiwani 2015, GN No. 294 of 2015.
District Executive Director\textsuperscript{12} holding office as Returning Officer,\textsuperscript{13} and Chairperson of the “Election Ethics Committee.\textsuperscript{14}” Having one person holding three sensitive positions in matters pertaining to citizens’ rights might have its downside.

It occurred in the petition I handled that the petitioner and her party secretary at different time reported abuse, use of defamatory statements and threats posed to her supporter during campaign rallies as required by Regulations 5.3 - 5.7\textsuperscript{15}. The Returning Officer was joined in the petition as 2\textsuperscript{nd} respondent\textsuperscript{16} 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 was in a different capacity. Even though there was no evidence if the complaints were dealt with, but it has been my concern that aspirants, their parties or supporters might have been denied opportunity


\textsuperscript{13} Section 7 (1) of the National Elections Act.

\textsuperscript{14} Part V Regulation 5.2.3 (a) of the GN. No. 294 of 2015

\textsuperscript{15} GN No. 294 of 2015

\textsuperscript{16} The National Elections Act,
to be heard due to uncertainty as when she was in her capacity as chairperson of the “Election Ethics Committee”. This needs to be examined and if possible changes need to be made.

Another element that can be utilized in improving the space of women holding electoral office is the training provided by the government and other bodies. Currently, such opportunity occurs during the election year. A need for continued training is necessary if an impact is to be felt in this vast nation. I must admit this is heavy investment in terms of finance and human resource as well as sustainability of the process. In order however for Sustainable Development Goals to be achieved and number of women holding leadership in public space and decision making bodies to increase then all impediments have to be cleared.

Importance of increasing women and girls in holding electoral office cannot be underrated. While acknowledging the improvement so far achieved, nevertheless most leadership and decision making positions through electoral office are still held by the male counterpart. This must change. Women judges and other judicial officers must take a leading role in supporting this change. Women and girls’ right to be heard must be given
its deserved attention, if the 2030 Agenda for Sustainable Development is to be achieved. The increase of women representation would certainly improve decision making roles, an effect which will overwhelmingly benefit societies as a whole.

THANK YOU
FEMMES ET LEADERSHIP

POUR UN ENGAGEMENT DES PARTIES PRENANTES ET UN PARTENARIAT DURABLE
INTRODUCTION

• La question du genre et du leadership féminin apparaît constamment dans tous les indicateurs des ODD

• leadership: « Le leader de demain devra avoir une approche plus féminine. Il devra convaincre plutôt que donner des ordres. » Charles Handy

• des objectifs du millénaire pour le développement aux objectifs de développement durable

• présentation de la Côte d’Ivoire et le contexte d’adoption des ODD
Champ d’application des ODD en lien avec le leadership féminin

1. Atteindre l’efficacité économique
2. Éradiquer la Pauvreté
3. Garantir l'accès des femmes les plus précaires à tous les services économiques et sociaux de base afin de favoriser leur autonomisation.
4. Reconnaître et favoriser la place des femmes dans l’activité agricole
5. Travail décent, promotion des femmes et croissance économique
2. Améliorer l’équité sociale

• Eradiquer toutes les formes de discrimination à l’égard des femmes et des filles en veillant au respect de l'équité des sexes

• supprimer de la vie publique et de la vie privée toutes les formes de violence faite aux femmes et aux filles

• Prioriser la bonne santé et bien-être des femmes

• Paix, justice et institutions efficaces
3. Maintenir l’intégrité environnementale

- Rendre accessible l’eau et assainissement
- Villes et communautés durables
- Recours aux énergies renouvelables
- Mesures relatives à la lutte contre les changements climatiques
de l’intégration des ODD dans la politique nationale de développement de la Côte d’Ivoire

1. Au niveau normatif
   • La Constitution de 2016
   • Signature de la convention sur l’élimination de toute forme de discrimination à l’égard des femmes
   • Ratification du Protocole de Maputo

2. Au niveau Institutionnel
   • Création de la commission nationale de développement durable
   • Adoption d’une politique du genre
   • Répartition des compétences ODD à tous ministères
De l’intégration des ODD dans la politique nationale de développement de la Côte d’Ivoire

3. Au niveau de l’administration de la justice

- Mise en place d’un centre d’information et d’orientation
- assistance judiciaire
- campagne de sensibilisation et d’information
- reforme en cours des lois discriminatoires

Suite

- prise en compte des besoins spécifiques des usagers et des acteurs du service public de la justice
- amélioration des conditions de détention
- Collaboration avec les ONG pour réaliser les ODD
Les défis

• Mise en place de partenariat durable
• Militantisme et implication dans les stratégies d’intégration du leadership féminin dans les méthodes de gouvernance
• Les contraintes socioculturelles
Conclusion

• Tenir compte des spécificités du pays
• Constater la vision planétaire des problèmes communs de l’humanité et la transversalité des indicateurs ODD
• renforcer la collaboration entre intervenants
• Mobiliser les ressources financières et les compétences humaines
MERCI POUR VOTRE AIMABLE ATTENTION
WOMEN IN LEADERSHIP IN THE JUDICIARY- THE KENYAN CASE

A PAPER PREPARED BY HON. LADY JUSTICE ROSLEYN NALIAKA NAMBUYE JUDGE OF APPEAL, E.B.S


VENUE: SAFARI PARK HOTEL, NAIROBI-KENYA.

THEME: WOMEN IN THE JUDICIARY ENABLING SUSTAINABLE
DEVELOPMENT GOALS; OPPORTUNITY, STRATEGIES AND CHALLENGES.

HISTORICAL BACKGROUND

Colonial Judiciary

The current Kenyan Judiciary has its roots both in the colonial and post colonial Executive actions. In 1897 the British government issued the East African order in council effective 12th August 1897 popularly known as the “reception clause”.

This action saw the importation into the East African protectorate of the common law and statutes of general application in England as at the reception clause date alongside the India Civil Court Act of 1869 and the small causes Act 1887. Regulations were formulated to introduce Native Courts, modeled on the Indian small causes Courts to deal with litigation arising from customary law.

The 1902 order in council established a permanent court of record to apply the Indian Civil and Criminal Procedure as well as the Indian Penal Code.

Order No. 13 of 1907 established the High Court, subordinate Courts of various classes, Native Courts and the Kadhi Courts. The High Court had unlimited civil jurisdiction. Criminal Jurisdiction was pegged on capital offences such as murder and offences against the state such as Treason. The Subordinate Courts had their civil jurisdiction pegged on the monetary value of the subject matter, while criminal jurisdiction was pegged on prescriptions in the Penal Code stating which offence was triable by which class of Magistracy court. Judicial authority was vested in the principal Judge. The High Court was vested with both appellate and supervisory jurisdiction over subordinate Courts in both Civil and Criminal matters.

In 1911, another order in council introduced the application of the Doctrines of Equity. In 1920, the Kenya protectorate order in council, introduced the office of the Governor with power to appoint Judges and justices of peace, pursuant to
which the first chief justice was appointed in the year 1954, taking over the administrative function of the Judiciary, previously vested in the principal Judge. Judges held office at the pleasure of the governor, thereby fusing Judicial and executive power, by bringing Courts under the direct control of the executive. The governor also had power to designate senior Provincial Commissioners, Senior District Commissioners, and District officers as Senior Resident, Resident and District Magistrates.

**Post Colonial Judiciary**

The 1963 order in council ushered in the independence constitution of Kenya subsequently amended in 1965, 1967, 1969, 1983, 1987, 1991 and 1997 all of which made provision for the Judiciary. The Magistracy, and Kadhis were catered for under the Magistrates courts Act and the Kadhi Courts Act. The post colonial Judiciary under the leadership of the Chief Justice, comprised the Eastern Africa Court of Appeal, currently renamed the Kenya Court of Appeal, and the High Court. With it, also came an in built lean Judicial Service Commission with no defined period of tenure, headed by the Chief Justice with membership comprising one Judge each from the Court of Appeal and the High Court, designated by the Chief Justice. There was no representation on the JSC for the Magistracy and the Kadhis. There was also the chairman of the Public Service Commission and the Attorney General. Recruitment was through advertisement and invitation to attend interviews. Promotion was by way of recommendations through section/station heads and approval by the JSC.

**Colonial and Post Colonial Leadership of the Judiciary**

The Colonial and Post Colonial leadership in the Judiciary was vested in the office of the Hon. The Chief Justice, assisted by the Registrar of the court. Its notable characteristics is that, it has been male dominated. Chief Justices who have headed this office since 1954, included Sir Kenneth Oconner, Ronald Sinclair, Geoffrey B.W. Rudd, Sir John Ainley, C.J. Ferred, Kitili Mwendwa, Sir James Wicks, Sir Alfred Simpson, Chunlal B. Madan, Cecil H.E. Miller E.B.S.E.G.H, Robin Alan Hancox E.G.H., Fred Kwasi Apaloo, Abdul Majid Cocker E.G.H, Zachaeus Chesoni, Benard Chunga, Evans Gicheru, Dr. Willy Mutunga and currently David Kenani Maraga.

**Reasons Why no Kenyan Woman has Ascended to the Position of Chief Justice**
A brief look at Kenya’s history from independence will show that there are various factors that have conspired against the ascendance of women in the Judiciary.

To begin with, history in itself has not favoured women. At the time Kenya gained its independence. There were no Kenyan women magistrates or judges in the Judiciary, and so it was not surprising that no Kenyan woman could be appointed to this position at the time.

Kenya’s first African Chief Justice, Honourable Kitili Mwendwa was appointed by H.E. President Jomo Kenyatta in 1968. Again by this time, there were no Kenyan women magistrates or judges, or even advocates or barristers who had joined the rank and file of judicial officers or officers of the court. As such there was no reservoir from which to source for women judicial officers.

The appointment of women judges and magistrates has been slow over the years, which has resulted in a small pool of women judicial officers from which to appoint women judges.

Another factor has been hierarchy. In an institution such as the Judiciary, the concept of seniority is deeply entrenched. There is a distinct pecking order among the rank and file, which to a great extent forms the basis of every appointment. Clearly women magistrates and judges whose appointments to the bar and bench, came much later were required to wait their turn before appointment to a senior position, least of all that of Chief Justice.

Another factor was the continued struggle for gender parity. Generally, because appointment of women to positions of leadership was not a priority in the past, it followed that the appointment of women to leadership positions was overlooked, or women were constantly relegated to playing supporting roles. Gender biases in many cases always resulted in the appointment of men in leadership positions. This phenomenon was replicated in all areas of society. In the Judiciary, this was no less the case.

There was also the 2003 Judiciary purge or Radical surgery as it came to be popularly known and the just ended Judges and Magistrates vetting exercises that caused the departure though prematurely from the judicial service of our most able women judicial officers who could currently be in leadership positions.

Post Colonial Reforms that set the pace for Women to make in roads into Leadership Position within the Judiciary
The progress for women judicial officers to make inroads into the leadership within judicial cadres has been a very slow one.

Reforms that paved the way for this window of hope were championed through numerous task forces. Among these were the Kwach committee set up by Hon. Chief Justice Z.R. Chesoni (as he was then) on 7/1/1998. It recommended the creation of specialized divisions, and increase of man power. The first Division created within the High Court was the family Division headed by a lady Judge, now her Highness Lady Justice Joyce Aluoch, currently Judge of ICC. On the 19th day of March, 2005 Hon. Mr. Chief Justice J.E. Gicheru E.G.H. (rtd) appointed the Governance committee which recommended open competition for all cadres within the Judiciary. The Ouko Task Force of 2007 recommended the establishment of an expanded, well empowered and independent JSC. It also reiterated a competitive process for both the recruitment and promotion within the Judiciary with a view to enhancing judicial integrity.

Constitutional Entrenchment- Anew Dawn for Women in the Judiciary

Following the promulgation of the 2010 Constitution, we had a rare opportunity to turn the tables or change the course of history, but this was not to be. Article 166 of the Constitutional entrenchment anchored the positions of the Chief Justice and Deputy Chief Justice with the latter being introduced for the first time in the history of the Kenyan Judiciary. Other notable prescriptions touched on making the judiciary accountable directly to the people by specifying that “judicial authority is derived from the people.” There is also introduction of the Supreme Court with original jurisdiction over Presidential Elections and Appellate jurisdiction on decisions from courts subordinate to it; provisions for special High Courts, retention of the security of tenure for judges but brought down the retirement age to 70 from 74 years of age, provision for elaborate disciplinary routines against Judicial officers. These constitutional entrenchment together with the outlined interventions and the creation of new Courts, contributed to increased leadership opportunities for women in the Judiciary.

The Judicial Service Commission Act, No. 1 of 2011.

The Act also anchored the position of the Chief Justice, Deputy Chief Justice, President of the Court of Appeal and the Principal Judge of the High Court, all of which are top leadership positions within the Judiciary. It also gives an elaborate structure of the Judicial Service Commission which comprises the Chief Justice, a Judge elected to represent the Supreme Court, Court of Appeal, High Court, office of the Attorney General, 2 Advocates representing the law society of Kenya, a
representative of the Public Service Commission, one Woman and a man representing the general public and a representative of the Magistrates. A recent development in the composition of the JSC is that the current Deputy Chief Justice Hon. Lady Justice Philomena Mbete Mwilu has been elected to represent the Supreme Court. That makes two female judicial officers on the JSC, with one holding the 2nd senior most powerful position within the Judiciary.

**Current Trend-open Competition.**

The current trend for accessing leadership roles within the now Transformed Judiciary, is informed by the prescriptions in the Kenya constitution 2010, on National Values and principles on leadership, that JSC as the employer is enjoined to adhere to both in the recruitment and the promotional exercises. Key under the National values are patriotism, respect for the rule of law, good governance, integrity and accountability. Under chapter six Article 73 on leadership and integrity, the employer looks for an officer who understands that her office is a position of public trust, one who demonstrates respect for the people, one that already has or is likely to bring honour to the nation and dignity to the office, one who promotes public confidence and integrity in the office she holds and one who understands the responsibility to serve rather than to rule the people.

Other qualities that the employer is enjoined to look for in a prospective female leader are personal integrity, competence, capability; objectivity and impartiality in decision making derived from sample writings submitted in the course of the interview and scrutinized by the JSC for any semblance of nepotism, favoritism and any other improper motives or corrupt practices that may be evident in the write ups. The employer also looks for selfless service based on the public interest demonstrated by honesty in the execution of public duties and the declaration of any personal interests that may conflict with public duties. Accountability to the public for decisions and actions taken in the line of duty is now a must paramount consideration. Discipline and commitment in the service to the people is an added advantage. There is also a requirement for such aspirants to show proof of community service. Judicial service pay is derived from Tax Payers money. It is a show of patriotism for a judicial officer to give back to the community. Ways of doing so depend on individual taste since Judicial Authority is derived from the people, members of the public are usually invited to send in their commends or inputs with regard to the suitability of the particular aspirants for the particular position applied for.
The above open competition has provided an answer to the pre-2010 constitution slow movement of women judicial officers to higher positions of leadership within the Judiciary as already mentioned above. The biggest challenge now is the widening of the circle of competition. It is no longer an in-house arrangement. There is competition from the entire legal fraternity with stiff competition for higher academic qualifications from colleagues from without who may be better placed academically by reason of their exposure to more opportunities for academic advancement as opposed to those of judicial officers who have little time to advance their academic qualifications due to high demands of judicial work. There is now greater pressure on the judicial officer to create time outside normal judicial work to improve on their academic performance in order to boost their chances of competing fairly for positions of leadership within the Judiciary with their counterparts from without the institution.

**Setting the Stage for Women Leadership in the Judiciary.**

All the officers who appear in the leadership positions in the schedule attached at all cadres of the judicial hierarchy have gone through the process of vetting by the just ended Judges and Magistrates vetting exercise, and also vetting by the JSC before accessing those leadership positions. Members of the public also gave them a clean bill of health as persons who are fit to hold those leadership positions. They are therefore not holding those positions out of any favour bestowed on them. But because they deserved those positions. They have gone through the furnace and solidified. There are bigger numbers at the lower level than at the top for the reasons already explained above that in the pre-2010 period, there was no open competition. With the advent of the open competition the trend to higher levels is likely to continue. It is up to the women judicial officers themselves to maintain and guard not only closely but also jealously this upword trend.

**Women Pioneers at the Magistracy**

It was not until 1969 when the Hon. Lady Justice Effie Owuor, JA (rtd) was sworn in as the first woman Kenyan Magistrate, a period of eighty two (82) years since the inception of the Kenyan Judiciary. Her Highness Hon. Lady Justice Joyce Aluoch currently Judge at the ICC followed soon thereafter. She was followed by Hon. Ruth Sitati currently the presiding Judge Kakamega High Court, Hon. Uniter Kidula who retired from the Judiciary at the rank of Chief Magistrate; Hon. Lady Justice Roselyn Naliaka Nambuye currently Judge of the Court of Appeal based in
Nairobi. Other early birds were Hon. Lady Justice Mary Ang’awa (rtd) and Hon. Sarah Ondeyo Omolo (Rtd).

**Women Pioneers at the High Court Judgeship Level.**

Once again her Ladyship Hon. Lady Justice Effie Owuor, JA (rtd) was sworn in as the first Kenyan Woman judge in 1983, a period of ninety six (96) years since the birth of the Judiciary. Her Highness Hon. Lady Justice Joyce ALuoch followed two (2) years later in 1985 being ninety eighty (98) years later. The third woman judge being Hon. Lady Justice Roselyn Naliaka Nambuye, JA came on board in August 1991, close to seven years after her Highness, and one hundred and four (104) years since the inception of the Judiciary. Other women Judges who came on board shortly thereafter were Hon. Lady Justice Mary Ang’awa (rtd), Hon. Sarah Ondeyo Omolo (rtd) and Hon. Lady Justice Jessie Lessit Judge of the High Court currently based at Milimani law courts as the presiding Judge of the Criminal Division.

**Women Judges Pioneer to the Court of Appeal**

The woman Judge, forerunner to this Court is none other than our very own Hon. Lady Justice Effie Owuor, JA (rtd) who made it to this Court which was by then the Highest Court of the land on 7/7/1998, a period of one hundred and eleven (111) years after the inception of the Judiciary. It was not until December, 2007 that Her Highness Hon. Lady Justice Joyce ALuoch also made it to the Court of Appeal, a period of one hundred and twenty (120) years after the inception of the Judiciary, and nine years after her Ladyship Hon. Effie Owuor, JA (rtd) had set the pace to that Court. Five (5) years later in 2012, and one hundred and twenty five (125) years since the inception of the Judiciary, a group of five eminent women judges, namely Hon. Lady Justices Roselyn Nambuye, Wanjiru Karanja, Martha Koome, Kalpana Rawal who later became the 2nd Deputy Chief Justice of Kenya and Hon. Hannah Okwengu JJA, the current chairperson of KWJA made it to the Court of Appeal. In 2014 another group of eminent women judges followed, namely Hon. Lady Justices Philomena Mwilu, the current DCJ, Hon. Lady Justices Agnes Murgor, Fatuma Sichale, and Jamila Mohammed followed in that order.

**Pioneer Women Judges to the Supreme Court**

The Supreme Court was ushered in by Article 163 of the Kenya constitution 2010. With the Court also came with the newly introduced position of Deputy Chief Justice. The first slot went to her Ladyship Hon. Deputy Chief Justice Nancy Makokha Barasa (rtd). She went down in Kenyan history as the first woman
Kenyan Deputy Chief Justice. She was shortly thereafter followed in 2013 by the DCJ Hon. Lady Justice Kalapana Rawal who retired in the year 2016. The position is currently held by the 3rd holder of that position Hon. DCJ Philomena Mbete Mwilu. Another woman Judge to make it to the Supreme Court at its inception is Hon. Njoki Ndungu, Supreme Court Judge.

**Chief Registrar Judiciary is the Chief Executive Officer of the Judiciary.**

This position is equivalent to a Permanent Secretary in other Ministries. The position formerly titled registrar of the Court, has been male dominated until 2007, when the first woman Hon. Lady Justice Christine Meoli took it over. Her ladyship handed over to Hon. Lady Justice Lydia Achode who ably midwifed the transition of the institution from the pre 2010 to post 2010 constitutional era. The title of the office changed from Registrar of the Court, to Chief Registrar. This new position first went to Gladys Boss Sholei. Currently it is under the able stewardship of Hon. Ann Amadi. Her foot steps are hardly felt but she has kept the so called “cartels” in check.” The institution is on course because it is under the able hands of a woman Chief Executive Officer.

**The Position of 1st Woman Chief Justice**

There has been no breakthrough for a woman judge to ascend to this position to date one hundred and twenty nine (129) years since the inception of the Judiciary. Given our history outlined above, and the rigorous process of appointment by the Judicial Service Commission, women have tended to shy away from applying for the position of Chief Justice, since open competition was introduced and only apply in reasonable numbers for appointment to the position of Deputy Chief Justice.

As mentioned earlier on, this has been the preserve of our brothers. Appointment to it was a closed door business, a presidential preserve. Open competition for it came with the advent of the new constitution, 2010. In the year 2011, two women judges Hon DCJ (RTD) Kalpana Rawal and Hon. Mary Ang’awa applied for it. They were short listed but unsuccessfully interviewed for the said position. Notable of these interviews was that their male colleagues who were listed ahead of them for the same interviews had their CVS splashed both in the print and electronic media pending those interviews. The two women Judges were the last to be listed and interviewed. Other than mentioning their names and the fact that they were in the race for the position of Chief Justice, nothing much of what they had achieved as judicial officers and elsewhere were highlighted. The quality of
their suitability for the position was also down played, notwithstanding, that JSC had the last say as to who to appoint, and who not to appoint to the said position.

The second opportunity arose during the 2016 interviews, when two women were also unsuccessfully interviewed for this position. One of them was none other than Hon. Lady Justice Roselyn Naliaka Nambuye,JA. The media did not highlight the excellent Judicial career she has had spanning close to thirty eight (38) years as at that point in time. But concentrated on personal matters and why she would be a weak leader when compared to fiery women politicians. The impression given was that she was shortlisted for purposes of complying with the gender rule and yet she met the criteria in all respect as per the advertisement.

**Commendable Work well done by Women in the Kenyan Judiciary.**

The failure to clinch position 1 leadership in the Judiciary notwithstanding, women in leadership positions in the Kenya Judiciary have done a commendable job. As it can be seen from the schedule annexed hereto, female Judicial officers who are in leadership positions are spread out throughout the country. They are not spared from being posited even to the remotest and bandits prone parts of the country, such as Turkana, Tana River, Samburu, Garissa etc. Why?. They are efficient workers who can confront and contain any eventuality in the line of duty. Behind the scenes, they are known as the Fire Extinguishers. Talk of any station in turmoil, the officer most likely to be deployed to that station will most likely be a female. Allow me to mention a few of these Heroines by way of illustration. There is a time judicial business ground to a halt at Kitale High Court for close to two years. It took the decisive, no nonsense, but firm, professional hand and mind of Hon. Lady Justice Martha Koome, JA to put it on track. The professional work ethics, respect , courtesy and sense of responsibility instilled in the bar/bench fraternity in the course of her tour at the said station still hold many years after her departure, guaranteeing the incessant flow of judicial work like river Nile, and will continue flowing until her ladyship declares otherwise.

Similarly when Kisii High Court was on fire, with a standoff between the bar and the bench, it took the wisdom, courage, persuasion and reasoning of Hon. Ruth Sitati now presiding Judge Kakamega High Court to bring the belligerents under her able control and command for round table talks, to difuse the standoff. Her ladyship rounded this off by a suptious meal served by her Lady ship just to remind the belligerents that there is no enmity in lawyering, but only active
disagreements; which disagreements have a solution, and which solution lies in the hands of the belligerents themselves, at all times.

Mombasa lawyers when they took to the streets protesting about lean work force at the station, it took the quick thinking and action of the soft spoken but decisive and firm Hon. Lady Justice Maureen Odero now presiding judge Nakuru High Court, to calm them down. All her ladyship did was to tripple her work out put. It all went quiet and this earned her many commendations from the lawyer while on tour at the said station.

Meru one of the most difficulty court stations for one to work at, when they threatened to boycott court alleging lean workforce, it took the hand of non other than the soft spoken, but firm, decisive, disciplinarian and no nonsense administrator, Hon. Lady Justice Jessie Lessit, now the presiding Judge Criminal Division High Court Milimani Nairobi, to remind the protestors that the business of court is to serve Wanjiku. The protestors had no alternative but to toe the line as directed by her Ladyship and got back to business. Meru has been quiet ever since, boosted by the fact that the incoming Judge Hon. Lady Justice Roseline Wendoh who took over from her continued to steer the station in the right direction.

Hon. Lady Justice Roseline Wendo, while at Nakuru High, Court the so called hot spot, whatever that means, put her foot down and reminded all and sundry that court rooms are preserved for court business and not politicking. Noisy Eldoret, was silenced by Hon. Lady justice Grace Ngenye, who reminded the noise makers that the core business of a Court is to render justice to the parties who come before it and not to listen to any noise makers. They protested her departure, when she was transferred because she had done a sterling job there.

Recently, it is Her Ladyship Hon. Hellen Wasilwa of the Industrial Court Nairobi, who put sense in the medical practitioners who had been on strike for close to ninety days, and steered them away from street protests into the board rooms for negotiations which eventually brought the strike to an end. When Wanjiku demanded to know how much work she pays per judicial officer, it took the in put of Hon. Lady Justice Agnes Murgor,JA to digest the numerous volumes of information on work measurements from across the globe to come up with the work measurement tool that now guides the institution on staff work performance. Mention the team that midwifed the current ICT infrastructure within the institution and the name of Hon. Lady Justice Hannah Okwengu,JA currently chair person KWJA will be the first to pop out. The list is endless
Formulating and Refining of various Institutional Policies.

Women judicial officers have been at the forefront in playing a leading role in the formulation and refining of policies that have gone along way not only to guide and stabilize, but also to redeem the hither to lost glory of the institution. Landmark decisions putting meaning to the expansive jurisdiction donated by the current constitution 2010, especially the Bill of Rights, as well as putting meaning to numerous provisions of an avalanche of legislation that have been churned out by parliament in line with its constitutional mandate have come from women Judicial officers either sitting alone or jointly with other colleagues.

The internet is awash with these decisions.

The way forward

Gone are the days when the community viewed the girl child as a commodity for generating wealth for the boy child to go to school. Gone are the days when Wanjiku viewed female judicial officers’ competence, capabilities and professionalism etc with doubt. They have proved themselves that they are up to the task. The march is on for position 1, for those who will be there when the time comes. It is unstoppable unless a mandatory injunction issues to that effect from the Supreme Court of Nigeria. We persuade our sisters present at this conference not to issue any. Our sisters from Nigeria, Ghana, Zambia, Mozambique, Lesotho etc have made it. Why not Kenya Women Judges. What we need as Kenya women in the Judiciary is to keep building the leadership pillar. Currently its strength is prominently pronounced at the lower levels. These numbers should continuously be boosted to strengthen the pillar. We need discipline and commitment to work for the common good of women leadership which should be the ultimate goal for all of us, with no defections. When the time comes, let the fearless step out supported by the pillar. As they do so, they should not look to check to find out who is the most suitable candidate to fight. Each should focus ahead at the ultimate goal and our Lord Jesus Christ will meet each one of them on the way to Emous and appoint one. At that time the foot soldiers strategically positioned will blow the trumpets, and as Wanjiku dashes out to find out as to who has invaded her sons comfort zone, the daughters will move in and Declare to her, it is our turn now, not to “EAT but to show case what stuff we as women are made up of, and what we are capable of putting in place to take the Kenya Judiciary to the next level, a world class institution.
Thank you and be blessed.

Hon. Lady Justice Roselyn Naliaka Nambuye, E.B.S
JUDGE OF APPEAL

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1. SUPREME COURT

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**GENDER ANALYSIS OF THE JUDICIARY LEADERSHIP**

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**Paralegal Staff**

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NAMES OF CHAIRPERSONS AND SECRETARIES OF JUDICIARY COMMITTEES

1. **JUDICIARY RULES COMMITTEE**
   i. Hon. Mr. Justice Alnashir Visram - Chairperson (M)
   ii. Hon. Moses Wanjala - Secretary (M)

2. **JUDICIARY COMMITTEE ON ELECTIONS**
   i. Hon. Mr. Justice Mbo gholi Msagha - Chairperson (M)
   ii. Hon. Lilian Arika - Secretary (F)

3. **JUDICIARY COMMITTEE TO DEVELOP EDR BOOK**
   i. Hon. Lady Justice Stella Mutuku - Chairperson (F)
   ii. Hon. Lilian Arika - Secretary (F)

4. **JUDICIAL STAFF SUPERANNUATION SCHEME COMMITTEE**
   i. Hon. Mr. Justice Mbo gholi Msagha - Chairperson (M)
   ii. Mr. David Rapando - Secretary (M)

5. **JUDGE’S RETIRMENT BENEFITS TASKFORCE**
   i. Hon. Justice William Ouko - Chairperson (M)
   ii. Ms. Domisiana Anyango - Secretary (F)

6. **COMMITTEE FOR JUDICIAL CODE OF CONDUCT**
   i. Hon. Mr. Justice E.M. Githinji - Chairperson (M)
   ii. Ms. Nancy Nyamwamu - Secretary (F)

7. **NATIONAL HONOURS AND AWARDS COMMITTEE**
   i. Hon. Lady Justice Njoki Ndungu - Chairperson (F)

8. **PERFORMANCE MEASUREMENT AND MANAGEMENT STEERING COMMITTEE**
   i. Hon. Mr. Justice Daniel Musinga - Chairperson (M)
   ii. Dr. Paul Kimalu - Secretary (M)

9. **JUDICIARY COMMITTEE OF INQUIRY ON THE STATUS OF JUDICIARY LAND IN KENYA**
   i. Hon. Lady Justice Lydia Achode - Chairperson (F)
   ii. Hon. Esther Nyaiyaki - Secretary (F)

10. **BAIL AND BOND IMPLEMENTATION COMMITTEE**
    i. Hon. Lady Justice Jessie Lesiit - Chairperson (F)
    ii. Mr. Clement Oketch - Secretary (F)
11. ALTERNATIVE JUSTICE SYSTEM TASKFORCE
   i. Hon. Mr. Justice Prof. Joel Ngugi - Chairperson (M)
   ii. Dr. Masha Baraza - Secretary (M)

12. NCAJ TASKFORCE ON CHILDREN MATTERS
   i. Hon. Lady Justice Martha Koome - Chairperson (F)
   ii. Mary Gorret Mogaka - Secretary (F)

13. NCAJ TRAFFIC WORKING GROUP
   i. Hon. Peter Mulwa - Chairperson (M)
   ii. Judith Opili, NTSA - Secretary (F)

14. TECHNICAL COMMITTEE DEVELOPING A CRIMINAL PROCEDURE BENCH BOOK
   i. Hon. Lady Justice Hannah Okwengu - Chairperson (F)
   ii. Dr. Masha Baraza - Co-ordinator (M)

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   i. Hon. Mr. Justice William Ouko - Chairperson (M)
   ii. 

22. JUDICIARY LIBRARY COMMITTEE
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   ii. Ms. Ruth Andiva - Secretary (F)
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2. Mr Duncan Okello (M)
3. Ms. Joy Bigambo (F)
4. Ms. Martha Mueni (F)

<table>
<thead>
<tr>
<th>SNO</th>
<th>TRIBUNAL</th>
<th>OFFICE</th>
<th>NAMES</th>
<th>GENDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Co-operative Tribunal</td>
<td>Chairperson</td>
<td>Hon. Alex Ithuku</td>
<td>Male</td>
</tr>
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<td></td>
<td></td>
<td>Secretary/CEO</td>
<td>Mr. Ziro</td>
<td>Male</td>
</tr>
<tr>
<td>2</td>
<td>Political Parties Disputes</td>
<td>Chairperson</td>
<td>Mr. Kyalo Mbobu</td>
<td>Male</td>
</tr>
<tr>
<td></td>
<td>Tribunal</td>
<td>Secretary/CEO</td>
<td>Mrs. T. Estambale</td>
<td>Female</td>
</tr>
<tr>
<td>3</td>
<td>Sports Disputes Tribunal</td>
<td>Chairperson</td>
<td>Mr. John Ohaga</td>
<td>Male</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Secretary/CEO</td>
<td>Mr. Luke Luseno</td>
<td>Male</td>
</tr>
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THE JUDICIARY

CLOSING REMARKS BY THE HON. THE DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND VICE-PRESIDENT OF THE SUPREME COURT, LADY JUSTICE PHILOMENA MBETE MWILU DURING THE INTERNATIONAL ASSOCIATION OF WOMEN JUDGES (IAWJ) 2017 AFRICA REGION CONFERENCE

SAFARI PARK HOTEL, NAIROBI

16TH – 20TH MAY 2017
Hon, Susana Medina, the Chair of the IAWJ,
Hon. Lady Justice Hannah Okwengu, Chair of the KWJA
Honourable Judges and Magistrates,
Distinguished Delegates and Participants,
Colleagues, Ladies and Gentlemen,

I thank the Kenya Women Judges Association (KWJA) for inviting me to make the closing remarks at this, the 2017 Africa Region Conference of the International Association
of Women Judges, proudly hosted by KWJA here in Nairobi, 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 with regard to 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 we have discussed, debated and interrogated over the past 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.
Colleagues,

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. Indeed what we recognise is the unique position we hold as women judges 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. The difficulties facing poor and marginalised groups are multiplied for women living in poverty, who experience compounded discrimination and disempowerment, as well as financial constraints. Women living in poverty experience particular difficulties in accessing justice mechanisms and winning judicial recognition, action and enforcement for crimes, discrimination and human rights violations they are disproportionately subject to.
Ladies and gentlemen,

The relationship between the discrimination and marginalisation of women that we have canvassed over the past few days - the simply appalling levels of violence and discrimination women continue to endure; the specific and more acute impacts on women of poverty 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 marginalisation 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 has highlighted is our role as women judges, nay women jurists.
Distinguished Guests and fellow 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 professional 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; it also 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 inherent in the nature 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 also specifically in cases particularly affecting women. Lack of diversity in judiciaries can undermine public confidence in the judicial process.

Ladies and gentlemen,
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 particular 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.

Distinguished colleagues,

The Judiciary in Kenya has taken steps to ensure that the composition of the institution reflects the composition of
society. This is crucial to enhance the legitimacy of the Judiciary and ensure that it is capable of delivering equal justice and upholding equality before the law. Increased diversity within a judiciary enables the institution better respond to the diverse contexts and situations within which matters for adjudication arise.

Ladies and gentlemen,
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.

Ladies and Gentlemen,
I commend the Hon. Lady Justice Hannah Okwengu JA, the Chair of KWJA, and her secretariat for their hard work and commitment in organising 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. I specially thank the Judiciary of Kenya for supporting her women judges and magistrates through KWJA.
Distinguished participants,

It is now my honour and privilege to close this Conference. I look forward to reading the report of the Conference and the strategies and recommendations we have identified during this forum. I thank all the participants, delegates, panellists and presenters for your contributions and active participation. I wish you all, and especially those that have travelled from overseas, a
pleasant further stay in Kenya and safe travels back home.

I thank you.

Hon. Lady Justice Philomena Mbete Mwilu, MGH

Deputy Chief Justice & Vice President of the Supreme Court
REMARKS BY CHIEF JUSTICE HON. JUSTICE DAVID K. MARAGA DURING THE OFFICIAL OPENING OF THE IAWJ REGIONAL CONFERENCE, NAIROBI

Your Excellency, the President of the Republic of Kenya, Hon. Uhuru Kenyatta

Honourable Chief Justice Nthomeng Majara of Lesotho

Hon. Lady Justice ........

Lady Judges of Africa,

Magistrates, Registrars and judicial administrators,
Eminent Lady Jurists,

Distinguished guests,

Ladies and Gentlemen,

Good morning.

Allow me to welcome you to the 15th Africa Regional Conference of the International Association of Women Judges (IAWJ). I want to thank the President for accepting our invitation to officially open this Conference. I also want to thank the delegates for their presence here. It is a sign of your commitment to gender equality, and a reminder that continued engagement and review of our efforts, is paramount in the quest to justice and rights, not just for women, but for all as your motto says.

Mr. President, Ladies and Gentlemen,
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. These include gender vulnerability and access to justice; gender vulnerability and conflict; women in the electoral process among others. Despite *The Economist Magazine* upbeat assessment in its famous ‘Africa Arising’ edition, for most part, Africa remains the face of poverty and conflict. Worse, this poverty and insecurity is highly feminized. Tragically, there is a 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, the path to achieving Sustainable Development Goals must travel through the gender equal road.
Whereas all the 17 Sustainable Development Goals can be read separately, their success is dependent on strong institutions of which the Judiciary is one. Indeed, SDG No. 16 focuses on **Peace, Justice and Strong Institutions**. Investing in a strong and independent Judiciary is a rule of law intervention but with a direct bearing on development outcomes.

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, or 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 in arrests related to acquisition of licences for small enterprises such as selling vegetables, brewing traditional liquor, picking firewood etc. 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. I am glad these are some of the topics you will be discussing at this conference and I earnestly look forward to your recommendations.

Mr. President, Ladies and Gentlemen,

Let me congratulate the Kenya Women Judges Association (KWJA) for providing strong leadership in the hosting of this Conference! 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.

Mr. President, Ladies and Gentlemen,

The current Constitution of Kenya (by virtue of 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.
Mr. President, Ladies and Gentlemen,

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.

Mr. President, Ladies and Gentlemen,

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 our 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.

Five years ago we had 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.
Mr. President, Ladies and Gentlemen,

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.

Mr. President, Ladies and Gentlemen,

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 actually 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 aggress 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 a dynamism in judging that liberates rather than contracts our jurisprudence and human potential.

**Mr. President, Ladies and Gentlemen,**

What the experience of implementing the two-thirds gender rule in Kenya has taught us is that the
“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?
Mr. President, Ladies and Gentlemen,

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. Our Bail and Bond Policy Guidelines is genderized.

Mr. President, Ladies and Gentlemen,

In conclusion, I believe I speak for many leaders today when I say that we value the IAWJ conferences as an important catalyst to our 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 *HeforShe* 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 and to continue with it. His Excellency the President himself is a *HeforShe* 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.

It is now my pleasure to invite His Excellency the
President of the Republic of Kenya, Hon. Uhuru Kenyatta, to officially open the Conference.

I welcome you.

Thank you.

HON. JUSTICE DAVID K. MARAGA, LLM, EGH
CHIEF JUSTICE OF KENYA AND PRESIDENT OF THE SUPREME COURT OF KENYA
15th Annual IAWJ Africa Regional Conference

GENDER VULNERABILITY IN CONFLICT SITUATIONS: Kenyan perspective

By Hon Elizabeth Juma, Magistrate, Kenya.

17th May 2017

# Table of Contents

1. INTRODUCTION .......................................................................................................................... 3  
   1.1 Definition .................................................................................................................................. 3  
   1.2 Relationship between Gender Vulnerability and Conflict ...................................................... 4  
       1.3 Current debates and trends in gender and conflict .............................................................. 5  
2. GENDER VULNERABILITY IN CONFLICT SITUATIONS ....................................................... 9  
   2.1 International Level ..................................................................................................................... 9  
       2.1.1 Political impact ................................................................................................................... 9  
       2.1.2 Economic impact ............................................................................................................. 10  
       2.1.3 Social and Cultural Impact ............................................................................................... 11  
       2.1.4 Legal .................................................................................................................................. 12  
   2.2 Regional Level ........................................................................................................................... 16  
   2.3 National Level .......................................................................................................................... 17  
3. RECOMMENDATIONS ................................................................................................................. 20  
4. CONCLUSION ............................................................................................................................... 21  
BIBLIOGRAPHY ................................................................................................................................. 23
1. INTRODUCTION

1.1 Definition

Gender remains a frequently misunderstood concept. In general terms it refers to the social constructions of masculinity and femininity.\(^1\) Masculinity denotes the qualities, behaviours and attitudes traditionally associated with or deemed appropriate for men; femininity for women.\(^2\) However, gender is often not fully understood in terms of its application as a form of analysis in the field of peace and security. Take for example the continued use of ‘gender’ as synonymous with ‘women’. One consequence of this is that ‘men’ are treated as the default category (the ‘norm’), exempt from any consideration of gender. Another consequence is that this results in little attention for sexual and gender minorities.\(^3\)

As Martha Fineman cogently argued, *vulnerability is-and should be understood to be-universal and constant, inherent in the human condition.*\(^4\) *Vulnerability is also deeply gendered.*\(^5\) *Part of that gendered association has linked vulnerability with victimhood, dependency, and pathology.*\(^6\) Fineman, in her path-breaking work, argues that we should accept the inevitability of vulnerability, thereby reclaiming the term for its potential in describing a universal, inevitable, enduring aspect of the human condition that must be at the heart of our concept of social and state responsibility.\(^7\) Accepting the inevitability of vulnerability is a useful way to think about and respond to the nexus of gender and conflicts which may come into existence. Vulnerability in this context is generally defined as *people’s capacity to avoid or cope with and recover from disaster.*\(^8\)

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\(^1\) Amy Blackstone, *Gender Roles and Society* (The University of Maine Digital Commons @ Umaine Sociology School Faculty Scholarship Sociology 2003) 336.

\(^2\) Jan Stets and Peter J., *Femininity/Masculinity* (Burke Department of Sociology Washington State University) 997-1005.

\(^3\) The Term ‘Gender Minorities’ Refer To Gender And Sexual Minorities, Including Intersex, Transgender, And Third Gender Individuals in this context.


\(^6\) Martha Albertson, *The Vulnerable Subject: Anchoring Equality in the Human Condition* (20 Yale J.L. & Feminism 1, 2 2008) 8.

\(^7\) Martha Albertson, *The Vulnerable Subject: Anchoring Equality in the Human Condition* (20 Yale J.L. & Feminism 1, 2 2008) 8.

According to the Black Law Dictionary a conflict refers to friction that happens when incompatible parties or differences.⁹

1.2 Relationship between Gender Vulnerability and Conflict
While men, women, boys and girls experience similar phenomena during and after conflict, their experiences and levels and vulnerability are influenced by their gender. The gender roles play a key influence because an individual experiences armed conflict phenomena such as loss of livelihood, assets, displacement, physical and mental injury, the death and injury of loved ones, sexual assault and enforced disappearance. Conflict affects, men, boys, women and girls differently because they:

- Are deficiently embodied.
- Symbolize different things to their communities and those that attack them.
- Are targeted differently and their injuries have different social and livelihood impacts.
- Have different responsibilities in their families and community and thus end up in harm’s way differently, and
- Have different livelihoods access to the cash economy and ability to claim, own and inherit property all and which impact the resources they can access to aide their survival and recovery¹⁰.

Women and girls are marginalised within most societies hence violence or conflict lead to increased vulnerability. There are obvious trends where women and girls have reduced access to resources and basic services, increased social and family responsibility, restricted mobility; inadequate access to protective services and legal mechanisms.

Inadequate policies point at local and national levels. All these factors influence women and girls’ ability to survive and recover from armed conflict\(^\text{11}\).

In the last decade, the problem of Gender Based Violence (GBV) in conflicts and its devastating consequences on the lives of conflict-affected persons has been documented extensively.\(^\text{12}\) GBV has been acknowledged as a weapon of war or conflict, often used as a means to control and intimidate a population, but is a highly heterogeneous phenomenon in its prevalence and perpetrators.\(^\text{13}\) An on-going illustration of this factor is Colombia which has been marked with decades of conflict, with an estimated 5.2 million internally displaced persons (IDPs) and ongoing violence.\(^\text{14}\)

### 1.3 Current debates and trends in gender and conflict

Kenya is a patriarchal society and has high levels of sexual and gender based violence, which have increased during times of election; many offences are based on ethnic affiliation and are used to punish certain group which have been active in both promoting conflict and peace bucking in pastoral communities.\(^\text{15}\)

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11 10 supra.
14 Andrea L Wirtz, Kiemanh Pham, Nancy Glass, Saskia Loochkartt, Teemar Kidane, Decssy Cuspoca, Leonard S Rubenstein, Sonal Singh And Alexander Vuemail, Gender-Based Violence In Conflict And Displacement: Qualitative Findings From Displaced Women In Colombia (2014).
Kenya is the seventh most violent country in ACLED (Armed Conflict Location and Event Data Project) dataset with just over 3500 recorded violent events between 1997 and September 2013. (Dowd and Ralegh, 2013 P. 1). Sexual and gender based violence (SABV) is a part of along history of violence in Kenya; which results from colonial oppression, racial discrimination and armed resistance (Thones et al; 2013 page 523). 45 per cent of women aged 15 – 49 have experienced either physical or sexual violence.

Research carried out in five urban areas in Kenya (Kisumu, Nairobi, Naivasha, Murang’a and Mombasa) in the wake of the 2007 – 2008 post election found that incidences of Sexual and Gender Based Violence increased during this period (Thomass et al; 2013 page 525). Women groups in Kenya have been very concerned with Sexual and Gender Based Violence instigated against women during and after election conflicts. (Njiru 2014, page 51, Kituku 2012 page 14).

The Nairobi Women’s Hospital Gender Violence Recovery Centre attended over 650 cases of gender based violence related to post-election crisis, three times the normal intake (Thomas et al 2013 page 525). An estimate 82 per day of women who were subjected to sexual violence did not report it formerly to the police. (Thomas et al page 525). 90 per cent of the rape cases were as a result of gang rape as opposed 10 per cent before the post-election crisis.

The research carried by Brigitte richwerder also show that women and girls were made subject to experience sexual harassment, rape, female genital mutilations, psychological torture, forced divorce or separation and physical abuse which

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16 See 15 supra p. 3
17 See 15 supra p 20
18 See 15 supra p 20
sometimes led to death; while some men also suffered mutilations of their sexual organs forced circumcision, sodomy, castration, forced divorce and separation.

Brigit found that women ‘paid and continued to pay the highest price for the violence over five years after the post-election conflict. Such as sexual and based violence experienced by women and girls in IDP camps in the aftermath of the 2007 – 2008 post-election violence.\(^\text{19}\)

The article argues that women’s continued vulnerability to violence in these camps are as a result of the failure of the government to address the root cause of the recurrent ethnic political conflicts in Kenya, gender inequalities and lack of provision of essential services in camps (Njiru 2014 pages 51). The endurance of intimate violence in these camps is attributed to factors including;

(i) The social acceptance of violence.
(ii) Unequal power relations between men and women.
(iii) Failure of government institutions to ensure basic life conditions in camps.
(iv) Lack of resettlement of IDPS and ensuring land reforms.
(v) Lack of privatization of violence by both women and government.
(vi) Laxity of police in prosecuting perpetrators of violence.
(vii) Low levels of community sensitization on existing laws on the rights of women and
(viii) a culture that blames victims and abhors reporting of sexual gender based violence (Njiru 2014 pp 59 – 60).\(^\text{20}\)

\(^\text{19}\) See 15supra p 21
\(^\text{20}\) See 15 supra p 21
There is some debate about whether international policy frameworks on gender and conflict reinforce stereotypes of the roles of men and women. Some experts argue that certain laws generalise women as victims and focus excessively on the protection of women.\(^\text{21}\) There is also a critique that the Women, Peace and Security (WPS) agenda’s focus on engaging with and supporting women, more generally, undermines the adoption of a gender-relational approach (that defines masculinities and femininities in relation to one another, and acknowledges men as gendered subjects).\(^\text{22}\) Others argue instead that exclusive attention to women is necessary to counter the male point of view that traditionally dominates conflict and security discourse.\(^\text{23}\)

International gender commitments may also clash with pragmatic, power based approaches. Some argue that the focus on elites at the outset in political settlement processes undermines UNSCR 1325, which calls for women’s equal and full participation at all stages of the promotion and maintenance of peace and security.\(^\text{24}\) This provision can also be undermined by the view that other forms of identity, such as ethnicity, are more important fault lines for conflict. There is debate about whether it is better to wait for specific points in the conflict and peace cycle that will serve as more effective entry points for women’s issues,\(^\text{25}\) or whether it is essential for women to be included in peace processes and for gender equality goals to be considered from the outset.\(^\text{26}\)

Debate around gender-sensitive conflict analysis often centres on the need to consider men alongside women rather than equating ‘gender’ with ‘women’. It is argued that a gender relational approach enables more comprehensive and robust gender and conflict analysis. It


\(^{26}\) Pilar Domingo, Rebecca Holmes, Alina Rocha Menocal and Nicola Jones, ‘Assessment of the evidence of links between gender equality, peacebuilding and state building Literature review’ (2013).
can also enable exploration of how gender intersects with other identities, which could improve identification and targeting of vulnerable groups (rather than focusing automatically on women and children as a generic whole).  

2. GENDER VULNERABILITY IN CONFLICT SITUATIONS

2.1 International Level

2.1.1 Political impact

To date, most post-conflict initiatives have not incorporated an understanding of gender inequalities. Although there have been specific initiatives (often marginal) aimed at women, it is rare for a major project to have incorporated a gender analysis and then designed its activities and intended impacts accordingly.

Recent decades have been marked by frequent and diverse conflicts: Rwanda is different than Kosovo, which is different from Guatemala. Each situation must be understood on its own terms. Similarly gender differences and relations must also be explored in their context. In addition to understanding the differences between women’s and men’s experiences, it is important not to assume that women have a common experience.

The concept of armed conflict and the practice of warfare are both gendered. Conflict takes place in a culture that assigns different roles and values to men and women, thereby impacting their lives differently. Furthermore, the gendered structures in a society get reinforced during wartime.

Political conflicts create significant risks for women, as new forms of violence emerge and existing patterns of violence often get amplified and intensified. The use of sexual violence as a tactic of war, such as military sexual slavery and forced prostitution, is well-documented, for example in the genocide in Rwanda, the civil wars in Sierra Leone, Liberia and the

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28 Cohn, Women and Wars (2013).

Democratic Republic of Congo, the war in Iraq\textsuperscript{30} Palestine\textsuperscript{31} and in the context of the current Syrian conflict.\textsuperscript{32} 

Emerging narratives on violence in conflicts in the Arab region describe increasing risks and incidence of interpersonal violence among displaced populations in refugee camps located in the neighbouring countries.\textsuperscript{33} This suggests that trans-border movements, while increasing risk of violence, create spaces, albeit limited, for women to bring forward gender issues not only of violence but also of equality hitherto overlooked.

In the current Syrian conflict little is known about the patterns of violence and associated risks that women face in their daily lives, both within the country and across national borders. Furthermore, there is limited assessment of the gendered nature of conflict and how pre-existing gender relations shape risks and vulnerabilities.

\textbf{2.1.2 Economic impact}

It is widely posited that conflict alters women’s economic role in the household and broader society. While rigorous evidence is limited, recent comparative, cross-country case studies (Bosnia and Herzegovina, Colombia, Kosovo, Nepal, Tajikistan and Timor-Leste) illustrate that armed conflict can increase women’s economic activity, primarily through participation in labour markets.\textsuperscript{34} In some cases, this is associated with increases in overall household and community welfare.\textsuperscript{35} In general, however, female employment often involves low-paid, low-skilled jobs, self-employment in the informal sector, or unpaid family labour.\textsuperscript{36} The effects of conflict on women’s economic activity differ by age and life status. Statistical data from

Rwanda document how conflict economically empowered widows, probably driven by necessity. In contrast, married women continued to conform to traditional notions of women’s role, engaging in domestic tasks and subsistence farming. In general, the economic opportunities open to women are shaped mostly by culture and tradition, education, and access to land and resources.

There is some country-specific evidence (Colombia, East Timor and more weakly, Nepal) that supports the argument that women’s greater economic participation contributes to their empowerment within households (measured by the share of women’s contribution to household income). Based on case studies, (Sudan, Uganda, Angola, Mali, and Somalia), find that women in some instances gain decision-making power within the family once they become the main breadwinner. In general, however, they find that while the practices of social institutions may change in conflict contexts, it is usually to a limited degree.

### 2.1.3 Social and Cultural Impact

The health impacts of conflict can be direct (battle-related deaths) or indirect (e.g. increased risk of disease transmission). A recent secondary review concluded men have a higher risk of death during conflict, whereas women and children constitute a majority of refugees and the displaced. Isolated quantitative studies provide contradictory evidence of the effects of conflict and fragility on the life expectancy ratio of men and women. One study found that conflict reduces women’s life expectancy disproportionately to men’s, because women are more affected by the indirect effects of economic change (e.g. increases in food prices),

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displacement and sexual violence – and consequently the risk of HIV/AIDS.\textsuperscript{43} Another, more recent statistical analysis found conflict does not have a significant impact on gender parity in life expectancy; rather internal conflicts seem to harm males and females equally.\textsuperscript{44}

There is evidence that conflict affects maternal mortality: in 2008, the eight countries with the highest maternal mortality rates were either experiencing or emerging from conflict.\textsuperscript{45} In addition, a meta-analysis on sex differences in trauma and posttraumatic stress disorder finds that females are at greater risk than men of experiencing these conditions after traumatic events.\textsuperscript{46}

2.1.4 Legal

The government of Kenya has ratified various international protocols and there are national legal provisions that protect women and girls for violence, such as the constitution and the penal code. Kenya has also in place a National Gender Policy and National Gender and Equality Commission.

However, despite the legal protocols, Kenya has failed to significantly reduce Sexual Gender Based Violence, there are still rising cases of Gender Based Violence and instances abuses against women and children.

Most post-election conflict violations are targeted at those viewed to be of different ethnic affiliation, political affiliation or sympathizers.

The culture of violence which is manifested in the formation of gangs used by politicians to settle power scores.


A number of normative policy frameworks at the international and national level promote gender equality, including in FCAS. Security Council Resolutions 1325 and 1820 aim to empower and protect women in situations of violence and insecurity. They incorporate both general protections for women (based on the similarities between men and women) and special protections (based on the differences between men and women). In 2013, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation No. 30, which obliges states to prevent, investigate, punish and ensure redress for crimes against women by non-state actors. For further resources on prominent international institutions and frameworks, see Table 1, below.

While international frameworks reflect an emerging international consensus on the significance of gender in conflict, some experts argue that certain laws problematically depict women as victims and males as perpetrators, and focus too much on the protection of women. This can undermine women’s agency and fails to consider their broader experience of and roles in armed conflict.

<table>
<thead>
<tr>
<th>Framework</th>
<th>Resolution and Key Provisions</th>
<th>Further information</th>
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47 UN Women, 2012, 2 a.
all without discrimination. Accordingly, women combatants and civilians enjoy the protection of the general rules of international humanitarian law on a basis of equality with men.

**Convention on the Elimination of all forms of Discrimination against Women (CEDAW)**

Adopted in 1979, defines what constitutes discrimination against women and outlines agenda for national action to end discrimination.


**UN Women, Peace and Security Agenda**

The UN Security Council (UNSC) has passed seven resolutions under the Women, Peace and Security agenda.


**EU Comprehensive Approach for the Implementation of UN Security Council Resolutions 1325 and 1820**

UNSCR 1325 is a guiding principle for European Security and Defence Policy operations, and the EU has also developed a gender mainstreaming framework.


**NATO action plan**

The action plan to mainstream UNSCR 1325 was endorsed in 2010. NATO is incorporating a gender perspective in crisis management, operational planning and exercise planning from the higher political and strategic level to the field-level.

[http://www.nato.int/cps/en/natolive/topics_91091.htm](http://www.nato.int/cps/en/natolive/topics_91091.htm)

**OSCE action plan for the promotion of gender equality (GAP)**

Dates back to 2004 and focuses on six priority areas: equal opportunities; violence against

The 1994 UN Declaration on the Elimination of Violence against Women (DEVAW) also recognized women in conflict settings as an especially vulnerable group, and it encompassed GBV in its definition of violence against women provided in Article 2. The Declaration defines violence against women as “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 deprivation of liberty, whether occurring in public or in private life,” which should be understood as including “physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

Following the lead of international institutions, several international courts including the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY). the Statute of the International Criminal Tribunal for Rwanda (ICTR). the Statute of the Special Court for Sierra Leone.
International Criminal Court (ICC), and the Extraordinary Court Chambers in Cambodia (ECCC) began to rework the traditional definitions and treatment of gender-based crimes.

In the statutes of both the ICTY and the ICTR, the tribunals were given authority to prosecute crimes of GBV. In the case of Prosecutor v. Jean Paul Akayesu, the ICTR broadly defined rape as “physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” It was important for the court in Akayesu that rape be defined in this way, so as to include rape with an object and/or the use of bodily orifices not intrinsically sexual. The court noted that “rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.” This broad definition of rape has allowed more women to seek justice through the courts by taking into account the reality that many women have experienced sexual assaults that were so brutal that they were beyond the traditional definition of rape.

2.2 Regional Level

In many other parts of Africa, insubordination of women has got a cultural and historical endorsement. The fact that there is a general acceptance of violence as a means of settling disputes worsens things. This is one aspect that has made women so disadvantaged especially in violent instances. It has made them to be the target and the ultimate victims. They face very tough times across all the possible facets of violence which varies from family, community and at times perpetrated by the state. The most dehumanizing revelation is the fact that any attempt to report such instances is regularly turned down in the name of it being a matter that can be dealt with privately.

52 The Rome Statute of the International Criminal Court (ICC).
54 Case No. ICTR-96-4-T, Judgment, 598 (Sept. 2, 1998).
55 Case No. ICTR-96-4-T, Judgment, 598 (Sept. 2, 1998).
56 Case No. ICTR-96-4-T, Judgment, 598 (Sept. 2, 1998).
57 Case No. ICTR-96-4-T, Judgment, 598 (Sept. 2, 1998).
59 ibid
Looking at specific African country situations, in Algeria, the raping of women happened in the 1990’s. During this period, an Islamist insurgency subjected multiple women to sexual enslavement.\(^\text{60}\)

With Algeria being Islamic state, female virginity and the fidelity of the same is an essential requirement greatly employed as a determinant for an individual’s worth for honour. Should anyone be suspected to have gone out of the wedlock, the beating that befalls as a result, is worse that the hell-fire. I fact, in Algeria, violence against women during contexts of pursuit for conjugal rights, are not forbidden. Reporting of rape that happens in the family context is even not a heard off.\(^\text{61}\)

Uganda is one of the African countries that has got a long history as far as subjection of women to violence is concerned. Perpetrators have been of multi-identities. Sometimes the state\(^\text{62}\) as well as private non-state actors engage in the perpetration.\(^\text{63}\) In any of the instances, the dominance of the patriarchal set up, is to blame for the suffering of the women in Uganda.\(^\text{64}\) Evident is the indolent conduct of the state in intervening to stop the inhuman conducts against women from the communities. Thus, a research conducted by the coalition Against Gender Violence in Uganda revealed that generally wife beating and homebased violence are the most prevalent forms of violence against women.\(^\text{65}\)

2.3 National Level

2.3.1 Environmental/ economic Conflict.

Most gender based violence is characterized by the assertion of power and control over females. Those who use violence may bully intimidate, verbally insult, sexually coerce and physically harm others into submission\(^\text{66}\).

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\(^{61}\) AFROL Country Profile Algeria. Available at: http://afrol.com/Categories/Women/profiles/algeria_women.htm

\(^{62}\) As it were during the Idi Amin times.

\(^{63}\) Supra, ACGSD.


\(^{66}\) Environmental conflict and women vulnerability in Africa. Urmala Bob et al 26\(^{th}\) oct 2010
The main form of violence against women that are experienced during times of environmental conflict relate (but not limited) to theft, physical abuse and assault, psychological abuse, sexual harassment and sexual abuse (including rape) reproductive violence which can be used to sexual violence (such as unwanted pregnancies, abortion complications from high risk pregnancies and sexually transmitted diseases) and exploitation such as sex for goods and services\textsuperscript{67}.

Violence against females take place more frequently during periods of conflict especially when physical violence characterize the type of conflict experienced and when the conflict occurs in societies that tend to be patriarchal, Women’s vulnerability increase significantly during periods of violence\textsuperscript{68}.

\textbf{2.3.2 Impact or experience by men.}

Although women are the primary targets of sexual violence and exploitation in conflict affected situations, men and boys are also suffered to sexual violence during armed conflict, often during military conscriptions or abduction into paramilitary forces. These receive, much less attention, however in part because male victims are much less likely to report incidences, resulting in limited documentation and statistical date. Gender stereo types and notions and

\textsuperscript{67} See 60 supra.
\textsuperscript{68} See 60 supra
masculinity suggest that men cannot be (potential) targets or victims and sexual abuse only perpetrators\textsuperscript{69}.

Such emasculation may deter male victims from reporting such violence. Male victims also receive the attention and inclusive information into the progressiveness for protection\textsuperscript{70}.

In the case of the militia group in Western Kenya, the security personnel adopted the strategy of turning on the residents for withholding information and treated all young men as suspected militia fighters. Change of tact by the law enforcement agency led to more violations.

2.3.3 Political/ social impact.

The vulnerability of women has been a context that has been so real to Kenya, not just during violent situations, but one that even goes to post violent times\textsuperscript{71}. Anytime there is a crisis in Kenya, women suffer the biggest blow. They are affected the most. The 2007-2008 post-election violence for instance unsheltered the women to greater vulnerabilities.\textsuperscript{72} For instance, women fleeing from their domiciles of choice got trapped into violent experiences of sexual torture among other physical body abuse\textsuperscript{73}. Most flabbergasting is the revelation that even at

\begin{itemize}
  \item \textsuperscript{69} Gender. Anne Kanga et al. April 2015
  \item \textsuperscript{70} 60 supra.
  \item \textsuperscript{72} Ibid
\end{itemize}
the IDP camps women still faced repeated threats of sexual violence. This is despite such camps being the place that is to give hope to such escapees from real threats to life.

Still in the IDP camps, women and female children were led to exchanging basic resources such as food, sanitary towels for sex. In this process, many of the females got raped and some infected with HIV/AIDS and other sexually transmitted infections.

Another kind of violence that predisposes women to untold sufferings is state violence. This happens when security forces take advantage of disputes surrounding land or even clan clashes. They occasionally come in, but instead of pacifying the area, they resort to inflict sexual torture to women, surprisingly in the same manner as the militia groups. The happenings at Mt Elgon in 2007, come to context. During the same, security officers subjected the women and female children to untold sexual torture. Women even got beaten by the militia who wanted them to disclose their husbands’ whereabouts.

This has been an evident trend in all the reported situations of violence such as that of the colonial struggles, during cattle rustling, security operations, shift a War as well as ethnic and political violence.

3. RECOMMENDATIONS
   i. Ensure that the loopholes in the legal frameworks is sufficiently addressed. For instance the gap in some international legal instruments in the definition of violence against women, needs a serious intervention by the national laws.
   ii. The current regimes both legal and policy, ought to repeal the discriminative practices of patriarchy and insubordination against women.
   iii. To improve research to develop methods for the recognition of early signs and national and local risk factors which would allow the setting up of early warning and intervention systems to prevent violence and abuse of vulnerable population groups.
   iv. To strengthen capacity of local and county agencies to apply these methods and to develop a gender sensitive pre-conflict intervention strategy.

75 As perpetrated by the British Army.
v. To include analyses of gender roles and relations as a fundamental part of interventions in situations of armed conflict, and provide services accordingly to reduce gender gaps and stereotypes.

vi. To recognize the changes that occur in gender and economic relationships.

vii. To ensure that health and legal professionals involved in the provision of assistance in crisis countries or in countries receiving refugees, are trained and sensitized to the rights-based approach and the applicability of respective international conventions – the Geneva Convention: CEDAW; CRC and others. Training in post-conflict situations should focus on the police, judiciary and educational resources.

viii. To ensure that health systems provide both separate care where appropriate, and integrated services of assistance to victims of violence and affected family members, and that in treatment, the respect of human dignity and the integration of the traumatized individual into the renewed social network, are crucial elements. External support should not only seek to integrate individual professional, from among the affected population, but also actively promote self-organization.

ix. To work with women and men to recognize rape as a crime against humanity – as it is for the International Criminal Court – rather than as a matter of “honour and morality”.

x. To work with adolescent boys and girls towards the prevention of gender-based violence, whether in times of peace or conflict.

xi. To ensure support to professional working in the care of victims of violence.

xii. To ensure a continuation of the sharing of research findings, experience and development of further guidance and exchange of materials to be used regarding situations of conflict, thus ensuring the maintenance and strengthening of an intersect oral and interdisciplinary approach.

4. CONCLUSION

Preventing and cutting down the levels violations in conflict situation, promoting peace, is an initiative that requires a serious commitment from the respective players ranging from the state to the non-state actors. Fidelity to the established legal and institutional frameworks for the purposes of advancing the war against women insubordination is one that requires some serious emphasis. There is need to engage members of the society including but limited to family members and the general communities to move from the patriarchal mentality which has seen women suffer for a very long time now.
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