

WOMEN DELIVERING JUSTICE: CONTRIBUTIONS, BARRIERS, PATHWAYS



Creating a Culture of Justice
International Development Law Organization

The International Development Law Organization (IDLO) is an intergovernmental organization devoted to empowering people and enabling governments to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

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IDLO GENDER PLEDGE SERIES



IDLO GENDER PLEDGE SERIES

At the High-Level Meeting of the 67th Session of the United Nations General Assembly (UNGA) on the Rule of Law at the National and International Levels in September 2012, IDLO made the following pledge:

“ We pledge to undertake a global survey of the role of women in justice sector institutions and to analyze the legal barriers to women’s access to justice [...]. We will work to ensure that women’s increased participation in the justice system and legal reforms to enhance women’s rights are accorded due priority [...]. ”

By drawing attention to the number of women legal professionals in the justice sector, as well as the barriers that women legal professionals face in entering and participating in the sector, IDLO hopes to encourage national governments and the international community to direct more resources and energies towards addressing the unique needs and challenges faced by current and prospective women legal professionals.

IDLO believes that improving women’s ability to work in justice institutions is essential – not only to ensure that women enjoy democratic freedoms and equality of opportunity in the workplace, but also to ensure that the specific interests of women are represented and advanced in justice institutions.

IDLO’s pledge is all the more important as Agenda 2030 advances. The international community has the opportunity to demonstrate its commitment to gender equality, by amplifying women’s voices, leadership and participation in justice institutions.

EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

*Women Delivering Justice: Contributions, Barriers, and Pathways*¹ details the importance of women's professional participation in decision-making bodies as a human right and crucial component of good governance, particularly in the justice sector. A diversified justice sector is critical for progress on gender equality and the legitimacy of the justice system in support of Sustainable Development Goals (SDGs) 5 and 16 of the 2030 Agenda for Sustainable Development. Regrettably, comprehensive data on women in the justice sector is not globally available. However, there are promising signs that women in most regions are overcoming major challenges to find positions in the sector, albeit from a low baseline.

When women are positioned in the justice sector, their contributions are substantial. Despite gaps in data and research, as their numbers and influence solidify, women are emerging as important justice leaders. A growing body of empirical research suggests that women judges contribute to improved access to justice for women, by supporting women's specific justice needs across a range of issues.

Yet, barriers remain to women's participation in the justice sector, including individual, social and institutional factors. A close examination of available data shows that national percentages can change dramatically when considering the number of women at senior levels of the profession and in leadership roles. Further, in many cases women judges are concentrated in a few courts, often juvenile or family courts. In short, barriers remain for women to enter and succeed in the justice sector generally, and to work across the full spectrum of legal issues.

With increased demand for judiciaries to play a more independent role in championing human rights and the rule of law, and to be representative of the constituencies that they serve, it is now imperative to find ways to support women justice professionals – especially women judges – to find a collective voice and to develop a common approach to reduce barriers to their effective participation in the profession.

Women Delivering Justice examines the pathways that have facilitated women's accession in the sector, elaborating lessons and good practices and detailing five priority policy recommendations to facilitate change:

- 1.** Develop an international data methodology to measure women's participation in the justice sector, relying on SDG Indicator 16.7.1 to improve the quality and comparability of existing data.
- 2.** Harness political will to support a favorable legal and social context for gender equality in the justice sector, including by reforming discriminatory laws that limit women's economic independence.
- 3.** Support women's law networks at the national, regional and international level to ensure women have a network of supporters and mentors as well as access to equal education opportunities.
- 4.** Reform legal admission and appointment procedures to ensure that they are transparent, fair and based on merit, and ensure promotional procedures take account of the historical discrimination against women that may prevent them accumulating the same professional background as their male counterparts.
- 5.** Strengthen gender expertise in the judiciary and provide support for feminist judges.

PART 1
INTRODUCTION



INTRODUCTION

Focused on advancing women's equal participation in the justice sector, *Women Delivering Justice* comes at a critical time. The 2030 Agenda for Sustainable Development acknowledges the mutually reinforcing relationship between gender equality and the rule of law as pillars of sustainable development. To support and further efforts undertaken by national and international organizations, including IDLO's pledge at the 2012 United Nations High-level Meeting on the Rule of Law, it is beneficial to capture the state of knowledge around women's professional participation in the justice sector.

With several notable exceptions, current literature does not bring together the disparate research that has been conducted in this field. Most existing reports emanate from Western jurisdictions and very few provide a holistic overview of the institutional and social factors that facilitate the engagement of women in the legal sector, with many studies focused only on the barriers women face. *Women Delivering Justice* makes preliminary inroads to address this gap, by bringing together available academic literature and lessons learned on women's participation in the justice sector from IDLO's own research and programming.²

For the purposes of this report, legal or justice professionals refers to judges, prosecutors, lawyers, law professors and legal experts at the national level. This report strives to capture and describe data related to women in justice sector institutions; however, as most available data concerns women's participation in the judiciary, there tends to be emphasis on the judicial constituency within the justice sector.

1.1

Women's participation and representation

In decision-making bodies, women's participation and representation is a human right. The effective involvement of women in all aspects of justice delivery is a core aspect of their participation in public and political life, and a crucial component of good governance. It is a matter of fairness and equal opportunity, and representation of women and men in decision-making bodies is a human right inscribed in all of the core human rights instruments – a right that all States have an obligation to respect and promote.

International laws require States to take concrete measures to address gender imbalances and deficits in all public institutions, both through the identification and removal of legal and practical barriers to women's equal

participation, and through proactive steps to actively encourage and advance women's equal representation.³

Article 7 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) specifies that State Parties must "take all appropriate measures to eliminate discrimination against women in the political and public life of the country" and to this end they must ensure women's right "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at the level of government". According to the CEDAW Committee, political and public life refers to: "the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers".⁴ This means States should institute temporary special measures to ensure women's equal participation in judicial and other legal institutions, where equality in law has not resulted in substantial equality in practice.⁵



The Committee views the adoption of temporary special measures as part of a necessary strategy by State Parties directed towards the achievement of substantive equality of women and men in their enjoyment of human rights.⁶ These obligations derive from general international standards concerning the independence of the judiciary and from international legal requirements to ensure women's enjoyment of their human rights on the basis of equality and non-discrimination.⁷ The *Beijing Declaration and Platform for Action* adopted in 1995 reaffirmed women justice professionals' equal representation in political and public life.⁸

The Commission on the Status of Women, at its forty-first session in 1997, adopted Agreed Conclusions (1997/2), which emphasized that attaining the goal of equal participation of men and women in decision-making was important for strengthening democracy and achieving the goals of sustainable development. The Commission reaffirmed the need to identify and implement measures that would redress the underrepresentation of women in decision-making, including through the elimination of discriminatory practices and the introduction of positive action programs.

Further, the importance of women's full and effective participation at all levels of governance has been reaffirmed recently by the international community through Sustainable Development Goals (SDGs) 5 (Gender Equality and Women's Empowerment) and 16 (Peace, Justice and Strong Institutions). Among the 236 indicators of progress in the SDGs, indicator 16.7.1 tracks the "Proportion of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service and *judiciary*) compared to national distributions" (emphasis added).⁹

The inclusion of an indicator specifically looking at gender diversity in the judiciary demonstrates the importance attached by the global community to representative judiciaries and the

contribution that women justice professionals can make to strengthening the rule of law and the achievement of sustainable development. Promisingly, knowledge around women's participation should improve with the introduction of SDG Indicator 16.7.1, which commits governments to collecting data.

1.2

A data deficit

Apart from sporadic reports, there is no consistently collected global comparative data on women in the justice sector. Different data collection methodologies, time periods and focus on different factors such as overall numbers, position on highest courts, or position as chief justice, mean that most national data has limited research value when juxtaposed against data from other countries.

Annex I provides an overview of selected national and regional data from available reports. The development of an international methodology to monitor progress in this area would go a long way in moving forward discussions on women in the justice sector and providing firm ground for practitioners to understand trends and progress.

The difficulty of developing a methodology to quantify women's professional participation in the justice sector has meant that much of the data on the contribution of women justice professionals is qualitative and descriptive in nature. While not as robust as quantitative data, this data can and should be relied upon to provide insights into trends that are taking place in courtrooms led by women. Nonetheless, for practitioners interested in women's access to decision-making roles, whether on the grounds of equality, enhancing the legitimacy of

state institutions and the rule of law, or improving the representation of women's interests, quantitative data on women's presence in the justice sector is also necessary¹⁰ to answer key questions such as:

- › *What is the global state of women's participation in the justice sector?*
- › *How many women are participating in the sector?*
- › *In what type of courts and other justice institutions are they concentrated?*
- › *When and where have women risen to the top of a given justice institution?*

Data of this nature would help to reveal whether women are represented in quantities sufficient for transformative change of the sector, as well as to determine whether there is a glass ceiling for women's access to power, and their capacity to lead institutional reform within the sector. Equally important is to understand retention rates for women justice professionals and trends over time, which help to show whether the profession is responsive to their participation. Data on the pool of professionals, such as women's enrolment in legal degrees at university and in professional accreditation systems, also helps to pinpoint which aspect of the legal career policymakers should be targeting.

As explored in the sections that follow, a deeper understanding is required of levels of employment in the sector and in which thematic areas, the contribution women justice professionals make to justice delivery, where blockages may be, and how national policymakers and practitioners, international organizations and others can support them to both increase their numbers and rise to positions of power. It is also critical to learn from the experience of women trailblazers who have managed to achieve positions of influence, and to better identify the individual, social and institutional factors that facilitated their promotion.

Women Delivering Justice is intended for use by practitioners and policymakers to ensure concrete outcomes for women legal professionals. Further, by documenting the contribution of women's professional participation to the legitimacy of courts and strengthening the rule of law in fragile contexts, it is hoped that this issue will be escalated and prioritized in justice sector programming.

Part 1 has discussed the importance of women's professional participation as a human right, detailing that a diversified justice sector is critical for progress on gender equality and the legitimacy of the court system. Despite the current data

deficit on women's justice sector participation and the challenges this poses for substantive discussion, **Part 2** focuses on the important contributions women are making to the justice sector and why women's professional participation is fundamentally important for inclusive and sustainable development. **Part 3** examines the individual, social and institutional factors that prevent women from participating in the sector. **Part 4** elaborates the pathways that have facilitated women's accession in the sector, with a view to identifying lessons learned. Finally, **Part 5** draws together the available knowledge and offers concrete policy recommendations for action.

PART 2
CONTRIBUTIONS OF WOMEN
JUSTICE PROFESSIONALS



CONTRIBUTIONS OF WOMEN JUSTICE PROFESSIONALS

The reasons for having women working in the justice system may not always be self-explanatory or easily articulated.

This section reviews the literature detailing the contributions and importance of women's participation in the justice sector beyond a human rights lens. The conclusion is that women's participation is not simply "the right thing to do" but can, in some cases, lead to better justice outcomes and experiences. Necessarily, discussion is concentrated on the judiciary, given the propensity of available data to focus on this segment of the justice sector. In many cases, however, the reasoning applied to justify women's participation in the judiciary could be equally applicable to other justice institutions, such as the prosecutor's office, the relevant national justice ministry or legal aid organizations.

Understanding women professionals' contribution to the justice sector is also challenged by the fact that contributions can be both tangible and intangible. Although intangible aspects are not always related to the actual outcome of a case and are therefore less easy to quantify, they may nevertheless be instrumental in effecting positive institutional change from the perspective of the users of the system, and from the perspective of achieving the intended ends of justice.¹¹

› WOMEN'S PARTICIPATION IS NOT SIMPLY 'THE RIGHT THING TO DO' BUT CAN, IN SOME CASES, LEAD TO BETTER JUSTICE OUTCOMES AND EXPERIENCES ◀

2.1

Improved legitimacy of justice institutions

The CEDAW Committee has noted that the very concept of democracy requires diversity in key government functions, including those involved in upholding and enforcing the law.¹² For rules to be considered legitimately representative of the population, the opportunity to participate in both their development and enforcement is essential. Institutions will be ignored or disregarded in circumstances where they are perceived to be representative of one specific group to the exclusion of others. With regards to the judiciary, in extreme circumstances this can impact on the willingness of individuals from the excluded group to turn to courts, undermining the justice system.

Gender diversity in the justice sector is particularly important because women have historically suffered discrimination and exclusion from public life, and the legal system has been an instrument of that exclusion. The mere presence of women in a legal decision-making role can counteract both actual bias and perceptions of gender bias,¹³ as well as public perceptions that justice institutions are out of touch with the overall population.¹⁴ This means that even women judges who are not gender-sensitive play an important role in improving the credibility of the justice system and trust in its capacity to deliver on equality. By their presence they demonstrate to the public that justice, and the judiciary in particular, is not closed to diversity, and is composed of the multitude of groups that make up wider society.¹⁵ This has important implications for rule of law

practitioners in that it suggests that judicial diversity, not only in terms of gender, but also in terms of ethnicity, race and economic class, may be one of the many solutions to address the public image and trust deficit that so frequently plagues judiciaries in conflict-affected environments.

2.2

Strengthened equality of opportunity for women

The presence of women in the justice sector, particularly in senior positions, sends a powerful message for those who aspire to justice sector positions that recruitment to the sector, in particular the judiciary appointment process, is what it claims to be—fair, meritocratic, and non-discriminatory.¹⁶ Upon assuming posts, the presence of women judges provides encouragement and active mentoring for women in the legal profession, law students, and indeed younger women and girls, to aspire to, seek, and obtain judicial appointment, thus improving gender balance in the judiciary. This message is exemplified in a study on women judges in Ghana, where several female judges credit the presence of women in superior positions on the bench for their decision to pursue a judicial career and believe that women can occupy positions of power, including those that had in the past been exclusively occupied by men.¹⁷ Further, in practical terms, through various organizations, boards and mentoring networks, women judges can help to mentor the new generation of female judges,¹⁸ and ensure retention rates are maintained.



Image: ©IDLO. A regional workshop co-organized by IDLO brought together female judges, lawyers and academics in Sousse, Tunisia to discuss women's effective participation in justice delivery and policy making across the Middle East and North Africa region.

More broadly, improvements in women's numbers on the judiciary – an institution held in high esteem in many societies – may, in some cases, have a domino effect in that it contributes to women's entrance into other professions of authority. By challenging the institutional barriers to women holding positions of authority, such judges set the mark for other previously male-dominated professions, as poignantly explained when describing the impact of women judges in Brazil: "the simple fact of being a woman and a judge has important social consequences as it makes the female judge a point of reference for other women, especially in less developed districts, where problems of feminine submissiveness are more prevalent".¹⁹ In short, by their presence in the judiciary, women judges play distinct roles as agents supporting women's economic independence and more broadly, social change. The presence of women moves society away from the mindset that men are the norm and that justice is not a job for women.

Feminization of the justice sector

Supporting women's presence in the justice sector on the grounds of representation and democratic legitimacy implicitly supports feminization because it means that policymakers should aim for an increase in the numbers of women professionals in the sector to a level where they are equally represented with men. Feminization can refer to both an increase in women's raw numbers and women reaching more than 50 per cent of the numbers in a given profession. Both types of feminization are an opportunity and can also transform perceptions of traditionally male-dominated professions.

In professional fields where women are present in equal numbers to men, they tend to produce decisions and public policies that are more sensitive to the priorities affecting the lives of women,²⁰ such as discrimination in employment.²¹ However, several researchers have recorded that the social and financial value attributed to a profession diminishes as men become a minority.²² Some studies indicate that the judiciary has not been immune to this phenomenon²³ and the potentially negative effects of feminization cannot

be ignored. There are strong arguments that support for women's entry into professions should always take place within broader social movements that seek to address biases and perceptions that women's work is not of the same value as men's.²⁴

Additionally, IDLO's research on women's professional participation in the justice sector in Tunisia highlights the importance of not essentializing the category of "women judges" and ascribing to it "almost magical powers to transform professional practices, or even society as a whole".²⁵ Even feminist judges can be constrained by an institutional environment that does not always allow them to implement feminist principles.²⁶ Further, judges are endowed with many other characteristics apart from their sex and it is not always possible to separate out what influences their professional behavior.²⁷ For instance, some studies have shown that political persuasion may be a more powerful influence on judges' decision-making than gender. This suggests that improving access to justice for women should focus on cultivating gender expertise within the judiciary, rather than focusing only on improving the raw number of women judges.²⁸

2.3

Improved justice outcomes

Inclusive decision-making

The presence of women in the justice sector supports inclusive decision-making and interests by tapping into knowledge, interpretations and experiences that are different from the male norm. In the political field, evidence shows that underrepresentation of women potentially biases policymaking away from women's interests.²⁹ Conversely, when women are present in politics, research shows that they raise issues that others overlook, pass bills that others oppose, invest in projects that others dismiss and seek to end abuses that others ignore.³⁰ Scholars argue that even if women are pushed into power with the intent of being proxies for their male relatives, they are eventually able to influence the delivery of public services in a different way.³¹

Similarly, the inclusion of women's perspectives in the justice sector is a powerful way to ensure that their lived experiences can be brought to bear on the decision-making process, thereby leading to better-informed and impartial decisions. Under the "representational" or "standpoint" theory, because some women have experienced pregnancy, child-rearing and in some cases, discrimination, a judiciary with a more balanced gender make-up will better respond to and understand those contexts.³² This was highlighted by several judges in one study which notes "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".³³

One response to advocacy for a more diverse judiciary is that judges are apolitical, and that gender should not matter – judges simply apply the law. Although most female judges will agree they are in a unique situation to understand women's issues, in all studies they invariably also emphasize that their gender does not impact on their partiality.³⁴ Indeed in some cases, the effect of "institutional pressure" for impartiality can lead to anti-feminist results:

When women are reluctant to appear too feminist, they are less likely to object to decisions that seem biased, particularly if the decisions are explainable on other grounds. One big downside to such covering behaviour, of course, is that it discourages active opposition to sexism.³⁵

Women judges who question long-standing judicial norms using their expertise in human rights and violence against women have been criticized for introducing partiality and subjectivity into the neutral act of applying the law. For example, in some cases where women judges rule in favor of female litigants, particularly in sexual assault matters on appeal, they are criticized for judicial activism. In one high profile case in Canada, a female judge's concurring opinion to overturn a lower court decision that dismissed a sexual assault matter due to the victim's lack of active resistance, was made the subject of a judicial complaint, with the judge accused of "feminist bias".³⁶

Yet focusing on the claimed bias of women judges can reflect an unconscious societal preference for the historical male perspective, which itself is often biased towards men's lived experiences. As explained by a scholar on gender equality and women's history, "legal expertise in human rights and violence against women issues is considered a source of bias in the hands of women, but [the

absence of such expertise is] an asset in the hands of men".³⁷ The debate around partiality must question the legitimacy of jurisprudence which ignores or belittles the reality of women's lived experiences, and assesses the credibility of women's testimony on the basis of stereotypes.³⁸

Improved justice outcomes for women in specific types of cases

Some scholars extend the representational argument to claim that with their different understanding and empathy, women judges improve substantial justice outcomes for women and girls by judging more compassionately women-specific matters and influencing and educating other colleagues by not allowing sexist comments, stereotyping and gender bias to go unquestioned.³⁹

On the one hand, quantitative studies (mostly from the United States) looking at whether women judges rule differently than male ones (individual effects) and whether the presence of a woman judge influences the ruling of a panel (panel effects) are equivocal on both questions.⁴⁰ An analysis of United States federal appellate cases over three years found a difference only in two types of cases –those involving sex discrimination and sexual harassment. In both types of cases, plaintiffs were twice as likely to win when a woman was on the panel deciding the case. The data showed that women judges were significantly more likely than their male counterparts to find for the plaintiff and that having a woman on the panel increased the probability that male judges would support the plaintiff.⁴¹ Other studies from the United States find the sex of the judge makes no difference,⁴² while studies from jurisdictions outside the United States show differences in very specific areas.⁴³

Qualitative studies, on the other hand, indicate that the gendered nature of certain crimes, may, although not always, elicit different responses from men and women, usually on the grounds that a female judge understands the physical nature of certain offences more than a male judge. Justice Patricia Wald, then a judge on the International Criminal Tribunal for the Former Yugoslavia (ICTY), argues women judges have a unique understanding of certain crimes, and should act on that understanding:

“Women judges may well have a special sensitivity to the degradation suffered by victims of such crimes. They should not be hesitant to express their unique perceptions of such harms when relevant. Nor should they hesitate to counteract the imperviousness of some men – even some judges – to the subtler facets of gender-based assaults.”⁴⁴

Women judges can provide male colleagues with gender-specific understandings of the legal issues and the social and normative context within which facts evolve, taking advantage of the collegiality and learning between judges that takes place on a panel bench to tangibly improve justice outcomes for women.⁴⁵ At least in the international criminal arena, there are some indications that women have contributed to more informed prosecutions and a better understanding of crimes that target women, thereby developing and strengthening international human rights jurisprudence.⁴⁶

As an example, Justice Navi Pillay at the International Criminal Tribunal for Rwanda in the matter of *Akayesu* was

instrumental in ensuring that charges of sexual violence were added to the original charges brought by the prosecutor of the case, drawing from her background in human rights. Commentators have identified that Justice Pillay played a critical role in getting her fellow male judges in the case to understand the complexities of sexual violence.⁴⁷ She also contextualized the plight of “comfort women” who were used as sex slaves during World War II as a current issue and one that needed to be acted upon in order to obtain justice for these individuals.⁴⁸

Another example of a woman judge pushing the frontiers of gender justice is the work of Justice Elizabeth Odio Benito, who served as a judge on the ICTY and was one of the first judges appointed to the International Criminal Court (ICC). During the trial of Congolese warlord Thomas Lubanga, she wrote a powerful dissenting opinion that criticized the court’s majority for failing to hold the defendant responsible for the rape of female child soldiers.⁴⁹ Justice Odio Benito also ruled in the *Celebici* case that one isolated act of rape could be considered a war crime, replacing the previous legal rule that there was a need for a “widespread and systemic attack” to take place.⁵⁰

An additional example of a woman judge leading the development of jurisprudence is the case of *Gonzalez, Monreal and Monarrez v. Mexico* at the Inter-American Court of Human Rights. In this matter, Justice Cecilia Medina Quiroga led the Court to conceptualize the murder of three young women in Ciudad Juarez in Mexico as homicide for reasons of gender. The Court’s judgment clearly signaled the obligation on States

to protect women from such violence, emphasizing the linkage of gender violence with the breach of the non-discrimination obligation contained in the American Convention on Human Rights:

*This judicial ineffectiveness when dealing with individual cases of violence against women encourages an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women is tolerated and accepted as part of daily life.*⁵¹

As a final example, in the appeals judgment in the matter of *Prosecutor v. Brima et al.*, a case in the Special Court for Sierra Leone, Trial Judge Teresa Doherty’s dissenting opinion on forced marriage as a crime against humanity was upheld on appeal, bringing to the forefront that there is more to forced marriage than sexual acts.⁵²

These non-exhaustive examples are indicative of the role women judges can play in making a lasting contribution to jurisprudence and pushing forward universal human rights. As concluded by Justice Doherty:

“On the international scene the attitude that women do not want to give evidence of sexual abuse also was given as one explanation why sexual offences were not indicted early in some tribunals. Women judges have been the ones pushing forward the fact that rape, sexual slavery, forced marriage are an intrinsic part of war. They have really contributed to international law by standing up and saying in a court, women and girls are not the spoils of war.”⁵³



Image: ©UN Photo_MarieFrechon

2.4

Strengthened justice experience for women

A perusal of data shows that women justice professionals are contributing in important ways to improvements towards the overall justice experience of women users of the system and supporting a fairer institutional environment for women to access justice. There are four areas where qualitative data reveals that women are making a unique contribution in the justice sector.

First, in relation to gender-based crimes, more gender-balanced courtrooms may make the process less distressing for women and girls who appear before them, particularly trauma victims. Discriminatory attitudes towards women survivors of violence by police and prosecutors who don't believe them and by judges who are insensitive or question their motives, often leads to revictimization.⁵⁴ Women judges and prosecutors may provide a better courtroom experience for women witnesses and survivors because they usually refrain from making sexist comments or demonstrating other forms of bias, particularly in matters concerning gender-based violence or discrimination on the basis of sex and they encourage their peers to do the same.⁵⁵

Similarly, the example of Chief Justice Georgia Wood from Ghana suggests that

some female judges may be more conscious of the potentially harmful way the law and institutions create justice barriers for women and children. Justice Wood has established a specialized Family Justice Center that identifies and addresses critical issues affecting women and children in the judicial process, with a focus on how the court adjudicates cases relating to gender-based violence.⁵⁶ Accordingly, there is some limited evidence to support the theory that, in contexts where human rights violations are rampant, women are frequently motivated to enter the legal profession for reasons related to gender justice. In specific sociopolitical contexts, some women are willing to use their position in the justice sector to support a fairer justice system for their own sex.⁵⁷

Second, some women judges also take a proactive approach to providing litigants with holistic justice solutions, with the result of making the formal justice process more appealing, particularly for many women: in Ghana, Chief Justice Wood has spearheaded the creation of a specialized center that provides holistic support to survivors of violence; in Argentina, Justice Elena Ines Highton de Nolasco, Vice-President of the Supreme Court, helped launch a domestic violence office in the court that focuses exclusively on providing legal, medical and other professional support to survivors; and Justice Gita Mittal of the Delhi High Court created a courtroom that allows child victims of violence to testify through live video. Such transformative actions by leading women support the view that women on the bench often, though not always, make justice institutions more accessible for women.⁵⁸

Third, some women judges are taking steps to ensure that the court environment is more accommodating for women. A Ghanaian magistrate indicated in a study that she makes every effort to prioritize hearing cases of women who come with young children or babies who may need to be fed, an important contribution given that many courts in Ghana lack restrooms or lactation support.⁵⁹

Fourth, in gender-segregated contexts the presence of a female justice professional can be empowering to a female victim. For example, where pathways for redress are gendered, issues are sensitive and seen as "women's issues", or where survivors have limited social mobility and engagement with the opposite sex, the presence of a woman judge, prosecutor or police officer can make an important difference.⁶⁰

These observations should not be interpreted as meaning that institutional reforms within the justice sector must be carried out by women justice professionals as opposed to their male counterparts. Rather, they acknowledge that it is systematically women who have tended to spearhead the changes necessary to support women's access to justice, both in the formal court system and in the broader political framework.⁶¹ Of course, given the scattered data on women's intangible contributions to the sector, more in-depth research is required, going beyond anecdotes and descriptions, to understand better the dynamics at play in these environments.



Image: ©Flickr_World Bank

2.5

Conclusion

The above discussion confirms that women justice professionals are critical for the rule of law, democratic legitimacy and equality of opportunity. The ever-present interest in whether women and men judge differently can

distract from the important question of what justifies male overrepresentation in the justice sector?

Although anecdotal and descriptive evidence from around the world shows that some women judges are contributing in important ways to breaking down many of the barriers women face in accessing equal justice in the courtroom, particularly in cases of violence against women and cases concerning sexual harassment and discrimination in employment, male

judges do not have to prove they are making important contributions for excluded groups to justify their presence on the bench. Additionally, it is also important that women justice professionals are not viewed as a panacea for women's access to justice. As has been noted, "we should not use women judges as a proxy for feminist judges".⁶² Gender equality in the justice sector remains first and foremost about representativeness and democratic legitimacy – worthy goals in their own right.

PART 3
BARRIERS FOR WOMEN
JUSTICE PROFESSIONALS



BARRIERS FOR WOMEN JUSTICE PROFESSIONALS

While there are identified data limitations, knowledge on women justice professionals has increased significantly over the last decade, providing rich empirical and theoretical data on how women have entered the justice profession, as well as the barriers they face in both beginning and advancing their career. Such research has been strengthened by increased attention from the rule of law community and donors on the role of women in the justice sector, resulting in global and regional meetings and information exchanges between women judges and other justice professionals.⁶³ This section provides an overview of the key themes that have emerged from the literature and discussions on women in the justice sector and the structural barriers that must be addressed to ensure the diversity and representativeness of justice institutions.

3.1

Barriers to entering the justice sector

In many contexts where judges are appointed, women remain well below their representation in the labor pool of lawyers. This implies that lack of representation or underrepresentation is a problem of direct and indirect individual, institutional and structural discrimination, potentially combined with a lack of support or motivation for women to enter the profession.⁶⁴ Empirical and theoretical studies suggest the gap in women's representation in national courts, and in certain specific courts, can be ascribed to social resistance, stereotypes and limited institutional capacities to incorporate gender concerns.⁶⁵ Although there are some national and context-

specific findings, it is clear from the research that many of the barriers to participation are similar across national borders.⁶⁶

Gender stereotypes and attitudinal barriers

Stereotypes and attitudes about women's experiences and suitability as lawyers or judges can stem from religion, culture, custom, tradition, and/or ideology. A leading explanation for women's underrepresentation is that gender stereotypes lead to the continued subordination of women in the legal profession. Social and religious interpretations of women's roles in society exclude women from the legal profession, judiciary or from particular courts.⁶⁷ In some countries it is commonly assumed among the general public that judges are, or should be, men and that perceptions of the judiciary as a male institution act as a barrier to women's entry into the judiciary.⁶⁸ Anecdotal sources from the Middle East and North Africa region also suggest that when some women were first appointed to the bench, men and women refused to appear before them, or sought to have their case transferred.⁶⁹ Further, the presumption that women are the primary caregivers and will stop working or reduce their load when they become mothers appears to act as a deterrent to the hiring of women, and in some cases, their promotion.⁷⁰

These findings are echoed in the United States. An empirical study undertaken examined whether "implicit gender bias" drives the continued subordination of women in the legal profession. The study tested whether people hold implicit gender stereotypes of women in the legal profession, and further tested whether these implicit stereotypes predict discriminatory decision-making. The results were illuminating. Using a diverse group of both male and female law students, the study found that the

students implicitly associated judges with men, not women, and also associated women with the home and family.⁷¹

In China, a recent qualitative study revealed that while women do become judges, they are often placed in the civil divisions because of perceptions around their "meticulousness, good writing and communication abilities, congeniality, and emotional nuances" that were thought to serve them well in mediation and dispute resolution roles. Male judges were frequently associated with alleged masculine qualities such as "tough", "energetic", "authoritative" and "intimidating". Interestingly, many of these stereotypes were shared by women judges themselves, with younger women judges suggesting that they would avoid working in the criminal division because they could not stand the "horrifying" and "bloody" photos of murder cases and the "dark" execution scenes or the "weeping of family members".⁷²

In some cases, religious leaders claim that women lack the patience and stability required for judicial administration.⁷³ These stereotypes have a negative impact on female law graduates who stymie their own professional growth by not applying to the bench, due to a lack of aspirations, insecurity, fear of reprisal, or their own misconceptions about proper roles for women.⁷⁴ In some cases this is restricted to specific types of matters. For example, in Egypt, prominent judges subtly assert the "nature argument", insisting that while women may rule on family court cases as well as those related to commercial and property matters, they are not "suited" to decide criminal cases, or work as a prosecutor, because of the perceived danger of such roles.⁷⁵ This standpoint can be found in several countries in the region.⁷⁶

Sub-Saharan Africa is not immune from the phenomenon of stereotypes limiting women's professional advancement.

One report on women lawyers and human rights defenders in Africa records that discriminatory gender stereotypes are frequently applied to women that impact on their roles both in the workplace and at home:

At work, women are often discriminated against by male colleagues; at home, the roles and work of women lawyers and human rights defenders are often not understood within communities, which expect them to fulfil a primary role as wives and mothers.⁷⁷

The report highlights that female lawyers were often patronized by their male colleagues and have been dismissed, ignored or ridiculed because of their gender. As identified in a report by the UN Special Rapporteur on the independence of judges and lawyers, pervasive and persistent gender stereotypes lead to discriminatory treatment of women in the justice system, including women judicial officers. For this reason:

There is a strong need for studies designed to examine the integration, or lack thereof, of gender and women's perspectives into judging, judicial procedures and the judicial branch at large. Traditional notions of judging and judicial authority must be challenged and the representation of women in the judiciary encouraged. At the same time, men, also, have the opportunity to play a crucial role, whether as judges, prosecutors or lawyers, in making the criminal justice system more accessible to women, and therefore more equal.⁷⁸

Lack of information and transparency about recruitment/selection processes

At present, it is widely understood that countries with civil law legal systems are more open to female judges than common law inspired legal systems.



Image: ©IDLO. IDLO and the European Bank for Reconstruction and Development (EBRD) convened a forum in Morocco in December 2017 to lay the foundations for the first regional network for women judges.

This is because civil systems rely on exams for admittance into the judiciary, whereas common law systems rely on selection processes that focus on elements such as length of service and reputation and experience in law firms, which may allow more room for patriarchal considerations or indirect discrimination.⁷⁹ Anecdotally, a number of women cite that the lack of transparency in certain appointment processes serves to block women's entry into the judiciary. This is especially the case in informal consultation processes where chief justices inform judges and lawyers when a position is vacant and seek their recommendation for suitable candidates.⁸⁰ Supreme Court Justice Elena Ines Highton de Nolasco observes that the incorporation of examinations in the judicial appointment mechanism in Argentina resulted in many more female candidates being selected, suggesting that exams prevent unfair processes or negative stereotypes from keeping women out of the judiciary.⁸¹

Lack of an enabling legal and social environment

Legal and social restrictions on women's mobility and access to finance and work act as major barriers to women's participation in the justice sector in many countries. In the Middle East and North Africa region, women's economic and political participation remains the lowest in the world due to legal and social restrictions on women's social and economic independence.⁸² For example, personal status laws include requirements that wives obey their husbands and enshrine a husband's right to stop his wife from working or studying.⁸³ This has impact on women's ability to work (and to remain) in the sector. Further, lack of finances for study, examinations and other expenses associated with becoming a judge is an additional barrier to entry, with boys receiving preferential treatment for educational opportunities in some contexts.⁸⁴

Lack of role models also deter women from joining the sector. Studies highlight the key role mentors play, not just in encouraging women to enter the sector, but also to remain in it:

The lack of formalized, structured mentoring opportunities for girls and young women across institutions of higher learning in Africa needs to be addressed. The stories presented in these narratives strongly suggest that role models not only help set one on a professional path but can continue to be instrumental bedrocks on which one can fall back during the challenges of pursuing a professional life – especially one at the international level.⁸⁵

In order for women to participate fully and equally in the legal profession, they must have the ability and will to actively seek judicial appointment. To this end, role models, mentors and solidarity and support networks have a central role. Moreover, media can also be instrumental, raising the visibility of women within the judiciary as positive role models.⁸⁶

Women judges and law students participating in IDLO research in Afghanistan also frequently commented that outreach efforts should be made to encourage women to join the justice sector and judiciary.⁸⁷ Hopefully, as more women enter the judiciary, and women role models prove themselves as judicial officers, this barrier may inevitably break down.

Where women's overall levels of participation in education, finance and politics are low, there are naturally fewer opportunities for women to enter the sector. However, women have not always been able to gain access to the basic skills and training that are a prerequisite to entering these more elite fields. For instance, where there is a shortage of girls/women at primary, secondary and tertiary levels, the pool of potential women judges is inevitably going to be lower. As women's enrolment at all education levels increases, this dynamic is changing and the argument that "there are not enough

women" or "women of merit" to enter the profession will no longer be defensible. This is already the case in many national contexts where women are enrolling in equal or greater numbers than men for legal degrees.

3.2

Barriers to retention in the justice sector

Increased opposition as numbers augment

It is often presumed that as societies progress, and as women gain positions as lawyers, and later as lower court judicial officers, they will "naturally" move up into higher judicial offices and increase in number. An examination of the numbers from the qualified labor pool in the United States, however, reveals that no such correlation naturally exists. On the contrary, some evidence suggests that resistance to women hardens precisely because they are progressing. As noted:

A token woman does not threaten the coding of a job-judge, or law professor-- as male; instead, the token woman is exceptional, the honorary male. But as more women enter a profession, rather than the job being coded as neither exclusively male nor female, the job may tip to the other category with deleterious consequences for pay and status, as in the example of women doctors in the former Soviet Union.⁸⁸

Feminist labor historians highlight that when women start to gain the credentials for a particular position, the requirements tend to change to favor men.⁸⁹ One study indicates that as more women enter the judiciary, they face more pressure, including more motions to recuse themselves.⁹⁰ This responds to

a trend noted in United States law firms – firms with women hiring partners were in fact more likely to hire more female entry-level candidates, an effect which decreased in firms where women had already achieved a greater gender balance among firm partners. This result confirms that the sex of the primary decision maker matters in recruitment, an effect consistent with what social psychologists call "in-group bias".⁹¹

Time poverty

Time poverty also emerges in research as a barrier for women both to remaining in the sector and to "standing out" for positions of advancement. Indeed, many women consider time poverty a barrier to advancement in their country's judiciary in that, unlike their male counterparts, women judges often struggle to balance work and family responsibilities.⁹² This is particularly problematic in countries where men are not expected to contribute to domestic life at all, and women are "often spread thin and are frequently forced to work doubly hard to manage their many commitments".⁹³

Sexual harassment and other forms of discrimination or insubordination

Research findings highlight female judges as at risk of harassment and discrimination because of being women. In fact, women judges are subject to additional security concerns and criticism compared to men, as well as gendered forms of intimidation. The latter include experiences of being relocated, denied benefits, or reassigned under the supervision of male judges, based on the argument that, as women, they would risk facing negative repercussions due to a promotion, or would be biased in judging cases that dealt with women's human rights issues.⁹⁴ This environment undoubtedly has the potential to encourage women to leave the sector.⁹⁵

3.3

Barriers to advancement in the justice sector

The very important success of several high-profile women in national and international justice roles should not be taken as representative or a self-replicating occurrence. The paucity of women in positions of power in many jurisdictions, despite dominance in lower-level courts, suggests that there are several factors at play that inhibit the rise of women to positions of power in the sector. These are described below.

Selection and appointment processes

Several studies point out that the selection mechanism for judges to the highest courts can often advertently or inadvertently discriminate against women. In most cases, high court judges are either selected by the legislature, by the executive, by the executive with the approval of the legislature, or by dividing up the appointment of judges across multiple institutions. Existing literature on expected causal relationships between selection methods and women's participation provides valuable insights.⁹⁶ First, there is little scholarly consensus on whether the election of judges by the public will increase women's representation as opposed to the appointment of judges by an elected official. Second, a merit selection process (i.e. a non-partisan body that nominates justices) has an equally mixed result for women, with some studies showing a positive correlation, some neutral results, and some a negative correlation. Third, women are more likely to be found in high courts where several judges sit. This is because in these contexts, gender inequity is more obvious and thus risks generating a negative response from citizens.⁹⁷ By contrast, in single-judge higher courts, selectors have little

incentive for parity as the difference is less obvious.

The core finding of research studying the highest courts in 50 democracies is that the strongest predictor of women's presence in the high court is whether the selection process is "exposed" versus "sheltered". The selection process is exposed in cases where the selectors are elected, visible and accountable to the public, and are therefore able to claim credit for their actions in diversifying the bench. Conversely, selection is sheltered when it's undertaken by a group of unelected people or persons without public scrutiny (for instance by a non-partisan nominating commission, such as a judicial commission), and the selectors who make the appointment are thus sheltered from voters and lack incentives to claim credit for their actions.⁹⁸ The researchers found that women are more likely to be appointed through exposed selection processes, and highlight that this finding is applicable to the highest courts. This is due to the fact that, generally speaking, because such courts handle constitutional issues, and include multiple justices, the public is more likely to support diversity than they may in a single-judge lower court. In the latter case, public accountability, and thus the rewards for diversity and being the "first", is unlikely to be as powerful.⁹⁹ Of course, these findings do not bode well for supporters of judicial independence who argue that the selection process should be free from political influence, without the involvement of the executive or legislature and who argue that judicial diversity is best ensured when unelected individuals (such as the chief justice, or a judicial commission) oversee appointments to the highest courts.¹⁰⁰

There are identifiable reasons for this preference for male candidates in sheltered selection processes. Research shows that women lack the legal and political networks and connections that facilitate advancement for male judges in the judiciary.¹⁰¹ This also works to their detriment – some studies have found that when women are appointed,

male judges are less likely to mentor them or provide them with opportunities to prove themselves, which is often integral to advancing in the judiciary. This supports the theory that non-elected and unaccountable selectors are more inclined to go with what they "know" and "feel comfortable with", and in particular, male judges, whether consciously or subconsciously, tend to prefer new male candidates to female ones.¹⁰²

A related subset of scholarship points to a more pernicious attitude from male judges, highlighting three main ways in which gender stereotypes about women may affect women's hiring and career advancement and ultimately exclude large numbers of women from leadership positions.¹⁰³ First, as argued, the "deeply held cognitive association connecting women to the home and family continually affects the workplace assumptions made by employers".¹⁰⁴ Second, assumptions about women's and men's work styles, character traits and job competencies tend to undermine women's opportunities to be promoted.¹⁰⁵ Third, because some jobs are consciously or unconsciously perceived as male jobs, females will be evaluated less favorably for those positions.¹⁰⁶

In addition, research has demonstrated that domestic courts continue to be informed by masculine expectations, often operating within institutional selection processes that view the qualifications of women as secondary to those of men.¹⁰⁷ Gatekeepers are often made up of men who minimize the professional history of women compared to that of men, and often delay or veto women's nominations.¹⁰⁸ Indeed, some scholars in the United Kingdom and the United States have argued that merit selection criteria are inherently biased because preferences for certain professional experiences have the effect of weeding out women who are as qualified as men but who due to discrimination in their careers, cannot have achieved the same level and type of experience (for instance, some law firms refused to hire women, which is a strong influencer of likelihood for preselection to a judgeship).¹⁰⁹ A study on the Kenya

Judicial Service Commission finds that the open recruitment process for judges under the 2010 Constitution has not yielded the expected positive results for increasing the gender diversity of the Kenyan judiciary, although reforms to the Judicial Service Commission as gatekeeper of a gender-balanced bench have yielded more recently some positive improvements.¹¹⁰

More optimistically, one study on law students in the United States provides tentative support that while discriminatory attitudes persist, in some cases, current legal students (but also future decision makers) were able to control their implicit biases to promote egalitarian outcomes.¹¹¹ At a minimum, if it is not possible to change the institutional expectations of the “ideal” qualifications for the judicial profession, it is hoped that as societies progress and discrimination in employment opportunities at law firms are reduced, women will be able to achieve the same professional levels as men to achieve positions on the bench, including in superior courts.

Challenges with work–life balance

Women face an additional hurdle in being promoted because as judges they are often forced to refuse promotions, as a promotion may involve relocation, possibly to a distant area. Unlike their male colleagues whose families will easily move with them to the new job location, female spouses cannot usually expect their spouses to be uprooted.¹¹² IDLO research

highlights that women who have entered the profession have often benefited from a supportive family network.¹¹³

Denial of opportunities that contribute to development and promotion

Some research has highlighted the phenomenon of “adverse incorporation” whereby women are included in the judiciary but on unequal terms. For example, gender stereotypes influence women judges’ assignments to positions in family or juvenile courts, while women are excluded from certain experiences and responsibilities, and thereby prevented from being groomed for leadership positions.¹¹⁴ In such circumstances, women often do not “even realize this exclusion is taking place until it is too late; then without proper training, women find advancement in their careers very difficult”.¹¹⁵ Moreover, the referenced study identifies a “glass cliff syndrome” whereby women are given precarious projects within the judiciary.

main phenomena: (i) the entry of women into the profession; (ii) the retention of women and growth of their numbers in the profession; and (iii) the advancement of women, in numbers, to senior echelons of the profession. This nuanced approach is necessary because what emerges from both the existing statistical data detailed in **Annex I**, as well as the examples above, is that the entry of female professionals into the workforce of justice institutions is not “natural” or “irreversible” and that feminist concepts of backlash and tokenism remain relevant, particularly for women to reach higher and more influential positions in the justice sector.¹¹⁶

Further, as confirmed in research conducted by IDLO, it becomes apparent after disaggregating data by the type of institution or court that paradoxically, women’s increase in numbers in the justice sector has not resulted in women naturally progressing down the typical career pathway to superior positions.¹¹⁷ An important gap exists between women law graduates and women practicing as lawyers, a larger gap between women lawyers and women judges (in common law countries) and an even larger gap between women’s representation on lower courts and upper courts in these countries.¹¹⁸ In some cases, when they do reach the superior courts, they are stuck in courts that are “traditionally” considered the most relevant for women – for instance, the highest family or juvenile court. The above subsections detail the systemic explanations for these concerning findings while the next section reviews where progress has been possible.

3.4

Conclusion

Overall, to holistically understand women’s effective participation in the sector, it is important to look at three

PART 4
PATHWAYS FOR WOMEN
JUSTICE PROFESSIONALS



PATHWAYS FOR WOMEN JUSTICE PROFESSIONALS

While there are disparities in the justice sector there are also important signs of progress, with both overall increases in the number of women in the justice sector in some countries and increases in the number of women trailblazers who are breaking through barriers and achieving important results, especially for gender justice. Over 20 per cent of supreme court justices in Albania, Argentina, Austria, Costa Rica, Croatia, the Czech Republic, Honduras, Ireland, Norway, the Philippines, Switzerland and Uganda were women in 2008.¹¹⁹ Progress can also be observed in countries such as Jordan,¹²⁰ Brazil and Peru.¹²¹ Overall, women constitute more than 40 per cent of judges in countries as diverse as Tunisia, France, Slovenia, Greece and Rwanda.¹²²

Understanding the rise of female leaders to positions of power and/or the increase of women's overall participation in the justice sector in these geographically, politically and legally diverse jurisdictions is important for those interested in supporting women in the justice sector and ensuring the justice system is representative, diverse and legitimate.

This section explores the evidence in this area and offers a preliminary, non-exhaustive examination of the individual, social and institutional factors which facilitated individual and groups of women to increase their numbers or to rise to positions of power. As this has been an understudied field, the evidence is mostly anecdotal, although some important studies have been conducted at the regional and international levels to understand how these breakthroughs have taken place.

Before proceeding, a cautionary note is necessary. This section does not essentialize the experience of women justice professionals – the experiences of women judges and legal professionals are diverse and the examples cited below are not necessarily representative. Instead,

the objective is to isolate trends or patterns that emerge from the literature and research undertaken by IDLO.

4.1

Political will is critical

There is some evidence that when governments make a conscious effort to improve women's participation in the justice sector, their numbers do increase. Commitments that exist in the form of government targets or even legislative commitments to diversity have been shown to increase the absolute and proportionate number of women in the justice sector. In Jordan, for example, the Ministry of Justice commenced a range of new initiatives seeking to increase the representation of women within the judiciary from 2005. These included the establishment of minimum quotas (15 per cent) for admission of female candidates to the Institute of Judicial Studies, and the establishment of funds to support

women judges' participation in training and research visits to benefit female judicial students.

The importance of strong political will and national commitment to support women in the justice sector is borne out by the rise of female participation in the judiciary in the Canadian province of Ontario. In 1988, the province established a Judicial Appointments Advisory Committee as a three-year pilot project, with one of its objectives to increase the diversity of the judiciary. The Attorney-General also personally wrote to all women lawyers in Ontario who had been at the bar for more than 10 years, encouraging them to apply. When the Committee began its work, only 4 per cent of the provincially appointed judges in Ontario were women. Within two years, 32 per cent of judges appointed pursuant to the Committee's recommendations were women, and by the next year, this had risen to 40 per cent.¹²³ Perhaps unsurprisingly, most evidence suggests that while numbers will increase with political will, women will not necessarily rise to leadership positions unless there is commitment from the gatekeepers for women to also assume these posts.



Image: ©IDLO

Interestingly, studies on the effect of political leadership, targets and quotas tend to focus on the higher, more formal courts. The impact of targets for local decision-making bodies in Namibia, and land boards in Uganda, Tanzania and Mozambique, on women's *actual* participation (and the type of decision-making) has been under-researched. One study from India on women's political representation at the local level suggests that prior exposure to a female leader is associated with electoral gains for women due to improved perceptions of the female leader's effectiveness and breaks down stereotypes of traditional domestic gender roles.¹²⁴ Further studies on the impact of quotas for judicial or administrative decision-making bodies at the local level would be beneficial.

Constitutional requirements and quotas are not enough

Constitutional requirements to ensure a gender balance in the judiciary are so far limited only to a handful of countries and the data is not clear as to whether an obligation or constitutional commitments to judicial diversity result in substantive gains in women's numbers, unless this is followed through with a political commitment to implement those changes.¹²⁵ In South Africa, despite the provision in the 1996 Constitution that gender should be taken into consideration when making appointments to judicial office, the record has yet to fulfill the promise of the law.¹²⁶

Likewise in Kenya, despite a constitutional provision providing that the Judicial Service Commission be guided by the promotion of gender equality, discrimination against female candidates in vetting procedures has been identified and research identifies that having a gender quota law or a constitutional provision on gender balance in the judiciary does not strongly affect the selection of women for the top position in the judiciary.¹²⁷ Relevantly, in the context of legislative quotas in Latin America, one study proposes that quotas are most effective when there is strong public support for them, which provides the government with a firm ground to

strengthen and promote gender quota laws.¹²⁸ This is likely to be relevant to a certain degree in circumstances where quotas are considered for judicial bodies, albeit with the caveat that judicial appointment procedures are often less controversial than electoral processes.

Legal provisions should be written as an obligation, not as an aspiration

An alternative theory is that the wording of constitutional requirements is important to ensuring that quotas have an effect on the upper echelons of the court system, as is required by international law.¹²⁹ In Morocco, the 2011 Constitution set a quota for women at the Supreme Council of the Judiciary. During the last elections the quota came into operation and three seats were given to women, a third of the number of elected judges.¹³⁰ Nonetheless, commentators have observed that women in Morocco generally remain in judicial positions with relatively little power or authority.¹³¹ Quotas also exist for the family courts in Pakistan whereby the law provides that at least one family court in each district shall be presided over by a woman judge.¹³² As in Morocco, the CEDAW Committee has continued to highlight that in Pakistan, despite this provision, women have very low participation in the superior courts.¹³³ Nonetheless, the appointment of female judges has never ceased to arouse heated debates and has been the subject of legal challenges,¹³⁴ suggesting that legal changes must be accompanied by public education measures.

Similarly, a study on the European Court of Human Rights' "soft" affirmative action measure, whereby the Assembly can reject a single-sex list of candidates from State Parties if candidates of that sex are overrepresented on the Court (40 per cent of the court constitutes representation), has similar findings. The study argues that the 40 per cent threshold for overrepresentation on the court effectively becomes a "maximum" since once the 40 per cent threshold is met, States recover the "right" to ignore any preoccupation of gender balance and propose only male candidates – which is

effectively what has happened.¹³⁵ The study also finds that states are selecting less qualified women candidates as a way to ensure their male preferred candidate is selected, in a form of "bad faith" by states to comply with the gender balance rule. The study concludes that the presence of women on the bench in the European Court of Human Rights cannot be attributed to the rule, nor the entering of a post-gender world. Instead, states appear to be privileging a minimalized understanding of the gender balance objectives rather than a maximalist understanding, leading to a preponderance of all-male lists when the 40 per cent threshold is exceeded.¹³⁶

A commitment from the gatekeepers is key

The data suggests that even in the absence of policy or legislative commitments, where there has been a commitment from gatekeepers to the application of the merit principle without gender bias (bar associations, presidents or nominating commissions etc.), women will increase their numbers in the sector.¹³⁷ In Nigeria, the appointment of Chief Justice Mukhtar Mohammed may reflect the government's commitment to have women occupy at least 30 per cent of public office positions in Nigeria, even though no constitutional or other legislative instrument requires that outcome.¹³⁸ This suggests that appointment bodies or individual leaders have an important role to support gender equality and transformative change in the sector, so long as such bodies follow through with their commitments.¹³⁹ The existence of pressure groups and a government commitment to regularly monitor gatekeepers to stick to their targets is obviously very important in this context. Interestingly, a trigger for leadership in this area may be the activities of neighboring countries. For instance, one study of female chief justices in Africa finds a correlation between a woman's promotion to the top of the judiciary in a neighboring or peer countries and the decision by gatekeepers to appoint a woman to the highest court, suggesting a "snowball effect" may exist.¹⁴⁰

4.2

Transparent and fair selection, nomination and promotion processes

Establishing transparent rules for the recruitment of judges is critical in addressing the tendency for appointment and promotion in the judiciary to be a “boys’ club”. As noted above, the “career judgeship” model of civil law countries is considered more transparent and rational than in common law societies, and therefore may favor the promotion of women judges within the judiciary. Nonetheless, a study on the rise of female leaders in the judiciary in Africa, considering both common law, civil law, and mixed law countries suggests that this difference is not so fundamental. It is argued that a more

powerful factor is whether the country splits the legal profession, such as United Kingdom, and distinguishes between lawyers licensed to appear in court (barristers) and those that primarily work in house (solicitors). In split systems, men are more likely to be advocates and appear in court than women, which in turn impacts the size of the pool of women qualified to move into the judiciary.¹⁴²

An important component in making selection processes fair is to advertise and circulate widely openings within the judiciary. But in addition to this, beginning from an early point in their careers, those overseeing the selection process itself should be trained to detect their own implicit biases and understand diversity and multiculturalism. Empirically tested bias reduction training courses beginning in law school and continuing throughout a legal career is key to ensuring consideration of egalitarian factors in any selection process.¹⁴³

4.3

Individual commitment and drive

Studies reflecting on women’s entry to and rise in the justice sector highlight that even in the absence of a favorable institutional environment for gender parity, a number of remarkable women have broken social and institutional barriers to enter and advance in the profession. This is no small feat and requires individual commitment and drive. In particular, accessing high judicial institutions requires “women [to] exert agency by taking strategic, creative and intuitive action to generate individual opportunity as well as to enable dynamic entry to gendered institutional environments that have been, as a practical matter, closed to the female sex since their inception”.¹⁴⁴



Image: ©International Criminal Court

A study examining the profiles of African women judges on two courts – the ICC and the African Court on Human and Peoples’ Rights– concludes that several patterns can be observed from such women. First, they have worked their way to the top – from both their countries of origins and within international courts. Second, these women also have had trailblazing records, in the sense that they are often the “first” to assume particular roles. They are endowed with leadership skills and, third, have been particularly active in children’s and women’s rights.¹⁴⁵ The latter is supported by a review of the resumes of women judges in the European Court of Human Rights which shows that an academic or otherwise active interest in feminist movements and issues continues to be a common feature of the profiles of women candidates.¹⁴⁶

The importance of determination and drive for a judge to advance in the profession is highlighted by Justice Sanji Monageng of the ICC:

“*One thing I have learned is that women should have a goal and be focused on something and work towards it...I am a self-made judge... don’t sit back and wait for things to happen; you have to empower yourself and make yourself available for promotion. Women should learn to do what men do. When you feel ready, go to the Chief Justice and tell him you are ready to be promoted. If you see a vacancy, for example, on the ICC, go for it...write good judgments that cannot be overturned on appeal and this makes you a strong candidate.*¹⁴⁷

The lesson is therefore that women judges must learn from the experiences of their senior colleagues and make an individual commitment to climb the judicial ladder.¹⁴⁸ Ironically, as society progresses, and as more women enter the profession without acute experiences of direct discrimination,

their drive to break through barriers may be less pronounced. The expectation among young women that the system is gender-neutral, and that determined individual commitment is not needed, may undermine their drive/motivation to achieve and the impression that a lack of progress is due to individual deficiencies (insufficient merit) rather than indirect discrimination.

4.4

Effective and broad-based political mobilization

It is widely acknowledged that collective action is one of the main drivers of change in terms of women’s economic empowerment.¹⁴⁹ Studies of women’s political participation highlight that effective and broad-based political mobilization of women hinges on a combination of three main factors. First, women succeeded in building broad coalitions and networks, and forging links with other political and rights-based actors. Second, they established close links with ordinary women and familiarized themselves with their concerns. Third, the women’s movement showed great flexibility and agility in responding to changing circumstances and opportunities.

The relationship between the women’s movement and women’s representation in the justice sector is understudied. Nonetheless, there is some anecdotal evidence that countries with higher levels of women judges is an indication of the strength and visibility of women in national law associations, and their lobbying efforts often prove pivotal in encouraging governments to appoint women to judicial posts. Some research

documents how feminists worked to secure the appointment of women judges immediately after suffrage in the United States and continued to put pressure on various administrations over the next 50 years, until more women were appointed.¹⁵⁰ At least in the United States, the feminists campaigning for women’s appointment separated themselves from those seeking to increase women’s numbers in legislative and executive positions, suggesting that this aspect tends to be advocated by a distinct group of activists.¹⁵¹ One argument for this may be that those supporting a diverse judiciary also tend to prefer a rule-based system based on judicial independence and merit selection, which creates a conundrum for advocacy campaigns.¹⁵² Others suggest that partnering with women’s organizations is a vital strategy for women to increase their numbers in the sector.¹⁵³

In addition, the broader political context is also important, both in supporting the mobilization of a broad coalition and opening the space for the acceptability of women playing a judicial role. For instance, research in Africa found an association with the conclusion of a civil war and the rise of women to the highest judicial positions.¹⁵⁴ In three countries, Burundi, Rwanda and Sierra Leone, women rose to the highest positions near or after the end of war, following which women mounted intense campaigns for peace and participated in the peace process. While the end of a conflict is not a necessary condition for the participation of women in the justice sector, it does point to firstly, the changing social norms that arise in wartime and thereafter, and the influence these may have on the acceptability of women participating in the sector, and the work and labor opportunities that arise for women during wartime when the workforce is depleted of able-bodied men.¹⁵⁵ The end of war also facilitates the cohesion of the women’s movement, which otherwise may remain flat or even decline.

4.5

Favorable legal, social and political environment

There are no widely known quantitative or qualitative empirical studies on the political, social and legal conditions that have supported women's entry and advancement into the justice sector. From the data available, some preliminary observations can be drawn. In countries where there are minimal legal, social and security restrictions on women's economic independence, women's participation in the justice sector tends to be higher. As with women's participation in the economy in general, it is unclear whether the provision of childcare facilities in court faculties support women's retention in the sector and professional advancement. Some argue that longer contracts with sufficient remuneration, combined with the measures to support the evolution of social norms to support the participation of fathers in child-rearing may be a more long-term and popular solution to the work-life balance faced by judges who are also mothers.¹⁵⁶

Broader state commitment to open the labor market to women, to support broader gender equality in public life and to reform discriminatory laws has also been correlated with women's advancement in the sector. In Tunisia, for example, where women now make up half the body of magistrates and lawyers, legal and policy measures targeting the schooling, education and entry of women into the labor market, as well as radio and television campaigns to support family planning and the emancipation of women and girls, are credited with facilitating their entry into the profession.¹⁵⁷



Image: ©IDLO

4.6

Mentoring and influencing aspirations

There are some indications that the presence of women mentors on the bench has a positive effect in inspiring other female students to follow in their footsteps and in supporting women to overcome their self-limitations. Several of the judges interviewed for a study undertaken in Ghana on gender and judging highlighted the impact of women's mentorship on the aspirations of law students: "I joined

the bench because of Justice Sawyer-Williams who gave a talk and the confidence she portrayed made me have personal ambition to become a judge based on her as a role model."¹⁵⁸ In response to being asked why more women are joining the bench, most respondents noted that the appointment of the current Chief Justice, the first female Chief Justice in Ghana, encouraged other women to pursue a judicial role. Similarly, IDLO research reinforces these findings, with many female law students in Afghanistan indicating that they were encouraged by positive reporting on women's contribution to a righteous society, gender-fair decisions and equal access to justice by the media, through judicial activities.¹⁵⁹

This indicates that career guidance and later mentoring programs to influence women's aspirations, beginning from secondary school, are key to ensuring women endeavor to undertake a legal career. Mentoring is also key among women judges who are appointed. In a study of women judges in Pakistan, the majority of judges expressed a desire to have more opportunities to communicate with peers and consult with seniors at different stages of their career. The author of the three-year study noted that in courts where senior women judges have been given an advisory role, junior women judges felt more comfortable with their first appointment, suggesting that in contexts of gender segregation, a support system for women judges aids their retention.¹⁶⁰

4.7

Training and education opportunities

In contexts where women's entry into the judicial profession is relatively recent, a number of studies indicate that strong induction and legal education that equips new officers with the skills to respond to the specific demands of their professional environment are useful. In a study in Pakistan, for instance, a recurring theme is that the beginning phase is one of the most fragile periods for women judges and where retention issues are most pronounced.¹⁶¹ Most

women highlighted that judicial training should focus more on problem-solving situations and on typical situations of judicial proceedings. This would ensure they are not "setup to fail", especially in contexts where gender segregation norms mean that they cannot reach out to predominately male judges for support. Offering training and mentoring opportunities is also key to women's professional advancement within the sector.¹⁶²



Image: ©IDLO

4.8

Conclusion

Women's entry into the legal profession and judiciaries will not happen in a vacuum. The successful pathways of the women discussed above can be ascribed to various phenomenon. They can be linked to the favorable institutional design, norms, cultures and practices that support the achievement of a gender balance within institutions.¹⁶³ Equally, women's agency is critical – all of these women had a determination to

succeed and advance in the profession. Further, the scholarship suggests that external social developments can also play an important role, including the social and political openings for increased women's participation that arise at the end of a conflict or in times of other major social change.

The above data also shows that there has been little rigorous scholarship in this area, and that more attention needs to be paid to the ascent of women across judiciaries, both numerically and into leadership positions, rather than simply on the obstacles they face. Further research should focus on comparative examination of the state of the selection process and the roles of

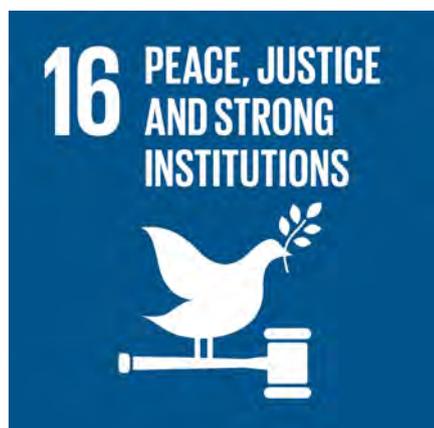
different actors, as well as a closer examination of differences in access to legal education and postgraduate legal opportunities. It should also consider cultural attitudes to female leaders and pre-colonial antecedents to help explain the rise of women to leadership positions in the judiciary,¹⁶⁴ as well as the overall entry of women into the legal sector. Moreover, while existing research is largely focused on the African continent, additional studies analyzing other contexts and geographical areas would be beneficial to a more comprehensive mapping and understanding of relevant issues around women justice professionals.

PART 5

POLICY RECOMMENDATIONS



POLICY RECOMMENDATIONS



W*omen Delivering Justice* identifies that women's professional participation in the justice sector is a legally and morally binding obligation on States. The inclusion of women in the justice sector is necessary and has led to important contributions. Nonetheless, advocates should not just focus on improving numbers without being attuned to blockages that exist for women's retention, promotion and advancement in the sector. There is evidence, albeit mostly anecdotal, that the pathways or the "pipeline" for judicial promotion is not gender-neutral. This is why it is so important to collect and publish data at regular intervals, to compare trends over time at the national, regional and international levels, rather than just presenting raw number or sex-disaggregated totals. This will allow for a better understanding of where the sector is going and what measures will bring forth the changes desired.

It is also important to underline the key point that improving the numbers of women in the justice sector should not be a "battle of the sexes" and efforts should not focus on women's narrow symbolic representation at the expense

of quality justice. Gender parity measures should not alienate male judges who are gender-sensitive and who are key allies in supporting the development of feminist jurisprudence. Further, efforts to improve women's representation should not turn into political point scoring or be used to disguise undemocratic practices. Gender justice is best achieved when both women and men understand and respond appropriately to the experiences of women plaintiffs and victims in the courtroom.

At the same time, it is well recognized that a critical mass of women on the bench can support attitudinal change in society regarding the role of women in decision-making and positions of authority. This means that numbers do matter but increasing the raw numbers of women should not be the sole objective of policymakers and rule of law practitioners, particularly those interested in women's access to justice.

The policy recommendations that arise from this review of contributions, barriers and pathways are multiple. Rather than relisting what has emerged from the studies on challenges and facilitation, many of which may be context-specific, the five recommendations below are considered priority measures that should be taken at the macro level in all countries, to help facilitate change.

1. Develop an international data methodology to measure women's participation in the justice sector, relying on SDG Indicator 16.7.1 to improve the quality and comparability of the existing data. Although many states collect data on women's participation in the justice sector, using it to draw conclusions as to the state of women's participation is confounded by a number of factors.

First, most national data is not publicly available, nor is it regularly monitored and kept up to date. Second, it is not always disaggregated by court type or level. Third, very few states keep data on retention rates in the profession, and where they do, this is not disaggregated by sex. Fourth, states often tend to publicize data only on the highest courts, likely since the composition of these courts attracts more public attention. The absence of publicly available and consistently monitored national data is problematic because it has the potential to disguise the problem of gaps and forestall the possibility of interest groups using such data to push for a more diversified and representative judiciary. A global platform to collect and analyze data is key to making meaningful and targeted progress in this area.

2. Harness political will to support a favorable legal and social context for gender equality in the justice sector, including by reforming discriminatory laws that limit women's economic independence. Equality of participation in the justice sector hinges on political leadership and initiative to create an enabling framework for women to enter and thrive in the sector. This begins with creating conditions for girls as well as boys to leave poverty, to receive an education, to take up opportunities and later, to participate in the economy. States should not only fulfill their obligation to address discriminatory employment laws, but also take measures to address gender stereotypes that undermine women's equal participation, including through media campaigns and establishing targets to support women's representation in decision-making roles.

3. Support women's law networks at the national, regional and international level to ensure women have a network of supporters and mentors as well as access to equal education opportunities. Developing and supporting women's law networks are key to ensuring that women are able to share these experiences and discuss together solutions to the challenges they face. Networks are also an important opportunity for younger women to meet mentors, and to access promotional and scholarship opportunities, and overall for women to collectively push for reform of discriminatory laws, improved visibility of women in the sector, and the appointment of women judges to international or regional courts and tribunals.

4. Reform legal admission and appointment procedures to ensure that they are transparent, fair and based on merit, and ensure

promotional procedures take account of the historical discrimination against women that may prevent them accumulating the same professional background as their male counterparts. Women are entering the legal profession at record speed. Yet the historical exclusion of women from the profession, the propensity for "in-group" bias by male gatekeepers, and the male-centered definition of what constitutes relevant "legal expertise" for promotion can mean that women may be unconsciously or consciously bypassed for promotion or assumption to positions of power within the judiciary. To redress this, states should institute measures to ensure recruitment and promotion processes are gender-responsive – including by instituting written tests, crediting diverse types of professional backgrounds, adopting measures to support the institution of temporary special measures to

ensure women have representation in equal numbers, and training not only judges but also lawyers and law students on how to recognize implicit bias.

5. Strengthen gender expertise in the judiciary and provide support for feminist judges. Women judges are not a proxy for feminist judges, although it has often been women spearheading jurisprudence that supports women's rights. For a more gender-sensitive justice system, however, efforts need to target both women and men judges. Supporters of women's rights should not only focus on creating a critical mass of women, but also on creating a mass of critical actors – lawyers, prosecutors and judges – who are gender-sensitive and who have the knowledge and skills to address gender-based violence and other forms of crimes that directly affect women.



Image: ©IDLO

ANNEX A
REGIONAL AND NATIONAL DATA



REGIONAL AND NATIONAL DATA

Global trends

Globally, women accounted for 27 per cent of all judges in 2011.¹⁶⁵ At the higher level, a recent study conducted by the World Bank finds that in the 153 economies where there are constitutional courts, 122 have at least one female justice, and women are chief justices in 26 economies.¹⁶⁶

In recent decades, the number of women in the judiciary has significantly increased worldwide. In many countries, around half of law students are women, and 2014 data shows that women in OECD countries make up more than 54 per cent of professional judges. But women are still vastly underrepresented in top-ranking judicial positions including on high court benches and other senior roles in the legal profession.

The OECD has recorded that women only hold 33.6 per cent of judgeships in supreme courts. This trend is mirrored in the proportion of presidential positions women occupy. On average, women hold 45.9 per cent of presidencies in lower courts, 28 per cent in courts of appeal, and 18.6 per cent in high courts.¹⁶⁷

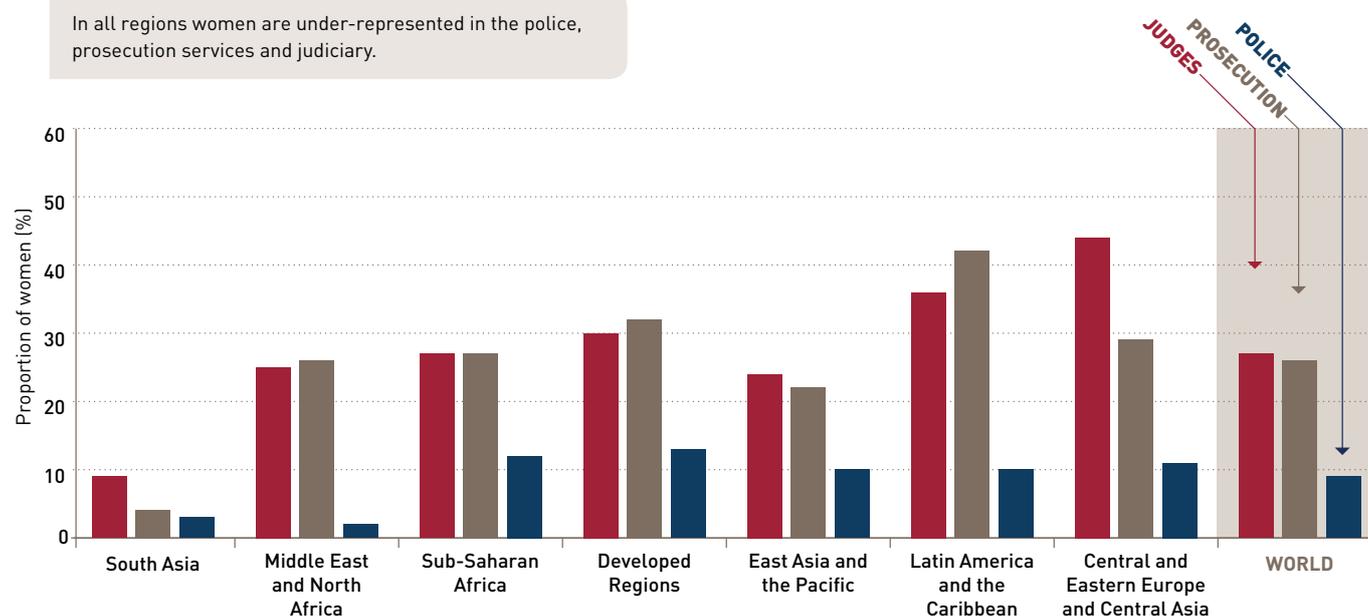
Nonetheless, there is significant variation across countries. As of April 2015, among the 76 countries with available data, the share of women among judges and magistrates varied from less than a quarter in Armenia, Azerbaijan, Japan, Nigeria, the Russian Federation, Tajikistan, Togo and the United Kingdom to more than three quarters in Jamaica, Latvia, Saint Kitts and Nevis and Slovenia.¹⁶⁸ Overall, women are outnumbered by men in about half of countries surveyed.¹⁶⁹

And by combining available data sources, it can be ascertained that women account for just 25 per cent of all prosecutors.¹⁷⁰ Globally, women in other justice sector institutions are difficult to identify.

Regional trends

As with global data, gathering regional data is problematic because country and regional statistics come from diverse sources and often use different methodologies which makes comparison challenging. Some trends still can be discerned but should not be considered definitive indications of the status of progress. Existing data at the regional and national levels is highlighted below.

In all regions women are under-represented in the police, prosecution services and judiciary.



Europe and North America

In Europe, the Gender Statistics Database of the European Institute for Gender Equality contains data on the numbers of women and men judges and presidents of highest national and European courts.¹⁷¹ In 2017, women accounted for 42.2 per cent of members of supreme courts in European Union countries, up from 18.9 per cent in 2003. They were just 21.4 per cent of the presidents of the highest courts, up from none in 2003. Women were presidents of four constitutional courts in Europe in 2017, up from 1 in 2003. According to the 2011–2012 UN Women report, *Progress of the World's Women*, Central and Eastern Europe and Central Asian countries have the most women judges in the world – over 40 per cent.¹⁷²

More specifically in Latvia and Slovenia, in 2014, 50 per cent of the justices on the constitutional courts were women. By contrast, the United Kingdom has extremely low rates of women justices, with women making up only 11 per cent of the bench of the highest court, and in Hungary just 7 per cent.¹⁷³ Overall in the United Kingdom, women constituted just 30 per cent of judges in a study conducted in 2016.¹⁷⁴

According to data from all 28 European Union countries, women constituted 17.9 per cent of public prosecutors in 2017, only a slight increase from 16 per cent in 2003.¹⁷⁵

In North America, the number of federally appointed judges in Canada shows that female judges in 2018 are represented at: 44 per cent in the supreme court; 40 per cent in the federal court of appeal; 25 per cent in federal court; and 23 per cent in federal tax court.¹⁷⁶

According to a 2009 report by the United States National Association of Women Lawyers, women are grossly underrepresented in leadership roles in the legal profession. The report, which tracked the progress of women in the nation's largest 200 firms, found that only 6 per cent of firms have women managing partners, 15 per cent of firms

have at least one woman on their management committee, and fewer than 16 per cent of equity partners are women. Furthermore, males comprise the highest paid partners at 99 per cent of the nation's top firms. This underrepresentation is particularly startling considering that law schools have been graduating equal numbers of women and men over the past two decades.¹⁷⁷

The number of women in leadership roles in the nation's courts and law schools is only slightly better than in the private sector. Statistics show that fewer than 30 per cent of judges in federal and state courts are women, including federal district court judges (25 per cent), federal appeals court judges (29 per cent), and state court judges (26 per cent). In the United States, approximately 33 per cent of state and federal court judges were women as of 2012.¹⁷⁸

Middle East and North Africa

In the Middle East and North Africa region, there is significant variation on women's participation in the justice sector. In terms of numbers, the latest available comparative data from 2010 – shows that although at the supreme court level there has been progress over time in Tunisia, Morocco and Lebanon, where women's participation sits at 44 per cent, 26 per cent and 20 per cent respectively, other countries are lagging behind, with Palestine, Yemen and Bahrain at 4 per cent, 2 per cent and 0 per cent respectively.¹⁷⁹ In addition to these figures, updated statistics are emerging – for instance, Lebanon has increased from 30 per cent women judges in 2005 to 42 per cent women judges.¹⁸⁰ In Jordan, in 2014 women were 18 per cent of the judicial corps (176 out of 973 judges) compared to 15 per cent in 2013 – a number steadily increasing since 1996 when the first female judge was appointed.¹⁸¹ Judge Ihsan Zuhdi Barakat was recently appointed as the Kingdom's first female supreme court judge, and women remained at 18 per cent of the judiciary in 2016.¹⁸² In Saudi Arabia, women are prohibited from

becoming judges and there are no women in the Saudi Arabian judiciary.¹⁸³ Figures from other countries in the region are not available.

Sub-Saharan Africa

No regional data on women in the justice sector in sub-Saharan Africa is discernible, with the exception of one study highlighting the rise of female leaders in the judiciary in Africa between 1990 and 2014 with the following specific findings:¹⁸⁴

- *Of the 21 civil law countries with a constitutional court, five had one or more women preside over the court: Benin, Burundi, Gabon, Niger and Senegal;*
- *In 6 of the 12 common law countries, women were selected as chief justice during the study period; and*
- *In one of the nine mixed systems (civil-common law), a woman was chief justice (Lesotho).*

The study notes the pattern of an increasing number of women occupying the highest position in the judiciary over time in sub-Saharan Africa, observing in particular a slow increase in the number of chief justices in common law countries.¹⁸⁵ Overall, "the empirical record has demonstrated that women in judiciaries across Africa are making incremental headway in achieving gender parity".¹⁸⁶

At the national level in sub-Saharan Africa, representation has clearly increased, particularly in the judiciary. For instance, in Tanzania, women as of 2013 comprised more than half of all magistrates and 56 per cent of court of appeal and high court judges.¹⁸⁷ In Kenya, where women are said to have the highest numbers in sub-Saharan Africa, in 2012, 40 out of 104 judges and 187 out of 424 magistrates were women. Women were also represented in the Judicial Service Commission, the Supreme Court, the Court of Appeal and the High Court. In 2011 for the first time, Kenya began to appoint women as

judges in the Muslim Khadi Courts.¹⁸⁸ In Uganda, in 2012, women comprised 39 per cent of all judges and 33 per cent of all supreme court and high court judges. In 2013, 12 out of 28 nominations to the Supreme Court, Court of Appeal and High Court were women, while a practice has developed that, when the Chief Justice is a man, the Deputy Chief justice is a woman, with the same applying to the Principal Judge and Chief Registrar.¹⁸⁹

In Ghana, in 2009, five out of 14 justices on the Supreme Court are women. Women occupy four out of the 22 judgeships on the courts of appeal, 14 out of 95 on the High Court and 14 out of 57 on the Circuit Court.¹⁹⁰

Latin America and the Caribbean

The latest data from this region comes from 2013, at which point women's participation in the highest courts of law had doubled since 2001. Between 2001 and 2011 it is reported that the average number of female judges went from 10 per cent to 22.6 per cent, according to data in the latest report from the Gender Equality Observatory of Latin America and the Caribbean.¹⁹¹ The data from 2010 shows that in half of Latin American countries, the presence of women in the highest court of law is above the regional average of 22.6 per cent. This applies to the Bolivarian Republic of Venezuela (44 per cent), Puerto Rico (43 per cent), Costa Rica (35 per cent), El Salvador (33 per cent), Colombia (30 per cent), Nicaragua (29 per cent), Dominican Republic (27 per cent), Cuba (27 per cent) and Chile (25 per cent).

In Caribbean countries, parity has often been achieved and then exceeded, with percentages ranging from 30 to 60 per cent of women in the highest courts of law.¹⁹² In 2010, 18 per cent of judges in Brazil's highest courts were women, compared to 0 per cent in 1998.¹⁹³ In Peru, the figure was 23 per cent in 2010 versus 6 per cent in 1998.¹⁹⁴ Finally, in Argentina, statistics indicate 29 per cent on the National Supreme Court, 22 per cent on federal courts of appeal, 36 per cent on federal trial courts, 20 per cent on provincial supreme courts, 27 per cent on courts of appeal, and 41 per cent on provincial trial courts.¹⁹⁵

Asia and the Pacific

According to UN Women data, South Asia is behind the Middle East and North Africa region in terms of women's representation in the judiciary.¹⁹⁶ In India, women's participation has increased from 5.4 per cent in 1985 to 7.65 per cent in 2005. Out of 29 supreme court justices, only one is a woman, indicating 3.44 per cent female participation on that court. Out of 514 high court judges, 25 are women. The highest number of women on any high court bench is four.¹⁹⁷ In Pakistan, there has been an increase in appointments of female judges in the past decade, causing representation in the judiciary to increase to more than one third in family courts.¹⁹⁸ In 2016, 5 per cent of Pakistan's high court judges were women and there have also been recent female firsts,¹⁹⁹ with the appointment of several female judges to positions not previously held by women.

NOTES

EXECUTIVE SUMMARY

¹ Hereinafter referred to as: Women Delivering Justice.

PART 1 INTRODUCTION

- ² For example, see IDLO, “Women’s Professional Participation in Afghanistan’s Justice Sector: Challenges and Opportunities” (2014), available at: <https://www.idlo.int/publications/womens-professional-participation-afghanistans-justice-sector-challenges-and>; IDLO-CAWTAR, “Study on the Professional Participation of Women in the Justice Sector in Tunisia” (unpublished); IDLO, “Strengthening Women Judges in the Southern and Eastern Mediterranean Region” (2017), available at: <https://www.idlo.int/strengthening-women-judges-southern-and-eastern-mediterranean-region>; IDLO, “Women Judges on Justice for Women” (2017), available at: <https://www.idlo.int/news/highlights/women-judges-justice-women>; and IDLO, “Advancing the Role of Women in the Kyrgyz Judiciary” (2016), available at: <https://www.idlo.int/news/highlights/advancing-role-women-kyrgyz-judiciary>.
- ³ ICJ, “Women and the Judiciary”, Geneva Forum Series No. 1 (Geneva, International Commission of Jurists, 2013), p. 18.
- ⁴ CEDAW General Recommendation 23, paras. 5, 15 and 46(b).
- ⁵ CEDAW General Recommendation 23, para. 16.
- ⁶ CEDAW General Recommendation 25, para. 18.
- ⁷ See ICJ, “Women and the Judiciary”, p. 18.
- ⁸ The Beijing Declaration and Platform for Action, adopted in 1995 at the Fourth World Conference on Women, also includes a specific statement that States must “ensure that women have the same right as men to be judges, advocates or other officers of the court” and “commit themselves to establishing the goal of gender balance...in the judiciary, including, inter alia, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of men and women, if necessary, through positive action”. Beijing Declaration and Platform for Action, para. 232.
- ⁹ The United Nations (UN) Statistical Division reports that data collection will begin in January 2019. See “Goal 16” (2018), available at: <https://unstats.un.org/sdgs/tierIII-indicators/files/Tier3-16-07-01.pdf>.
- ¹⁰ Josephine Dawuni and Alice Kang, “Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa”, *Africa Today*, vol. 62, issue 2 (2015), p. 45.

PART 2 CONTRIBUTIONS OF WOMEN JUSTICE PROFESSIONALS

- ¹¹ Josephine Dawuni, “African Women Judges on International Courts: Symbolic or Substantive Gains?”, *University of Baltimore Law Review*, vol. 18, No. 5 (2018), p. 235.
- ¹² The CEDAW Committee has noted “societies in which women are excluded from public life and decision-making cannot be described as democratic”. CEDAW General Recommendation 23, para. 17.
- ¹³ Nienke Grossman, “Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts”, *Chicago Journal of International Law*, vol. 12, No. 2 (2012), p. 665.
- ¹⁴ Joshua Doherty, “Women’s Representation in Judiciaries Worldwide: Arguments in Favor of Increasing the Gender Diversity on the Bench” (Institute for Global and International Studies, George Washington University, 2012).
- ¹⁵ The ICJ report on women in the judiciary echoes this sentiment, and links democratic legitimacy to the notion of equal justice: “for equal justice to be delivered, those administering justice should reflect and embody the diversity of the society they are presiding over”. ICJ, “Women and the Judiciary”, p. 20. As observed by O’Connor and Azzarelli, “people are more likely to put their trust and confidence in courts that represent all individuals that constitute a society”. Sandra Day O’Connor and Kim K. Azzarelli, “Sustainable Development, Rule of Law, and the Impact of Women Judges”, *Cornell Journal of International Law*, vol. 44, No. 3 (2011), p. 2.
- ¹⁶ Rosemary Hunter, “More Than Just a Different Face? Judicial Diversity and Decision-making”, *Current Legal Problems*, vol.68 (2015), p. 123. In the words of Baroness Hale: “All properly qualified and suitable candidates should have a fair crack of the whip and an equal chance of appointment, being considered impartially and solely on their merits and not in some other way or for some other reason.” Cited in Sital Kalantry, “Women in Robes”, *Americas Quarterly* (Summer 2012), p. 87.
- ¹⁷ Josephine J. Dawuni, “To ‘Mother’ or not to ‘Mother’: The Representative Roles of Women Judges in Ghana”, *Journal of African Law*, vol. 60, No. 3 (2016), p. 426.
- ¹⁸ Dawuni, “African Women Judges on International Courts”, p. 235.

- ¹⁹ Eliane B. Junqueira, "Women in the Judiciary: A Perspective from Brazil", in Ulrike Schultz and Gisela Shaw, eds, *Women in the World's Legal Professions* (Hart Publishing, 2003), p. 445.
- ²⁰ See IDLO-CAWTAR, "Study on the Professional Participation of Women in the Justice Sector in Tunisia and also Marlaine Cacouault-Bitaud, "Is the Feminization of a Profession a Sign of a Loss of Prestige?", *Travail, genre et sociétés*, vol. 5, No. 1 (2001), available at: https://www.cairn-int.info/article-E_TGS_005_0091--is-the-feminization-of-a-profession-a.html.
- ²¹ Kalantry, "Women in Robes", p. 88.
- ²² Marlaine Cacouault-Bitaud writes "An early distinction needs to be made as the term is used both in cases where the rate of female participation remains limited (even if an increase represents a significant change) and cases where it grows to the point where men become the minority." Cacouault-Bitaud, "Is the Feminization of a Profession a Sign of a Loss of Prestige?".
- ²³ Participants at the Virtue Foundation 2011 Conference on Women in the Judiciary noted that where the number of women in the judiciary increases, judicial salaries in some countries decreased. This was particularly the case in the United States and Canada. The report of the conference concludes: "Although the trend does not exhibit explicit discrimination towards women, it may indicate that the prestige of a field will be compromised as women enter it, undermining women's advancements by devaluing them." The Virtue Foundation, "Senior Roundtable on Women and the Judiciary" (United States Supreme Court, United States Department of State, Washington, DC, 21 March–1 April 2011), p. 30. See also Carlos Gomez-Bahillo, Carmen Elboj-Saso and Celia Marcen-Munio, "The Feminization of the Spanish Judiciary", *Convergencia*, No. 70 (April 2016). For a different perspective on feminization, discussing, inter alia, why the dominance of women in the judiciary in Russia has not led to a corresponding decrease in prestige, see Vadim Volkov and Aryna Dzmitryeva, "Recruitment Patterns, Gender, and Professional Subcultures of the Judiciary in Russia", *International Journal of the Legal Profession*, vol. 22, No. 2 (2015).
- ²⁴ Cacouault-Bitaud; and see also Madalena Duarte, Paula Fernando, Conceição Gomes and Ana Oliveira, "The Feminization of the Judiciary in Portugal: Dilemmas and Paradoxes", *Utrecht Law Review*, vol. 10, No. 1 (31 January 2014), pp. 29–43, available at: <https://ssrn.com/abstract=2395181>.
- ²⁵ See IDLO-CAWTAR, "Study on the Professional Participation of Women in the Justice Sector in Tunisia".
- ²⁶ It should be recalled that feminist judges operate under the same constraints as their male counterparts – for instance, in common law contexts they are bound by precedent. Hunter highlights that for some scholars these constraints operate to "disqualify feminist knowledge". She writes: "Mary Jane Mossman contends that the legal method— involving characterization of the issues, choice of precedent, and the canons of statutory interpretation – is a closed method of reasoning which enforces the status quo and does not allow for the introduction of feminist theory or concerns about gender justice. Thus, for instance, a family judge interviewed as part of the Australian Feminist Judgments Project regretted that she 'not infrequently' had to make decisions 'that I know are the right decision in terms of the legal framework in which I have to operate, but don't actually sit well within my feminist heart and soul.'" Hunter, "More Than Just a Different Face?", p. 131.
- ²⁷ As Sally Kenney notes "This tendency to construct men and women as two dichotomous, non-intersecting groups of adjudicators worsens rather than recedes over time. As new scholars take up questions of gender and judging, rather than build on their predecessors, many fall into the same predictable trap of essentialism [all men are x, all women are y]. Although post-modernism leads feminists to be sceptical of binaries such as male and female, not all attempts to use sex as a variable are misguided." Sally J. Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", *Michigan State Law Review*, vol. 2012, No. 5 (2014), p. 1524.
- ²⁸ Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1524.
- ²⁹ Lori Beaman, Esther Dulfo, Rohini Pande and Petia Topalova, "Women Politicians, Gender Bias, and Policy-Making in Rural India", Background Paper, in UNICEF, *The State of the World's Children* (2006), p. 1.
- ³⁰ In India, for example, Panchayati Raj Institutions were mandated as local self-governing bodies, with an amendment that required one third of the head of the village positions be reserved for women in every state. Research has shown that villages with a female *sarpanch* are more attuned and attentive to the needs of its female residents. Uttara Chaudhuri and Mitali Sud, "Women as Proxies in Politics: Decision Making and Service Delivery in Panchayati Raj" (The Hindu Centre for Politics and Public Policy, 2015).
- ³¹ Dhanmanjiri Sathe, Stephen Klasen, Jan Priebe and Mithila Biniwale, "Can the Female Sarpanch Deliver? Evidence from Maharashtra", *Economic and Political Weekly*, vol. 48, No. 11 (2013).
- ³² Kalantry, "Women in Robes", p. 124. See also ICJ, "Women and the Judiciary", p. 2, which notes that "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".
- ³³ ICJ, "Women and the Judiciary", p. 2.
- ³⁴ Dawuni, "African Women Judges on International Courts", p. 232.
- ³⁵ Dawuni, "African Women Judges on International Courts", p. 234. Indeed, some studies suggest that gender makes no difference once judicial political affiliation is controlled for. See, for example, Lord Bingham of Cornhill, "The Judges: Active or Passive?", *Proceedings of the British Academy*, vol. 139 (2007), p. 55; Nigel G. Fielding, "Judges and Their Work", *Social and Legal Studies*, vol. 20 (2011), p. 97; Harry Anison, "Interpreting the Politics of the Judiciary: The British Senior Judicial Tradition and the Pre-emptive Turn in Criminal Justice", *Journal of Law and Society*, vol. 41 (2014), p. 339, cited in Hunter, "More Than Just a Different Face?", p. 126. See also Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1525, noting that "we should not use women judges as a proxy for feminist judges".
- ³⁶ See Constance Backhouse, "The Chilly Climate for Women Judges: Reflections on the Backlash from the Ewanchuk Case", *Canadian Journal of Women & the Law*, vol. 15, No. 1 (2003), pp. 167–193. The article discusses the public attack on Canadian Supreme Court Judge L'Heureux-Dube and feminism following her separate concurring opinion in the Ewanchuk case. Her opinion, inter alia, criticized the trial judge for the adoption of sexist myths and stereotypes which portrayed women who said no to sexual advances as really saying "yes".

- ³⁷ Quote by Professor Renée Römkens, Director of ATRIA Institute of Gender Equality and Women's History and Professor of Gender-Based Violence at the University of Amsterdam. See IDLO, "Female Justice Professionals Champion Gender Equality", available at: <https://www.idlo.int/news/highlights/female-justice-professionals-champion-gender-equality>.
- ³⁸ For examples of how judicial stereotyping impacts caselaw, see Simone Cusack, "Eliminating Judicial Stereotyping: Equal Access to Justice for Women in Gender-based Violence Cases", UN OHCHR, 9 June 2014, available at: <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>.
- ³⁹ See, for example, Brenda Hale and Rosemary Hunter, "A Conversation with Baroness Hale", *Feminist Legal Studies*, vol. 16(2008), p. 237; Elaine Martin, "The Representative Role of Women Judges", *Judicature*, vol. 77 (1993), p. 166; Mary M. Schroeder, "Judging with a Difference", *Yale Journal of Law and Feminism*, vol. 14 (2002), p. 255, cited in Hunter, "More Than Just a Different Face?", p. 124.
- ⁴⁰ Overall, the results of the US studies are inconclusive except in a small category of cases. Examples of studies showing gender differences in judging are: Boyd, 2006 (female judges settle cases more than males); Brudney et al., 1999 (Republican females more likely to support unions than Republican males; but no difference between Democrats). Christina L. Boyd, "She'll Settle It?", *Journal of Law and Courts*, vol. 1, No. 2 (2013); James Brudney, Sara Schiavon and Deborah Merrit, "Judicial Hostility Toward Labor Unions? Applying the Social Background Model to a Celebrated Concern", *Ohio State Law Journal*, vol. 60, No. 5 (1999).
- ⁴¹ Jennifer L. Peresie, "Female Judges Matter: Gender and Collegial Decision-making in the Federal Appellate Courts", *The Yale Law Journal*, vol. 114, No. 7 (2005). The areas examined include abortion, ADA – disability, affirmative action, campaign finance, capital punishment, contract clause, EPA, federalism, piercing the corporate veil, Title VII sex discrimination, sex harassment, takings clause, and Title VII race.
- ⁴² Studies showing no difference are: e.g. Charles Cameron and Craig Cummings, "Diversity and Judicial Decision Making: Evidence from Affirmative Action Cases in the Federal Courts of Appeals, 1971–1999", paper presented at the Crafting and Operating Institutions conference, Yale University, 2003 (on affirmative action cases); Adam B. Cox and Thomas J. Miles, "Judging the Voting Rights Act", *Columbia Law Review*, vol. 108, No. 1 (2008) (on voting rights claims), available at: https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=8033&context=journal_articles.
- ⁴³ Studies from other countries on female judges are few, mostly from Europe, Israel, Canada and South Korea. Bogoch and Don-Yechiva found in a 1999 study that female judges in Israel tend to give lower jail sentences but not when they sit on panels with males. They did not find any sex-based difference on decisions to convict. Bryna Bogoch and Rachele Don-Yechiva, *Gender in Justice: Bias against Women in Israeli Court* (Jerusalem, Israel, Jerusalem Institute for Israel Research, 1999). Ostberg and Wetstein found that female justices are more supportive of equality claims, more supportive of economic underdogs, but found no sex-based difference for free speech cases in Canada. C. L. Ostberg and Matthew E. Wetstein, "In a Different Voice: Sex Difference in Economic Cases Decided by the Canadian Supreme Court", paper presented at the annual meeting of the Canadian Political Science Association, Saskatoon, Saskatchewan, 2007. In 2009, Kim found that increased female participation in the judiciary resulted in incorporation of traditional feminine qualities, such as empathy, nurture and accommodation of family responsibilities in judgment. Haesook Kim, "The Avalanche Perspective: Women Jurists in Korea 1952–2008", *Feminist Legal Studies*, vol. 17, No. 1 (2009).
- ⁴⁴ Cited in Dawuni, "African Women Judges on International Courts", p. 235.
- ⁴⁵ This supports Farhang and Wawro's finding that the judicial propensity towards "unanimity" in judgments, in which justices bargain and deliberate to reach consensus, offers important opportunities for judges with a feminist perspective to ensure that the judgment reflects to a minimum degree their feminist values. Sean Farhang and Gregory J. Wawro, "Indirect Influences of Gender on the U.S. Court of Appeals: Evidence from Sexual Harassment Law", University of California–Berkeley Working Paper (2010), p. 3, available at: <http://www.columbia.edu/~gfw10/FarhangWawroIndirectEffectsMay2010.pdf>.
- ⁴⁶ See Dawuni, "African Women Judges on International Courts", pp. 230, 239 and also Kimi Lynn King and Megan Greening, "Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia", *Social Science Quarterly*, vol. 88, No. 5 (2007). The authors find that gender is a "determinative factor" in sentencing decisions at the ICTY. They also assert that female judges have a "distinctive role" that changes depending on the gender of the victim in a particular case. Specifically, the article traces the history of rape and its use as a tool for male power, especially during war. It is noted that despite the widespread practice of rape by soldiers during World War II, no rape charges were brought in the Nuremberg or Tokyo tribunals. Now, due in large part to the work of the ICTY and the jurisprudence of women judges, rape has been established as a war crime.
- ⁴⁷ Dawuni, "African Women Judges on International Courts", pp. 230 and 239.
- ⁴⁸ Women's Empowerment Network, "It's a Current Issue: Human Rights Violations Against ex-Comfort Women", 8 August 2014, available at: <https://womennewsnetwork.net/2014/08/08/human-rights-violations-ex-comfort-women/>
- ⁴⁹ International Criminal Court, *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo*, CC-01/04-01/06, 14 March 2012.
- ⁵⁰ Elizabeth Odio Benito, Louise Chappell and Andrea Durbach, "Judge Odio Benito: A View of Gender Justice from the Bench", *International Feminist Journal of Politics*, vol. 16, No. 4 (2014), p. 649.
- ⁵¹ *Gonzalez, Monreal and Monarrez ("Cotton Field") v. Mexico* (2009), Inter-American Court of Human Rights (IACHR), para. 388, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf.
- ⁵² Roland Adjovi, "The Special Court for Sierra Leone's Appeals Judgement in the AFRC Case", *Hague Justice Journal*, vol. 3, No. 2 (2008), available at: [http://www.haguejusticeportal.net/Docs/HJJ-JJH/Vol_3\(2\)/Journal%20-%20Adjovi%20-%203.2%20-%20EN.pdf](http://www.haguejusticeportal.net/Docs/HJJ-JJH/Vol_3(2)/Journal%20-%20Adjovi%20-%203.2%20-%20EN.pdf).
- ⁵³ IDLO, "Advice from Justice Doherty to Women: 'Take Any Chance You Get'", 6 July 2018, available at: <https://www.idlo.int/news/highlights/advice-justice-doherty-women-take-any-chance>. See also Patricia M. Wald, "Women on International Courts: Some Lessons Learned", *International Criminal Law Review*, vol. 11 (2011), p. 403. Cited in Dawuni, "African Women Judges on International Courts", pp. 238–239.
- ⁵⁴ Kalantry, "Women in Robes", p. 88.
- ⁵⁵ Hunter, "More Than Just a Different Face?", p. 123.

- ⁵⁶ O'Connor and Azzarelli, "Sustainable Development, Rule of Law and the Impact of Women Judges", p. 7.
- ⁵⁷ One prominent theme that emerged from IDLO's study of more than 500 law students in Afghanistan is that women graduates were driven to learn more about women's rights, and to support women's rights in their profession. For example, several graduates in the discussions asserted "law means access to equal rights through justice", while others talked about gender roles more directly: "women have always been a low class of society and exposed to violence. I want to struggle against violence and injustice. In our community boys have supremacy over girls...I want to change this idea". IDLO, "Women's Professional Participation in Afghanistan's Justice Sector", p.13.
- ⁵⁸ O'Connor and Azzarelli, "Sustainable Development, Rule of Law and the Impact of Women Judges", p. 7.
- ⁵⁹ Dawuni, "To 'Mother' or Not to 'Mother'", p. 432.
- ⁶⁰ IDLO's research in Afghanistan also provides support for this position. Violations of women's rights take place against a backdrop of a serious shortage of legal professionals and judicial resources in Afghanistan. This low participation of women in the justice sector – 8.4 per cent of judges, 6 per cent of prosecutors, and 19.3 per cent of registered lawyers – has been identified as one of the factors preventing women from seeking redress. When a matter is sensitive, for instance in cases of sexual violence, the cultural and religious restraints, social norms and taboos, fear of social stigma, exclusion and, at times, even threat to life, make it difficult for women to come forward to seek redress. For example, the December 2012 UNAMA Report on the Implementation of the VAW Law underscores the value of increasing the participation of women professionals in the justice sector, observing that "the role of female police in addressing violence against women complainants cannot be overstated...where women prefer to talk to women on matters pertaining to their personal lives". Women justice professionals enable women to and seek justice, because "cultural norms mean that Afghan women find it difficult to speak with a non-relative male police officer, particular in relation to domestic violence or sexual assault". This instrumentalist rationale, in that the presence of women justice professionals helps to solve the problem of under-reporting of violence against women, can be equally applied to other aspects of the justice process, given that complainants will usually have to discuss details of their matter with prosecutors, defense lawyers and judges. IDLO, "Women's Professional Participation in Afghanistan's Justice Sector". The same logic has been applied to other countries. Judge Monageng, a member of the ICC and judge in Botswana, highlights in the Dawuni study that female victims of sexual violence feel more comfortable with a female judge. Dawuni, "African Women Judges on International Courts", p. 237.
- ⁶¹ See O'Connor and Azzarelli, "Sustainable Development, Rule of Law, and the Impact of Women Judges".
- ⁶² Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1525.

PART 3 BARRIERS FOR WOMEN JUSTICE PROFESSIONALS

- ⁶³ See, for instance, the ICJ 2014 Geneva Forum on Women and the Judiciary; the 2011 Virtue Foundation, "Senior Roundtable on Women and the Judiciary"; IDLO and GQUAL's event, "Achieving Gender Parity in International Representation", 60th Commission on Status of Women, New York, 17 March 2016; IDLO and IAWJ's event, "Women's Access to Justice: Lessons, Models and Emerging Issues", The Hague, 8 May 2017; GQUAL Conference, "Changing the Picture of International Justice", The Hague, 3 October 2017; IDLO and CAWTAR, "Regional Workshop on Women's Professional Participation in the Justice Sector: Reality and Perspectives, Sousse", 24–25 November 2017; IDLO and EBRD convened a forum – "Towards a Women Judges Platform in the Southern and Eastern Mediterranean Region", Rabat, 14–15 December 2017; IDLO and GQUAL's event, "Achieving Gender Parity in UN Human Rights Bodies", 62nd Commission on Status of Women, New York, 13 March 2018; IDLO and GQUAL's event, "Women Justice Professionals and Gender Equality", The Hague, 28 March 2018.
- ⁶⁴ In the United States, employment discrimination analysis uses two categories, disparate impact and disparate treatment. Using different standards for choosing men and women judges – what we call a double standard – constitutes disparate treatment discrimination, the most blatant form of discrimination other than excluding women from consideration altogether. "Disparate impact discrimination occurs when employers use a facially neutral requirement or condition – for example, that one must have had previous judicial experience – as a criterion. Employers can justify using such a criterion, once it is shown to have a disparate impact on women, if it is a business necessity for the job. The ABA, for example, rated women low for the failure to have worked for a large firm, an accomplishment nearly impossible for women to have met because large firms openly refused to hire women attorneys until recently." Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1504.
- ⁶⁵ OECD, *Women in Political Decision Making and Public Life in MENA countries* (2014), p. 144.
- ⁶⁶ Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 7.
- ⁶⁷ ICJ, "Women and the Judiciary", p. 5.
- ⁶⁸ In the Virtue Foundation meeting of women judges from various jurisdictions, 65 per cent said that perceptions of the judiciary as a male institution is a barrier to women's entry into the judiciary. See Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 15.
- ⁶⁹ For example, the Jordan participant concluded that discriminatory and restrictive social norms concerning the role of women in society are exemplified by ongoing reported resistance to the idea of women exercising judicial authority, and incidents of male refusal to have legal matters determined before female judicial officers. ICJ, "Women and the Judiciary", p. 38.
- ⁷⁰ ICJ, "Women and the Judiciary", p. 5.
- ⁷¹ Further, implicit gender biases were pervasive. The results showed that for both male and female participants, their implicit gender biases predicted some, but not all, of their decisions, the more strongly male participants associated judges with men in the Judge/Gender IAT, the more they preferred that appellate judges possess masculine (compared to feminine) characteristics. This result demonstrates that implicit gender biases can affect decision-making, and that implicit gender biases persist, even in the next generation of lawyers. Justin D. Levinson and Danielle Young, "Implicit Gender Bias in the Legal Profession: An Empirical Study", *Duke Journal of Gender Law and Policy*, vol. 18, issue 1 (2010), p. 11.

- ⁷² Chunyan Zheng, Jiahui Ai and Sida Liu, "The Elastic Ceiling: Gender and Professional Career in Chinese Courts", *Law & Society Review*, vol. 51, No. 1 (2017), pp. 178-179.
- ⁷³ Engy Abdelkader, "To Judge or Not to Judge: A Comparative Analysis of Islamic Jurisprudential Approaches to Female Judges in the Muslim World (Indonesia, Egypt, and Iran)", *Fordham International Law Journal*, vol. 37, No. 2 (2014), p. 355.
- ⁷⁴ Abdelkader, "To Judge or Not to Judge", p. 358.
- ⁷⁵ Abdelkader, "To Judge or Not to Judge", p. 355.
- ⁷⁶ OECD/CAWTAR, *Women in Public Life: Gender, Law and Policy in the Middle East and North Africa* (Paris, OECD Publishing, 2014), p. 141.
- ⁷⁷ ICJ, *Drivers of Change: Women Lawyers and Human Rights Defenders in Africa* (2016), p. 8, available at: <http://www.refworld.org/pdfid/57ee85344.pdf>
- ⁷⁸ Gabriella Knaul, "Interim Report of the Special Rapporteur on the independence of judges and lawyers", UN Doc.A/66/289, (10 August 2011), para. 83, available at: <http://undocs.org/A/66/289>. See also Gabriella Knaul, "Report of the Special Rapporteur on the independence of judges and lawyers", UN Doc. A/HRC/17/30 (29 April 2011), available at: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-30.pdf>.
- ⁷⁹ Samer Ghamroun, "Who is Afraid of a Female Majority in the Lebanese Judiciary?", Beirut, The Legal Agenda, 31 March 2015, available at: <http://legal-agenda.com/en/article.php?id=3070>
- ⁸⁰ ICJ, "Women and the Judiciary", p. 4.
- ⁸¹ Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 23.
- ⁸² OECD, *Women's Economic Empowerment in Selected MENA Countries: The Impact of Legal Frameworks in Algeria, Egypt, Jordan, Libya, Morocco, and Tunisia* (Paris, OECD Publishing, 2017), p. 3.
- ⁸³ ICJ, "Women and the Judiciary", p. 37.
- ⁸⁴ This has been highlighted by over 65 per cent of participants at the Virtue Foundation 2011 Senior Roundtable on Women and the Judiciary. Justice Koome from Kenya noted that girls in rural areas are expected to support their families and do chores at home and, with scarce money, boys may be prioritized for education. Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 14.
- ⁸⁵ Josephine Jarpa Dawuni and Akua Kuenyehia, *International Courts and the African Woman Judge: Unveiled Narratives* (New York, Routledge, 2018) p. 15.
- ⁸⁶ ICJ, "Women and the Judiciary", p. 13, p. 8.
- ⁸⁷ See policy recommendations in the IDLO study, "Women's Professional Participation in Afghanistan's Justice Sector".
- ⁸⁸ Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1508.
- ⁸⁹ Kenney "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1506.
- ⁹⁰ Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", pp. 1508-1509, citing Constance Baker Motley, "Reflections", *Columbia Law Review*, vol. 102, No. 6 (2002).
- ⁹¹ Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 15.
- ⁹² Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 17.
- ⁹³ Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 29.
- ⁹⁴ One woman participant in the ICJ study on women in the judiciary noted that after overturning an "acquittal" in a rape case she was labeled a "man hater" in the media and accused of bias. ICJ, "Women and the Judiciary", p. 6.
- ⁹⁵ In 2013, the Law Council of Australia conducted a National Attrition and Re-engagement study to obtain quantitative data and confirm trends in progression, attrition and re-engagement rates of female lawyers. The research also examined the qualitative reasons behind these trends. As noted in the report: "A very high level of discrimination and harassment at work was reported by both male and female practitioners. One in two women, and more than one in three men, have been bullied or intimidated in their current workplace. A significant proportion of respondents, both female and male, indicated they had experienced some form of discrimination, intimidation or harassment in their current workplace. Whilst this issue appears to have been encountered by a considerable proportion of the profession, irrespective of gender, women were significantly more likely than men to have experienced a range of types of discriminatory behavior. Half of all women report experiencing discrimination due to their gender, whilst one in four have experienced sexual harassment in their workplace. Close to one in two women have experienced discrimination due to their gender compared to just over one in ten men. Approximately one in four women have been discriminated against due to family or career responsibilities, and one in four women have experienced sexual harassment at work." See "National Attrition and Re-Engagement Study (NARS) Report" (2013), p. 76.
- ⁹⁶ Using a dataset of women's representation in the highest courts in 50 democracies, an examination was undertaken of the impact of the court's power, the selection process, the culture of the state, and the supply of qualified women for women's participation in the court. Melody Ellis Valdini and Christopher Shortell, "Women's Representation in the Highest Court: A Comparative Analysis of the Appointment of Female Justices" (Political Sciences Faculty Publications and Presentations, 2014), p.57.
- ⁹⁷ Valdini and Shortell, "Women's Representation in the Highest Court", p. 6.
- ⁹⁸ Valdini and Shortell, "Women's Representation in the Highest Court", p. 14.
- ⁹⁹ This is different to quotas in political parties for women, whereby voluntary gender quotas are as contagious – as soon as one party adopts them, others will as well so as not to be seen by voters as actively prejudiced against women – the electoral competition creates an incentive for diversity, in a very public way. Valdini and Shortell, "Women's Representation in the Highest Court", p. 10.

- ¹⁰⁰ Valdini and Shortell, "Women's Representation in the Highest Court", p. 869.
- ¹⁰¹ Virtue Foundation, "Senior Roundtable on Women and the Judiciary", pp. 17–18.
- ¹⁰² Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 29.
- ¹⁰³ Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 9.
- ¹⁰⁴ Joan C. Williams, "The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the 'Cluelessness' Defense", *Employment Rights and Employment Policy Journal*, vol. 7 (2003), p. 406, cited in Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 10.
- ¹⁰⁵ Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 11.
- ¹⁰⁶ "Because males have traditionally dominated certain positions, potential employers' choices will be affected by gender stereotypes about the ideal candidate for those positions." Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 12.
- ¹⁰⁷ Ulrike Schultz and Gisela Shaw, "Introduction: Gender and Judging: Overview and Synthesis", *Gender and Judging*, 2013, vol. 3. pp. 24–36, cited in Dawuni, "African Women Judges on International Courts", p. 209.
- ¹⁰⁸ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 60, citing Kenney who notes "the ABA, for example, rated women low for the failure to have worked for a large firm, an accomplishment nearly impossible for women to have met because large firms openly refused to hire women attorneys until recently. When Sandra Day O'Connor and Ruth Bader Ginsburg were recent law school graduates, law firms told them explicitly that they would not hire women. When President Reagan nominated Justice O'Connor, critics argued she was not qualified because she had not worked for a large firm." Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1504. She further observes that the Republican-controlled Senate disproportionately delayed President Clinton's women and minority men nominees to the federal bench. See Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1505.
- ¹⁰⁹ See Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1505.
- ¹¹⁰ Winifred Kamau, "Women Judges and Magistrates in Kenya: Challenges, Opportunities and Contributions", in Ulrike Schultz and Gisela Shaw, eds, *Gender and Judging* (Oxford, Hart Publishing, 2013), p. 167, cited in Dawuni, "African Women Judges on International Courts", p. 222.
- ¹¹¹ Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 34.
- ¹¹² Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 29.
- ¹¹³ See IDLO-CAWTAR, "Study on the Professional Participation of Women in the Justice Sector in Tunisia"; and IDLO, "Women's Professional Participation in Afghanistan's Justice Sector", p.44.
- ¹¹⁴ ICJ, "Women and the Judiciary", p. 17.
- ¹¹⁵ Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 25.
- ¹¹⁶ Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1504.
- ¹¹⁷ IDLO, "Women's Professional Participation in Afghanistan's Justice Sector"; and IDLO-CAWTAR, "Study on the Professional Participation of Women in the Justice Sector in Tunisia".
- ¹¹⁸ As noted by Kenney, data shows that the global growth of female lawyers has not correlated with an equally representative number of women lawyers on judicial bench: "If the process for choosing judges was fair and did not discriminate against women, we would expect the proportion of women judges to be close to the proportion of women lawyers with the required number of years of practice. When political scientist Beverly Blair Cook investigated, however, she found that between 1920 and 1970, states varied as to whether 1% or 5% of lawyers were women and 1% to 10% of trial court judges were women." Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p.1503.

PART 4 PATHWAYS FOR WOMEN JUSTICE PROFESSIONALS

- ¹¹⁹ Nienke Grossman, "Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts", p. 674.
- ¹²⁰ Rana Hussein, "Ratio of Female Judges Rose to 18% in 2014 – Report", *The Jordan Times*, 26 August 2015.
- ¹²¹ See Kalantry, "Women in Robes", pp. 83–85.
- ¹²² IDLO-CAWTAR, "Study on the Professional Participation of Women in the Justice Sector in Tunisia"; *The Guardian*, "UK Among the Worst in Europe in Employing Women Judges", 20 September 2012, available at: <https://www.theguardian.com/law/2012/sep/20/uk-female-judges-ratio-europe>.
- ¹²³ OECD, *Women, Government, and Policy Making in OECD Countries: Fostering Diversity for Inclusive Growth* (Paris, OECD, 2014), p. 62.
- ¹²⁴ Lori Beaman, Raghavendra Chattopadhyay, Esther Dulfo, Rohini Pande and Petia Topalova, "Powerful Women: Does Exposure Reduce Bias?", *Quarterly Journal of Economics*, vol. 124, No. 4 (2009).
- ¹²⁵ See the findings of Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa".
- ¹²⁶ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 60.
- ¹²⁷ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", pp. 60–62.

- ¹²⁸ Tiffany Barnes and Abby Cordova, "Making Space for Women: Explaining Citizen Support for Legislative Gender Quotas in Latin America", *The Journal of Politics*, vol. 78, No. 3 (2016).
- ¹²⁹ Notably, quotas and affirmative action to support women's professional participation in the justice sector, particularly in counter-stereotypical roles, also addresses, or at least reduces implicit biases. Levinson and Young have directly addressed this issue, observing: "Making such a policy choice for the purpose of implicit gender bias reduction can be supported by social science evidence. Studies have demonstrated that exposing students to female exemplars, including women judges and professors, actually does reduce implicit gender biases. In a leading study on implicit gender bias reduction, Nilanjana Dasgupta and Shaki Asgari tested whether exposing female college student participants to women in counter stereotypic roles would reduce implicit gender biases. The researchers tested their hypothesis by studying the effect of counter stereotypic exemplars on both short-term and long-term bias reduction. In the first study, they examined whether teaching female college students about female leaders would reduce their gender stereotypes of women as supporting figures (rather than leaders). To do this, the researchers had participants review photos and short biographies of counter stereotypic women, including Supreme Court Justice Ruth Bader Ginsburg. They then conducted a stereotype/gender IAT in which participants had to group together male and female names with attributes of leaders and supporters. They found that participants who had learned about the women leaders displayed less implicit gender bias than members of the control group; these participants more quickly grouped together women with leadership attributes on the IAT." Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 40.
- ¹³⁰ *The Arab Weekly*, "Moroccan women judges strive for equal rights", 25 September 2016, available at: <https://theArabweekly.com/moroccan-women-judges-strive-equal-rights>.
- ¹³¹ *The Arab Weekly*, "Moroccan women judges strive for equal rights".
- ¹³² Family Court Act 1964.
- ¹³³ See Livia Holden, "Women Judges and Women's Rights in Pakistan", *Onati International Institute for the Sociology of Law*, vol. 4, No.7 (2016), p. 761.
- ¹³⁴ See Holden, "Women Judges and Women's Rights in Pakistan", pp. 761–763.
- ¹³⁵ Stéphanie Hennette Vauchez, "More Women – But Which Women? The Rule and the Politics of Gender Balance at the European Court of Human Rights", *European Journal of International Law*, vol. 26, No. 1, p. 209.
- ¹³⁶ Vauchez, "More Women – But Which Women?", p. 221.
- ¹³⁷ Beverly B. Cook, "Will Women Judges Make a Difference in Women's Legal Rights?", in Margherita Rendel, ed., *Women, Power, and Political Systems* (London, Croom Helm, 1981).
- ¹³⁸ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 60.
- ¹³⁹ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 61.
- ¹⁴⁰ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", pp. 62–63, citing four pairs of neighboring or peer countries that have had two women at the top of their constitutional courts – Benin and Niger, and Burundi and Rwanda.
- ¹⁴¹ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 57. The authors observe that of the common law and mixed common law countries, only Mauritius, South Africa and Swaziland have a split legal profession and none of them has had a chief justice. By contrast, seven of the remaining common law and mixed common law countries that have a fused legal system have had a female chief justice.
- ¹⁴² Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 57.
- ¹⁴³ Levinson and Young, "Implicit Gender Bias in the Legal Profession", p. 38.
- ¹⁴⁴ Dawuni, "African Women Judges on International Courts", quoting Fiona Mackay et al., "Institutionalism Through a Gender Lens: Towards a Feminist Institutionalism?", *International Political Science Review*, vol. 31, No. 5 (2010), p. 209.
- ¹⁴⁵ Dawuni, "African Women Judges on International Courts", p. 219.
- ¹⁴⁶ Vauchez, "More Women – But Which Women?", p. 209.
- ¹⁴⁷ Interview with Justice Mmasenomoo Monageng, Judge, International Criminal Court in The Hague, Netherlands (9 December 2015) cited in Dawuni, "African Women Judges on International Courts", p. 224.
- ¹⁴⁸ Dawuni, "African Women Judges on International Courts", p. 224.
- ¹⁴⁹ Jeni Klugman and Laura Tyson, "Leave No One Behind: A Call to Action for Gender Equality and Women's Economic Empowerment", paper prepared for the UN Secretary General's High-Level Panel on Women's Economic Empowerment, New York, 2016, p. 86.
- ¹⁵⁰ Kenney notes that during the Carter administration, women were networked with each other as well as outside groups to publicize information about judgeships, recruited and screened candidates and lobbied for candidates they believed to be well profiled. By forming broad coalitions, they ensured a wide audience for their efforts. Their many efforts included testifying before the Senate Judiciary Committee about the slow pace of women's appointment, forming the National Association of Women Judges, and training women for election and selection. Kenney, "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go", p. 1515.
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- ¹⁵³ Dawuni, "To 'Mother' or not to 'Mother'", p. 437.
- ¹⁵⁴ Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 62.

- ¹⁵⁵ For instance, Dawuni and Kang highlight: "During an intense militarised conflict of long duration, women may take on new or greater social responsibilities, and they may mobilise for peace. Scholars of women and politics find that countries that came out of conflicts have more women in parliament and have been likelier to adopt sweeping pro-women legislation than have others." Dawuni and Kang, "Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa", p. 62
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ANNEX A REGIONAL AND NATIONAL DATA

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Tel: +39 06 40403200 | Fax: +39 06 40403232 | Web: www.idlo.int | Email: ido@idlo.int | Twitter: @IDLO

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