

WOMEN'S PROFESSIONAL PARTICIPATION IN KENYA'S JUSTICE SECTOR: BARRIERS AND PATHWAYS



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.

Front cover image: The Judiciary of Kenya



TABLE OF CONTENTS

ACRONYMS	05	3.2 Gender roles and stereotypes	32
LIST OF FIGURES AND TABLES	05	3.3 Cultural, geographic and religious factors	33
EXECUTIVE SUMMARY	09	3.4 Family obligations and domestic responsibilities	33
Policy recommendations	09	3.5 Harassment and discrimination	34
A targeted methodology	10	3.6 Lack of support networks and mentorship programs	34
PART 1 THE KENYAN EXPERIENCE AND WHY IT MATTERS	12	3.7 Political will and legal and policy constraints	35
1.1 Background	13	PART 4 A WAY FORWARD	36
1.2 Why does women's participation matter?	14	4.1 Enhance implementation of the Constitution	37
PART 2 THE EVOLVING SITUATION – FINDINGS AND ANALYSIS	16	4.2 Enact and implement gender-responsive policies and build a gender-sensitive justice sector	38
2.1 Academia	17	4.3 Improve access to education and create a supportive environment in law schools	38
Nairobi University	18	4.4 Undertake gender audits	39
Moi University	18	4.5 Highlight role models	39
2.2 Judicial Service Commission	19	4.6 Support networking and mentorship associations	40
2.3 Law Society of Kenya	20	4.7 Eliminate stereotypes	40
Leadership	20	CONCLUSION AND POLICY RECOMMENDATIONS	42
Membership	21	NOTES	44
2.4 Lawyers	22	ACKNOWLEDGEMENTS	47
2.5 Judges and magistrates	22		
2.6 Government positions	25		
Committees	25		
2.7 The Office of the Director of Public Prosecutions	26		
2.8 National Police Service	28		
PART 3 BARRIERS TO WOMEN'S PARTICIPATION AND REPRESENTATION	30		
3.1 Recruitment and appointment processes	31		



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Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
FIDA	International Federation of Women Lawyers
IAWJ	International Association of Women Judges
NGEC	National Gender and Equality Commission

List of Figures and Tables

Figure 1: Law Society of Kenya membership numbers (2009–2019)	21
Figure 2: Law Society of Kenya membership percentages (2009–2019)	21
Table 1: Nairobi University School of Law Faculty (2019)	18
Table 2: Moi University School of Law Faculty (2019)	18
Table 3: Judicial Service Commission composition (2019)	19
Table 4: Law Society of Kenya leadership (2001–2019)	20
Table 5: Judiciary composition (2010)	23
Table 6: Judicial staff distribution (2012–2018)	23
Table 7: Judiciary (selected) leadership roles (2018)	24
Table 8: Magistracy, <i>Kadhis</i> and Registry staff numbers (2019)	24
Table 9: Office of the Director of Public Prosecutions executive positions (2010 and 2019)	26
Table 10: Office of the Director of Public Prosecutions heads of divisions (2019)	27
Table 11: Office of the Director of Public Prosecutions heads of regional offices (2019)	27
Table 12: National Police Service recruitment and appointments (2015)	28

IDLO GENDER PLEDGE SERIES



IDLO GENDER PLEDGE SERIES

At the High-Level Meeting of the 67th Session of the United Nations General Assembly 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 energy 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's Professional Participation in Kenya's Justice Sector*¹ provides information and analysis of gender inequality experienced by women justice professionals, combining quantitative data with qualitative research obtained by national partners engaging directly with justice sector professionals. It reveals the progress towards true equality, the enduring obstacles, and the key policy steps necessary to help realize the 2030 Agenda for Sustainable Development, and in particular Sustainable Development Goal 16 on peace, justice and strong institutions and Sustainable Development Goal 5 on gender equality and women's empowerment.

This report is the fourth publication in IDLO's Gender Pledge Series and the third country-specific study following similar research in Afghanistan and Tunisia. IDLO recognizes the importance of a diverse and inclusive justice sector where women are equally represented in all roles and at all levels, empowered to fully participate in decision-making processes, and able to access their rights without fear of systemic discrimination.

Women in Kenya's justice sector have made significant progress, and each year the concentration of women in the sector grows closer to parity. Furthermore, the next generation of legal professionals in Kenya looks to be its most gender-balanced ever, based on growing representation of women in law schools, faculties and the overall justice sector. Many of these gains can be attributed to the adoption of a progressive Constitution in 2010, and the hard work done by pioneers in the field to disprove patriarchal myths about women's capabilities and suitability for work in the sector.

Nonetheless, women justice professionals in Kenya continue to face challenges. Findings from this research

indicate that while women are close to nominal equality in the sector, leadership positions remain dominated by men.

A larger presence in the justice sector has also not ameliorated persistent workplace inequities encountered by women. Women report facing unfair recruitment processes, stereotypes, conflicts in balancing professional and family responsibilities, and a lack of support networks compared to their male colleagues. Policies, especially gender-neutral ones, often reinforce these injustices by failing to account for the unique needs of women professionals. Addressing these inequities is essential, not only to enable women to fully reach their potential as professionals in the field, but to enable them to contribute fully to justice service delivery, especially by facilitating access to justice for women and girls.

By illuminating the unique obstacles faced by women in Kenya's justice sector and providing actionable policy recommendations, *Women's Professional Participation* presents concrete opportunities for positive, substantive change in the justice sector.

Policy recommendations

The policy recommendations that arise from this review include:

1. Enact legislative and other specific measures to support the implementation of the 2010 Constitution, in particular article 27 on gender parity in public bodies, and provide incentives for private bodies, such as law firms, to do the same.
2. Adopt and implement gender-sensitive policies, including on maternity, childcare facilities, flexible working hours, transfer and security policies, and sexual harassment.
3. Ensure that recruitment and promotion processes are fair, transparent and aligned with bringing about gender parity. Strengthen mentorship programs, networking, and continuous training for women justice professionals and law students so they can share experiences and knowledge, including on addressing gender imbalances in hiring and networking.
4. Mandate gender sensitization and awareness training for all justice sector professionals, including judges, lawyers and police officers. Ensure that the curricula cover the importance of gender parity and how to adequately address barriers faced by women justice professionals, as well as how to build a safe and inclusive work environment for all.
5. Address gender discrimination and harassment of women justice professionals through transparent and effective complaints procedures. Ensure the adoption of strict anti-reprisal policies, including for cases of sexual harassment.
6. Improve access to education for

women and girls at all levels by providing scholarships, implementing affirmative action policies, and creating awareness among students – high school, university and law school – on the attainability and attractiveness of a career in the justice sector.

7. Promote career progression, leadership, mentorship and networking programs for women justice professionals and law students, including support for women's professional associations.
8. Enhance programs that promote the entry of women into the National Police Service, including through affirmative action, as well as provide opportunities for their career advancement.
9. Conduct regular gender audits to identify areas of discrimination within different justice sector organizations.
10. Actively combat negative perceptions and stereotypes of women's leadership and engagement in the justice sector, including by profiling women role models and media outreach.

A targeted methodology

Women's Professional Participation employs a mixed-methods approach involving qualitative and quantitative data. Prior to embarking on primary data collection, a desk review was undertaken to collect updated statistics and inform the questions posed to participants. To provide as complete a picture of the current situation as possible, Kenyan partners – the National Gender and Equality Commission (NGEC)² and the International Association of Women Judges – Kenya (IAWJ–Kenya)³ – drew from diverse data sources including judicial records, law schools statistics, academic literature and government reports. These enabled an understanding of historical trends and relevant legal and policy instruments.

Additionally, during the first half of 2019, 61 legal professionals (30 men and 31 women) were interviewed across six locations (Kisii, Kisumu, Mombasa, Nairobi, Nakuru and Narok) to complement an ongoing Judiciary Gender Audit⁴ and gain practical insights. Interviews were conducted with

five judges, eight magistrates, six prosecutors, 23 lawyers/advocates, one legal assistant, eight academics/advocates, and 10 officers drawn from the Law Society of Kenya, the Rift Valley Law Society of Kenya, and the International Federation of Women Lawyers – Kenya (FIDA–Kenya). In addition, 40 members of the public attending court sessions in each of the locations were interviewed. Finally, focused discussions were held with six male and three female advocates in Nairobi/Nakuru, one male and three female prosecutors in Mombasa, and two female magistrates in Kisumu.

To ensure a gender-balanced approach incorporating multiple perspectives, male and female participants were interviewed across purposively selected professional roles and geography. Combined with the desk review and existing statistics, the primary data collected and resulting findings are detailed in this report, illuminating obstacles that women face when seeking justice, entering the justice sector, training, seeking promotions, and influencing decision-making processes, leading directly to the tailored recommendations presented.



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IDLO's Gender Pledge Series

This report adds new insights and diversity to IDLO's Gender Pledge Series.⁵ It follows similar national research in Afghanistan, captured in the report: *Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities*⁶ as well as in Tunisia and detailed in the report: *Women's Professional Participation in Tunisia's Justice Sector: Pathways and Opportunities*.⁷

In addition, IDLO's global study, *Women Delivering Justice: Contributions, Barriers, Pathways*,⁸ focused on the state of knowledge regarding women's professional participation in the justice sector and progress on gender equality and the legitimacy of justice systems in support of Sustainable Development Goals 5 (Gender Equality and Women's Empowerment) and 16 (Peace, Justice and Strong Institutions) of the 2030 Agenda for Sustainable Development.

As evidenced and detailed by this series of reports, IDLO remains committed to gaining insights and knowledge from a

diverse range of countries around the world so that challenges related to supporting the full participation of women legal professionals in the justice sector can be addressed and equality advanced. Increased understanding of broad issues, while sharpening awareness of local contexts and nuances, are instrumental in realizing this aim in line with the 2030 Agenda and IDLO's Gender Pledge.



PART 1
THE KENYAN EXPERIENCE
AND WHY IT MATTERS



THE KENYAN EXPERIENCE AND WHY IT MATTERS

1.1

Background

Like many African countries, Kenya's legal framework and structure, including some normative aspects, were inherited from colonial times.⁹ Those responsible for creating and managing the country's nascent justice institutions were men born and trained in the United Kingdom, who were unconcerned with preserving existing social structures or allowing women to enter the profession.¹⁰ Even as reforms were put into place which ostensibly allowed women to become judges, magistrates and attorneys, these had little practical effect on increasing the gender balance within the system until the late 1990s. As detailed in this report, since then, women have shifted the demographic balance of many positions, particularly enrollment in legal training and law schools. Nonetheless, discriminatory assumptions about the capability and suitability of women to practice in the legal profession continue to prevail and at times seeking promotion or leadership roles.

In 2010, a new Constitution came into effect in Kenya.¹¹ The Bill of Rights outlines Kenya's commitment to equality, gender diversity, inclusiveness and anti-discrimination.¹² Article 10 declares that these principles must be applied to all State organs and they are to be considered national values and principles of governance, including in constitutional and legal interpretation and for public policy decisions. There is

an express obligation to implement these rights and freedoms, interpreting them such that "the values that underlie an open and democratic society based on human dignity, equality, equity, and freedom" are promoted.¹³ Furthermore, the Constitution itself directly establishes operational policy on gender equality, setting a minimum gender ratio for all appointed and elected positions. Article 27(8) specifically states:

In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.¹⁴

Although the Kenyan Constitution embodies principles of gender equality and inclusion, application of these principles is not automatic. The Eighth Periodic Report of the Republic of Kenya on implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) underscores the underrepresentation of women in public service in Kenya.¹⁵ While the gender threshold has been met in some instances and at times at high levels, men are represented to a much greater extent than women in decision-making forums within the legislative, administrative and judicial spheres.¹⁶

Ultimately, it is the role of judges to interpret and apply the Constitution. As an example, article 45(3) of the Constitution provides that "Parties to a

marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage".¹⁷ One decision analyzing the division of matrimonial property according to legislation and this constitutional provision sheds light on some prevailing attitudes:

It would be surreal to suppose that the Constitution somehow converts the state of coverture into some sort of laissez-passer, a passport to fifty percent wealth regardless of what one does in that marriage. I cannot think of a more pernicious doctrine designed to convert otherwise honest people into gold-digging, sponsor-seeking, pleasure-loving and divorce-hoping brides and, alas, grooms.¹⁸

There are also concrete examples of the Constitution being successfully invoked to address discriminatory legislation and practices. In *L.N.W v. Attorney General*, the High Court declared unconstitutional a provision of the Births and Deaths Registration Act which prevented children born out of wedlock from taking the name of their father without his direct request.¹⁹ In *Centre for Rights Education and Awareness v. Attorney General*, the High Court considered a petition that claimed that parliamentarians had not fulfilled their obligation pursuant to articles 27(8) and 81(b) of the Constitution to implement the two-thirds gender principle.²⁰ In affirming the petition, the Court played a direct role in ensuring that the constitutional principle was upheld.

1.2

Why does women's participation matter?

Women's participation in the justice sector is not only a human right, but also a crucial component of democratic governance. The right of women to fully and equally participate in justice systems and decision-making bodies has been repeatedly affirmed and emphasized by international bodies, including the United Nations.

Article 7 of CEDAW mandates States Parties to take concrete measures to eliminate discrimination against women in political and public life. As detailed by the Committee on the Elimination of Discrimination against Women in 1997 in General Recommendation No. 23 on Political and Public Life, this means ensuring women, on equal terms with men, have the 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 levels of government".²¹ The Beijing Declaration and Platform for Action, adopted in 1995, also affirms equal representation in political and public life. Strategic Objective G.1. indicates that measures need to be taken to "ensure women's equal access to and full participation in power structures and decision-making", noting that this includes the judiciary²² and that States must "ensure that women have the same right as men to be judges, advocates or other officers of the court, as well as police officers and prison and detention officers...".²³

General Recommendation No. 23 explicitly expresses that women's equal inclusion in public life is a precondition for democracy. If institutions, agencies

and governing bodies are not representative of a population, the legitimacy and responsiveness of a democracy is fundamentally jeopardized. Inadequate representation and participation fosters mistrust, which limits effectiveness. This is especially meaningful in a country like Kenya where the population of women is consistently higher than men.²⁴

The empowerment of women within the justice sector also has numerous benefits beyond increasing the legitimacy of justice institutions. Actual bias and perceptions of bias can be counteracted, addressing gender-specific issues and diminishing the influence of discriminatory and stereotypical attitudes. Pursuing substantive equality is not only a worthy goal in itself, but should be prioritized for these reasons.

Equal and full participation and representation means that women must be involved at all levels of the justice system. Women have to be represented not just at entry levels, but also at senior levels and in high-level decision-making positions, such as in the Police and in judicial administration. Having women at senior levels, for example, could have numerous downstream effects, including on future recruitment, challenging harmful patriarchal norms and institutional barriers, and normalizing the presence of women.

Both prior research and new information obtained for this report find that women seeking justice are often alienated by the legal system in Kenya. Their complaints about gender-based crimes are not taken seriously by police,²⁵ and opaque legal processes do not allow them to actively play a role in their own cases or to feel at ease.²⁶ Women survivors of sexual violence often find it difficult and uncomfortable to communicate with male police, prosecutors and judicial officers, and female representation can make a difference in the justice system for women and their access to justice.

While there still remains limited empirical data on the impact of female

(or male) justice professionals' participation on overall justice outcomes, there is growing evidence that the presence of more female front-line justice sector professionals can create more conducive environments in police stations and courtrooms and even affect, in some instances, the outcomes of gender-based violence cases.³³ This is not because women possess innate traits that make them naturally more empathetic – a problematic "positive" stereotype that has arisen over past decades and which reinforces attitudes that act as a barrier to women achieving prominent justice sector roles – but because their presence can help address discriminatory practices and counter biased attitudes. As one respondent highlighted during this study:

Women must be present in the justice sector because they play an important role. They represent women's interests and if they are not there, no one will cater for them. It is not for men alone to participate in the administration of justice. Women also bring their perspective, which is important for [the] administration of justice.

Another potential change that could take place as a result of improved participation by women in public decision-making roles is the shifting of social norms. While the Kenyan Constitution now clearly outlaws discrimination on the basis of gender, norms and the socially accepted construction of gender roles continue to restrict access to justice for many women. In these contexts, female justice professionals can empower female survivors as well as provide inspiration as role models.

Yet, the goal of achieving equal representation of women in the delivery of justice cannot simply be about increasing numbers. The goal is also to ensure that women fully and meaningfully participate as judges, as lawyers, as prosecutors and as other justice professionals. As highlighted in previous research, it is important not to essentialize the category of "women

judges” and ascribe unrealistic expectations towards the transformation of professional practices or society to them.³⁴ Critical understanding of this reflects that even feminist judges can be constrained by an institutional environment and may be unable to implement feminist principles. Further, judges can be influenced by many characteristics other than their sex. This

suggests the importance of cultivating gender expertise within the judiciary and justice sector as a whole, rather than focusing only on numbers.

In conclusion, the impact of women’s participation in the justice sector has been under-studied, and further empirical analysis would contribute to understanding benefits to justice seekers

and the administration of justice. Nonetheless, the experiences of Kenyans and those in other jurisdictions suggest that aside from being a worthy goal in and of itself, pursuing gender equality in the ranks of justice professionals represents a key step to addressing discrimination in larger society.

In focus:

Women police officers

Police officers are an important part of the justice chain, and it has been noted that “by having a representative police force – one that reflects the make-up of the community – the credibility and legitimacy of the police force also grows”.²⁷ According to the National Center for Women and Policing, national and international studies indicate that although women and men are equally capable of being police officers, women police officers bring strengths to police work, including the ability to minimize the use of or reliance on force.²⁸ They are effective in defusing violent situations in comparison with their male counterparts and they are reported by the public to act inappropriately less frequently than male police officers.²⁹

Female police officers can act as role models and having women police officers can be important, especially in regions where women are more likely to report gender-based violence and other sensitive matters to a woman or where their interaction with men, even State officials, is discouraged.³⁰ Operationally it is imperative to have female officers and it is good practice to have trained females during investigation procedures.³¹ Police stations staffed primarily by women show increased reporting of crimes against women and children, thus providing an important service.³²



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PART 2
THE EVOLVING SITUATION –
FINDINGS AND ANALYSIS



THE EVOLVING SITUATION – FINDINGS AND ANALYSIS

Despite gains made since the 2010 Constitution was adopted, findings indicate that women in Kenya still face numerous obstacles when attempting to exercise their equal right to participate in and access justice through the formal legal system. The overall findings reveal the need to take deliberate measures to address the historical exclusion of women within the justice sector.

2.1

Academia

Legal education is a relatively recent phenomenon in Kenya, as colonial-era courts were filled exclusively with judges and magistrates trained outside of the country. Until the 1960s, there was no institution offering legal training in Kenya. Even after Nairobi University gained its first law faculty in 1970, admission was tilted heavily towards men. Women were socially excluded due to perceptions that the profession

was inappropriate for them and that such an intense career would render them unsuitable for marriage. From the 1970s until the 1990s, very few women were admitted to law school.

Since 1970, institutions offering law as a course of study have increased from one to several and since the 1990s, women's enrollment has improved significantly. As of 2019, admission is almost at par and women constitute more than half of students in certain classes and law schools.³⁵ Completion rates for legal education are also roughly equivalent, which makes post-graduation disparities in active practice more noticeable. Based on this, the majority of factors that cause the disproportionate concentration of men in legal positions and particularly leadership roles appears to occur outside of the law school learning environment.

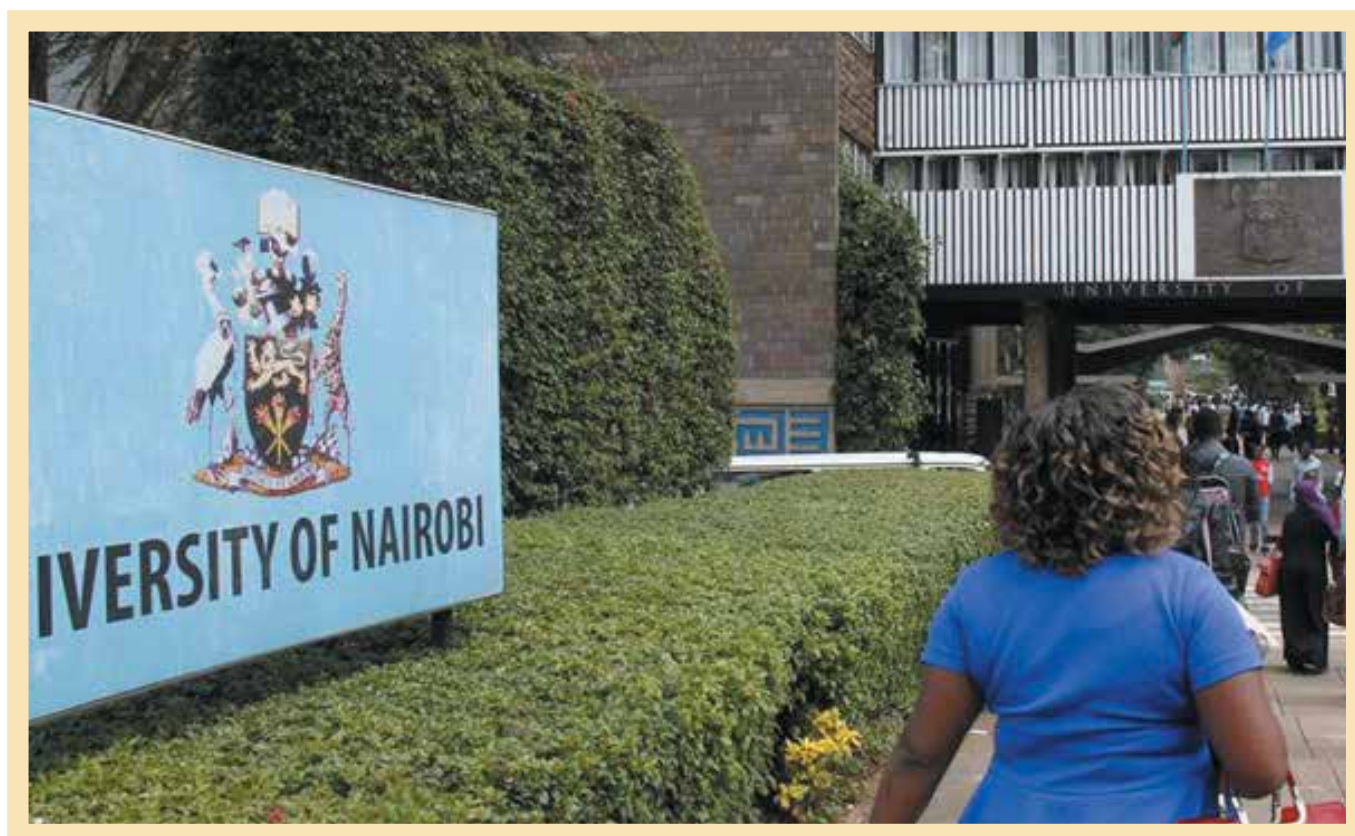


Image: © Daily Nation

Importantly, there is also an absence of women in high-ranking academic positions, which is worrisome considering that female students make up an increasing percentage of law school admissions. To a certain extent, this may be due to the late entry of women into the field and the time needed to acquire the necessary academic qualifications and experience. Nonetheless, the slow rate of change towards parity requires further exploration. To quantify this issue, an analysis of the two dominant academic legal institutions in the country was undertaken to pinpoint where inequities exist.

Nairobi University

Nairobi University, the largest employer of legal scholars in Kenya, has taken steps to address its history of discrimination since the 1990s, especially in recent years. The law school had its first female Dean from 2014 to 2018, who was also Kenya's first female law professor.³⁶ Yet in 2019, as Table 1 indicates, only three women have professor status and women professionals are disproportionately in lower-ranking positions. Even within these ranks, with the exception of Tutorial Fellows, women are still not equally represented.³⁷

Moi University

Moi University began to offer law specializations in 1994 but did not feature any women in its professional ranks until 2000, according to interviewed faculty. As Table 2 indicates, as of April 2019, women do not make up more than 20% of any position and have no presence in the Dean's office or among professors.³⁸

Designation	Men	Women	% Women
Dean	1	-	0%
Associate Dean	1	-	0%
Professor	11	3	21%
Senior Lecturer	10	7	41%
Lecturer	17	11	39%
Tutorial Fellow	3	6	66%
Total	43	27	39%

Table 1: Nairobi University School of Law Faculty (2019)

Designation	Men	Women	% Women
Dean	1	-	0%
Professor	1	-	0%
Senior Lecturer	4	1	20%
Lecturer	9	2	18%
Assistant Lecturer	4	1	20%
Tutorial Fellow	6	1	14%
Total	25	5	17%

Table 2: Moi University School of Law Faculty (2019)

2.2

Judicial Service Commission

The Judicial Service Commission is a relatively new body created by mandate of the 2010 Constitution and the Judicial Service Act.³⁹ It is primarily responsible for appointing and removing judges, disciplining judicial staff and regulating the Judiciary Fund and the National Council of Administration of Justice. This body was established in part to ensure that appointments meet the constitutional requirement of the two-thirds gender principle, increasing the pool of women serving in all tiers of the judiciary. All members are appointed or elected to this Commission with the exception of the Chairperson (Chief



Image: © The Judiciary of Kenya

Justice) and Attorney General. As shown in Table 3, while there are more men than women in the Commission, it does satisfy the two-thirds principle.⁴⁰ Nonetheless, considering its responsibilities and direct connection to the Constitution, some respondents interviewed argued that it should aim for parity.

Respondents also observed that the Commission should be given credit for improving and promoting gender equality within the judiciary in accordance with its constitutional mandate to reverse historical factors of discrimination. This includes progress made in upward mobility since the Commission was created in 2010.

Designation	Men	Women
Chairperson	1	-
Vice Chairperson	-	1
Law Society Representative	1	1
Supreme Court Representative	-	1
Court of Appeal Representative	1	-
High Court Representative	1	-
Magistrates Representative	-	1
Attorney General	1	-
Public Service Commission Representative	1	-
Public Representative	1	1
Total	7	5

Table 3: Judicial Service Commission composition (2019)

2.3 Law Society of Kenya

The Law Society of Kenya is a member-driven organization that all lawyers must subscribe to immediately following their admission to the Bar. Bodies including the judiciary, the Office of the Attorney General and the Office of the Director of Public Prosecutions, and private firms draw personnel from Law Society ranks. The Society is responsible for regulating the conduct of active lawyers and plays an important role in the working lives of many legal professionals, providing information as well as opportunities for specialized training and networking.⁴¹

Leadership

Since its creation in 1992, leadership at the Law Society has been male dominated, with a woman serving as Chairperson in only two years. Since the adoption of the 2010 Constitution, women have taken up positions in higher numbers, but until 2010, women were clearly marginalized within the leadership ranks, their participation alternating between 18% and 27% as shown in Table 4. Women vied for the Chairperson position after 2003, but were unsuccessful. One respondent attributed this to the alienation of women from the Society and the perception among men that women lacked leadership qualities.

Encouragingly, since 2010, trends are also improving as indicated in Table 4, reaching 64% representation in 2019.⁴² Article 171(2)(f) of the 2010 Constitution states that the Law Society of Kenya must be represented by one person of each gender.⁴³ Due to this, it is now legally impossible for a person of the

same gender to serve both as Chairperson and Vice Chairperson. This has also contributed to women reaching and exceeding parity in Council positions. One respondent explained that this shift is a result of the increased interest of women in participating in the Society and the demand for fair competition for such positions. However, a woman has not run for the position of Chairperson (now referred to as President) since 2007.

Designation	2001–2003	2003–2005	2006–2007	2008–2010	2011–2013	2014–2016	2016–2018	2019
Chairperson	1/1	0/1	0/1	0/1	0/1	0/1	0/1	0/1
Vice Chairperson	0/1	0/1	0/1	0/1	1/1	1/1	1/1	1/1
Council Member	2/8	2/8	2/8	2/8	5/10	5/11	5/11	7/11
Chief Executive Officer	0/1	0/1	1/1	0/1	0/1	0/1	1/1	1/1
Total % women	27%	18%	27%	18%	46%	43%	50%	64%

Table 4: Law Society of Kenya leadership (2001–2019)

Membership

Membership of the Law Society of Kenya is a clear window into women’s professional participation in the justice sector. While accurate data could only be collected from 2009, considering that women were almost completely excluded from the profession before the 1990s, these later trends are most indicative. As shown in Figures 1 and 2, even during the period from 2009 to

2019, the percentage of women rose from 33% to 44%, and the number of registered women members increased by 4,766. In a period where the number of legal professionals has more than doubled, the majority of the gain has been women joining the ranks. This necessitates further analysis of the extent to which this progress is reflected by an increase in leadership and influence.

The Law Society has increasingly recognized good work done by women legal professionals. In 2018, three women were presented with the Outstanding Judge of the Year, Outstanding Magistrate of the Year, and Pro Bono Lawyer of the Year awards, respectively. This recognition is performance- and merit-based, signaling that women justice professionals are now perceived as able to compete effectively with their male colleagues and even emerge victorious.

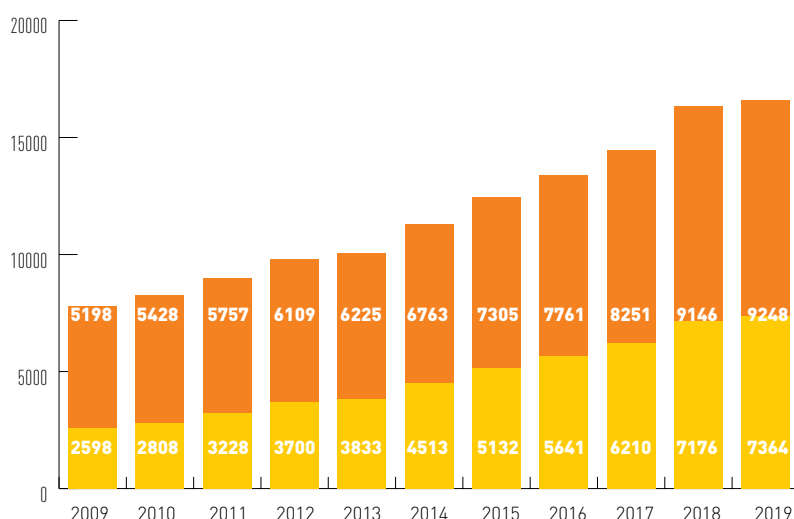


Figure 1: Law Society of Kenya membership numbers (2009–2019)

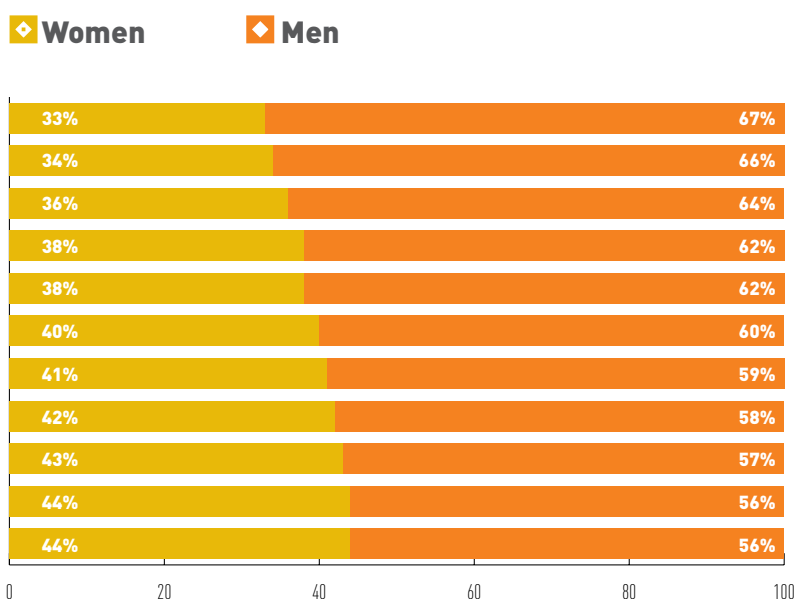


Figure 2: Law Society of Kenya membership percentages (2009–2019)

2.4

Lawyers

The majority of women legal professionals work in the private legal sector as lawyers. Most begin as employees in larger firms, but many have increasingly begun their own practices singularly or in partnership with other colleagues. Female respondents interviewed indicated they were disproportionately working with clients who were victims of gender-based crimes, as female clients reported preferring female advocates because they felt more comfortable opening up to them. However, respondents noted that this was not necessarily because they themselves were more interested in specializing in these types of cases and that they were disproportionately assigned family and children's issues, while their male colleagues were able to work on more lucrative commercial, land and conveyance cases. When women are involved in high-profile cases, it is more often than not as assisting counsel as opposed to in decision-making or visible roles.⁴⁴

2.5

Judges and magistrates

The judiciary is at the core of a country's legal system, particularly one such as Kenya where the interpretation of the Constitution is still in its early stages. All stakeholders rely on the decisions of the judiciary for elaboration of rights and demarcation of precedent.

Women's status in the Kenyan judiciary has improved significantly since the first woman to serve on the High Court was appointed in 1971.⁴⁵ However, they remain underrepresented in the higher levels of the judiciary, even with constitutional support. As of 2019, no woman has held the post of Chief Justice. As shown in Table 5, in 2010, the year in which the Constitution entered into force, women were gravely outnumbered except in the Office of the High Court Registrar.⁴⁶ No woman served as a Court of Appeal Judge, Chief Court Administrator or *Kadhi*, while lower ranks such as paralegals were the closest to parity.

However, progress is evident in later years, and the establishment in 2011 of the Judges and Magistrates Vetting Board provided opportunity for the NGEN to issue an Advisory that observed that some of the criteria for determining the suitability of judicial officers were too subjective and applied inconsistently across vetting processes. This resulted in a review of standards and determination processes, which saw more women positively vetted to serve in the High Court, the Court of Appeal and the Supreme Court of Kenya.⁴⁷

Based on the data, women have made incremental progress towards reaching parity as judges and as judicial staff, bringing the overall total just two percentage points away from nominal equality in 2018, as illustrated in Table 6.⁴⁸ This has occurred even as the concentration of women as Magistrates and Legal Officers has declined.

The relatively higher concentration of women as staff compared to those in positions of authority is compatible with the broader observation that while women are closer than ever to parity in the legal profession in Kenya, substantive equality has been more challenging to attain. The recent Judiciary Gender Audit elucidates these concerns more clearly, in large part due to its breakdown of selected cadres within the judiciary.⁴⁹ As shown in Table 7, the data suggests that while women continue to play a larger role within the lower ranks of the judiciary, there are steps to be taken to also achieve parity in higher ranks.⁵⁰ More concretely, a woman has never held the posts of Chief Justice, President of the Supreme Court or President of the Court of Appeal, the three highest posts in the judiciary.

Within the magistracy, women are currently better represented compared to higher court bodies or Courts of Record.⁵¹ As indicated in Table 8, progress is evident, although some data remains stark.⁵² For instance, there is not a single woman in *Kadhis'* Courts, which is disquieting, particularly given their jurisdiction over family issues such as divorce and inheritance that affect women disproportionately.⁵³ Respondents in the judiciary also noted that data might misleadingly suggest that women are taking on more responsibility as heads of stations or within the judicial office rank, but that the stations led by women tend to be small, with fewer support staff, or to be less prestigious.

Designation	Men	Women	% Women
Chief Justice	1	-	0%
Court of Appeal Judge	11	-	0%
High Court Judge	27	18	40%
High Court Registrar	-	1	100%
Chief Court Administrator	1	-	0%
Magistrate	168	109	39%
Kadhi	17	-	0%
Paralegal staff	1,865	1,531	45%

Table 5: Judiciary composition (2010)

Designation	2012–2013	2014–2015	2016–2017	2018
Judge [% women]	45 (38%)	54 (39%)	62 (40%)	64 (41%)
Magistrate and Legal Officer [% women]	255 (48%)	213 (44%)	206 (44%)	215 (42%)
Judicial staff [% women]	1,703 (45%)	3,822 (47%)	2,450 (49%)	2,423 (49%)
Total	2,003 (45%)	4,484 (46%)	2,723 (48%)	2,702 (48%)

Table 6: Judicial staff distribution (2012–2018)



Image: © Twitter/The Judiciary Kenya

Designation	Men	Women	% Women
Director	8	-	0%
High Court Judge (and equivalent)	97	63	37%
Presiding Judge	29	15	34%
Court of Appeal Judge	12	7	35%
Supreme Court Judge	5	2	28%

Table 7: Judiciary (selected) leadership roles (2018)

Designation	Men	Women	% Women
Resident Magistrate	47	97	67%
Senior Resident Magistrate	76	76	50%
Principal Magistrate	42	21	33%
Senior Principal Magistrate	33	21	39%
Chief Magistrate	27	19	41%
Registrar and Deputy Registrar	6	4	40%
Kadhi	53	0	0%

Table 8: Magistracy, *Kadhis* and Registry staff numbers (2019)

Image: © Twitter/ David Maraga

2.6 Government positions

Since the issuance of a Circular Executive Decree in 2006 which indicated that at least 30% of new employees recruited into the public service should be women,⁵⁴ a degree of affirmative action has been in place within the public legal sector in Kenya. While detailed statistics are not available, recruitment officers were mandated to ensure that no more than 70% of new recruits were men, and this established a framework through which women could hold the Government accountable for failure to implement fair hiring practices.

This has been substantively bolstered since the 2010 Constitution, which in addition to affirming the principles of gender equality, contains article 27 that directly addresses the issue of discrimination in hiring and appointments. Specifically, article 27(6) mandates that the Kenyan Government redress past discrimination through affirmative action, and 27(8) dictates that no more than two-thirds of members of elected or appointed bodies be of the same gender. Article 232 confirms that appointment, training and advancement be made available equally, regardless of gender. The Constitution also contains specific provisions in article 171 regarding representation within the judiciary and the promotion of gender equality.

Committees

Women have played important roles in commissions and committees since the adoption of the Constitution in 2010, a turning point that many interviewed respondents attributed to the increase of chairpersonships and commissioner roles. For example, the Commission for the Implementation of the Constitution (now defunct) had a female lawyer as its Vice Chairperson and a number of others serving as Commissioners. The Chief Executive Officer of the Kenya Truth and Reconciliation Commission was female, and the Commission also had two female lawyers serve as Commissioners.

Yet, out of 43 departmental committees in the National Assembly and Senate, only 9% are chaired by women at the time of writing.⁵⁵



Image: © IDLO

2.7

The Office of the Director of Public Prosecutions

Prior to the adoption of the Constitution, the Office of the Director of Public Prosecutions existed as a department within the State Law Office headed by the Attorney General, not as an independent body. However, pursuant to article 157 of the Constitution, it is now autonomous and exercises State powers of prosecution while insulated from political factors.⁵⁶ It is charged with undertaking criminal proceedings against suspects before the courts and has the power to continue or terminate any proceedings before judgment is delivered.⁵⁷ The Office has key implications for women who are victims of crime, considering that

they can face secondary victimization if prosecutors do not take their matter seriously or execute the case properly. Respondent interviewees repeatedly emphasized the need for women's participation in this office, as many women victims of crime have reported that they do not feel comfortable sharing certain relevant details of their experience with men, meaning cases do not meet evidentiary thresholds and cannot proceed to prosecution.

As of 2016 data, the Office reports a total of 1,013 staff, of which 55% are female. This is an increase of 808 since 2011, signaling the growing capacity of Kenya's justice system. Female staff interviewed were positive about their current situation and particularly the trend in hiring women:

“We are treated equally; there is no explicit gender discrimination. The number of females in the office has increased and in fact during induction of the new staff, the ladies were actually more than the males.”

As Table 9 demonstrates, changes within the organization and leadership can be observed between 2010 and 2019.⁵⁸ Two new positions created since 2010, the Senior Public Prosecutor and a role for the Prosecution Training Institute, are headed by women. Women are relatively well represented in leadership positions, fulfilling the two-thirds threshold.

However, in relation to heads of subdivisions, shown in Table 10, women outnumber men by more than two-thirds, going against the constitutional threshold. This is balanced by the domination of men in heading Office of the Director of Public Prosecutions regional offices, as shown in Table 11.⁵⁹ Yet, respect for the two-thirds principle is of concern, as gender parity and compliance with the Constitution is important within such influential offices.

Designation	Women (2010)	Women (2019)
Director of Public Prosecutions	0/1	0/1
Deputy Director of Central Facilitation Services	0/1	0/1
Deputy Director, Head of County Affairs	0/1	0/1
Deputy Director of Public Prosecutions and Head of Economic, International and Emerging Crimes	1/1	1/1
Deputy Director, Head of Offences Against the Person	0/1	0/1
Senior Public Prosecutor	N/A	1/1
Prosecution Training Institute	N/A	1/1
Total	1/5	3/7

Table 9: Office of the Director of Public Prosecutions executive positions (2010 and 2019)

Sub-division	Men	Women
Murder	-	1
Appeals	1	-
Terrorism	1	-
Sexual and Gender-Based Violence	-	1
Children	-	1
Hate Speech	-	1
Wildlife	-	1
Human Trafficking	-	1
Corruption	-	1
Land	1	-
Total	3	7

Table 10: Office of the Director of Public Prosecutions heads of divisions (2019)

Region	Men	Women
Coast	1	-
South-Rift	1	-
North-Rift	-	1
North-Eastern	1	-
Nairobi	-	1
Western	1	-
Central	1	-
Nyanza	1	-
Lower Eastern	1	-
Total	7	2

Table 11: Office of the Director of Public Prosecutions heads of regional offices (2019)

2.8

National Police Service

The functions of the Kenyan National Police Service, as stipulated under the National Police Service Act, include investigation and collection of evidence to support a case against an accused person.⁶⁰ Their preliminary tasks include determining whether matters are worthy of prosecution and forwarding them to the Office of the Prosecutor. This means that their work has direct implications for justice outcomes, as incomplete investigating, scant collection of evidence, or discretionary dismissal of charges will prevent victims from receiving justice.

Importantly, when survivors of rape or domestic violence seek justice, the police are a first point of contact and survivors' perceptions of the justice system are shaped by the way they are treated and their reception by police officers. Interviewed respondents described experiences of insensitive officer behavior, a lack of privacy in police stations leading to embarrassment, long wait times and little officer interest in investigating gender-based crimes.

Some respondents noted that male officers lean on patriarchal concepts such as arguing that male offenders should be forgiven and reconciliation pursued to preserve family well-being, possibly at the expense of the victim. Women respondents noted these concerns more prominently, describing a shared view that a core injustice in the Kenyan justice system is the treatment of women victims of gender-based crime by front-line officers, including the Police. In the words of one female advocate:

In cases where women are involved as victims, the police drag their feet and this is something that is associated with culture, especially cases such as female genital mutilation, domestic violence and early child marriages.

Additionally, lawyer and judge respondents described the frustration of witnessing such treatment by officers from the investigation stage onward and signaled the need for increased gender sensitivity training for police. Notably, management of the Police in Kenya is predominately male. There has never been a female Inspector General of Police, and only one woman has served as the Deputy Inspector General of Police.⁶¹ As of 2020, management is fully staffed by men, including the Inspector General of Police, both Deputy

Inspector Generals as well as the Director of the Directorate of Criminal Investigations.⁶²

As indicated in Table 12, the most recent service-wide statistics available from 2015 show that only 11 women served in leadership positions in the Police, making up only 7% of all staff.⁶³ This lack of representation is in line with respondent complaints regarding the conduct and priorities of front-line police officers and investigators.

Further, the perspective of women is conspicuously absent from policy directions and key decisions. The Police lacks a strategic office for overseeing gender equality and/or a position responsible for oversight and enforcement of obligations under the Constitution and relevant law, including various gender initiatives led by the Government that the Police should adhere to.⁶⁴ As a respondent argued, while improved parity within the Courts of Appeal and the High Court is a positive step, low recruitment of women within the Police remains a primary obstacle for women seeking justice.

Designation	Kenyan Police Service		Administration Police Service		Directorate of Criminal Investigations		Total	
	Men	Women	Men	Women	Men	Women	Men	Women
Senior Assistant Inspector General	5	0	2	0	1	0	8	0
Assistant Inspector General	29	2	18	0	12	4	59	6
Chief Inspector	61	4	11	0	23	1	95	5
Total	95	6	31	0	36	5	162	11

Table 12: National Police Service recruitment and appointments (2015)

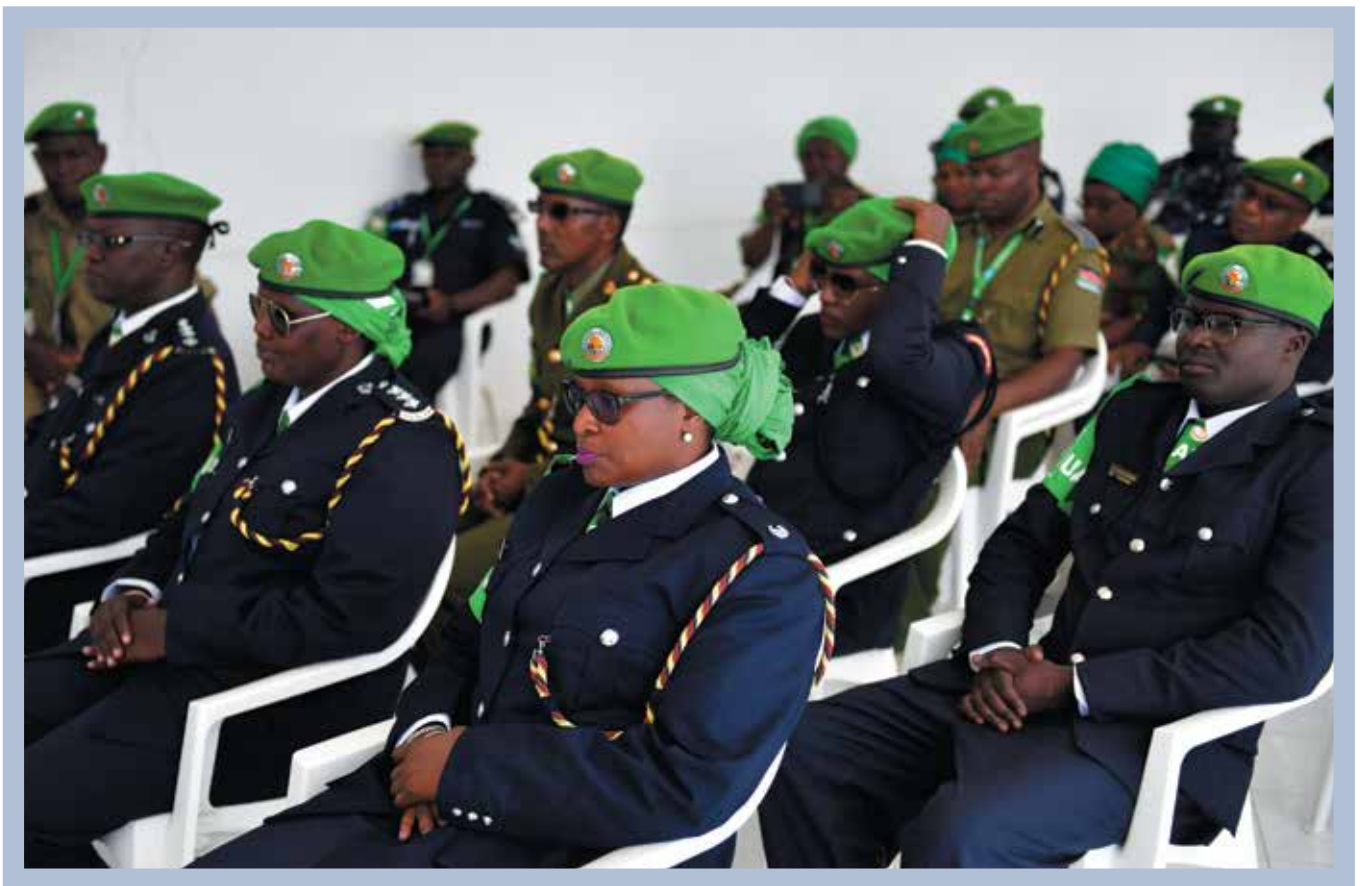


Image: © Flickr/AMISOM

PART 3
BARRIERS TO WOMEN'S
PARTICIPATION AND
REPRESENTATION



BARRIERS TO WOMEN'S PARTICIPATION AND REPRESENTATION

Based on the data and respondent views and experiences collected above, it is clear that women have made considerable strides in the legal profession. Their presence is now being felt across the sector – in the courts, the Office of the Director of Public Prosecution, academia, the Police and more. Nonetheless, increased rates of participation have not been accompanied by equality in positions of leadership, suggesting that subtler forms of discrimination still pervade in the decision-making bodies that make choices regarding appointments and promotions.

Respondents confirm that a number of barriers persist in the justice sector that prevent full enjoyment of equal rights to participation as justice professionals. The barriers highlighted are based on the lived experiences of legal professionals in Kenya, many of whom have tried to break into higher circles of leadership. As one female judge summarized the problem:

“The judiciary has tried to increase women’s representation and participation at recruitment level, but there is need to improve their numbers at the high levels of the institution. Let us give women a chance, they can also be Chief Justice and Attorney General or any position of leadership.”

Now that nominal parity in the field has either occurred or will be achieved soon based on numerical trends, the focus must turn to addressing the internal dynamics within the sector as well as external factors that prevent advancement to more senior positions.



Image: © Nairobi Law School

3.1

Recruitment and appointment processes

Many respondents highlighted processes for recruitment and appointment as a key factor that inhibits women. They are not transparent, and women respondents indicated that candidates who were not obviously the most qualified were being hired or promoted. This was especially frustrating for respondents in circumstances where women candidates were equally competent and experienced in comparison to the man hired.

Respondents mentioned that there are also more job opportunities for men than women, and women are routinely passed up for training that might improve their chance of future promotion or recruitment. When a top position becomes available and the next in line is a woman, respondents reported that firms will often hire from outside or give the job to a less qualified male candidate.

In the judiciary, gender considerations in recruitment are made after a merit-based shortlist has been assembled, leading to questions regarding the criteria used for determining who belongs on the shortlist.⁶⁵ In some cases, it was alleged that such recruitments are influenced by informal discussions among higher members of the judiciary, largely represented by men.

These issues are even more present in the private sector, where recruiters are not subject to the same gender considerations that public bodies like the judiciary and the Prosecutor’s Office

are. Respondents perceived that their qualifications are underestimated due to implicit discrimination and the unspoken assumption that a female employee will leave to start a family or demand less onerous responsibilities. These attitudes are not limited to the legal sector, as reflected by the case *Tracy Wangechi Mugambi v. Windsor Golf Hotel and Country Club*, which provided compensation in a situation where a woman was fired after taking maternity leave.⁶⁶ Even in the Law Society, which is governed by the Constitution's gender dictates, the opaque process has been cited by respondents as a factor that turns away qualified women candidates.

In relation to women's participation in Kenya's Police, unlike other professions, the lack of gender parity is not just at the leadership level, but at entry. This would mean that even if entry-level parity is achieved, there will likely be a delay before women approach nominal equality in high-level decision-making roles within the Police.

It is important to note that the Police's entry procedures and criteria, particularly those testing physical attributes, have not been substantively updated since women have become more prominent in professional life.⁶⁷ This has perpetuated perceptions among the police that women are weak and cannot withstand the demands of being an officer.

In academia, advancement is heavily tilted towards those with higher educational attainment and qualifications. As women have not been present in the field for as long as men, many have not been able to accrue the necessary degrees to be considered qualified for senior positions. Furthermore, social, cultural and religious factors, such as early marriage, prevent women from pursuing further studies.

3.2

Gender roles and stereotypes

Omnipresent in the experiences of discrimination relayed by women respondents, whether they were legal professionals or citizens seeking justice, is the barrier imposed by traditions and perceived gender roles. While social progress has occurred, the image of women as homemakers and mothers is still pervasive. One respondent said that women in the field are best suited to dealing with family matters or sexual violence cases. Indeed, this is so well established within the judiciary that the Children's Court is reportedly nicknamed "Court Ya Mama" because its staff is so populated by women. Sometimes these stereotypes appear positive at first and many respondents, including women professionals, argued that women have natural characteristics that make them more empathetic and caring. For example, a male judicial officer evoked motherhood when describing the valid point that female victims often feel more comfortable around women officers:

“Female presence as adjudicator in cases of rape and defilement is important and helps the victim to open up. Female judicial officers are patient and take time to listen, I think it is their motherly instinct but this does not in any way interfere with their objectivity and impartiality in administering justice.”

While this appears positive, the underlying attitude contributes to a narrative that subtly pigeonholes women into such roles, even if they are more interested and capable in other areas of the law.

The most common assumption made about women legal professionals according to respondents is that women are too preoccupied by the responsibilities of raising children to fully commit to their work. In the

courtroom, while judges were assessed as being generally respectful of female lawyers, judicial officers were reported to make condescending comments that subtly cast aspersions on women justice professionals' ability to concentrate fully on their work. In one instance, this included asking leading questions about whether a woman lawyer wished to continue with a trial or would rather go to school to pick up her children.

Instances were also reported where members of the public and litigants made assumptions about female lawyers, specifically that they are not "real" lawyers. For example, one respondent relayed the frustration of being asked to direct clients to a lawyer when she herself was the lawyer. While those within the ranks of the judiciary and law firms are becoming increasingly cognizant of the competence of women, certain attitudes among the public are slow to change. One client who had his case referred to a woman respondent asked: "Are you sure you are capable of battling this case against a man?"

The stereotype that women are weaker than men also inhibits progress. This is present in the Police in particular as women are not perceived to have the discipline and "combat-readiness" associated with the job.⁶⁸ Another example of this perception involves women in private law practice. Respondents reported that law firms prefer male employees because they believe them better able to handle the pressures of work and they can send them on assignments without having to make arrangements for their safety. Due to this stereotype, women have to "prove themselves" before being given assignments, which is not the case for men. Additionally, respondents reported that this stereotype is also used to explain why women are hardly ever trusted with high-profile cases, whether in private firms or in the Office of the Director of Public Prosecutions.

For instance, women reported that they struggle to attract the types of clients that pay high returns, which diminishes their ability to succeed within firms and when they begin their own practices. A reason was summarized by one respondent:

“For example, a typical lawyer in an adversarial system is one who is shrewd, abrasive and aggressive. This is not easy for female lawyers. Apart from corporate clients, other clients prefer abrasive, aggressive lawyers and most men have these attributes in comparison to women. It is not about competence because females are just as competent and intelligent as men but it is a problem of society and the manner in which the system works.

Relatedly, women respondents also believe that they earn less than men and that their commissions are lower as they are assigned lower-profile cases and family-related matters. As indicated by one respondent:

“There is unequal pay in the law firms for female advocates. Many of my colleagues talk about unequal pay comparing themselves to their male counterparts, being given less important assignments (female lawyer’s competency being doubted, less are allowed to be partners), poor maternity cover or none at all and sexual harassment from their male employers.

Furthermore, there is a common misperception that women judges, magistrates and police investigators are biased against men accused of gender-based crimes, and that they will choose to charge, prosecute or convict without due evidence. This view highlights why the notion that women are naturally empathetic is corrosive to the legitimacy of their work. The analog to women being more understanding and accommodating of survivors of rape is the perception that, in the words of one respondent, “in rape cases, if a matter is before a female magistrate, the accused person would have a tougher time”.

3.3

Cultural, geographic and religious factors

Aside from the traditional gender roles and social expectations placed upon women, culture, religion and geography can play a role in women’s employment and leadership opportunities within the justice sector. An example highlighted by respondents is the lack of female *Kadhis*, despite many Muslim women working in the legal sector. Traditionally, these positions have been awarded exclusively to men and this remains, despite both women’s and men’s use of these courts.

While geographic factors were not as pronounced in Kenya as compared to other countries studied, women in rural areas were found to be less likely than their urban counterparts to pursue legal careers, due both to lower literacy rates and more conservative attitudes in those communities. And even when women gained access to education, it was assumed that they were better suited to nursing and teaching, a perception that remains still. Women are not judged to possess leadership qualities by many members of the Kenyan public, an attitude described by one respondent as “a disease suffered at the national level”. Another respondent noted:

“A majority of voters still believe that women cannot be leaders despite women being the majority of the population in Kenya. It is not an issue of competence that is lacking, but a question of perception of women’s leadership.

As a result, even women who are able to meet the strict criteria to qualify for leadership roles, like partnerships in law firms, are locked out of positions for alleged lack of an ineffable quality that men possess. In some cases, women respondents reported considering leaving or actually leaving firms, which can reinforce the perception that women are not committed enough to their work.

3.4

Family obligations and domestic responsibilities

Despite equality in law reflecting a shift in social norms, women continue to be disproportionately impacted by the burden of domestic responsibilities. Unlike male colleagues, women have to account for balancing both work and family responsibilities. Such obligations have proved to be a significant obstacle for women, including women in the justice sector.

Women with young children are less likely to relocate and their hours are less flexible. As a result, employers are less likely to hire them, particularly in high-pressure and decision-making positions. In some instances reported by respondents, law firm management privately demanded that mothers take a truncated maternity leave in order to maintain their status within the firm.

Employers are also less likely to accommodate the schedule of women with newborn babies for training in relation to a promotion or to other career advancement activities. In the case of one respondent, during the allotted time period that she was being evaluated for a potential promotion, she went on maternity leave, which led to her not receiving the position. The firm saw that she had finalized fewer cases than competitors during that period, and family obligations were not considered.

Workplace policies often do not reflect the effects of women's disproportionate social responsibilities or the gendered division of domestic labor.⁶⁹ A woman respondent, a lawyer in private practice, indicated she lost her job due to medical complications arising from pregnancy. In order to avoid accounting for maternity leave, firms avoid hiring women or do not offer roles where their legally mandated three-month maternity absence would be, in the words of one respondent, "disruptive".

These reported concerns align with findings from research in other countries and around the world where observers argue that overcoming the challenge of balancing professional and family responsibilities is the greatest barrier to women's parity and advancement.⁷⁰ Policies need to accelerate equal care and domestic responsibilities for women and men. Employment rules and laws should provide better guarantees and enforcement towards equality, with particular attention in cases of pregnancy and maternity, such as flexible hours, relocation, maternity and paternity leave, and childcare facilities, among others.

3.5

Harassment and discrimination

Many women legal professionals reported that they faced harassment and unfair treatment from co-workers and superiors, as well as members of the public. Respondents perceived that men felt threatened or disrupted by women in their workplaces, particularly in well-established male-dominated spaces. Instances were indicated where women being harassed makes it difficult for other women to excel. One private practitioner admitted she was deterred from seeking high-profile jobs after witnessing media intimidation of the former Deputy Chief Justice during a case.

Sexual harassment is also a problem and in many cases experienced by those new to the profession. Sexual harassment is often downplayed, according to one male respondent, and exposing such behavior risks reprisal and exposure to further harm. While policies exist, many respondents reported having to endure harassment in order to keep their jobs.

The Law Society of Kenya has acknowledged the pervasiveness of the problem and drafted an updated policy to guide firms on how to prevent harassment, as well as how to address it when allegations are raised.⁷¹ Recently, this issue has been publicized due to a 2019 case filed before the Employment and Labor Relations Court.⁷² Brought by a female partner at the firm, descriptions are of a working environment consistent with those depicted by a number of respondents in which harassment, discrimination, contract violation and intimidation are the norm.

3.6

Lack of support networks and mentorship programs

Support networks are important in all professions as they provide mentorship platforms for young professionals to gain necessary insights and guidance into a specific sector. Kenya's legal sector has scattered examples of such associations, but few sufficient to provide women with all the tools they need to succeed when facing gender-specific challenges. The Law Society includes mentorship programs with senior advocates, but respondents report these can be enhanced. The Kenya Magistrates and Judges Association specifically targets issues affecting female judicial officers. One respondent expressed her desire for similar organizations across the sector:

“ Networks are important, whether formal or informal. If networks are not available then it is very difficult for female legal professionals to excel in any field. That interaction is good for females as it helps them to hone skills and boost confidence in their ability to perform by looking at how their seniors have performed.”

Respondents noted that the lack of informal networks for mentoring women lawyers has led to them missing out on events that could yield professional opportunities and skill development. Relative to men, women lawyers do not have large networks, which, in turn, can inhibit career advancement; this is in part due to a lack of opportunity, but also a need for better outreach for women to participate.

3.7

Political will and legal and policy constraints

While it is clear there have been advances since the adoption of the 2010 Constitution, its implementation in the justice sector is a work in progress, and further commitments are needed to institutionalize it fully. Stronger political will is required, as well as enhanced commitment to implementation and reform.

For example, gender parity remains minimal at the Supreme Court and the Court of Appeal. Cases filed to challenge the gender composition of these courts for having disregarded the two-thirds gender principle were dismissed.⁷³ Furthermore, the Constitution clearly establishes the entry qualification to join the judiciary, the Office of the Director of Public Prosecutions and the Attorney General's Office. However, very few women have the experience stipulated, effectively locking them out of these roles at present. Often, due to policies

being drafted in a seemingly gender-neutral manner, few women are successfully appointed and frequently find themselves relegated to deputy positions instead.

Some policies require further gender analysis on their disproportionate impact on women. An example of an ostensibly gender-neutral measure that has gendered consequences is the policy on transfers for judicial officers, which stipulates that they may only serve at a given station for three years. This may have a specific impact on female officers with children. While not directly discriminatory, the policy may indirectly affect women negatively and disincentivize them from seeking employment in this position. Respondents also highlighted that many women preferred to remain in their comfort zone to avoid the pressures associated with beginning new jobs and embarking on new challenges, in part due to the factors outlined above – limited networks, lack of policies supporting maternity and child rearing, and restrictive social norms against women working in dangerous or challenging environments. One respondent conceded that the pressure

to accept transfers dissuades those who have already established themselves in one particular place:

“If a woman is already settled in a specific town and her practice is doing well or her employer in the other sector is good, she will not leave. [Because of] the frequent or unpredictable transfers to remote areas or places, which are far-flung and undesired, they would rather remain in familiar jurisdictions. They will not try to apply for positions in either the judiciary or DPP [Office of the Director of Public Prosecutions] or any government job where transfers are eminent

In addition to what is stated overtly by the respondent, this mentality is also a reflection of the lack of flexible and supportive institutional policies addressing challenges that women professionals in general face, and thereby effectively deterring them from taking up roles that contribute to their career progression.

PART 4
A WAY FORWARD



SUPPORT FOR WOMEN IN THE JUSTICE SECTOR

Women's participation in the justice sector is globally recognized as a human right and established as a constitutional right in Kenya. This report has detailed evidence that women continue to face substantive inequalities in their roles as women justice professionals and that these disparities may have negative consequences, not only for women justice professionals themselves, but more broadly for women accessing justice as well.

Where women are able to access leadership roles, women could improve outcomes for justice seekers, support implementation of neglected constitutional provisions on equality and non-discrimination, and serve as role models for the next generations of young lawyers and judges. While numbers are climbing incrementally closer to parity in the sector as a whole, imbalances will continue to persist within decision-making roles without strong policy intervention. This section identifies areas that can be improved to ensure that women justice professionals can finally attain substantive equality in Kenya.

4.1

Enhance implementation of the Constitution

Kenya's 2010 Constitution establishes the need for gender parity within appointive and elective bodies. Procedures for appointment, recruitment and promotion within the justice sector must take into account historical and persistent discrimination against women, which has created lingering disadvantages in the sector. Affirmative action policies can play a role in reversing this and defying social assumptions that women do not possess leadership qualities. The incomplete implementation of the Constitution, especially the violation of the two-thirds principle by numerous organizations in the public legal sector, must be addressed.

The impact of a judiciary willing to enforce the constitutional mandates for gender equality has already been observed in several key cases in recent years. As an example, in 2017, the High Court recognized the "discriminative shackles of patriarchy" in the case of *Re: Estate of Thuku Soroko Gikunju* after a woman was denied her share of her father's estate due to her marital status, in violation of the Constitution.⁷⁴ Feminist and gender-sensitive jurisprudence can have a concrete impact on women's ability to achieve justice through the courts, and has established powerful precedents.

While the judiciary plays an important role in ensuring that the Constitution is adhered to and its articles are implemented, having a gender quota law or a constitutional guarantee does not automatically translate into the appointment of women in the justice sector. The extent to which the two-thirds principle is enforced depends on the commitment of political figures to ensure that compliance occurs. Signaling to appointing authorities that compliance is obligated will accelerate the process.

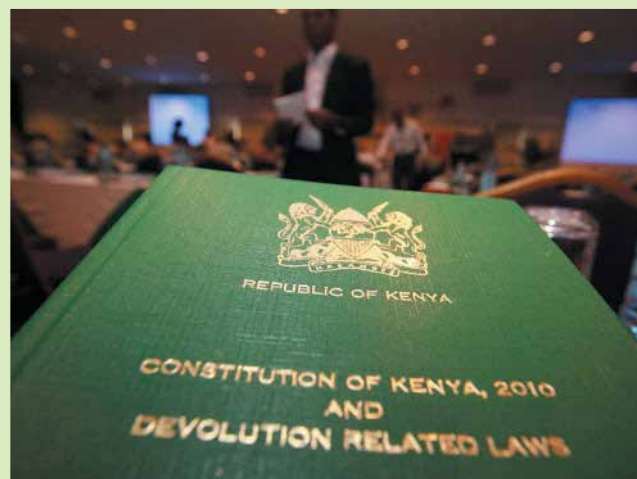


Image: © THE STAR

4.2

Enact and implement gender-responsive policies and build a gender-sensitive justice sector

Kenyan law promotes gender equality including affirmative policies that could contribute to bridging the gap in women's participation and representation in the justice sector. However, based on the research and interviews conducted, it is clear that discrimination persists in both subtle and not-so-subtle ways, even in the absence of direct legal discrimination. The challenge lies in policy gaps as well as limited implementation or enforcement. Specifically, the adoption and/or implementation of policies combined with efforts to focus on the following issues can help support women justice professionals:

- **maternity leave:** ensuring leave as a legal right and not an inconvenience or disruption as well as eliminating practices that do not accommodate expectant or new mothers and providing more information and encouragement on the use of paternity leave;
- **childcare:** facilitating availability of childcare for work-life balance;
- **flexible hours:** working hours that are time- and location-flexible to help fulfill professional and family roles;

- **professional welfare and advancement:** enhancing women's welfare in the legal profession and providing equal opportunities for the advancement of women in the legal field, including revisiting transfer policies in the public sector;
- **sexual harassment:** adopting a sexual harassment policy and law is critical to ensure a conducive learning, education and employment setting as well as building the capacity of human resource departments to address sexual harassment complaints fairly and expeditiously;
- **affirmative action:** institutionalizing affirmative action as needed;
- **organizational culture:** actively changing institutional cultures that hinder the progress of women; and
- **champions:** galvanizing gender champions for behavioral change at individual and institutional levels, helping to implement good practices to achieve equality.

Justice institutions must be required to build the capacity of their employees to be gender-sensitive and to provide a safe, supportive and inclusive work environment for women justice professionals. There is a need to train staff extensively on combating sexual harassment, and prevention mechanisms must be put into place and implemented. Complaints procedures must be made clear, and sanctions must be imposed if harassment is taking place. The Law Society of Kenya, as the main regulating body of lawyers and judges in the country, should directly intervene to devise, implement and train on gender policies and strategies to support equality in participation and advancement, and support the development of reduced-hour, flexible time and childcare policies.

4.3

Improve access to education and create a supportive environment in law schools

Ensuring that girls and young women have equal access to education as compared to their male counterparts is a first step towards empowering them to be professionals in the legal sector. Developing early mentorship and career awareness programs will help combat stereotypes that women are not suited to a legal career path as well as support women after they graduate. Law faculties should be more active in visiting schools to inspire students to consider pursuing law as a career.

Furthermore, law schools should consider affirmative action programs or scholarships aimed at empowering women from low-income households or rural areas to pursue legal careers. Establishing networks to connect women with mentors, share experiences and discover solutions to common problems faced by women in the sector would be another positive step.

All law students, not only women, should be required to complete courses relating to gender and the law in order to ensure that Kenya's future legal professionals are made aware of factors like implicit gender biases and subtle discrimination before they become enmeshed in the culture of organizations. By making students aware of the historical injustices faced by women and the persisting imbalances, students of all genders will make more informed decisions regardless of where they end up working. Building the capacity of students, staff and professors on endemic issues such as sexual harassment and intimidation will also be valuable to ensure that law schools are a conducive learning environment.

4.4

Undertake gender audits

As noted earlier, there is a perception that the legal sector can be a hostile environment for women due to publicized cases of discriminatory treatment, frequent transfers and unfair recruitment processes. This might discourage women from attending law school and attempting to join the field.

Public and private institutions, including firms, should be incentivized to perform or commission regular gender audits to identify and eliminate discriminatory practices. As a tool to assess institutionalization of gender equality in an organization, a gender audit will help assess whether organizational services, structures, procedures, budgets and the overall environment are supportive of gender equality, and identify areas for improvement. The judiciary has already taken this step and if recommendations are implemented, a better working environment for women will be facilitated and contribute to attracting more female employees in the future.

4.5

Highlight role models

Multiple respondents noted the importance of having visible role models in the field as reinforcing their decision to persevere and complete their legal training. Learning about prominent figures is one way for women to obtain insights into the challenges they faced and gain inspiration. There are existing role models in the justice profession – judges, professors, prosecutors, advocates and even law students – that can inspire other women to a career in justice.

Working with the media to also report on positive examples of women justice professionals can help change public perceptions about women's capabilities while also contributing to attracting more women to the field. Profiling successful women who have overcome barriers across the justice system will inspire upcoming young professionals to join the profession as well as helping appointing authorities to identify women for prominent positions.

4.6

Support networking and mentorship associations

The lack of available networks for young women professionals to gain valuable career advice and acquire skills was cited by many respondents, and the creation and strengthening of such organizations would address this issue. Such networks could help women in the justice sector to build professional connections to advance their careers, as well as provide them with platforms for joint actions to build their own capacity, challenge barriers and support each other, such as through networking, mentorship and coaching.⁷⁵

4.7

Eliminate stereotypes

It is clear that despite legal progress, social perceptions of women's capacity for leadership are governed by stereotypes. Education can contribute to reversing assumptions among both young people and professionals. Broader social outreach is needed to address negative public perceptions of women – thus gaining support of the media in eliminating negative stereotypes and providing a more prominent role for women justice professionals. Government, traditional leaders, civil society and private firms should pro-actively engage in efforts to eliminate stereotypes and other negative perceptions of women within their spheres of influence. Judicial officers, the Office of the Director of Public Prosecutions, law firms and, importantly, the police should be required to undergo gender sensitivity training, including courses that address gender bias, especially implicit bias, and stereotypes.



Chief Justice David Maraga and Rachel Shebesh, Chief Administrative Secretary, Ministry of Public Service and Gender, shake hands at the Regional Conference for Women Justice Actors organized by the International Associations of Women Judges – Kenya Chapter and IDLO in Nairobi from November 29 to December 1, 2018.

Image: © Twitter/The Judiciary Kenya

CONCLUSION AND POLICY RECOMMENDATIONS



POLICY RECOMMENDATIONS

As the research findings in *Women's Professional Participation* have shown, women in Kenya's justice sector have made undeniable progress, a process accelerated by the adoption of the 2010 Constitution. Women have almost achieved parity in law schools, and every year the rate of women in the sector increases. Considering that as recently as the 1990s women were essentially locked out of the field, these gains are impressive. Nonetheless, as nominal equality becomes more and more attainable, the need for substantive equality and parity in positions of leadership becomes even more urgent. Women are well represented in lower tiers of the sector, but they remain unrepresented at the highest levels of the Supreme Court, the Office of the Director of Public Prosecutions and private law firms. Moreover, women continue to be largely unrepresented in the Police. Further progress is needed to ensure that the core organs of Kenya's society are legitimately representative of its people and responsive to the needs of over half of its population.

To reiterate, the following policy recommendations are critical to advancing the participation of women professionals in the justice sector:

1. Enact legislative and other specific measures to support the implementation of the 2010 Constitution, in particular article 27 on gender parity in public bodies, and provide incentives for private bodies, such as law firms, to do the same.
2. Adopt and implement gender-sensitive policies, including on maternity, childcare facilities, flexible working hours, transfer and security policies, and sexual harassment.
3. Ensure that recruitment and promotion processes are fair, transparent and aligned with bringing about gender parity.
4. Mandate gender sensitization and awareness training for all justice sector professionals, including judges, lawyers and police officers. Ensure that the curricula cover the importance of gender parity and how to adequately address barriers faced by women justice professionals as well as how to build a safe and inclusive work environment for all.
5. Address gender discrimination and harassment of women justice professionals through transparent and effective complaints procedures. Ensure the adoption of strict anti-reprisal policies, including for cases of sexual harassment.
6. Improve access to education for women and girls at all levels by providing scholarships, implementing affirmative action policies, and creating awareness among students – high school, university and law school – on the attainability and attractiveness of a career in the justice sector.
7. Promote career progression, leadership, mentorship and networking programs for women justice professionals and law students, including support for women's professional associations.
8. Enhance programs that promote the entry of women into the National Police Service, including through affirmative action, as well as provide opportunities for their career advancement.
9. Conduct regular gender audits to identify areas of discrimination within different justice sector organizations.
10. Actively combat negative perceptions and stereotypes of women's leadership and engagement in the justice sector, including by profiling women role models and media outreach.

An opportunity exists, a decade into this new era of Kenyan constitutionalism and politics, to elevate women to their rightful place alongside their male colleagues at the apex of the justice sector and to ensure that all Kenyans can enjoy equal access to justice.

NOTES

- ¹ Hereinafter referred to as: Women's Professional Participation.
- ² NGECE was established by the National Gender and Equality Commission Act, 2011 pursuant to article 59(4) of the Constitution of Kenya (2010). Its mandate derives from the Constitution and aims to support national values and principles of governance, which include human dignity, equity, social justice, inclusiveness, equality, human rights and non-discrimination. NGECE actively contributes to expanding spaces for women professionals in the justice sector.
- ³ IAWJ is a non-profit, non-governmental organization whose members represent all levels of the judiciary worldwide and share a commitment to equal justice for women and the rule of law. Created in 1991, the IAWJ has grown to a membership of over 6,000 in 100 countries.
- ⁴ NGECE, *The Judiciary Gender Audit 2019* (forthcoming).
- ⁵ At the High-Level Meeting of the 67th Session of the United Nations General Assembly on the Rule of Law at the National and International Levels in 2012, IDLO made a 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...". This fourth study in Kenya follows similar national research in Afghanistan and Tunisia and a global study on contributions, barriers and pathways to women's professional participation in the justice sector.
- ⁶ IDLO, *Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities* (2014), available at: https://www.idlo.int/sites/default/files/IDLO_Afghan%20Legal%20Professionals%20full%20report.pdf.
- ⁷ IDLO, *Women's Professional Participation in Tunisia's Justice Sector: Pathways and Opportunities* (2019), available at: https://www.idlo.int/sites/default/files/pdfs/publications/idlo_womens-professional-participation-in-tunisia-justice-sector_low-res_oct2019.pdf.
- ⁸ IDLO, *Women Delivering Justice: Contributions, Barriers, Pathways* (2018), available at: <https://www.idlo.int/sites/default/files/pdfs/publications/IDLO%20-%20Women%20Delivering%20Justice%20-%202018.pdf>
- ⁹ Eugene Cotran, "The Development and Reform of the Law in Kenya", *Journal of African Law*, vol. 27, No. 1 (1983), pp. 42–61.
- ¹⁰ A scrutiny of the Law Society website (www.lsk.or.ke) from the colonial period reveals that even the leadership of the Bar was either a British or Indian national who served as Chairperson of the Premier Bar Association. In 1979, Amos Wako became the first male of Kenyan origin to be Chairperson of the Bar Association.
- ¹¹ Kenya has been a Member Party of IDLO since 2012. IDLO provided technical assistance to the Committee of Experts in Constitutional Review during the process to design the Constitution of Kenya, and subsequently to the Commission of the Implementation of the Constitution. Currently, IDLO continues to support implementation of the Constitution as well as programs focused on access to justice, devolution, gender reform, electoral dispute resolution, and land, environment and natural resources management. See: IDLO, *IDLO in Kenya*, available at: <https://www.idlo.int/idlos-work-kenya>.
- ¹² Article 10, Constitution of Kenya (2010).
- ¹³ Chapter Four: The Bill of Rights, article 20(4a), Constitution of Kenya (2010).
- ¹⁴ Chapter Four: The Bill of Rights, article 27(8), Constitution of Kenya (2010). Additionally, article 81 provides as follows: "The electoral system shall comply with the following principles – (b) not more than two-thirds of the members of elective public bodies shall be of the same gender". See: Chapter Seven: Representation of the People, article 81(b), Constitution of Kenya (2010).
- ¹⁵ CEDAW, "Eighth periodic report of States Parties due in 2015 – Kenya", 1 June 2016, CEDAW/C/KEN/8, paras. 94–115, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKEN%2f8&Lang=en.
- ¹⁶ *Ibid.* and see also: Kenya National Bureau of Statistics, *Women and Men in Kenya: Facts and Figures 2017*, p. 60.
- ¹⁷ Part 2 – Rights and Fundamental Freedoms, article 45(3), Constitution of Kenya (2010).
- ¹⁸ See: *PNN v. ZWN Civil Appeal 128 of 2014* (2017) eKLR.
- ¹⁹ [2016] eKLR. The Kenya National Commission on Human Rights has indicated that the decision confirms that all children born out of wedlock have the right to have their father's name recorded on their birth certificate.
- ²⁰ [2015] eKLR, Petition 182 of 2015.
- ²¹ CEDAW, General Recommendation No. 23, preamble, and see also paras. 5 and 15, Sixteenth Session (1997).
- ²² Further, the Beijing Declaration highlights that "Women's equal participation in political life plays a pivotal role in the general process of the advancement of women. Women's equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women's interests to be taken into account. Without the active participation of women and the incorporation of women's perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved." Beijing Declaration and Platform for Action, 1995, para. 181.
- ²³ *Ibid.*, para. 232(m).
- ²⁴ Kenya National Bureau of Statistics, *Women and Men in Kenya: Facts and Figures 2017*, p. 11.
- ²⁵ Fiona Sampson and Sasha Hart, *Making Legal History: Overview of the Development and Implementation of a Strategic Equality Initiative to Achieve Legal Protection from Defilement for All Girls in Kenya*, p. 2. Available at: <http://kenyalaw.org/kl/index.php?id=4521> (As a general pattern, police have failed to conduct adequate criminal investigations into crimes under the Sexual Offences Act resulting in a climate of impunity that has only served to perpetuate this violence. In a 2009 survey of those who reported gender-based violence to Kenyan police, 52% said police were "not helpful"; 39% said police were "reluctant to record statements"; 28% said they felt "humiliated and handled without courtesy and dignity"; and 20% said they were asked by police for bribes).

- ²⁶ R. Aura, *Situational Analysis and the Legal Framework on Sexual and Gender-Based Violence in Kenya: Challenges and Opportunities*, p. 3, available at: <http://kenyalaw.org/kl/index.php?id=4512>; Samantha Jeffries et al., "Women's Pathways to Prison in Kenya: Violence, Poverty, Familial Caretaking and Barriers to Justice", *Women's Studies International Forum*, vol. 73 (2019), pp. 50–61. 10.1016/j.wsif.2019.02.003, p. 54.
- ²⁷ Tara Denham, *Police Reform and Gender* (INSTRAW and DCAF, 2008), p. 5.
- ²⁸ National Center for Women and Policing, *Recruiting and Retaining Women: A Self-Assessment Guide for Law Enforcement* (National Centre for Women and Policing, 2001), p. 22.
- ²⁹ C. Bezuidenhout, "Performance of Female Police Officers in a Male Dominated Environment: Replacing Myth with Reality", Institute for Human Rights and Criminal Justice Studies – Second World Conference, 3–7 December 2001, Durban, South Africa, p. 7, as cited in Tara Denham, *Police Reform and Gender* (INSTRAW and DCAF, 2008), p. 5.
- ³⁰ High-level Group on *Justice for Women, Justice for Women: High-level Group Report* (New York, NY: UN Women, IDLO, World Bank and Task Force on Justice, 2019), p. 78.
- ³¹ Tara Denham, *Police Reform and Gender* (INSTRAW and DCAF, 2008), p. 5.
- ³² *Ibid.*, pp. 9–10, citing studies from India, the United Kingdom and Sierra Leone.
- ³³ UN Women, *Progress of the World's Women 2011–2012: In Pursuit of Justice*, p. 61.
- ³⁴ IDLO, *Women Delivering Justice: Contributions, Barriers, Pathways*, p. 14.
- ³⁵ A close look at existing law schools reveals that the ratio of females to males is almost 50:50, with some schools having more girls in class. For instance, as of April 2019, Nairobi has 50%, Strathmore 60%, Egerton 50%, and Moi 54%. Between 2011 and 2016, the enrollment ratio at the Kenya School of Law was almost 50:50 and in some instances the number of females was slightly higher than males.
- ³⁶ Professor Patricia Kameri-Mbote, who has been a trailblazer in the Kenyan legal profession.
- ³⁷ "Faculty", Nairobi School of Law, accessed April 2019, available at: <https://law-school.uonbi.ac.ke>.
- ³⁸ "Faculty", Moi University, accessed April 2019, available at: <https://law.mu.ac.ke/>.
- ³⁹ Constitution of Kenya [2010] and Judicial Service Act No. 1 of 2011 (Revised).
- ⁴⁰ Judicial Service Commission, March 2019, available at: <https://www.judiciary.go.ke/leadership/judicial-service-commission>.
- ⁴¹ Law Society of Kenya, "About the Law Society of Kenya", available at: <http://www.lsk.or.ke>.
- ⁴² Data from 2001 to 2015 was gathered through hard copy journals of the organization. Data from 2016 to 2019 was gathered online from the Law Society of Kenya, accessed December 2019, available at: <https://lsk.or.ke>.
- ⁴³ The Judicial Service Act No. 1 of 2011 (Revised) establishes the Judicial Service Commission, an organ responsible for recommending candidates for appointment to the judiciary. Article 171 of the Constitution details the composition of this Commission.
- ⁴⁴ Notably, the lead counsels for petitions for all parties in Kenya's Election Petitions were all males, with very few women assisting as counsel.
- ⁴⁵ Ms. Effie Owuor. Her curriculum vitae is available at: https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/elj2_Ken_cv.pdf.
- ⁴⁶ The Republic of Kenya, *The Final Report Task Force on Judicial Reforms* (2010), available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Final_Report_of_the_Task_Force_on_Judicial_Reforms.pdf.
- ⁴⁷ See: NGECC, *Advisory Opinion 2013*.
- ⁴⁸ *State of the Judiciary Report 2017–2018*, p. 214, available at: <https://www.judiciary.go.ke/wp-content/uploads/sojar20172018.pdf>
- ⁴⁹ NGECC, *The Judiciary Gender Audit 2019* (forthcoming).
- ⁵⁰ *Ibid.*
- ⁵¹ "Courts of Record" refers to High Courts and above. The decisions or judgments that come from these courts act as precedents and are binding on subordinate courts by the doctrine of *stare decisis*. Magistrates' Courts are subordinate at all times and their decisions are not binding on any court.
- ⁵² NGECC, *The Judiciary Gender Audit 2019* (forthcoming).
- ⁵³ *Kadhis'* Courts are established under the *Kadhis'* Courts Act [Cap. 11]. They are presided over by the Chief *Kadhi* or a *Kadhi* and have jurisdiction to determine questions of Islamic law relating to personal status, marriage, divorce and inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the court. Unlike other courts, the rules of evidence as contained in the Evidence Act do not apply in *Kadhis'* Courts. See: "Kadhis' Courts", available at: <https://www.judiciary.go.ke/courts/subordinate/kadhis/#1521467462054-3cffdd19-4d3b>.
- ⁵⁴ Referenced at para. 121 of the Government of Kenya, "Seventh periodic report of States Parties", 24 March 2010, CEDAW/C/KEN/7, p. 35. This was a directive from the then Secretary to the Cabinet to the effect that at least 30% of new employees recruited into public service should be women.
- ⁵⁵ Other identifiable institutions that have had women legal professionals in leadership positions include: the Council of Government; the Assets Recovery Agency; the Central Depository; and the Settlement Corporation Limited.
- ⁵⁶ Part 4 – Other Offices, Constitution of Kenya [2010].

- ⁵⁷ The Office of the Director of Public Prosecutions Act No. 2 of 2013, section 5(1)(b).
- ⁵⁸ Current data is provided by the Office of the Director of Public Prosecutions while 2010 data is available from: "Executive" Office of the Director of Public Prosecutions, accessed December 2019, available at: <http://www.odpp.go.ke/>.
- ⁵⁹ Data from the Office of the Director of Public Prosecutions, Nairobi Office, 2019.
- ⁶⁰ National Police Service Act No. 11A of 2011.
- ⁶¹ Grace Syombua Kaindi was appointed Deputy Inspector General of Police in 2013 and is the first female to hold the position following the constitutional requirement which stipulates that where a man is at the helm of an institution, the deputy must be a woman and vice versa. When she retired in 2016, she was replaced by a man in violation of the constitutional provision.
- ⁶² See: "National Police Service", accessed 25 February 2020, available at: <http://www.nationalpolice.go.ke/pages/wrapper/115-inspector-general-of-police.html>.
- ⁶³ *National Police Service Commission Annual Report 2014/2015*, p. 13, available at: <https://www.npsc.go.ke/index.php/2014-03-25-12-08-21/downloads?download=58:annual-report-fy-2014-15>.
- ⁶⁴ *Ibid.*
- ⁶⁵ NGEK, *The Judiciary Gender Audit 2019* [forthcoming], p. 44.
- ⁶⁶ [2019] eKLR.
- ⁶⁷ For instance, see: *Independent Policing Oversight Authority & another v. Attorney General & 660 others* [2014] eKLR. This matter challenged the constitutionality of the recruitment process for purposes of appointments to the Police. Elements of discrimination raised included women locked out on the basis of pregnancy. The court relied on the European Court of Human Rights and the criteria for limiting rights under article 24 of the Constitution of Kenya (2010) to justify the treatment of women who were pregnant during the recruitment process.
- ⁶⁸ See note 55.
- ⁶⁹ Debora L. Rhode, *The Unfinished Agenda: Women and the Legal Profession* (American Bar Association Commission on Women in the Profession, 2001).
- ⁷⁰ *Ibid.*
- ⁷¹ *Law Society of Kenya Sexual Harassment Policy 2019*.
- ⁷² *Miriam Mweu v. Kiptiness and Odhiambo Advocates* [2019] eKLR, Petition 132 of 2019.
- ⁷³ See: *Federation of Women Lawyers (FIDA-Kenya) & 5 others v. Attorney General & Another* [2011] eKLR; as well as *National Gender and Equality Commission & another v. Judicial Service Commission & 2 Others* [2017] eKLR.
- ⁷⁴ [2017] eKLR, Succession Cause 347 of 2012.
- ⁷⁵ IAWJ-Kenya and FIDA-Kenya are examples of professional networks for women justice professionals.

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