

# GENDER IMPACT ASSESSMENT

## The Judicial Code of the Republic of Armenia and its Derivative Legal Acts

**European Union and  
Council of Europe  
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– enhancing the independence and  
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# List of Abbreviations

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<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEPEJ</b>	European Commission for the Efficiency of Justice
<b>ECHR</b>	European Convention on Human Rights
<b>EIGE</b>	European Institute for Gender Equality
<b>EU</b>	European Union
<b>GA</b>	Gender analysis
<b>GIA</b>	Gender impact assessment
<b>GAJ</b>	General Assembly of Judges
<b>GR</b>	General Recommendation
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OSCE</b>	Organisation for Security and Cooperation in Europe
<b>SDG</b>	Sustainable Development Goals
<b>SJC</b>	Supreme Judicial Council
<b>UNODC</b>	United Nations Office on Drugs and Crime

# Glossary of Key Terms

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**T**he glossary of terms is a compilation from the Council of Europe. 2016. Gender Equality Glossary and UNODC. 2021. Gender Mainstreaming in the Work of UNODC: Guidance Note for UNODC Staff. Specific sources are cited as appropriate.

**Balanced participation** of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40 per cent.<sup>1</sup>

**Feminisation** means the process of increasing the number of women in a profession traditionally dominated by men.<sup>2</sup> It can also refer to a shift in gender roles in the organisation towards a focus upon the feminine.

**Gender** means the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.<sup>3</sup>

**Gender analysis** is the study of differences in the conditions, needs, participation rates, access to resources and development, control of assets, decision-making powers, etc, between women and men on their assigned gender roles.<sup>4</sup>

**Gender based discrimination** is any distinction, exclusion or restriction made on the basis of socially constructed gender roles and norms which prevents a person from enjoying full human rights, resources, opportunities and the right to contribute and influence. Discrimination can be:

- ▶ **Direct discrimination** which occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of women or of men, which cannot be justified objectively; or
- ▶ **Indirect discrimination** which occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. Applying a gender-neutral law may leave the existing inequality in place or exacerbate it.<sup>5</sup>

**Gender equality** means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference, and aims to promote the full participation of women and men in society. It means accepting and valuing equally the differences between women and men and the diverse roles they play in society. Gender equality includes the right to be different. This means taking into account the existing difference among women and men, which are related to class, political opinion, religion, ethnicity, race or sexual orientation. Gender equality means discussing how it is possible to go further, to change the structures in society which contribute to maintaining the unequal power relationships between women and men, and to reach a better balance in the various female and male values and priorities.<sup>6</sup>

- ▶ **De jure equality** (sometimes called **formal equality** or “paper governance”) refers to equality under the law.

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1. Source: Recommendation Rec (2003) 3 of the Council of Europe Committee of Ministers to member states on balanced participation of women and men in political and public decision-making.

2. Source: Council of Europe. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

3. Source: The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 3.

4. Source: Council of Europe. 2014. Manual Supporting Gender Equality Rapporteurs in their role.

5. Source: Council of Europe Committee of Ministers Recommendation CM/Rec (2007) 17 on gender equality standards and mechanisms, Explanatory Memorandum, CM (2007)153 add, Paragraph 20.

6. Source: Council of Europe Committee of Ministers Recommendation CM/Rec (2007) 17 on gender equality standards and mechanisms, Explanatory Memorandum, CM (2007)153-add, Paragraph 20.

- ▶ **De facto equality** refers to equality in practice. Equality does not mean that women and men are the same or that they become identical, but rather that their similarities and differences are recognised and equally valued and that their opportunities and their benefits become and remain equal. It means equality for women and men in the allocation of resources or benefits or in access to services and recognising the diversity of different groups of women and men.

**Gender equity** refers to fairness and justice in the distribution of responsibilities and benefits between women and men. To ensure fairness, measures must often be put in place to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field. Equity is the means - equality is the result.

**Gender blind** refers to the failure to recognise that the roles and responsibilities of women/girls and men/boys are given to them in specific social, cultural, economic and political context and background. It means ignoring the different socially determined roles, responsibilities and capabilities of women and men. Gender-blind policies and activities are based on information derived from men's activities and/or assume those affected by the policy or activity has the same (male) needs and interests.

**Gender neutral** refers to anything – a concept, an entity, a style of language - that is un-associated with either the female or male gender. These laws, policies or activities are not specifically aimed at either women or men and are assumed to affect both sexes equally. However, they may actually be gender blind.

**Gender-neutral, gender-sensitive and gender-transformative:** the primary objective behind gender mainstreaming is to design and implement development projects, programs and policies that:

- ▶ Do not reinforce existing gender inequalities (**Gender-neutral**)
- ▶ Attempt to redress existing gender inequalities (**Gender-sensitive**)
- ▶ Attempt to redefine women and men's gender roles and relations (**Gender-positive/transformational**).

**Gender mainstreaming** is the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and all stages, by the actors normally involved in policy making. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetrated.<sup>7</sup>

**Gender stereotypes:** are generic attitudes, opinions or roles applied to a particular gender based on unjustifiably fixed assumptions. Gender stereotypes continue to be widespread and often give rise to bias and gender based discrimination. Gender stereotypes are governed by society and reflect common social norms and ideas on how a man or woman is expected to behave. These ideas are often reinforced or reproduced by the media, religion and global political and economic processes. Stereotypes play a decisive role in perpetuating gender inequality in societies.

**Gender norms** are ideas about how women and men should be and should act. People internalise and learn these "rules" early in life, which sets up a life cycle of gender socialisation and stereotyping. Put another way, gender norms are the standards and expectations to which gender identity generally conforms, within a range that defines a particular society, culture and community at that point in time.

**Gender impact assessment** is the process of comparing and assessing, according to gender relevant criteria, the current situation and trend with the expected development resulting from the introduction of the proposed law or policy. It is the estimation of the different effects (positive, negative or neutral) of any policy or activity implemented to specific items in terms of gender equality.<sup>8</sup>

**Sex-disaggregated data** is the collection and presentation of all statistics separately on women and men. It means that all data is cross-classified by sex, presenting information separately for each sex, for women and men, and sometimes boys and girls. Sex-disaggregated data reflect roles, shares, participation and presence at events in numbers or in percentages. Sex-disaggregated data is essential for assessing the reality of gender differences in a society or specific sector at a given point in time and identifying barriers to gender equality.

**Gender-disaggregated data** is the collection and analysis of results by gender, or in other words data on the social status and socio-economic roles of women and men.

7. Review of Economic and Social Council agreed conclusions 1997/2 on mainstreaming the gender perspective into all policies and programmes in the United Nations system. ECOSOC res 1997/2.

8. European Institute for Gender Equality. 2016. Gender Impact Assessment: Gender Mainstreaming Toolkit.

A “**gender perspective**” is a way of approaching or examining an issue, paying particular attention to the potentially different ways that women and men are or might be impacted. This is also called using or looking through a “gender lens”. In a sense, it is exactly that: a filter or a lens that specifically highlights real or potential differences between women and men.

**Temporary special measures** refer to actions aimed at accelerating *de facto* equality between women and men that may, in the short term, favour women. Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women states that: “Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.”<sup>9</sup>

**Gender-responsive budgeting** is a method of determining the extent to which government expenditure has detracted from or come nearer to the goal of gender equality.

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9. UN Convention on the Elimination of All Forms of Discrimination against Women, Article 4, paragraph 1.

# Executive Summary

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**A** vital entry point for mainstreaming gender equality considerations in the judiciary is to ensure that the Judicial Code of Armenia and the deriving legal acts provide for a gender-responsive legal framework. Every law has its impacts, intended or non-intended. No law has neutral impacts, particularly if the position of certain actors, such as women, is not equal at the starting point. Gender mainstreaming looks at not only how to achieve gender balanced representation in decision-making positions in the judiciary by encouraging greater participation of women in the judiciary at all levels; but also to address structural inequalities that exist between men and women to improve their access to, or control over, resources and improve their opportunities to participate in decision making processes.

This report provides for a Gender Impact Assessment (GIA) of the Judicial Code of Armenia and the deriving legal acts, namely: the rules of the procedure of the General Assembly of Judges; the methodology and the procedure of the performance evaluation of judges; the requirements for non-governmental organisations nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the General Assembly of Judges and the internal working disciplinary rules of judges. It aims to identify the effects of these legal acts on gender relations in the society.

The central question this report asks is whether the Judicial Code of the Republic of Armenia and the derivative legal acts *reduce, maintain or increase* the gender inequalities between women and men. The report looks at the expected impacts on the equality of women and men, not merely on the impacts related to a ban on discrimination. The report tries to estimate different effects, positive, negative or neutral of the laws in terms of gender equality.

The report is prepared by the international consultant of the Council of Europe Ms Eileen Skinnider<sup>10</sup>.

## Findings

The report draws three main findings.

1. The Judicial Code and the derivative legal acts, for the most part, have been articulated using a gender-neutral approach based on the assumption that the formulation of the judiciary benefits all members of the judiciary equally. At first sight these provisions seem gender-neutral and non-discriminatory. However, a recent study on gender equality in the judiciary in Armenia found that persistent gender stereotypes existing in the society about “women’s” and “men’s” jobs and unconscious gender bias led to discriminatory treatment of women in the justice system, including women judges.<sup>11</sup> When gender inequalities are deeply embedded in the social and institutional structures and internalised by many women and men, provisions that appear gender neutral are in fact gender blind. This approach ignores the different socially determined roles and responsibilities of women and men and how this generates different experiences for women and men judges. This has the effect of **maintaining** gender inequalities between women and men.
2. The Judicial Code does contain some specific legal provisions that are framed using a gender-sensitive approach, in an effort to **reduce** gender inequalities. A legislatively prescribed quota formula attempts to redress the underrepresentation of women on the bench while the provisions that specifically refer to judges who are on “maternity, child birth or child adoption leave” allows for differences in treatment based on sex and characteristic of women and men, specifically not to penalise women judges who become mothers in certain situations.

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10. Ms Eileen Skinnider is an international consultant on justice, gender and human rights issues and a Senior Associate of the International Centre for Criminal Law Reform. A lawyer by profession, with an LL.B. (U of S, 1987) and LL.M. in Public International Law (LSE, 1996), she has over 20 years of experience in conducting research, developing global tools, and providing technical assistance regarding the national implementation of international human rights and criminal justice standards. Ms Skinnider has also worked with the Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).

11. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

i. Regarding the gender quotas, they are generally seen as effective special temporary measures aimed at overcoming considerable deficits in women's representation in the judiciary. However, the quota formula contained in the Judicial Code to be considered when compiling the list of candidates for judges has a low threshold of 25 per cent, far below the Council of Europe recommendation of 40 per cent. The other quota formula contained in the Judicial Code is for the election of judge members to the SJC, which make up five of the ten SJC members. This formula requires the number of representatives of the same gender be restricted as possible to a maximum of three members, meaning that the underrepresented gender is left with two out of the five places (40 per cent). However, if we take into account the whole of SJC, this quota formula only requires two of the ten members of the council to be of the underrepresented gender (20 per cent), which again is far below the Council of Europe recommendation of 40 per cent. In addition, the quota formula for the election of SCJ judge members allows for two exceptions when the voting violates this formula. The first exception requires the number of representatives of the same gender be restricted as possible to a maximum of four members, meaning that the underrepresented gender is left with one out of the five places (20 per cent). The second exception allows the formula to be ignored. There are also no quota formulas applied to promotion lists or for senior positions in the courts or to ensure a gender balance on Commissions that evaluate judges or select judges.

ii. Regarding the measures dealing with maternity, child birth or child adoption, these provisions are vital in not penalising women who are on leave for these reasons. However, there is a lack of proactive measures to accommodate parenthood and the challenges disproportionately faced by women in managing family and professional lives.

3. There were no legal provisions that were overtly discriminatory. However, the one concern where there could potentially be an **increase** in gender inequalities is the provisions in the draft Decision on establishing internal disciplinary rules for judges. The draft Decision covers topics such as working and rest schedules and set working conditions that are fairly rigid in terms of presenteeism, setting inflexible office hours and requiring the use of magnet cards to clock entry and exit to the courthouse. There is a concern that the norms that are valued reflect an ideology of complete devotion and commitment to the profession. While seemingly neutral, these value norms adversely impact women who have more caregiver responsibilities than men or are viewed to have diminished commitment to work due to family responsibilities. The hope of the gender equality movement that men would share in the demands of family life equally with women has not been realised as women continue to be primarily responsible for unpaid contributions in raising children and home making. Not only do women have increased responsibilities in the home, women are often disadvantaged by the negative stereotyping associated with women caregivers. The lack of women in the judiciary and in senior positions could be because there is a lack of measures that reconcile and accommodate the difficulties women face more so than men in managing family and professional lives. The result is a lack of equal opportunities for women to participate in the judiciary based on their different experiences and needs.

The Judicial Code has no specific reference to gender equality and while it includes some proactive measures to increase gender balance, there is little focus on proactive measures for women's empowerment, such as ensuring women's participation in management and leadership roles. Nor is there any clear provision or plan on how to address and change attitudes, norms and perceptions about gender roles that prevent women from assuming their rights to equality. As the CEDAW Committee noted in its concluding observations on the combined fifth and sixth periodic reports of Armenia, there remains a preference for gender neutral approach.<sup>12</sup> There is little to no reference to the gendered implications or the potential disproportionate impact on women. This leads to inadequate protection for women against direct, as well as indirect discrimination, hinders the achievement of formal and substantive equality between women and men, and results in a fragmented approach to the recognition and enforcement of women's human rights.<sup>13</sup>

## Recommendations

From these findings, recommendations follow.

1. There is a need to elevate gender equality as a judicial institutional objective. When gender equality is a clear explicit objective, there is an impetus to consider developing institutional mechanisms to implement this objective. This supports a systematic and sustained effort for making women's as well as men's concerns and experiences an integral dimension of the Judicial Code so that women and men benefit equally and

12. CEDAW committee, in its concluding observations on the combined fifth and sixth periodic reports of Armenia. 2016.

13. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

inequality is not perpetrated. This is necessary in order to eliminate any distinction, exclusion or restriction made on the basis of socially constructed gender roles and norms which prevents people from enjoying full human rights, resources, opportunities and the right to contribute and influence.

2. There is a need to bolster special temporary measures that are already in place in order to more effectively promote gender balance in all levels of the courts, in senior positions and in the standard setting and decision-making bodies. This involves promoting real gender balance, as described by the Council of Europe's definition of balanced participation not falling below 40 per cent of either women or men. Such critical mass can challenge the apparent "gender neutral" status quo which traditionally reflects male norms while also advocating for substantial changes important for women.

3. There is a need to review the draft Decision on establishing internal disciplinary rules for judges to include measures that accommodate and reconcile work-life in ways that are gender transformative rather than reinforcing existing gender stereotypes. If measures that support work-life balance (e.g. flexible hours and teleworking; part-time or temporarily reducing working hours; and eliminate recording entry/exit time) are introduced but ignore the male-dominated culture, women who seek to avail themselves of flexible working practices may be viewed as deviant or weak professionals who choose not to invest as much as men in their careers. In exploring work-life balance measures, it is important not to characterise this as exclusively a woman's issue or that focuses narrowly on motherhood as this reinforces outdated ideas that women care less about their careers than men and that men are less interested in family life than women. There is a need to focus on the structural and institutional factors that constrain the careers pathways for both women and men in their judicial professional.

More specific proposals are contained in the last section and in the attached matrix.

# 1. Introduction

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**W**orking toward gender equality in the judiciary is a well-established social goal. The integrity and independence of the judiciary capable of delivering quality justice depends on not excluding anyone. Society and those who come into contact with the justice system will have more confidence in a judiciary that reflects the composition of the plurality and diversity of society. The state as the employer for the judiciary has an obligation to promote gender equality in managing the judiciary, starting from the conditions of entry and career promotion and moving on to working conditions, working hours and occupational safety.

A vital entry point for mainstreaming gender equality considerations in the judiciary is to ensure that the Judicial Code of Armenia and the deriving legal acts provide for a gender-sensitive and gender-responsive legal framework. This requires integrating a gender perspective into all components of the legislative process, from design, implementation, monitoring and evaluation. Gender mainstreaming looks at not only how to achieve gender balanced representation in decision-making positions in the judiciary by encouraging greater participation of women in the judiciary at all levels; but also how to address structural inequalities that exist between men and women to improve their access to, or control over, resources and improve their opportunities to participate in decision making processes.

## Conducting a Gender Impact Assessment

This report provides for a Gender Impact Assessment (GIA) of the Judicial Code of Armenia and the deriving legal acts, namely: the rules of the procedure of the General Assembly of Judges; the methodology and the procedure of the performance evaluation of judges; the requirements for non-governmental organisations nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the General Assembly of Judges and the internal working disciplinary rules of judges. Every legal act has its impacts, intended or non-intended. No legal act has neutral impacts, particularly if the position of certain actors, such as women, is not equal at the starting point. The GIA tool aims at identifying the effects of various laws on gender relations in the society and to strengthen the gender equality dimensions of the Judicial Code and derivative legal acts. Laws can only be optimal if governments are aware of the impacts of the law. Furthermore, the judiciary can become more sensitive to gender with a better understanding how formal and informal legal provisions, policies, practices and procedures across the judiciary can reinforce gender inequalities and gender-based stereotypes, and what can be done to enable gender equality.

The central question this report asks is whether the Judicial Code of the Republic of Armenia and the subsequent decisions of the General Assembly of Judges and the Supreme Judicial Council *reduce, maintain or increase* the gender inequalities between women and men.<sup>14</sup> The idea is to look at the expected impacts on the equality of women and men, not merely on the impacts related to ban on discrimination. It is meant to estimate different effects, positive, negative or neutral of the laws in terms of gender equality. A GIA means to compare and assess, according to gender relevant criteria, the current situation and trend with the expected development resulting from the introduction of the proposed law.

The basis for gender impact assessments lie in State Parties' obligations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), particularly the obligation to incorporate the principle of equality of women and men in their legal systems, abolish all discriminatory laws and adopt the ones prohibiting discrimination against women. Another key document, the Beijing Platform of Action made the connection of 'gender' and 'assessment' explicit, as well as introduced the concept of mainstreaming of a gender perspective which influenced the way gender equality is achieved and opened the door to GIA. OECD uses the formulation of 'gender-responsive assessment' where the aim is to support the creation of security and justice institutions that are representative, accountable, rights-respecting and responsive to the specific

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14. European Institute for Gender Equality. 2016. Gender Impact Assessment: Gender Mainstreaming Toolkit. Paragraph 1.

security and justice needs of women, men, boys and girls.<sup>15</sup> In the European Union, GIA is conceived as one of the tools of gender mainstreaming, which is a general strategy for achieving gender equality. The Council of Europe Conclusions on the “review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action: Indicators in respect of Institutional Mechanisms” in 2006 emphasised that a formal commitment and formal structures for gender mainstreaming are not sufficient and that practical action in all relevant areas is needed.<sup>16</sup> Furthermore, it urged all Member States and the Commission to improve and strengthen the development and regular use of mainstreaming methods, particularly gender budgeting and gender impact assessment, when drafting legislation, policies, programmes and projects. The European Institute for Gender Equality disseminated a toolkit for conducting GIAs in 2016, which forms the basis for this report.<sup>17</sup>

Judicial Codes are extremely relevant for a gender impact assessment for a number of reasons. There is an international and national legal obligation basis to mainstream a gender perspective into the judiciary laws and to ensure equal representation of women and men in the judiciary. It is imperative that the judiciary reflect the composition of the society in order to be perceived as legitimate and thereby safeguarding human rights, upholding democracy and preserving the rule of law. It contributes to the development of a gender-sensitive judicial system, one that does not rely on gender stereotyping and incorporating a gender perspective, enriching the ability of judicial reasoning and increasing women’s access to justice. Gender equality is important in its own right. Women and men should both have equal opportunities to become judges and to advance in these careers. The laws need to recognise the differences between women and men’s socio-cultural and economic conditions and the need for differential treatment to promote equal gains.

### Aim and structure of this report

This report will identify the level and extent to which gender equality perspective has been mainstreamed in the legal acts, and highlight challenges and shortcomings. Based on the analysis, the report provides recommendations on how gender mainstreaming could be enhanced. The analysis assesses the alignment of the respective legal acts with the relevant international standards including those of the Council of Europe and best practices of gender mainstreaming especially in regard to judiciary and judicial code.

**Structure of this report.** Part 2 of the report provides for a gender relevance assessment, including defining the purpose of the legal acts and checking the gender relevance. Part 3 sets out the gender impact assessment providing an analysis of the situation of women and men in this field and identification of gender inequalities and weighing the gender impact. Part 4 draws some conclusions from a gender perspective and lists proposals to improve the legal acts in terms of gender equality.

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15. OECD, 2009, Toolkit for Mainstreaming and Implementing Gender Equality. p1.

16. Council of Europe Conclusions on the ‘review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action: Indicators in respect of Institutional Mechanisms’ as cited in European Institute for Gender Equality. 2016. Gender Impact Assessment: Gender Mainstreaming Toolkit.

17. European Institute for Gender Equality. 2016. Gender Impact Assessment: Gender Mainstreaming Toolkit, see [eige\\_gender\\_impact\\_assessment\\_gender\\_mainstreaming\\_toolkit\(1\).pdf](#).

## 2. Gender Relevance Assessment

### 2.1. The purpose of the legal acts under review

#### 2.1.1. The legal framework under review

This Gender Impact Assessment reviews the legal framework regarding the judiciary in Armenia, namely the Judicial Code of the Republic of Armenia<sup>18</sup>, along with four derivative legal acts. Specifically, these are: (1) the General Assembly of Judges (GAJ) Decision on Approving the Rules of Procedure of the General Assembly of Judges of the Republic of Armenia<sup>19</sup> (hereinafter the Rules of Procedure of the GAJ); (2) the Supreme Judicial Council (SJC) Decision on Establishing the Procedure and Time Limits for Performance Evaluation of Judges, Procedure, Methodology, Scales for Collecting Data Necessary for the Evaluation and the Form of Evaluation Sheet<sup>20</sup> (hereinafter the Methodology and the Procedure of the Performance Evaluation of Judges); (3) the SJC Decision on Defining Requirements for Non-Governmental Organisations Nominating a Candidate for a Non-Judge Member of the Ethics and Disciplinary Commission of the General Assembly of Judges, Procedure for and Details of Holding a Competition Carried out for Nominating Candidates and Election of Members of the Competition Commission for the Purpose of Election of a Non-Judge Member of the Ethics and Disciplinary Commission of the General Assembly of Judges<sup>21</sup> (hereinafter the Requirements for NGOs nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the GAJ); and (4) the draft SJC Decision on Establishing Internal Working Disciplinary Rules for Judges<sup>22</sup> (hereinafter the draft Internal Working Disciplinary Rules of Judges).

Box: The legal framework under review

The legal framework under review
Judicial Code of the Republic of Armenia
The Rules of Procedure of the GAJ
The Methodology and the Procedure of the Performance Evaluation of Judges
The Requirements for NGOs nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the GAJ
The draft Internal Working Disciplinary Rules of Judges

18. The Judicial Code of the Republic of Armenia, adopted on 7 February 2018 (the version of the translation includes all amendments and supplements made as of April 4, 2021).
19. The GAJ Decision on Approving the Rules of Procedure of the General Assembly of Judges of the Republic of Armenia (No. 02L). The translated version includes the amendments and supplements made by the Decision of the GAJ No. 01 of 3 June 2020 "On making amendments and supplements to Decision of the GAJ No. 02L of 18 May 2018 "On approving the Rules of Procedure of the GAJ", Annexes 3-5 were supplemented by the above mentioned Decision No 01 of 3 June 2020.
20. The SJC Decision on Establishing the Procedure and Time Limits for Performance Evaluation of Judges, Procedure, Methodology, Scales for Collecting Data Necessary for the Evaluation and the Form of Evaluation Sheet (SJC-53-N-9, 2020).
21. The SJC Decision on Defining Requirements for Non-Governmental Organisations Nominating a Candidate for a for a Non-Judge Member of the Ethics and Disciplinary Commission of the General Assembly of Judges, Procedure for and Details of Holding a Competition Carried out for Nominating Candidates and Election of Members of the Competition Commission for the Purpose of Election of a Non-Judge Member of the Ethics and Disciplinary Commission of the General Assembly of Judges (BDKh-32-N-7, 2020)
22. The draft SJC Decision on Establishing Internal Working Disciplinary Rules for Judges (BDKh-00-Vo-00, 2020).

## 2.1.2. The purpose of the legal acts

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After the 2018 “velvet revolution”, one of the main requirements of the government has been the formation of an independent and uncorrupted judiciary in order to restore public trusts in the courts and the judiciary.<sup>23</sup> The purpose of the Judicial Code, adopted in 2018 prior the “velvet revolution”, is to establish the structure and jurisdiction of the court system in Armenia, with the exception of the Constitutional Court. It is to “regulate relations pertaining to the formation and organisation of activities of the judiciary” (Article 1, Judicial Code). The Code covers three main sections, the fundamentals of the organisation and functioning of the judiciary, the status of a judge and the mandate and tasks of the SJC, the independent state body guaranteeing the independence of courts and judges. The derivative legal acts provide further details on the rules of procedure for the GAJ, performance evaluation of judges, nominating non-judge members of the Ethics and Disciplinary Commission and the internal working disciplinary rules of judges.

## 2.1.3. Overview of the legal acts

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### The Judicial Code

The Judicial Code consists of three sections: Section 1 - Fundamentals of Organisation and Functioning of Judiciary; Section 2 - Status of a Judge; and Section 3 - The Supreme Judicial Council.

**Section 1. Fundamentals of Organisation and Functioning of Judiciary.** Chapter 1 sets out the first three tier courts: the First Instance courts, Courts of Appeal and the Court of Cassation. This law does not cover the Constitutional Court. The first tier is represented by two types of courts: the court of general jurisdiction and the specialised courts: Administrative Court and Court of Bankruptcy. This chapter also contains the requirement for judges to be apolitical and the activities that are deemed incompatible for judges. Chapter 2 covers a number of principles, such as the independence of the courts; equality before the law and the court; and publicity of judicial proceedings. It also has provisions on the judges’ right to form an association and on the maintenance of judicial statistics. Chapters 3, 4, 5 and 6 cover the Courts of First Instance of General Jurisdiction, the Specialised Courts, the Court of Appeal and the Court of Cassation respectively. The provisions provide for the jurisdiction of the courts, the number of judges and the seats of the courts. Moreover, the provisions stipulate that the procedure of selection for judges to be assigned to specific cases is a task of the SJC. Of note, judges in the Courts of First Instance of General Jurisdiction have either civil or criminal specialisation. Chapter 7 deals with Chairpersons of the Courts and of the Chambers of the Court of Cassation and sets out their powers. Chapter 8 provides details on ensuring the normal operation of the courts and the SJC. The staff of the SJC, called the Judicial Department, ensures the operation of the SJC, the courts, the General Assembly of Judges and its commissions. Chapter 9 covers the distribution of cases in the courts, while Chapter 10 deals with judicial sanctions that the court can impose on persons present in their courtrooms.

**Section 2. Status of a Judge.** Chapter 11 covers a number of guarantees for the activities of a judge, such as immunity, irreplaceability, salary and social guarantees, annual leave, and the right to participate in educational programmes. Chapter 12 sets out the rules of judicial conduct. It includes provisions to ensure the independence and impartiality of the court and build respect for and confidence in the court, such as rules of ethics. Chapter 13 deals with the General Assembly of Judges, its status as the self-governing body of judges as well as the procedures for its activities. The GAJ’s activities include: discussing proposals aimed at improving the operation of courts for submission to the SJC and other competent state bodies; establishing and selecting members for the Ethics and Disciplinary Commission, the Training Commission, the Commission for Performance Evaluation of Judges; electing and proposing a judge candidate for the Constitutional Court; and electing judge members of the SJC. Moreover, the GAJ can also make up working groups to ensure the effective performance of its functions.

**Section 3. The Supreme Judicial Council.** The SJC is an independent state body guaranteeing the independence of courts and judges. Chapter 14 provides for the composition and powers of the SJC and procedures for disciplinary action and discontinuance of members of the SJC. There are ten members of the SJC who need to have at least 10 years-experience as a judge or 15 years-experience for non-judge members (academic lawyers or other prominent lawyers with high professional qualities). Judge members of SJC are elected by the GAJ and other members are elected by the National Assembly. SJC powers include compiling and approving the list of judge candidates, including promotion list and proposing candidates for chairpersons as well

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23. Transparency International Anti-Corruption Centre et al. undated. Opinion on the Republic of Armenia Draft Constitutional Law Amending the Constitutional Law on the Judicial Code of the Republic of Armenia and Related Draft Laws.

as prescribe the procedure for calculating the workload of a judge as well as the criteria for the workload of a judge. Chapter 15 sets out the rules of procedure of the SJC. Chapter 16 and 17 provides more details regarding the compilation and approval of the list of contenders for judge candidates and the list of judge candidates procedure for appointing judges and chairpersons of the courts of first instance, the court of appeal and the court of cassation. Chapter 18 sets out the procedures regarding the performance evaluation of judges. Chapter 19 covers disciplinary actions against judges. Chapter 20 provides for the processes regarding termination and discontinuation of powers of a judge. Chapter 21 sets out provisions regarding the consideration of and deciding on the issue, within SJC, of giving consent for instituting criminal prosecution against a judge or depriving him or her of liberty with respect to exercise of his or her powers. Finally Chapter 22 covers the final and transitional provisions.

### **The Rules of Procedure of the GAJ**

These rules contribute to an improved system of accountability of the judiciary and building of public confidence in the system by an improved ethical and disciplinary framework and practice.<sup>24</sup> The Rules of Procedure of the GAJ cover the process of convening an Assembly meeting; the rights and duties of judges during an Assembly meeting; the procedure for adopting decisions by the Assembly; the procedure for organising elections in the Assembly, including electing a judge member of the SJC, a judge candidate for the Constitutional Court, and members of the Ethics and Disciplinary, Training and Performance Evaluation Commissions; and establishing working groups.

### **The Methodology and the Procedure of the Performance Evaluation of Judges**

This SJC Decision provides further details on the procedure and time limits for performance evaluation of judges which are carried out by the Commission for Performance Evaluation of Judges of the GAJ. The details include how to collect data necessary for the evaluation, the methodology to be used, the evaluation scales and the form sheet to be used.

### **The Requirements for NGOs nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the GAJ**

This SJC Decision sets out the requirements for NGOs nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the GAJ. It covers the procedure for and details of holding a competition and the election of non-judge members of this Commission.

### **The draft Internal Working Disciplinary Rules of Judges**

This draft SJC Decision covers working and rest schedules; working duties of the parties; and violation of the internal disciplinary working rules. It sets out a procedure of entry into and out of the court by magnetic card.

## **2.1.4. The approach in formulating the legal provisions**

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Many of the legal provisions are written in a gender neutral approach and style. The Armenian language is genderless, where neither pronouns nor nouns have grammatical gender. In addition, most provisions are unassociated with either male or female gender and are not specifically aimed at either women or men as they are assumed to affect both sexes equally and seen to be objective and impartial.

However, there are some specific legal provisions in the Judicial Code that are framed using a gender-sensitive approach, attempting to redress the underrepresentation of women on the bench and recognising the different roles and responsibilities of women and men around pregnancy and maternity.

### **Quotas**

There is a legislatively prescribed formula in the Judicial Code for encouraging women's representation in the judiciary. Gender balance is taken into account when compiling the list of candidates for judges. Article 109, part 5 provides that "where the number of the judges of either sex is less than twenty-five per cent of the total number of judges, up to fifty per cent of places in the list of contenders for judge candidates shall be reserved

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24. Aleksanyan, Narine. 2020. Gender Analysis of PGG Project "Implementation of Judicial Reforms in Armenia".

to the persons of the sex concerned who have received the maximum number of “for” votes, but not less than at least more than half of those of all the members of the Supreme Judicial Council”. In addition, the Judicial Code establishes a gender quota for the SJC, in particular for the purpose of gender representation of judge members within the SJC at least two must be of the opposite sex. Article 76, part 3 provides “for the purpose of gender representation of judge members within the Supreme Judicial Council, the number of representatives of the same gender must be as restricted as possible to maximum three members, except for cases provided for by parts 12 and 13 of this Article”.

## Pregnancy and maternity

There are a number of provisions in the Judicial Code that specifically refers to a judge who is on “maternity, child birth or child adoption leave”. For example, in Article 86, part 3, the powers of a member of the SJC would terminate if the member could not perform his or her official duties due to temporary incapacity lasting over 4 subsequent months or over 6 months in a calendar year, except for the reasons of “being on maternity leave, child birth or child adoption leave”. In Article 95 which regulates the decisions regarding lists of judge candidates, part 4 provides that persons included in the list of judge candidates having expressed disagreement to the recommendation on their appointment “for the reasons of being on pregnancy and child delivery leave, being on leave for adopting a new born child or for having been designated as a guardian of a new born child”, shall not be considered when calculating the required number of judges for filling the vacant position of judges. In Article 113 on the grounds for removal of a person from the list of contenders for judge candidates and of a judge candidate, part 2 that stipulates the ground of not being engaged as a lawyer for a period of time makes an exception for the reasons of being on pregnancy and child delivery leave, being on leave for adopting a new born child or for having been designated as a guardian of a new born child. Article 116 on the procedures for accepting the proposal by the candidate having received a proposal for a vacant position of a judge of court of first instance and consequences of not accepting it provides for a similar exception that if they refuse for such reasons, they will not be removed from the list of candidates. Article 128 covers a similar exception for candidates of the Court of Appeal. Article 159 on the termination of the powers of a judge makes a similar exception where the reasons for termination include failing to perform duties for more than four consecutive months.<sup>25</sup>

## 2.2. Checking gender relevance

Traditionally judicial codes have been viewed as gender-neutral, based on the assumption that the formulation of the judiciary benefits all members of the judiciary equally. This is a predominate view found in Armenia, as reflected in the recent Council of Europe study on challenges and opportunities for gender equality in the Armenian judiciary.<sup>26</sup> This study involved: thirteen in-depth interviews with the key informants from the judiciary; five focus group discussions with the representatives of the judiciary, NGOs and universities (involving thirty-six people); and an on-line survey that had eighty-nine respondents. The majority of participants believed that women and men have equal opportunities to become judges and advance in their careers and only need to comply with the objective selection criteria and succeed in the competition.

However, applying a gender lens to provisions that appear to be gender-neutral pays attention to the potentially different ways that women and men are or might be impacted. Provisions which may at first glance seem non-discriminatory may contain hidden aspects of gender inequality when a gender lens is used as a gender perspective can highlight real or potential differences between women and men. Gender inequalities are so deeply embedded in the social and institutional structures and internalised by many women and men, that a conscious process of deconstruction and active promotion of gender equality is needed in order to reveal the actual extent of gender inequalities.<sup>27</sup> Mainstreaming a gender perspective when formulating any law, including judicial codes, is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of that law so that women and men benefit equally and inequality is not perpetrated.<sup>28</sup> This is necessary in order to eliminate any distinction, exclusion or restriction made on the basis of socially constructed gender roles and norms which prevents people from enjoying full human rights, resources, opportunities

25. The key provisions will be discussed in more detail in the Section 3.3 when assessing the gender impact of the Judicial Code and its derivative legal acts.

26. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

27. The Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

28. Review of Economic and Social Council agreed conclusions 1997/2 on mainstreaming the gender perspective into all policies and programmes in the United Nations system. ECOSOC res 1997/2.

and the right to contribute and influence.<sup>29</sup> A gender lens highlights both direct discrimination, where the legal provisions allows for differences in treatment based on sex and characteristic of women and men which cannot be justified objectively and indirect discrimination, where the legal provisions do not appear to be discriminatory but have a discriminatory effect when implemented.

Gender mainstreaming is a requirement under Armenian law which indicates that the impact assessment of any legal normative acts should include a gender perspective.<sup>30</sup> Gender mainstreaming is simply looking at the human implications of any activity, highlighting the differences between women and men and thus the potential differential impacts and designing the activity to ensure that both men and women will benefit equally. It is a *strategy* to achieve gender equality in the judiciary. It does not view gender as a “separate question”, but explicitly integrates a gender dimension into all aspects of the judiciary.

### **2.2.1. Judicial Codes should intend to contribute to gender equality**

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Even where judicial codes do not specifically state as one of its aims is to contribute to gender equality, judicial codes are foundational to the promotion of gender equality through the justice system. Judicial codes are based on such principles as equality before the law and the independence of the judiciary. Equality before the law does not only apply to court-users, but also to those in charge of delivering justice. This means from a purely legal viewpoint, gender should not be an obstacle in the recruitment process of judges and their evolution within the judiciary. In addition the principle of independence of the judiciary should start with a fair transparent selection of those in charge of delivering justice.

#### **Fundamental element of the rule of law and good governance**

The requirement of equality is a fundamental element of the rule of law and good governance and contributes to the independence, impartiality, integrity and credibility of the judiciary; the fight against impunity and corruption. Equal representation in the judiciary is a crucial component of good governance. This has been confirmed by the Sustainable Development (SDG) goals, Goal 5 on Gender Equality and Women’s Empowerment and Goal 16 on Peace, Justice and Strong Institutions.<sup>31</sup>

#### **Gender equality is central for the advancement of society as a whole**

Women’s rights to equality and non-discrimination are crucial to defining the importance of ensuring women’s full and equal participation in the judiciary. Yet the necessity of women’s full participation goes beyond this too, as it, “is essential not only for their empowerment but also for the advancement of society as a whole”.<sup>32</sup> Courts that operate free from gender bias and other forms of discriminatory practices can be powerful drivers of social change.<sup>33</sup> Indeed, the integrity and effectiveness of an independent judiciary as an arm of democratic government is critical and the need for judicial diversity must be viewed in that context. It is inherent in the nature of equal justice in a diverse society that those administering justice reflect and embody that diversity: “women who are bound by the justice system should be participants in it at all levels”. The Committee on the Elimination of Discrimination against Women has underlined the gravity of situations in which a lack of diversity takes its severest form, noting that: “societies in which women are excluded from public life and decision-making cannot be described as democratic”.<sup>34</sup> Increased judicial diversity enriches and strengthens the ability of judicial reasoning to encompass and respond to varied social contexts and experiences. This can improve justice sector responses to the needs of people in society who are marginalised groups.<sup>35</sup> Moreover, women’s visibility as judges “can pave the way for women’s greater representation in other decision-making positions, such as in legislative and executive branches of government”.<sup>36</sup>

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29. Council of Europe Committee of Ministers Recommendation CM/Rec (2007) 17 on gender equality standards and mechanisms, Explanatory Memorandum, CM (2007)153 add, Paragraph 20.

30. Armenian Law on Ensuring Equal Rights and Equal Opportunities for Women and Men.

31. The target 5.5 calls the States to ensure women’s full and effective participation and equal leadership opportunities at all decision-making levels in political, economic and public life. The indicator 16.7.1 tracks the “proportion of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service and judiciary) compared to national distributions,” demonstrating the importance attached by the global community to representative judiciaries for the strengthening of the rule of law and the achievement of sustainable development.

32. International Commission of Jurists (ICJ). 2014. Women and the World’s Judiciaries: Identifying Challenges and Opportunities.

33. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

34. ICJ. 2014. Women and the World’s Judiciaries: Identifying Challenges and Opportunities.

35. ICJ. 2014. Women and the World’s Judiciaries: Identifying Challenges and Opportunities.

36. Council of Europe. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

## Gender equality is essential for enhancing women's access to gender-responsive justice

The requirement of equality, including gender equality, is essential for the fulfilment of the right to justice for all users of the justice system, but particularly women. The right of access to justice for women is essential to the realisation of all their internationally protected rights. Increasing women's participation in the judicial system can contribute to addressing judiciary's institutional prejudices and make the justice system more gender-responsive, increasing women's confidence in the justice system and thereby making it more accessible to women and girls. Women judges bring forward women's experiences and spearhead initiatives on gender in the judiciary. The judiciary's decisions influence the public and legal discourses, thus impacting on society at all levels.<sup>37</sup> Balanced participation brings in women's perspectives to judicial deliberation and decision-making which forms the basis of how laws are interpreted and applied. Promoting gender balance in the judiciary is central element of strengthening the judicial sector as a whole, and States should strive towards a gender balance "at each level, including at the most senior levels", mirroring the representation of women in society as a whole.<sup>38</sup> This means steps should be taken to ensure that women are recruited on an equal basis with men to specific positions in the judiciary as well as removing barriers to women's career advancement that are themselves discriminatory. Moreover, higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice and enforce their rights through the courts.<sup>39</sup>

### Safeguards gender-responsive standard setting

Advancing women's full participation at all levels, particularly decision-making and standard setting levels plays a role in promoting gender equality. When women do not hold key positions in the court system, this allows for the dominant male standard to be continued to be viewed as the 'norm' and women entering the court system must navigate a majority male system, be assessed by male dominant standards.<sup>40</sup> Furthermore, a male-dominated judicial system often lacks the knowledge and skills to deal with situations in a gender sensitive way, such as gender-based violence against women. The advancement of women in key senior positions can shift gender stereotypes, thereby changing attitudes and perceptions as to the appropriate roles of women and men.<sup>41</sup>

#### 2.2.2. Who are affected by Judicial Codes?

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The Judicial Code and derivate legal acts affect the judiciary as professionals, as an institution and ultimately the citizens of Armenia who appear before the courts. There are differences for women and men as regards their conditions, behaviour and/or preferences, needs and opportunities in the field of judiciary that a judicial code should be aware.

### Judges

The Judicial Code regulates people's access to the careers of judge, their appointments, their promotion and advancement throughout the various courts in Armenia. This means there is a direct and immediate effect on the status and position of women and men who apply and become judges. The formulation of the laws that promote gender equality will improve the position of women and men, while gender blind provisions will continue to allow the male dominant standards to harm the position of women regarding their access to such an institution. The laws need to promote a balanced representation of women and men in the judiciary, as well as effective participation of women in the profession, to their full potential.

### Judiciary as an institution

The law provides for provision for the proper and effective functioning of the judiciary as an institution which is vital to the rule of law, the fair administration of justice and the protection of human rights.<sup>42</sup> This includes

37. Council of Europe. 2017. Barriers, Remedies and Good Practices for Women's Access to Justice in Armenia.

38. Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality. 2016. CM (2016)36. Action 1.2.

39. The Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

40. Council of Europe. 2017. Barriers, Remedies and Good Practices for Women's Access to Justice in Armenia.

41. The Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

42. ICJ. 2014. Women and the World's Judiciaries: Identifying Challenges and Opportunities.

the establishment of the self-government body of the GAJ and composition of the independent state body guaranteeing the independence of courts and judges of the SJC as well as Commissions of the GAJ who have much power in the composition of the judicial profession, judicial appointments, evaluations and promotions and disciplining of judges. The provisions are to ensure the competence, legitimacy and integrity of the judiciary as an institution. While the laws regulate the functioning of the courts, the courts are formed by women and men, both as judges and court staff as well as court users, all with different positions and usually in unequal situations due to gender. The formulation of the laws can strengthen, maintain or reduce these inequalities.

## Society

The Judicial Code also impacts society as a whole. Judicial decisions and the administration of justice have such vast and varied effects on society. The make-up of the judiciary can influence their perception of the judiciary and courts as well as their trusts in these institutions. Judiciaries should be representative of the societies they serve. Judges as servants to the rule of law must apply correctly the principle of equality before the law. Historically, the assumption was that the personal characteristics of individual judges (e.g. their political views, personal considerations or gender) were not relevant to how cases are decided. They were seen as neutral, undistorting mediums through which the law was transmitted. Judges were expected to leave their biases or prejudices at the door of the courtroom. However, the dominance of men in the judiciary has led to men defining the “rules of the game”, setting male dominant standards for defining competency and commitment. A male gendered institution is not necessarily populated predominately by men, but rather it is an institution that is defined, conceptualised and structured in ways that puts a premium on gendered masculine characteristics, including a willingness to work “on demand”, free from domestic responsibilities and infused with negative gender stereotypes about the appropriate roles for women and men. Male dominant standards mirror the overall gender inequality situation in society, such as lack of balance between work and private life, lack of childcare services for young children or lack of support for mothers who choose to return to work while still breastfeeding, poor representation of women in management systems.

### 2.2.3. Legal basis for conducting a gender impact assessment of the Judicial Code

Judicial Codes are indeed relevant as a subject matter for a gender impact assessment for a number of reasons.<sup>43</sup>

#### International legal basis

Representation of women and men in decision-making bodies is a human right inscribed in all of the core human rights instruments.<sup>44</sup> Particularly, women have the right to equal participation in public life and equal access to, and representation within, the judicial profession. As such international law requires states to take concrete measures to identify and remove legal and practical barriers to women’s equal participation, and through proactive steps to actively encourage and advance women’s equal representation.<sup>45</sup> This not only requires the removal of legal and other barriers to women’s participation in the judiciary, it also requires a range of practical and structural measures, including temporary special measures, to ensure women’s equal enjoyment in practice of the right to hold judicial office. As the Committee on the Elimination of Discrimination against Women has underscored, although the removal of legal barriers to women’s equal representation within the judiciary is crucial, it is not sufficient: “the critical issue... is the gap between the *de jure* and *de facto*, or the right as against the reality of women’s participation.”<sup>46</sup> This highlights the difference between formal gender equality and substantive gender equality, and the need to ensure both equality in law, equal opportunities and equal treatment of women and men as well as equality in impact, outcome and results.<sup>47</sup> Equal representation is a matter of fairness and equal opportunity as well as being critical for the progress on gender equality and the empowerment of women. It also confirms the need for temporary special measures

43. For a thorough analysis of the international, regional and national legal basis of gender equal judiciary see: Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

44. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities. See CEDAW, Article 7; CEDAW Committee General Recommendations No. 23, 25 and 33; Beijing Declaration and Platform for Action.

45. ICJ. 2014. Women and the World’s Judiciaries: Identifying Challenges and Opportunities. See Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women specifies that States Parties must “take all appropriate measures to eliminate discrimination against women in the political and public life of the country”, and to this end they must ensure women’s right “to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government”. Political and public life refers to: “the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers”.

46. CEDAW Committee General Recommendation No. 23 on political and public life.

47. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

that are aimed at accelerating the improvement of the position of women to achieve de facto or substantive equality with men and to affect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women.

## Council of Europe

Equal access of women to justice, as well as balanced participation of women and men in public decision-making are among the strategic objectives of the Council of Europe's Gender Equality Strategy for 2018-2023. It is important to highlight that the Council of Europe, in its 2003 recommendation endorses a minimum mass of 40 per cent of opposite sex in any decision-making body.<sup>48</sup> It is seen that a critical mass of the opposite sex in the decision-making body is necessary in order to have the equal consideration of the interests of women and men.

## National legal obligations

The Armenian legal framework establishes the requirement to ensure gender equality in any laws. Armenia's Constitution guarantees equal rights to women and men, providing that women and men are to enjoy legal equality (Article 30) and prohibits discrimination (Article 29). The Constitution also stipulates that one of the main objectives of state policy is the promotion of actual equality between women and men (Article 86). The Law on Ensuring Equal Rights and Equal Opportunities for Women and Men laid the foundation for gender policies and new legislation. It guarantees provision of equal rights and equal opportunities in all spheres, while explicitly prohibiting direct and indirect gender discrimination. Gender quotas have been established for the judiciary, of which more will be discussed.<sup>49</sup> In 2015, Armenia adopted the Action Plan on Promoting Gender Balance among Candidates for Judges for 2015-2017. It defines, *inter alia*, the action of (i) analysing existing opinions and approaches in different social groups on gender equality in the judiciary; (ii) developing educational materials and thematic curricula based on the analysis of the international experience; (iii) providing capacity building on gender equality; (iv) ensuring cooperation with different educational institutions, NGOs and INGOs; (v) promoting access to legal professions among girls and young women; (vi) organising discussions, roundtables, seminars for raising awareness on the issue of gender equality in the judiciary.

Moreover, the Gender Equality Strategy and Action Plan 2019-2023 articulates priorities and way forward to mainstream gender across diverse sectors, including advancement and equal participation of women and men in the leadership and decision-making positions as one of its objectives.<sup>50</sup> The Armenian judiciary is entrusted to guarantee the equality normative framework and uphold its enforcement is upheld in its courts. This role is expected to be exercised by judges wherever they are requested to resolve disputes between parties, when they deliberate on cases, when they rule on procedures to be applied in courts, and in general when they interpret the law.<sup>51</sup>

48. Recommendation of the Committee of the Ministers of the Council of Europe, 2003: "Balanced participation of women and men in political and public decision making".

49. Judicial Code of the Republic of Armenia, article 76, part 3, article 109, part 5.

50. Gender Equality Strategy and Action Plan 2019-2023.

51. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, 2011.

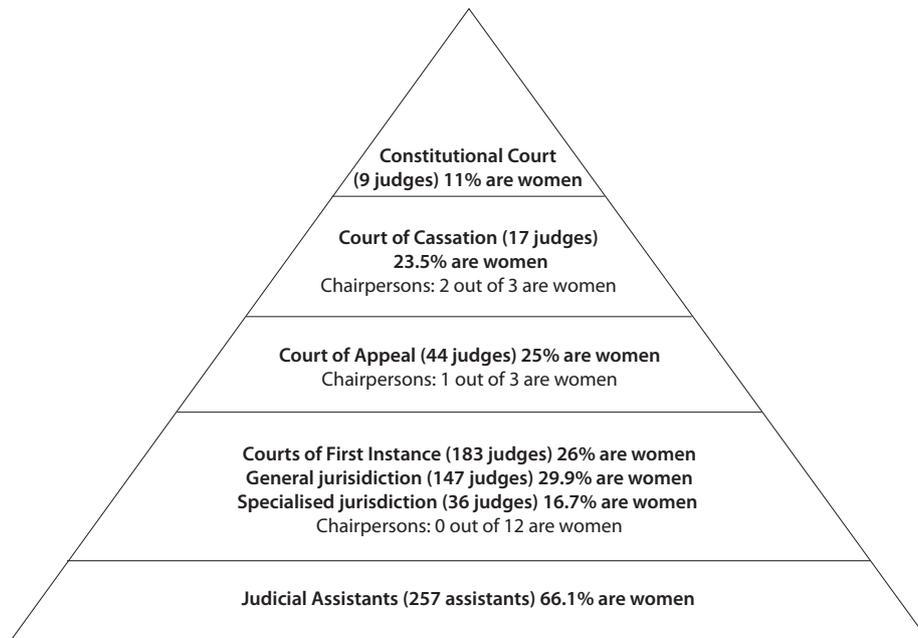
# 3. In-depth Gender Analysis of the Legal Acts

## 3.1. The situation of women and men in the field

### 3.1.1. The numbers of women and men in the judiciary

According to statistics provided by the SJC in 2020, out of the total number of judges of 244, women represent only 26.6 per cent (65 women from 244 judges).<sup>52</sup> The diagram below illustrates the breakdown of this number at the various court levels.

#### Diagram: The numbers of women judges and judicial assistants



Source: Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities and Council of Europe. 2020. Gender Analysis of PGG Project “Implementation of Judicial Reforms in Armenia”.<sup>53</sup>

#### Participation of women and men as judge

These numbers show a significant gender imbalance participation in the Armenian judiciary. Women are significantly less represented as judges in all levels of courts, making up only 26.6 per cent of judges. This is much lower than what the Council of Europe defines as “balanced participation” which is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40 per cent.<sup>54</sup> The percentage of women judges decreases slightly the higher the court level, from 26

52. These statistics are from Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities and Aleksanyan, Narine. 2020. Gender Analysis of PGG Project “Implementation of Judicial Reforms in Armenia”.

53. Regarding the chairpersons of the Courts of Appeal, at the time of the study, there were 0 women who were chairpersons in the Courts of Appeal. After conducting the above noted study, a woman was appointed as the Chairperson of the Civil Court of Appeal in April 2021.

54. Recommendation Rec (2003) 3 of the Council of Europe Committee of Ministers to member states on balanced participation of women and men in political and public decision-making.

to 23.5 per cent. With around 3 out of every 4 judges being men, it can be said that the profession of a judge remains traditionally male dominated.

## Division of labour

The statistics show that there are differences among the composition of the general and specialised jurisdictions of the Courts of First Instance, with the percentage of women judges being much lower within the specialised courts. This shows that women judges are not often appointed to specialised courts. There is also significant gender imbalance in criminal courts, which has traditionally been viewed as “man’s” work. In all three levels of courts there are a total of 85 criminal judges and only 16 are women judges (18.8 per cent). Among these 16 female criminal judges, 12 are in the Courts of First Instance; 3 in the Court of Appeal and 1 in the Court of Cassation.<sup>55</sup> This is seen as well in the administrative courts. In all three levels of courts, there are a total of 45 administrative judges and only 9 (20 per cent) are women. Among these 9 female administrative judges, 5 are in the Court of First Instance, 2 in the Court of Appeal and 2 in the Court of Cassation.<sup>56</sup>

### 3.1.2. Access to processes of control and decision-making power

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#### Senior managerial positions

Very few women judges are in senior positions in the judiciary. Prior to 2018, no female had been a chairperson of any court. Since 2018, two Chambers of the Armenian Cassation Court are headed by women and most recently in April 2021, a woman was appointed as the Chairperson of the Civil Court of Appeal (which is 3 out of 18, the total number of chairpersons of the courts and chambers). This means only 16.6 per cent of senior positions are filled by women. However, for the first time, in February 2021 the position of the President of the Court of Cassation, elected by Parliament, is held by a woman.<sup>57</sup> In contrast, there are higher levels of women in lower positions as seen in the position of judicial assistant where over 66 per cent are women.

#### Processes of control and decision-making power

The SJC sets standards and plays an important role in the appointment and dismissal of judges. Currently one out of ten members of the SJC is a woman, meaning only 10 per cent of seats in the SJC are filled by women. The Chairperson of the SJC is a man.<sup>58</sup> The one and only woman is a judge member nominated by the GAJ, and there is no woman among non-judge members elected by the National Assembly.<sup>59</sup>

### 3.1.3. Judicial institutional infrastructure relating to gender equality

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#### Strategic Plans regarding gender equality in the judiciary

In 2014, the Armenian Council of Court Chairpersons drafted and approved a new action plan for the period 2015-17 aimed at promoting gender equality and gender balance within the judiciary. This action plan was limited by defining capacity building and awareness raising activities.<sup>60</sup> It involved events where female judges shared their experience and encouraged female students to trust in their abilities and to strive for a successful career as a judge.<sup>61</sup> There currently is not a renewed action plan to promote gender equality in place.

#### Gender units or commissions within the judiciary

There does not appear to be a specific gender unit within the SJC or a Commission for Equality established by the GAJ. This suggests a lack of capacity to carry out gender-responsive budgeting or to address the integration of gender into new policies and processes.

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55. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

56. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

57. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities

58. Aleksanyan, Narine. 2020. Gender Analysis of PGG Project “Implementation of Judicial Reforms in Armenia”.

59. Five members of the SJC are elected by the GAJ, from among judges of all court having at least ten years of experience as a judge; five members elected by the National Assembly from among prominent lawyers with high professional qualities and at least fifteen years of professional work experience. The member elected by the National Assembly may not be a judge.

60. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

61. Council of Europe. 2017. Barriers, Remedies and Good Practices for Women’s Access to Justice in Armenia.

## Association of women judges

In 2018, the Unit of Female Judges was formed with the aim to promote enhancement of the role of female judges in the judiciary of Armenia.<sup>62</sup> In 2019 a Women's Section was formed within the Association of Armenian judges. The section was established with the view of setting up a fully-fledged Association that would work with women judges to respond to the challenges they face in their work.<sup>63</sup>

### 3.1.4. Gender-based social norms and values

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The recent study by the Council of Europe on the challenges and opportunities for gender equality in the Armenian judiciary revealed a number of common attitudes about the issue of gender equality in the judiciary.<sup>64</sup>

#### Common attitude that a judge is a judge and gender does not come into it

It was common for participants in the study to believe that the profession of a judge is neutral marked with objectiveness and that one should not make any differentiation based on gender. Most considered that opportunities are equal and the selection criteria and processes to be objective. It was suggested that it is the women themselves who do not choose or want to carry the burden of being a judge or applying for senior positions in the judiciary. Many felt that there was no need for adopting specific gender-sensitive policies to support work-life balance or policy on sexual harassment. There is a belief that all the problems a women judge can have so can a man judge. There was little awareness of any differences in experiences, needs and concerns due to gender. These opinions then also believe that quotas are unnecessary because they believe that women and men have equal opportunity to succeed in the judiciary and that it should only be based on skills and qualifications.

#### Gender stereotypes and prejudices

Patriarchal attitudes persist in the society continuing to see men as the breadwinners and women as primary unpaid caregivers. Women themselves are reluctant to occupy positions traditionally held by men. The study also revealed stereotypes influence the belief that certain jobs are seen as men's work, such as criminal law cases. Women hesitate more about becoming judges since they are unsure about the location of their appointment. If they are appointed far from their residence, it can negatively affect their family life, their family less likely to move with them as compared to men judges and their families.

#### Lack of understanding gender

The study concluded that the representatives of the judiciary do not acknowledge the existence of any gender challenges, including the gender imbalance or the glass ceiling preventing women from reaching senior positions of decision-making. There was also a concern that gender equality in their understanding is mainly linked to women's representation rather than understanding the specific needs of women and men in the judiciary and how this is different.

### 3.1.5. Gender-responsiveness of courts and women's access to justice

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Another Council of Europe study looking at barriers for women's access to justice in Armenia found that judges did not always treat women victims with due consideration of the trauma they have experienced.<sup>65</sup> Judicial personnel were not always properly trained to deal with gender-sensitive situations. Furthermore, victims were often further jeopardising their lives by testifying in court about the abuse and violence against them. This study highlighted the lack of equal representation on the bench and how it had an impact on the gender-sensitiveness of the courts. Not only did the judiciary's decisions influence the public and legal discourse, thus having an impact on society at all levels, but the study found that women judges bring women's experiences to the forefront and also spearhead initiatives on gender equality in the judiciary.

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62. Aleksanyan, Narine. 2020. Gender Analysis of PGG Project "Implementation of Judicial Reforms in Armenia".

63. Council of Europe. Testimonials: Nora Karapetyan, Head of the Section of the Association of Armenian judges on Armenia women judges: providers of justice. <https://pjp-eu.coe.int/ru/web/pgg2/-/story-on-support-to-the-armenian-women-judges-to-help-overcome-the-underrated-value-of-women-in-judiciary>

64. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

65. Council of Europe. 2017. "Barriers, Remedies and Good Practices for Women's Access to Justice in Armenia".

## 3.2. Identification of gender inequalities issues

Underrepresentation of women is a problem of direct and indirect individual, institutional and structural discrimination, combined with lack of support or motivation for women to enter the profession. Before focusing on the review of the specific provisions in the Judicial Code and its derivative legal acts in the next section, identifying gender differences and understanding how these differences have a potential on inequality and discrimination in the judicial field ensures looking beyond the formal, numerical equality in terms of access to the profession. It is essential to look at the different experiences, needs and opportunities of women and men to understand what is needed to ensure equality of results for women and men, both being able to enjoy their rights, the same income levels, equality in decision-making and influence. Furthermore, it is important to understand that even though overt gender discrimination may not be viewed as common, unconsciously held bias impacts on equality outcomes as well.

### 3.2.1. Participation of women and men

Women's labour force participation in the judiciary is lower than that of men, with 26.6 per cent of women working as a judge compared with 73.4 per cent of men. It is low across the board and drops even more when considering higher courts and leadership roles. Low participation of women in the labour field reflects gender attitudes in Armenia that strongly associate the breadwinner role with men and that the main burden of unpaid care work is to be borne by women.<sup>66</sup> Not only does this reflect different roles for women and men in society according to gender, but the values placed on these roles reflect the asymmetric power relations between women and men. This contributes to depriving women from the same opportunities men have to access positions such as judiciary.

In addition, social norms contribute to viewing certain types of work as men's work. The legal profession has been traditionally viewed as a male domain and the Armenian judiciary continues to be a male dominated profession with men holding most of the senior positions. This also translates into power being held in the hands of men and the "rules of the game" being established by men. When women are excluded from the critical mass (i.e. 40 per cent) in a particular labour field and from leadership positions, it is harder to shift cultural and social norms and transform the male dominant standards.

Male dominant standards regarding professional competency and commitment typically reinforce and reward gendered male characteristics of being available, totally immersed in their task, without family worries. These standards are then viewed as objective standards that all judge candidates should be evaluated. A woman's ability to perform a job is frequently judged against male standards rather than the competences of the job (skills, knowledge and behaviour necessary to perform the job). This male standard along with a misunderstanding of equality as requiring same treatment for men and women has led to male defined practices being applied to women.<sup>67</sup> This discriminates women in accessing decision-making positions, not because of a lack of skills or knowledge, rather due to the lack of availability.<sup>68</sup>

Linked to the male dominate culture of the justice sector is the systematic discrimination based on negative gender stereotyping, the beliefs held about characteristics, traits and activities that are "deemed" appropriate for men and women. Historically, the practice of law was perceived as "man's work", "the gentlemen's profession" and the perception that characteristics for justice professionals, such as aggression, authoritative personality and having a disciplined, logical mind were predominately "male characteristics".<sup>69</sup> Gendered "female characteristics" that view women as being more emotional and more prone to sentimentalism were perceived as inappropriate for such professional work. Depicting the legal professional as an area in which rationality, neutrality, competitiveness and authority are distinctive masculine qualities, can reinforce negative gender stereotyping.

66. Osipov V. and Sargizova J. 2016, "Men and gender equality in Armenia. Report on sociological survey findings", UNFPA

67. Fawcett Society and Commission on Women and the Criminal Justice System. 2009. *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

68. Legal Resource Centre from Moldova. 2019. *Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary*.

69. Flake, Collin Read. 2011. "Dismissed with Prejudice: Gender Inequality in the Utah Legal Market" All Theses and Dissertation Paper, p. 3041; Bowman, Cynthia Grant. 1999. "Bibliographical Essay: Women and the Legal Profession" (1998-99) *Journal of Gender, Social Policy and the Law* Vol 7:149; Mossman, Mary Jane. 2009. "The Law as a Profession for Women: A Century of Progress?" *The Australian Feminist Law Journal*, Volume 30.

Patriarchal and traditional rigid social norms and perceptions regarding masculinity, femininity, gender equality, sexuality, the division of household tasks and gender-based violence remain prevalent in Armenian society.<sup>70</sup> The recent study highlighted a number of barriers women face that speak to their weak participation in the judiciary.<sup>71</sup> This included acceptance of these stereotypes, along with women themselves being reluctant to occupy positions traditionally held by men. The study also reflected that this imbalance in participation was not seen as a serious issue and that there was no need to adopt a specific plan to address this imbalance. Such a situation relies on prejudices and stereotypes regarding the role of women and men in the family, the society and in the profession. As can be seen from the study, such prejudice is often internalised by the women judges themselves when being confronted with a rather impossible mission of finding a balance between highly demanding professional duties and equally demanding household requirements.

### 3.2.2. Division of labour by gender

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Even when women's participation increased in a profession, it is not uncommon to see labour divisions within the profession. This is often called pigeon-holing, where women are assigned to courts or cases that are seen as "women's work", such as family law and civil law cases and not given opportunities in what are viewed as typically "men's work", such as criminal law. Division of labour can be based on gender stereotyping that discriminate against women as well as "essentializing" women. "Gender essentialism" is the attribution of a fixed essence to women and men. Women's essence is assumed to be universal and is generally identified with those characteristics viewed as being specifically feminine.<sup>72</sup> This might see women judges as exhibiting feminine qualities such as "meticulousness, good writing and communication abilities, congeniality, and emotional nuances" and men as exhibiting masculine qualities such as "tough", "energetic", "authoritative" and "intimidating". This can influence those in power to place women judges in the civil division or cases involving family law, children or juvenile laws or need mediation and dispute resolution, rather than the criminal law division.

This division of labour by gender can have an impact on their career advancement. Women are often excluded from certain experiences and responsibilities and therefore are prevented from being groomed for leadership positions. For example, where women judges are refused the opportunity to sit on complex high profile cases on the ground that they were not qualified to sit whereas male judges with similar qualifications were not subject to the same strictures, this can hamper the women judges advancement prospects.<sup>73</sup> Another example is where the experience and perceived qualities of litigators, a male dominated domain, are viewed as more significant than those of solicitors when recruiting judges.<sup>74</sup> Moreover, reflecting the stereotypical thinking about women in the legal profession, there often is a noticeable grouping of women in certain areas of the law that are the 'lower echelons' of the profession, including the underpaid area of family law.<sup>75</sup>

As can be seen in Armenia, fewer women are in the criminal specialisation and in the special courts. The view that this is "men's work" also leads into the belief that it would be hard for a women judge to manage a group of majority male judges. It is interesting to note that the opposite is never considered, that it would be somehow challenging for a male judge to manage a majority of female judges. Occupational stereotypes also limit women's advancement to higher-level positions. For example, ambitions for professional advancement are perceived as less appropriate for women than for men. Women are regarded as not having the traits required in high-level positions.<sup>76</sup> The statistics show that women are also more represented in the lower positions such as judicial assistants and less in senior management positions.

70. Aleksanyan, Narine. 2020. Gender Analysis of PGG Project "Implementation of Judicial Reforms in Armenia".

71. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

72. For a further discussion on the risks of "essentializing" gender in the legal profession, see Skinnider, Eileen. 2016. Women as Justice Makers in ASEAN: A Literature Review".

73. This example was from the Canadian Bar Association Task Force on Gender Equity in the Legal Profession report cited in Backhouse, Constance. 2003. "The Chilly Climate for Women Judges: Reflections on the Backlash from the Ewanchuk Case" Vol 15 Canadian Journal of Women and the Law, at page 163.

74. This example is based on the situation in England. Traditionally in England, judges were chosen primarily from the English Bar until the Courts and Legal Services Act 1990 that officially broke the monopoly that the Bar held on all superior judgeships in order to allow non-barristers, especially solicitor-advocates, but also people who read law without necessarily having practised as lawyers, such as law academics, to join the Judiciary and thus widen the pool of would-be judges. For more details see Elizabeth Gibson-Morgan. Gender Equality in the Judiciary in England and France: Making it a living reality. *Revue Miroirs [En ligne]*, 4 Vol.2|2016, mis en ligne le 1 avril, 2016.

75. Skinnider, Eileen. 2016. Women as Justice Makers in ASEAN: A Literature Review".

76. Asian Development Bank. 2019. Armenia Country Assessment, page 24.

### 3.2.3. Access to and control of decision-making power

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Where women have difficulties accessing leadership and the body vested with the competence of ensuring the self-administration of the judiciary, there is also difficulties in ensuring parity for women judges. In male dominated professions, the standards set value or reflect what is important for men or what works for them. When these standards are developed by men for men, finding a balance between a judge's professional duties and household duties is often not considered a priority. There is less interest in developing measures to empower the women judges with the status of professionals who can develop up to their full potential rather than having a status of ordinary employees barely tolerated in a profession that still remains heavily dominated by men.<sup>77</sup> Therefore, it is not surprising that the perceptions remain that men are more suited to assuming managerial roles and leadership roles.

The bodies that set the standards and evaluate these standards, the SJC and the GAJ Commissions, are made up of mostly men. Women lack access to the power structures that set and enforce the standards for the judiciary. Furthermore, power is also often built around informal, male dominated networks to which women often have restricted access. The recent study noted the lack of effective policy ensuring gender-balancing in the promotion of judges, given that the SJC and the Commissions remain male dominated. The participants failed to see the differential impact that a male dominated profession with male dominant standards impact women and their access to decision-making roles. There was a view that women had equal opportunity to advance in her career with no challenges, but rather it was the belief that women themselves did not want such senior positions because of family reasons.

### 3.2.4. Work-life balance

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Another gender inequality issue relates to balancing work and life. The simple fact is that women spend more time than men in the unpaid economy, for instance childcare, household work, elder care, which effects their position in the household and the labor market. Their responsibilities for unpaid domestic tasks contribute to increase time poverty. The last data available on time use in Armenia in 2008 showed that women spent almost five times more on domestic tasks than men. Women spend 5 hours per day on unpaid work compared with 1 hour for men.<sup>78</sup> When examined historically, the achievement of an 8 hour working day for the "working man", seen as an achievement in the 19<sup>th</sup> Century, was based on the normative male with an "economically inactive wife".<sup>79</sup> This model has been resistant to conversion to the "working woman" or the "economically active wife". Women have continued to, and are expected to, assume responsibility for the domestic sphere without any real accommodation of this reality in the workplace. This impacts their professional duties as often when they become a judge their domestic workload does not diminish. Gender norms continue to associate women with domestic tasks rather than income earning roles.

Another aspect to keep in mind when discussing work-life balance is that it has a 'gender hue' attached, because the 'life' component tends to be associated with the feminized role of caring for others, particularly children. Any strategy to address this issue must not reinforce outmoded ideas that women care less about their careers than men and that men are less interested in family life than women or that devalue the lives of persons without children. In addition, caution is needed when viewing women's failure to reach their full professional potential as the price they are willing to pay to combine careers with their family life. They may not be "opting out" but rather being "pushed out".<sup>80</sup> Such pushes can be inflexible jobs, lack of good, affordable childcare, and lack of paid leave to take care of sick family members.

The recent study found that women are more likely than men to state that childcare and family responsibilities prevented them from applying to higher courts or chairperson positions.<sup>81</sup> The study also found women more hesitate about becoming judges since they are concerned about being appointed far from her residence. Women who are appointed to new locations are less likely to be accompanied by family than their male counterparts, due to gender division of labour within the typical family.<sup>82</sup> Thus while the process for determining such appointments is equally applicable to men and women and not on its face discriminatory, such processes have a different impact on women and men. The persistent gender stereotypes lead to more negative effects on women and raises barriers for their access to the judiciary.

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77. Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary

78. Asian Development Bank. 2019. Armenia Country Assessment, page 41.

79. Thornton, Margaret. 2016. "The Flexible Cyborg: Work-Life Balance in Legal Practice" Sydney Law Review.

80. Stein, Alison. 2008. "Women Lawyers Blog for Workplace Equality: Blogging as a Feminist Legal Method".

81. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

82. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

### 3.2.5. Health and occupational safety

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The judiciary can be a place where women face unsafe work environments, sexism and discriminatory attitudes. This deters women from entering such professions as well as contributes to high levels of attrition. Gender-based harassment is unwanted behavior that denigrates, humiliates or insults a person on the basis of their gender.<sup>83</sup> It can entail unwanted verbal, non-verbal and/or physical conduct and is a form of harassment based on the gender roles associated with women and men in the society. For example, gender-based harassment includes harassment that targets individual for not behaving in a manner consistent with the perceived stereotypical characteristics of their gender; masculinities (gender roles and characteristics associated with men) and femininities (gender roles and characteristics associated with women). Gender-based harassment is not generally motivated by sexual interest or intent. More often it is based on hostility, and represents an attempt to create an environment in which the person at whom the harassment is directed feels undesirable, unwanted and unwelcome in the workplace. In some cases, gender-based harassment can include harassment based on sexual orientation, which is also called homophobic bullying.<sup>84</sup>

The Council of Europe Convention on preventing and combating violence against women and domestic violence, article 40 defines sexual harassment as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

It is not uncommon for women professionals who experience gender-based or sexual harassment not to speak up to senior management. As one study found “women were afraid to rock the boat in what they already perceived as treacherous waters.”<sup>85</sup> For all sorts of gendered reasons, women do not make formal complaints about discrimination. This can include stigma concerns, fear of being blamed or fired; and fear of facing colleagues’ reaction such as sarcasm or hostility. Another factor that contributes to underreporting is the lack of an effective grievance mechanism.

## 3.3. Weighing the gender impact of the legal provisions

This section analyses the legal provisions of the Judicial Code and the derivative legal acts in terms of assessing the gender impact. It looks at specific gender differences and how these differences actually constitute or have impact on inequality and discrimination. The list of issues should not be taken to reflect any order of importance.

### 3.3.1. Objectives and principles

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#### Issue 1. The objectives and principles of the Judicial Code

##### Summary

Chapter 1 (General provisions) and Chapter 2 (Principles) set out the purpose of the Code and the principles of the court, including the importance of an independent judiciary; the applicability of international human rights treaties ratified by Armenia and equality before the law and the court. There is no mention of gender equality as an explicit objective of the law or as an explicit principle, other than the reference to equality before the law and court.

##### Gender impact

The approach taken in setting out the purpose of the law appears to be gender neutral, relying on the assumption that the formulation of the judiciary focusing on values such as independence and impartiality affects both sexes equally. In considering the previous sections, the judiciary remains predominately male dominated, with women significantly underrepresented at all levels in the judiciary, including senior positions, and that women face obstacles conditioned by external factors and stereotypes in the society, as well as internal attitudes within

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83. The High Judicial and Prosecutorial Council of Bosnia and Herzegovina. 2015. Guidelines for the Prevention of Sexual and Gender-based Harassment within the Judicial Institutions of Bosnia and Herzegovina.

84. The High Judicial and Prosecutorial Council of Bosnia and Herzegovina. 2015. Guidelines for the Prevention of Sexual and Gender-based Harassment within the Judicial Institutions of Bosnia and Herzegovina.

85. Sterling, Joyce and Reichman, Nancy. 2013. “Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession” *Florida International Law Review*, 8(2).

the judiciary, the gender neutral approach is in reality gender blind. A gender blind approach ignores the different socially determined roles, responsibilities and capacities of women and men. As such, gender equality requires more than concentrating on a pure equal opportunity approach focusing on women entering the judiciary as this is not enough to afford women equal status and participation in the profession. Promoting gender equality means questioning the origin of “norms” within the judiciary which, as one scholar puts it “have been constructed by men to reinforce and reward their gendered male characteristics”.<sup>86</sup> The goal must be to reconstruct the judicial institution based on gender equality – empowering both genders and eliminating the privilege / power of one gender over another. In other words, in order to genuinely end discrimination against women judges it is necessary to change the nature and structure of legal profession in profound ways.

The lack of mentioning gender equality as a clear objective within the law is a missed opportunity to ensure that equality between women and men becomes a judicial institutional objective requiring a gender perspective to be incorporated throughout the law and the derivative legal acts with the aim to improve the equality parameters within the judicial profession. Such a legal obligation is aimed at promoting real equality between men and women within the judiciary inspired by the principle of balanced presence of women and men within the judiciary; and to combat all continuing manifestations of discrimination, removing obstacles and social stereotypes. When there is a clear explicit objective regarding gender equality, this can lead to consideration of developing institutional mechanisms to implement this objective, such as creating GAJ’s Commission for Equality, which then could develop a Gender Equality Strategy, which could focus on gender mainstreaming in all the GAJ and SJC’s activities.

While the principle of equality before the law and court is included in Chapter 2 and is a key right articulated in the international human rights instruments, this in and of itself might not be enough to guarantee people access to a gender-responsive court. Narrow interpretations could mean only guaranteeing women’s access to predominately male courts. Therefore, this legal provision might continue to maintain existing inequalities.

### **International standards and examples of good practice**

All major international human rights and Council of Europe treaties promote gender equality and prohibit discrimination. See CEDAW, Article 3 (full development and advancement of women to ensure rights on equal basis to men) and Article 7 (elimination of discrimination against women in public and political life) as well as the European Convention on Human Rights, Article 14 (prohibition of discrimination on the basis of sex) and the European Social Charter.

Good practice: In Spain, equality between women and men has become a judicial institutional objective and this is seen throughout the legislation in provisions that are meant to improve the equality parameters within the judicial profession.<sup>87</sup> The Preamble to the Spain’s Organic Law on the Judiciary contains a reference to ensuring that equality of the individual and of groups are real and effective and to remove obstacles that impede or hinder their full expression and to facilitate the participation of all citizens in political, economic and social life, based on Article 1 of the Constitution. The principle of equality between women and men can be seen as a requirement for all examinations for induction into and promotion within a career as a judge (Article 310); for training (Articles 433 bis and 434); the establishment of the Committee for Equality as a body of the General Council of the Judiciary (Article 595); and the mandate and work of the Equality Committee (Chapter VI). Further details have been articulated in the General Council of the Judiciary Committee for Equality, Equality Plan for Careers within the Judiciary.

Good practice: In the Philippines, following a study on access to justice for women which found, in part, negative attitudes towards female victims, trivialisation of sexual and domestic violence; gender-insensitive court procedures, and use of gender stereotypes, the Supreme Court developed an Action Plan to Mainstream Gender in the Judiciary.<sup>88</sup> The plan included: gender sensitivity training for judges and other judiciary personnel; incorporating gender issues into the curriculum at law schools; establishing committees intended to further the goal of a gender-responsive judiciary; and compulsory allocation of a certain percentage of the judiciary budget for gender programmes.

86. Bowman, Cynthia Grant. 1999. “Bibliographical Essay: Women and the Legal Profession” (1998-99) *Journal of Gender, Social Policy and the Law* Vol 7:149.

87. Spain’s Organic Law 6/1985, of 1 July, on the Judiciary, see the Preamble.

88. Asian Development Bank. 2017. Philippines: Governance in Justice Sector Reform Program and UNDP. 2003. Promoting Gender Sensitivity in the Philippine Court System in the Philippines.

## Recommendation

More efforts are needed to elevate gender equality as a judicial institutional objective. This could be done through amending the Judicial Code to include a specific legal provision regarding the objective of achieving gender equality or draft a comprehensive SJC Decision, which could also link to the recommendations on establishing GAJ's Commission for Equality or a working group, and to develop a comprehensive Gender Equality Strategy.

### 3.3.2. Composition of the standard setting bodies

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#### Issue 2. Membership in the SJC

##### Summary

Chapter 14 provides for the composition and powers of the SJC. The SJC is an independent state body guaranteeing the independence of court and judges (Article 79). According to Article 89, the SJC, among other things, compiles and approves the list of judge candidates, including the promotion list of judge candidates; proposes to the President of the Republic judge candidates subject to appointment; for promotion, and candidates for the chairpersons of courts and candidates for the chairperson of chambers of the Court of Cassation. The SJC also proposes to the National Assembly candidates for judges and chairperson for the Court of Cassation. The SJC decides on the issue of imposing disciplinary action against a judge; prescribes the procedure for calculating the workload of a judge as well as the criteria for the workload of a judge; and prescribes the procedure for establishing the duty schedule of judges. The Decision of the GAJ on Approving the Rules of Procedure of the GAJ covers a number of issues including the procedures for electing judge members of the SJC. Article 54 of that Decision requires not only the surname and name of the candidate but also the father's name.

Article 80 sets out the eligibility requirements for being members of the SJC. For judge members, they must have at least 10 years-experience as a judge and for non-judge members they must be academic lawyers or other prominent lawyers with high professional qualities and at least 15 years of professional work experience. The GAJ elects the judge members of the SJC. Article 76 sets out the procedure for the election of judge members of the SJC. One member is to be from the Court of Cassation; one member from courts of appeal and three members from the court of first instance, with all specialisations to be represented. The Judicial Code establishes a gender quota for the judge members within the SJC - at least three must be of the opposite sex - but does not cover the other five non-judge members which are elected by the National Assembly. This means that the under-represented gender must have at least two of the five judge member spots. Article 76, part 3 provides "for the purpose of gender representation of judge members within the Supreme Judicial Council, the number of representatives of the same gender must be as restricted as possible to maximum three members, except for cases provided for by parts 12 and 13 of this Article". The exceptions to this quota include: part 12 - where, after considering the replacement of all the candidates having received the maximum number of votes through the process prescribed by the Judicial Code, the requirements prescribed by law are violated anyway, the process is to be repeated, restricting gender representation to four members; and part 13 - where, as a result of the process provided for by law, the vacant positions failed to be filled, the process prescribed by law shall be repeated once again, without considering the gender quota requirement prescribed by part 3. Article 84 deals with the election of the Chairperson of the SJC, which involves a secret vote, and in cases of ties, preferences are given to seniority and then to age.

##### Gender impact

The SJC is the standard setting body of the judiciary and is the gatekeeper for recruitment and promotion. The dominance of men in this body is apparent. There is only one woman out of the ten members. This means only 10% of the seats in the SJC are filled by women. The female member is a judge member nominated by the GAJ, with no female members among the non-judge members elected by the National Assembly. While there is a gender quota formula, this is only applicable for judge members of the SJC and not for the SJC members elected by the National Assembly. While the above-mentioned provision provides legislative guarantee for ensuring more gender balance in the SJC, it does not reach the balanced participation defined by the Council of Europe of at least 40 per cent. In fact, taking into consideration the exceptions, the first exception only really guarantees one position for the sex that is underrepresented, which is in fact the current situation in Armenia. The second exception allows for ignoring the quota formula altogether. The current quota formula is ineffective in changing this imbalance. The GAJ's Decision requiring the father's name of the candidate in addition to the surname and name reflects a common traditional practice that focuses on the patriarchal lineage rather than the matriarchal.

There is a concern that the dominance of men in such bodies has led to men defining “the rules of the game” based on male norms and values.<sup>89</sup> This male dominant standards argument suggests that a woman’s ability to perform a job is frequently judged against male standards rather than the competences of the job (skills, knowledge and behaviour necessary to perform the job) and that these standards are used throughout her career, at the point of entry as well as advancement and promotion. This male standard along with a misunderstanding of equality as requiring same treatment for men and women has led to male defined practices being applied to women. Mainstreaming a gender perspective when setting standards recognises that roles and responsibilities of women and men are different in society and workplace should address such disparities by creating enabling working environment in order to guarantee substantive equality. An important element to contribute to the transformation and change of attitudes, norms and perceptions about gender roles that prevent women from assuming their rights to equality is to establish accountability measures, such as a reporting requirement on the measures taken to ensure gender equality in the standards set for judges.

### **International standards and/or examples of good practice**

CEDAW, Article 11 calls for the elimination of discrimination against women in the field of employment in order to ensure the same rights to employment opportunities, advancement, remuneration, on an equal basis. CEDAW G.R. No. 33 on women’s access to justice calls for states to expose and remove the underlying social and cultural barriers, including gender stereotypes confront and remove barriers to women’s participation as justice professionals. The Council of Europe Recommendation defining balanced participation of women and men calls for the representation of either women or men in any decision-making body in public life not fall below 40 per cent. The Council of Europe has also recommended measures to ensure the largest representation of judges within standard-setting bodies.<sup>90</sup>

Good practice: In Spain, the Organic Law on the Judiciary requires the General Council of the Judiciary to report to parliament on a yearly basis on the status, operation and activities of the General Council of the Judiciary itself and of the Courts. This Report is to include a chapter on the impact of gender within the judicial sphere.<sup>91</sup>

Good practice: In Bosnia and Herzegovina, the Law on the High Judicial and Prosecutorial Council, Article 4, part 4 provides “The membership of the Council shall be generally representative of the peoples of Bosnia and Herzegovina and shall reflect the gender balance in Bosnia and Herzegovina. The Book of Rules of the Council shall regulate the procedures necessary to ensure compliance with applicable provisions of the Constitution and laws of Bosnia and Herzegovina regulating this issue.”<sup>92</sup>

### **Recommendation**

More efforts are needed to ensure balanced participation in the SJC and accountability to mainstream gender perspective when setting standards. Regarding strengthening the gender balance in the SJC, this could be done through reformulating or clarifying the quota formula for the election of judge members to take into account the overall gender make-up of the whole of the Council and limiting the exceptions to the quota rule. For example, at least three of the judge members must be of the sex that is currently underrepresented in the SJC. Moreover, there could be a Decision that supports activities that seek to attract and appoint women to the SJC. Increasing a gender balance in the SJC does not guarantee that gender perspective is mainstreamed into the standards. Accountability measures could include requiring the SJC to report to parliament on its status, operations and activities including the impact of gender within the judicial sphere.

## **Issue 3. GAJ’s Commissions**

### **Summary**

In setting out the status of and procedure of activities of the GAJ, Article 74, part 5 provides that the GAJ is to establish three Commissions: (1) the Ethics and Disciplinary Commission, (2) the Training Commission and (3) the

89. Fawcett Society and Commission on Women and the Criminal Justice System. 2009. Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System. London: Fawcett Society; Dawuni, Josephine. 2016. “African Women Judges on International Courts: Symbolic or substantive gains?” iCourts Working Paper Series, No. 60., The Danish National Research Foundation’s Centre of Excellence for International Courts: 2016; Easta, P., Caligari, A., Bartels, L. and Fitch, E. 2015. “Flexible work practices and private law firm culture: A complex quagmire for Australian Women lawyers” QUT Law Review Vol 15, Issue 1, p 30.

90. OSCE, ODIHR, Gender, Diversity and Justice, Overview and Recommendations, 2019.

91. Spain’s Organic Law 6/1985, of 1 July, on the Judiciary, Article 563.1.

92. Law on the High Judicial and Prosecutorial Council, Article 4, part 4. See [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)007](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)007).

Commission for Performance Evaluation of Judges. In addition, the Assembly can also make up working groups to ensure the effective performance of its functions. There is no mention of establishing an Equality Commission.

Article 77 covers the establishment of GAJ Commissions. Each Commission is made up of both judge members and non-judge members. The judge members are elected by secret ballots, whereas the non-judge members are elected by open ballot. There is no mention of gender quota for these Commissions. Non-judge members are nominated by NGO organisations. For the Ethics and Disciplinary Commission, the SJC Decision sets out the requirements for NGOs nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the GAJ. The GAJ Decision on Approving the Rules of Procedure of the GAJ provides further details regarding the election of members of the Ethics and Disciplinary, Training and Performance Evaluation Commissions; however, there is nothing at all about gender or trying to encourage greater gender parity in these Commissions.

## **Gender impact**

As previously noted, the overall approach taken in the formulation of the Judicial Code is predominately one of gender neutrality, which given the current situation, can be seen to be gender blind. Developing institutional mechanisms to implement gender equality within the judiciary allows the promotion of substantive equality to be at the forefront and focus on gender mainstreaming in all the GAJ and SJC's activities. This could be remedied with the establishment of an Equality Commission.

In reviewing the composition of the existing Commissions, there is no requirement to encourage balanced participation. According to the official website of the judiciary: the Ethics and Disciplinary Commission - 3 out of 6 members are women; the Training Commission - 2 out of 5 members are women; and the Commission for Performance Evaluation of Judges - 2 out of 5 members are women.<sup>93</sup> These Commissions have considerable authority and impact over the judges, such as instituting disciplinary proceedings, approving the procedures for training of judges, proposing course and topics to the Academy of Justice, and conducting performance evaluations, to name a few. They have a role in interpreting and enforcing the standards. The way such powers are exercised can have differential impacts on women and men judges and therefore there is a need not only to ensure gender balance but also a gender perspective is taken when interpreting the standards and exercising their functions.

The SJC Decision on the requirements for NGOs nominating candidates for non-judge members of the Ethics and Disciplinary Commission includes as part of the eligibility requirement of NGOs that it has as its statutory objective to include the fields of democracy, human rights protection or judiciary. It was unclear if women's organisations or those involved in combatting violence against women would qualify under this requirement. It seems like a missed opportunity to ensure details of gender sensitive NGOs who can nominate candidates. Further review is needed. In terms of the procedure for holding the competition, there lacked any emphasis on gender, such as requiring in advertising competition to encourage women and people of diversity to apply. Furthermore, the composition of the Competition Commission, made up of three members, again does not mention any gender balance requirement.

## **International standards and good practices**

The Council of Europe Recommendation defining balanced participation of women and men calls for the representation of either women or men in any decision-making body in public life not fall below 40 per cent. Furthermore, the Recommendation R (98) 14 of the Committee of Ministers to Member States on Gender Mainstreaming along with the Council of Europe Gender Equality Strategy 2018-2023 calls on achieving gender mainstreaming in all policies and measures.

Good practice: The Spanish General Council of the Judiciary's Commission for Equality was established under the Organic Law on the Judiciary and assigned with various functions.<sup>94</sup> One of which was to take action in order to draw up the Equality Plan for Careers within the Judiciary. The provision was modified to indicate that the Plenary Session of the General Council of the Judiciary shall elect annually, from amongst its Members, with a majority of three fifths and ensuring a balanced presence of men and women, the components of the Commission for Equality, which shall include five members<sup>95</sup>

93. The data is in Armenian only and is translated by the Council of Europe.

94. Spain's Organic Law 6/1985, of 1 July, on the Judiciary, Article 136

95. Article 136 bis.

Good practice: In Argentina, the Supreme Court created the Office for Women within the Court's institutional structure in 2009.<sup>96</sup> A key objective for the creation of the Office for Women was incorporating a gender perspective in the judiciary to achieve gender equity, both for users of the justice system and for those who work in it. The main areas of work of the Office are: 1. Assessments and surveys to identify behaviours, decisions, and procedures that perpetuate gender inequality and prevent or hinder women's access to justice 2. Awareness-raising and training activities on issues related to women's rights 3. Preparation of project proposals to mainstream gender and improve working relations in the judiciary 4. Communication and dissemination of laws and policies, including on violence against women 5. Monitoring of judicial activity through an analysis of jurisprudence to identify needs and gaps and ensure adherence to normative requirements.

### **Recommendation**

Consider creating a GAJ Commission for Equality, which could then develop a comprehensive Gender Equality Strategy.

### **3.3.3. Gender-related cross-cutting issues**

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#### **Issue 4. Gender parity in the courts: the quota formula**

##### **Summary**

Chapter 3 which sets out the numbers of judges assigned to each court of first instance and specialisation does not contain any legal requirement to ensure gender balance. There is a legislatively prescribed formula calling for gender to be taken into account when compiling the list of candidates for judges. Article 109, part 5 provides that "where the number of the judges of either sex is less than twenty-five per cent of the total number of judges, up to fifty per cent of places in the list of contenders for judge candidates shall be reserved to the persons of the sex concerned who have received the maximum number of "for" votes, but not less than at least more than half of those of all the members of the Supreme Judicial Council".

##### **Gender impact**

It may not be possible to effectively overcome considerable deficits in women's representation and participation without the establishment of quota systems. They are seen as effective temporary measures through which it may be possible to overcome and redress significant historical gender imbalances within the judiciary and to accelerate women's full and equal participation in the judiciary. It is emphasised that quota systems must operate to ensure that judicial appointments are based on qualifications and skills. With this in mind, it is a positive advancement that the Judicial Code has a gender quota, particularly given the low representation of women judges in Armenia.

While there is a legislatively prescribed formula in the Judicial Code for promoting women's representation in the judiciary calling for gender balance to be taken into account when compiling the list of candidates for judges, this is only required to take place when the numbers of either sex is less than 25 per cent of the total number of judges. There is no legal obligation to ensure gender parity on the bench in Chapter 3 which sets out the numbers of judges assigned to Courts of First Instance. In the Courts of First Instance, women already make up 26 per cent so this provision would not be applicable. It is a low threshold and ineffective to reaching the balance participation of women and men called for the Council of Europe Recommendation of representation of either sex not falling below 40 per cent.<sup>97</sup> This number of 40 per cent reflects research that explores the question of tokenism and critical mass.<sup>98</sup> In exploring the question of whether the mere presence of women professionals automatically has an impact for women, some scholars have looked at the issue of tokenism particularly in token inclusion of women within senior positions and agree that it is likely to have little impact.<sup>99</sup> The mere presence of women professionals in small numbers shows that they tend to behave more like the male colleagues. The research suggests that a 'critical mass' of women is needed in order

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96. Alba Ruibal, "Women's Rights at the Argentine Supreme Court: Innovative Non-Judicial Offices for Women and a Conservative Jurisprudence on Reproductive Rights", paper presented at the American Political Science Association Annual Meeting, Seattle, United States, 1-3 September 2011. See also <https://www.csjn.gov.ar/om/institucional.do>.

97. Council of Europe. 2016. Recommendation Rec (2003) 3 of the Council of Europe Committee of Ministers to member states on balanced participation of women and men in political and public decision-making.

98. Tokenism refers to the practice of making only a perfunctory or symbolic effort to do a particular thing, especially by recruiting a small number of people from underrepresented groups in order to give the appearance of gender equality within a workforce.

99. Fawcett Society and Commission on Women and the Criminal Justice System. 2009. Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System. London: Fawcett Society.

to challenge existing practices.<sup>100</sup> Only when the numbers reached a critical mass did women begin to advocate for substantial changes important for women. For example, in Sweden, when women made up only 15 per cent of the parliament they tended to behave more like the male members of parliament. Conversely, as their numbers increased to 45 per cent, women began to advocate for changes important to Swedish women and insisted that men take on social welfare responsibilities.<sup>101</sup> Such critical mass can challenge the apparent “gender neutral” status quo which traditionally reflects male norms.

Furthermore, even when the formula does kick in, the legal provision only requires that the contenders on the list include at least 50 per cent of women. There is no encouragement or requirement for the contenders on the list to be voted in. This provision has the characteristics of a soft quota because there is no guarantee that those who vote will follow the gender balance principle and there are no sanctions for non-observance for such principle.<sup>102</sup> However, simply increasing the number of women judges in the Court of First Instance does not correlate to increasing levels of women in senior positions or in higher courts, for which there is no gender quota formula. Nor will it in and of itself bring about meaningful and substantive gender equality.

It is unclear as to how the quota formula covers the division of civil or criminal judges within the Courts of First Instance of General Jurisdiction. If the overall representation of women is over 25 per cent, yet under this percentage for judges of criminal specialisations, would the quota formula be applicable? The domain of criminal law remains very much male dominant, with less than 20 per cent of criminal judges being women and there are persistent gender stereotypes of viewing that area of law as “men’s work” and not suitable for women.

The recent Council of Europe study on gender equality in the Judiciary in Armenia revealed that a number of judges have negative impressions of quotas, including women.<sup>103</sup> There was a belief that gender quotas were not necessary as there was not a perceived problem with under-representation of women on the bench. Some viewed quotas as artificial, offensive and humiliating to women and limiting the appointment of qualified candidates. Another finding of the study was that women are as competent as their male colleagues to be judges. One scholar provides a theory on the masculinity of merit in the justice profession to explain why women who have predominately been among the top students in law school for several decades are repeatedly found to lack merit for senior positions.<sup>104</sup> She notes that merit seems to have entered the discourse only comparatively recently, coinciding with women’s increasing pursuit of positions of influence within the public sphere. She argues further that merit is an abstract term involving a claim to excellence, but it has no meaning without reference to the social context in which it appears. There is an assumption that merit involves rational choice; that the “best person for the job” (the person who based on past performance displays the greatest promise or potential), will be instantly discernable. However, predicting future performance means there is an element of subjectivity (in determining what factors are taken into account and how they are evaluated), not an objective variable. She asks the question why the merit of a particular judge is expressly raised only when the appointee is a woman, not for a man. This scholar suggests that the long history of appointing only men as judges has made it difficult to re-imagine judicial merit in a non-gendered way. In other words, the fundamental or objective criterion associated with the best people has informally come to include masculinity.

### **International standards and/or examples of good practice**

The Council of Europe and the CEDAW Committee support quotas and special temporary measures. Article 4 of CEDAW provides that temporary special measures aimed at accelerating *de facto* equality between men and women is not considered discrimination. The Council of Europe Recommendation defining balanced participation of women and men provides that balanced participation means that the representation of either women or men in any decision-making body in public life should not fall below 40 per cent.

Good practice: Examples from international courts include: (1) The Rome Statute on the International Criminal Court, Article 36.8(a) reads that “The States Parties shall, in the selection of judges, take into account the need,

100. Fawcett Society and Commission on Women and the Criminal Justice System. 2009. *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

101. Fawcett Society and Commission on Women and the Criminal Justice System. 2009. *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

102. This is similar to the situation in Latvia where the Law on Judicial Power requires that the elections to the Supreme Court should take into account the principle of equal representation of gender; however, research indicated that it was not effective. See Selanec, Goran and Senden, Linda. 2011. “Positive Action Measures to Ensure Full Equality in Practice between Men and Women, including on Company Boards. National Report: Latvia. European Network of Legal Experts in the field of Gender Equality”.

103. Council of Europe. 2021. *Gender Equality in the Judiciary of Armenia: Challenges and Opportunities*.

104. Thornton, Margaret. 2006. “Otherness’ on the Bench: How Merit is Gendered”, Australian National University College of Law Research Paper No. 08-16.

within the membership of the Court, for ... a fair representation of female and male judges".<sup>105</sup> (2) Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, Article 12 reads: "2. Due consideration shall be given to adequate gender representation in the nomination process".<sup>106</sup>

### **Recommendation**

Consider improving the quota formula to reflect achieving gender balance of 40 per cent in all levels of courts, as well as increase efforts to promote women's active participation in the judiciary at all levels as one component of improving substantive gender equality. Given the resistance to quotas, consider enhancing training and awareness-raising to ensure appropriate understanding of the need for quotas, and also to see them as temporary special measures to redress the clear and significant under-representation of women on the bench.

## **Issue 5. Formula in certain situations giving preference based on seniority and age**

### **Summary**

There are a number of provisions in the Judicial Code that use the formula to determine preferences in certain situations where there are several persons suitable for a position: either preference is given to the person with longer judicial experience and if the same, then to the person who is older or vice versa. For example Article 56, parts 3 and 4 which deal with the situation where there has been a reduction in the number of judges of relevant specialisation in a court and where there are several reserve judges of the relevant specialisation to fill a position, the preference is first to the elder judges of relevant specialisation and where elder judges are of the same age, preference is given to the person with longer experience as a judge. Other articles give preferences first to seniority and then age. This can be seen in such provisions as Article 75, part 5 covering the election of a judge candidate for the Constitutional Court; Article 76, part 10 dealing with the procedures for election of judge members of the SJC; Article 84, part 7 covering the election process for chairperson of the SJC; Article 109, part 8 dealing with compiling and approving the list of contenders for judge candidates; Article 115 covering procedure for selecting a candidate for the vacant position of a judge of a Court of First Instance; Article 124, part 9 dealing with drawing up and approving the promotion list of judge candidates to be appointed to the court of appeal; Article 127 covering procedure for selecting a judge for the court of appeal; Article 133 dealing with drawing up and approving promotion list for the Court of Cassation judges and making a proposal; Article 134 covering procedure for the appointment of the chairperson of a chamber of the Court of Cassation.

### **Gender impact**

Such a formula for determining ties appears gender neutral. However, there is a concern that it has a discriminatory impact on women given that they are more likely than men to take time out of work to care for children. Therefore, women of the same age will likely have less seniority than their male counterparts who have not had to take time out. Where there are ties, and gender imbalance remains, this is a good opportunity to counter the imbalance.

### **International and good examples**

The formula proposed by the EU Court of Justice in Case C-409/95, Hellmut Marschall v Land Nordrhein-Westfalen provides that if two applicants get equal score one of them being a woman and the other being a man, the option shall be considered to favour promotion of a female judge as long as there is still a major gender imbalance in promotion within the profession, except for the cases when the objective evaluation of the criteria specific to each individual application is in favour of the man, provided such determining criteria are not discriminatory in respect to the female candidates.

### **Recommendation**

Consider introducing a provision that where there is a tie, preference be given to the sex that is underrepresented in the court or Commission or body.

<sup>105</sup> The Rome Statute on the International Criminal Court of 1998, 2187 UNTS 90, Article 36.8(a).

<sup>106</sup> Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev. 2 (1997), Article 12.

### **3.3.4. Access to judicial careers**

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#### **Issue 6. Access to judicial careers – becoming judges of Courts of First Instance**

##### **Summary**

Chapter 16 covers the compilation and approval of the list of contenders for judge candidates and the list of judge candidate procedures for appointing judges of Courts of First Instance. The lists are compiled according to specialisations (criminal, civil and administrative) by the SJC who calculates the required number of judges for filling the vacant positions of judges for the next 2 years and add a few more (Article 95). Article 95, part 4 provides that persons included in the list of judge candidates having expressed disagreement to the recommendation on their appointment for the reasons of being on pregnancy and child delivery leave, being on leave for adopting a new born child or for having been designated as a guardian of a new born child, shall not be considered when calculating the number.

##### **The eligibility criteria**

The eligibility criteria for applicants include individuals having a law degree; at least 3 years of professional experience; and working knowledge of one language from among English, Russian, French, in addition to Armenian language. There are also specific procedures for including persons holding academic degree in the field of law in the list of contenders for judges' candidates (Article 106).

##### **The procedure of admission in the list of contenders for judges' candidates**

A person who meets the eligibility criteria can apply. Article 99 covers the checking of applications and documents. Regarding the written examination, the SJC defines and publishes the form of the written examination, the minimum requirements for the structure and content. Article 103 provides that exams tests are in different fields – criminal, civil or administration specialisation, and checks theoretical legal knowledge, also checks skills at analysing and applying the law. Certain measures are in place to ensure transparency of the written exam. An evaluation commission specialising in the relevant field, members proposed by the Training Commission, is then established to check the results of the written examinations (Article 104). The provisions do not refer to the issue of gender in terms of its composition. There is an evaluation scale with criteria for evaluation prescribed by the SJC to be used by the evaluation commission and the exams are evaluated anonymously (Article 105). After the written exam, the Judicial Department submits the single completed list to SJC for the purpose of holding an interview (Article 107). The interview is aimed at revealing the skills and qualities necessary for a contender to act effectively in the office of a judge (Article 108). The necessary skills and qualities shall be revealed through evaluation of the professional work experience of the contender, their motivation to become a judge and expectations, awareness of the requirements of the fundamental legal acts concerning the status of a judge, his or her personal qualities (in particular, self-control, integrity, conduct, moderate use of reputation (influence), sense of responsibility, listening skills, communication skills, sense of justice, analytical skills and other non-professional qualities necessary for the activity of a judge. Contenders shall undergo psychological testing, with the criteria approved by SJC.

##### **The procedure applied by the SJC in approving the list of contenders for judge candidates for training**

Article 109 provides for the procedures for voting to elect which applicants will be on the lists of contenders for judge candidates that will undergo training at the Academy of Justice. There is a legislatively prescribed formula calling for gender balance to be taken into account when compiling the list of candidates for judges (Article 109, part 5 as previously discussed). Voting is based on the SJC member's "inner conviction" as well as the quota formula and the preferences regarding ties, as previously discussed. Approval of the list of judge candidates is done after they complete their training (Article 110). Article 113 notes that the grounds for removal of a person from the list of contenders for judge candidates and of a judge candidate will not include those unable to work after graduating from the course due to pregnancy or child delivery.

##### **The procedure applied by the SJC in selecting the candidates for judge's positions**

Article 115 deals with selecting a candidate for a vacant position and proposing to the President of Republic. In the sequence of selection where there is more than one possibility, there is no mention of gender, but rather preference is given to the eldest person.

## Gender impact

### The eligibility criteria

On the face of it, the eligibility criteria appear to be gender neutral and non-discriminatory. However, the reality is that women are significantly under-represented in the judiciary. There is no obligation to encourage and promote applicants from a diverse background to apply which may affect how women will be on the list of contenders. It might be worth reviewing if and how the additional language requirement impacts women and men differently. In Moldova, the ability to speak another language was considered a barrier which impacted women more negatively than men in accessing the judiciary.<sup>107</sup> Since it was still a necessity for the activity of a judge, it was decided it could be dealt with by professional training after the person became a judge.

### The procedure of admission in the list of contenders for judges' candidates

Regarding the written exams and interview, the procedures appear gender neutral and prima facie non-discriminatory. The key selection criterion for judging focuses on their ability to be impartial and not on their gender. This position believes that the individual is miraculously able to leave the particularity of his or her sex and other characteristics of identity together with his or her life experiences, at the courtroom door in order to carry out the adjudicative role with impartiality. In a male dominant sphere, the criterion of impartiality and neutrality, far from being an objective criterion, has been shaped by those in power, which have been men.<sup>108</sup> When the criterion of impartiality and neutrality reflect the perspectives of a "reasonable man", women judges that have different perspectives based on their lived experiences may be seen as not being impartial. An example from Canada highlights this point. A female Supreme Court of Canada judge in her written judgment critiqued the adoption of sexist myths and stereotypes used by the Court of Appeal in a sexual assault case and she was subsequently accused in the media, the Court of Appeal judge and male lawyers of "feminist bias" and writing a "radical feminist judgement".<sup>109</sup> The message was clear, that feminists were unqualified to render judicial decisions.

There is no mention of how the exam might ensure knowledge on gender equality or testing of soft skills such as being able to take a gender-sensitive approach and to check for stereotypes or biases. Criteria should define merit in a sophisticated manner and should explicitly include the goals of judicial diversity and gender equality and should enable appointment from a diversity of legal backgrounds.<sup>110</sup>

Regarding the evaluation commission which is formed by the SJC every year and is composed of 5 members, there is no requirement to respect the gender balance of the evaluation commissions. In fact, with only 1 woman out of the SJC's 10 members, it is clear that this commission will not be able to respect the gender balance. The imbalance at this institutional level has a potential of involuntarily leading to perpetuation of gender stereotypes and discrimination.

Regarding the interview, there are many good aspects listed in the Article as to what the interviewers will be checking. However, as previously discussed, while each of these qualities appears to be objective criterion, they have been set and evaluated by the ones in power, which is masculine. So for instance, from the recent study, it was noted that during the interviews the SJC member asked the potential candidate who have children whether accomplishment of their functions with a heavy workload will influence their family-life, and if they are ready to take the responsibility, even to be appointed far from their families.<sup>111</sup> It was further noted that every candidate would be in the same position. Such a view fails to recognise that the roles and responsibilities of women and men are different in society and that the workplace should address such disparities by creating enabling workplace environments in order to guarantee equal opportunities for everyone effectively. Furthermore, if the responses evaluated from a stereotypical viewpoint, a woman who has children and answers that she can do the work might be looked on more negatively or suspiciously than her male counterpart. Breaking stereotypes and practices requires special temporary measures to significantly increase women's participation in the judiciary.<sup>112</sup> Moreover, there were not questions assessing the person's fitness to serve as a judge that required them to demonstrate gender knowledge and sensitivity.

107. Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

108. Thornton, Margaret. 2006. "Otherness' on the Bench: How Merit is Gendered", Australian National University College of Law Research Paper No. 08-16

109. Backhouse, Constance. 2003. "The Chilly Climate for Women Judges: Reflections on the Backlash from the Ewanchuk Case" Vol 15 Canadian Journal of Women and the Law, at page 163.

110. ICJ. 2014. Women and the World's Judiciaries: Identifying Challenges and Opportunities.

111. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

112. Elizabeth Gibson-Morgan. Gender Equality in the Judiciary in England and France: Making it a living reality. *Revue Miroirs* [En ligne], 4 Vol.2|2016, mis en ligne le 1 avril, 2016.

## **The procedure applied by the SJC in approving the list of contenders for judge candidates for training**

The concerns about the quota formula have been addressed above as well as the procedures for a tie. There is a concern about the vote being based on their “inner conviction”. Research indicates that in the selection process, selectors are more inclined to go with what they “know” and “feel comfortable with”.<sup>113</sup> In particularly male judges, whether consciously or subconsciously, tend to prefer male candidates to female ones. Regarding the training of candidates, there is no focus placed on equality and non-discrimination issues; nor information, skills or specific competences relevant for gender dimensions while training the candidates to qualify for position of judges.

## **The procedure applied by the SJC in selecting the candidates for judge’s positions**

While the procedures for selection appear to be gender neutral, and prima facie non-discriminatory based on meritocratic criteria without any impediments in terms of gender dimension, when considering the statistical data, there is a concern of de facto discrimination and the need for effective special measures. The selection members are predominately men, who vote on ‘inner conviction’ which is vague and difficult to ensure gender stereotypes are not being considered.

## **International standards and/or examples of good practice**

Good practice: In Austria, the 2015-2020 Action Plan for the advancement of women, drafted by the Austrian Ministry of Justice is a comprehensive action plan in the legal field is. The Federal Equal Treatment Act provides that federal authorities should develop affirmative action plans for the advancement of women. The Action Plan stipulates that: (i) women are proactively invited to apply for jobs in this sector. The job announcement should explicitly state it; (ii) given they have the same qualifications, women get preferential treatment in application processes and promotions until the 50 per cent target is achieved. The preferential treatment principle has to be stated in the job announcement; (iii) the same rule applies to further training and education which qualify them for a promotion; and (iv) the Committees in charge of application and promotion decisions should include members of both sexes.<sup>114</sup>

Good practice: In England and Wales, an “Equal Merit Provision” was inserted into the Constitutional Reform Act 2005 by the Crime and Courts Act 2013.<sup>115</sup> Under this new provision, “selection solely on merit does not prevent “the selecting body, where two persons are of equal merit, from preferring one of them over the other for the purpose of increasing diversity”.

Good practice: In Canada, the Supreme Court of Canada has a female Chief Justice and four out of the nine judges are women, making it the most gender-balanced highest court in the world. This has been achieved by a three-agency approach by the Government, the Commissioner for Federal Judicial Affairs (FJA) and the judicial profession itself. The Government, in partnership with the FJA, has actively sought to attract and appoint women to judicial roles. This work has been supported by the efforts of the judicial profession to accommodate women and remove barriers that make it difficult for them to excel as compared to their male colleagues, so that they may more easily join the front ranks of practice from which judges are typically drawn. However, the fundamental change that has engendered women’s progress has been a different approach to the selection criteria or “merit” principle. The “merit” principle is broken down into Professional Competencies (where it clearly states that a lack of court room experience is not a barrier to appointment) and Personal Characteristics. These include: an ability to listen, an awareness of racial and gender issues, tact, humility, reliability, tolerance and consideration of others.<sup>116</sup> Moreover, the guidelines for Judicial Advisory Committees explicitly state that along with assessment of professional competence and overall merit, they must “strive to create a pool of candidates that is gender-balanced and reflective of the diversity of each jurisdiction, including Indigenous peoples, persons with disabilities, and members of linguistic, ethnic and other minority communities, including those whose members’ gender identity or sexual orientation differs from that of the majority.”<sup>117</sup> The members of the Judicial Advisory Committees are given training, specific assessment criteria, and sample questions to ask when making inquiries about candidates in order to enhance their ability to collect relevant information and to identify highly qualified candidates who may have a different background or experience than their own.

113. Legal Resource Centre from Moldova. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

114. Yvonne Galligan, Renate Haupfleisch, Lisa Irvine, Katja Korolkova, Monika Natter, Ulrike Schultz, Sally Wheeler. 2017. “Mapping the Representation of Women and Men in Legal Professions Across the EU”.

115. CRA 2005 by the Crime and Courts Act 2013, section 63.

116. Skinnider, Eileen. 2016. Women as Justice Makers in ASEAN: A Literature Review”.

117. Office of the Commissioner for Federal Judicial Affairs Canada. 2016. Guidelines for Judicial Advisory Committee Members.

Good practice. In Spain, the Decision of the Plenary of the CGPJ of the 20th of December 2012 required gender mainstreaming in the syllabus of competitive examinations for entry into the Judiciary, and the inclusion of new topics related to equality and violence.

Good practice. In Bosnia and Herzegovina, the legislation on the Superior Council of Justice and the General Prosecutor Office contains provisions on ensuring the parity as one of the obligations assigned to the Council as part of judges' appointment and promotion procedure.<sup>118</sup>

Good practice. The systematic recruitment by judicial nominating committees and expanding the pool of applicants at the start of the judicial nomination process is key to effectively increasing diversity in the judiciary. Research from the Brennan Center for Justice at New York University Law School regarding judicial appointments provided the basis for their recommendations: nominating committees must acknowledge implicit bias; increase strategic recruitment; be clear about the role of diversity in the nominating process in the law; keep the application and interviewing process transparent; train commissioners to be effective recruiters and nominators; and appoint a diversity compliance officer or ombudsperson.<sup>119</sup>

## Recommendation

It is appreciated that the methods used to recruit judges are a sensitive subject matter because it involves the issue of the independence of the judiciary. More efforts are needed to ensure that the recruitment processes guarantee transparency and fairness as well as equality of opportunities. It is recommended to revisit the quota formula, as well as consider measures to reach gender parity in the bodies that evaluate and vote for the judges' candidates. This could be done through increase strategic recruitment, nuanced definition of 'merit'; creating a pool of candidates that is gender balanced; give training to the SJC on implicit bias and could provide sample questions to help identify highly qualified candidates who may have a different background or experience than their own.

### 3.3.5. Access to career advancement within the judiciary

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#### Issue 7. Career advancement within the judiciary- chairpersons

##### Summary

Article 121 provides for procedure for appointing the chairperson of a court of first instance. The Judicial Department draws up and submits to SJC the list of all judges who, in part, possess not less than 3 years-experience as a judge and have had no disciplinary penalties. The SJC examines the personal files of the candidates and, if necessary, invites them to an interview. In the decision-making process, the Supreme Judicial Council takes into account the professional reputation of a judge, attitude towards his or her colleagues during the performance of duties of a judge, other skills and qualities. The SJC holds a vote by open ballot where each member shall have only one vote. Based on the voting results, the person having received the majority vote of all the members of the Council shall be proposed to the President of the Republic. Article 130 covers the procedure for appointing the chairperson of the Court of Appeal. Articles 134 and 135 provide procedures for appointing the chairperson of a chamber of the Court of Cassation and proposing a candidate for chairperson of the Court of Cassation, respectively.

In considering the chairperson, they "take into consideration features characterizing the skills and qualities necessary for acting effectively in the office of the chairperson of the given chamber, including the following (1) professional reputation of a judge; (2) attitude towards his or her colleagues during performance of duties of a judge; (3) organisational and managerial skills of a judge and other features characterizing the skills and qualities displayed by the judge in the performance of managerial activities". The vote is to be based on their "inner conviction".

##### Gender impact

While the criteria and procedures set out for judges to be appointed as chairperson at first sight appear to be non-discriminatory, given that there are very few women in these positions (only 16.6 per cent), it needs to be asked does this criteria unintentionally discriminate against women? There does not appear to be any legal barriers, so then the question becomes what are the attitudinal barriers that need to be addressed?

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118. European Commission for the Efficiency of Justice in its study published in 2018.

119. Ciara Torres-Spelliscy and others. 2010. Improving Judicial Diversity. Brennan Center for Justice at New York University School of Law.

Special measures might be needed in order to address such barriers. However, currently there are no quotas or formulas to promote women's representation for offices of chairpersons of the courts.

There does appear to be a glass ceiling which stops women from obtaining senior positions despite having the competence required. A number of barriers contribute to this glass ceiling.<sup>120</sup> First, there are internal barriers related to the social identity of gender. The socialisation process through family, school and media women and men respond to gender role expectations that are discriminatory toward women. Second, there are external barriers linked to the organisational culture. The existence of gender stereotypes within the organisation works against the promotion of women. Third, there are barriers derived from their family role. Household responsibilities constitute an impediment for women to be in charge of positions with variable working hours or positions that require mobility and the lack of equal distribution of house chores with their spouses indirectly contributes to the formation of this barrier.

As previously mentioned, the criteria on which the judges are evaluated for this position may hide some indirect discrimination. There can be organisational culture and the existence of gender stereotypes which prevail as male dominant standards which always work against the promotion of women. For example, "presenteeism", which emphasise physical presence, "face time" or "visibility rather than quality of work negatively impacts women more than men due to the barriers women face as a result of gendered family roles (procreation and household responsibilities). When male dominant standards are the ones used to assess the prima facie gender neutral qualities such as "quality, efficiency and integrity in the position of a judge" or "skills of the judge to perform the required job", this can allow gender bias to manifest. It would be interesting to explore how the COVID-19 pandemic and the corresponding justice strategies to shift to remote possibilities has altered perceptions of "presenteeism" in the work space.

There appears to be an assumption that women judges have no interest in career promotion. According to the recent study, it was mentioned that it was the choice of women themselves who do not want to carry the heavy burden of the senior positions in the judiciary.<sup>121</sup> There is a need to consider what conditions should be in place to provide equal opportunities to men and women considering their realities. If women themselves are reluctant to apply for senior positions due to explicit or implicit gender biases in the judiciary, this hinders the career promotion of women and their equal representation in the management positions. Special temporary measures might need to be applied, to ensure favourable conditions.

### **International standards and/or examples of good practice**

Council of Europe Recommendation defining balanced participation of women and men (40 per cent).

Good examples: In Germany and Ireland, the development of formal ongoing education programs targeted towards the managerial positions as an instrument to encourage women to access positions of top responsibility.<sup>122</sup>

### **Recommendation**

More effort is needed to ensure that the evaluation and voting procedures do not allow gender bias to manifest. Consider requiring the SJC to undergo training on implicit bias and to provide well-reasoned justification when appointing a chairperson. Moreover, effort is needed to encourage women to put their names forward for leadership positions. Consider developing education and mentoring programmes within the judiciary.

## **Issue 8. Career advancement within the judiciary- promotion to higher courts**

### **Summary**

In terms of promotion to higher courts, the GAJ elects and proposes candidacies of judge members of the Constitutional Court. Article 75 sets out the procedures for such an election. The GAJ's quorum is when there are more than half of all judges and decisions made by simple majority. Ties are determined by preferences given to seniority and age.

It is the SJC that draws up and approves the promotion list of judge candidates for the Court of Appeal and the Court of Cassation. Chapter 17 of the Judicial Code covers the relevant procedures. Similar to the previous list, the SJC calculates the number of positions that should be on the list, follows the procedures for accepting applications, (e.g. applicant judge for court of appeal needs at least 3 years as a judge of first instance with

120. These barriers are described in more detail in Carlos Gómez-Bahillo et al. 2016. "The feminization of the Spanish judiciary". *Convergencia, Revista de Ciencias Sociales*, no. 70, 2016, Universidad Autónoma del Estado de México.

121. Council of Europe. 2021. *Gender Equality in the Judiciary of Armenia: Challenges and Opportunities*.

122. Legal Resource Centre from Moldova. 2019. *Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary*.

no disciplinary penalties or can be former judges and academics whereas for applicant for court of cassation judge requires judge of relevant specialisation who possesses at least 10 years of professional work experience, at least 5 years of which in position of judge), studies the personal file of candidates and if necessary invite them to an interview. In drawing up the promotion list the SJC shall take into account the skills and qualities necessary for acting effectively in the office of Judge of Court of Appeal or Court of Cassation and for judges looks at the results of the performance evaluation. The vote is based on SJC member's inner conviction. There is no reference to gender or balanced participation. Where votes are tie, an additional vote is to be held and if another tie, preference is to seniority (one possessing longer professional work experience, or if equal to the eldest candidate). After approving the list, it is then submitted to the Justice Academy for arranging their study. The selection procedure provides for a sequence to follow and where there are several that qualify for a position, preference is given based on age rather than on gender considerations.

## Gender impact

As previously mentioned, while the procedures for selection appear to be gender neutral, and prima facie non-discriminatory based on meritocratic criteria without any impediments in terms of gender dimension, when considering the statistical data, there is a concern of de facto discrimination and the need for effective special measures. Some of the same concerns that have already been mentioned are here as well: the criteria on which the judges are evaluated for this position may hide some indirect discrimination and allow for gender bias to manifest; the selection members are predominately men; and the vote is 'inner conviction' which is vague and difficult to ensure gender stereotypes are not being considered. If there is subtle bias that prefer men, then there is need to change the norms and standards, how "merit" is viewed and capacity as well as ensure gender parity on selection boards. Voting on inner conviction can often advertently or inadvertently discriminate against women. Selection processes that are exposed, rather than sheltered, are good indicators of women's presence in the high courts. Otherwise, this allows the selectors who are a group of persons without public scrutiny lack incentives to explain their inner conviction when making an appointment.

There are no formulas for quotas to higher courts. There is a lack of policy to ensure the gender balance in senior appointments. The promotion lists are mainly composed by men. The study heard that the last promotion lists for the Court of Appeal and Cassation Court consisted mostly of men.<sup>123</sup> Interestingly, none of the participants from the study suggested that women judges were less competent compared to their male colleagues when carrying out their professional duties. However, looking at the statistical data, few women reach the higher level courts. There is a false assumption that women judges have no interest in career promotion. Many of the women respondents from the study said it was their choice not to apply for the promotion. As previously noted, caution is needed when viewing women's failure to reach their full professional potential as the price they are willing to pay to combine careers with their family life. They may not be "opting out" but rather being "pushed out" due to inflexible job conditions.<sup>124</sup> A study from Moldova noted that such explanations stem from prejudices and gender stereotypes specific to a cultural space still dominated by patriarchy.<sup>125</sup>

There appears to be different standards for candidates who are judges and who are academia. The judge candidates will have undertaken performance evaluations that show their judicial knowledge and their capability of interpreting and applying the laws. The academic candidates should have more than a certain number of years-experience. For them to access the promotion list, it seems that only personal and professional trajectories are taken into account, without the need to present any kind of evaluation. This requires further study to determine if this approach has a differential impact on women and men.

## International standards and/or examples of good practice

Good practice: In Spain, responding to a concern that discretionary positions on the promotion list were favoring men, the General Council of the Judicial Power approved a Book of Regulations that proposed a modification of the position assignment criteria, placing more weight on the judicial experience.

Good practice: In Bosnia and Herzegovina, the Law on the High Judicial and Prosecutorial Council, Article 43, part 2 provides "The Council shall implement relevant Constitutional provisions regulating the equal rights and representation of constituent peoples and others. Appointments to all levels of the judiciary should also have, as an objective, the achievement of equality between women and men."

123. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

124. Stein, Alison. 2008. "Women Lawyers Blog for Workplace Equality: Blogging as a Feminist Legal Method".

125. Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

Good practice: In Belgium, the 2014 reforms introduced gender quotas in the appointment process for the Belgian Constitutional Court.<sup>126</sup> It requires the Court to be composed of at least a third of judges of each sex. This requirement will however not enter into force immediately, but only once the Court is in fact composed of at least one third of female judges. In the meantime, a judge of the underrepresented sex shall be appointed every time that the two preceding appointments have not increased the number of judges of this underrepresented sex. For example, if women remain unrepresented on the Court (as they currently are, representing only around 16% of the Court), and the next two appointees are men, the third appointment will have to be a woman. The Bill is the outcome of a 10-years discussion of the need of more gender diversity and constant critique of underrepresentation of women in the Court. The previous 2003 Act stated that the Court shall be composed of judges of both sexes. But this requirement did not guarantee the achievement of gender diversity.<sup>127</sup>

### **Recommendation**

More effort is needed to promote gender balance in the higher courts. This could include consideration of proactive measures for ensuring that the proposed lists of judicial promotions have adequate representation of women, such as applying a gender quota or requiring that due consideration is given to adequate gender representation in making up the promotion lists. Moreover, it is also suggested that measures should be considered that promote a gender-responsive judiciary. This could include having criteria for the promotion of judges to include requiring judges on the promotion list to have knowledge of women's human rights and be able to demonstrate commitment to the goal of gender equality.

## **3.3.6. Performance evaluation procedures**

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### **Issue 9. Performance evaluation procedures**

#### **Summary**

Chapter 18 of the Judicial Code deals with performance evaluation of judges. Article 136 sets out the aim of performance evaluations as contributing to the selection of the best candidates when compiling the promotion list of judge candidates; selection of the areas of training of judges; reveal ways to improve the effectiveness of the work of the judge; contribute to self-improvement and improvement of the effectiveness of court's activities. The results of such evaluations are sent to Training Commission; the judge being evaluated; the Ethics and Disciplinary commission and the chairperson of the court. Article 138 sets out (1) the criteria for the performance evaluation: quality and professionalism; ability to justify the judicial act; ability to preside over court sessions and conduct them prescribed by law. (2) Criteria re effectiveness of the work: effective workload management skill and work planning; examination of cases and delivery of judicial acts within reasonable time limits; observation by a judge of time limits prescribed by law; ability to ensure an efficient working environment. (3) Criteria regarding ethics and rules of conduct: observance of the rules of conduct and ethics; contrition to the public perception of the court and to the confidence therein, attitude towards other judges and the staff of court.

The SJC has issued a Decision on the Methodology and the Procedure of the Performance Evaluation of Judges. Annex 3 contains a detailed form for reviewing: (1) the quality and professionalism of the judge's work; (2) Effectiveness of the work of a judge; and (3) Evaluation of the rules of ethics and conduct of a judge.

#### **Gender impact**

The criteria on which judges are evaluated, such as professionalism; effectiveness and following the rules of ethics and conduct appear gender neutral. However, as previously mentioned the dominance of men in the justice sector has led to men defining "the rules of the game", setting how competency and commitment are evaluated. A women's ability to perform the job is frequently judged against male standards rather than the competences of the job. For instance, research from other countries has shown that there is a tendency to equate performance and commitment with the ethos of long hours in the legal professions.<sup>128</sup> This supports a culture of "face-time", "visibility" or "presenteeism" in the justice sector. The draft internal working disciplin-

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126. Yvonne Galligan, Renate Haupfleisch, Lisa Irvine, Katja Korolkova, Monika Natter, Ulrike Schultz, Sally Wheeler. 2017. "Mapping the Representation of Women and Men in Legal Professions Across the EU".

127. <http://ohrh.law.ox.ac.uk/belgian-parliament-introduces-sex-quota-in-constitutional-court/>

128. Fawcett Society and Commission on Women and the Criminal Justice System. 2009. Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System. Bartlett, Francesca. 2008. Professional discipline against female lawyers in Queensland: A gendered analysis. Griffith Law Review, 17-1, p. 301. Thornton, Margaret. 2016. "The Flexible Cyborg: Work-Life Balance in Legal Practice" Sydney Law Review.

ary rules for judges attest to this with the introduction of a card system at the court houses. The merit here is defined by the ideology of complete devotion and commitment to the profession. While seemingly neutral, these value norms or “merit” criterion adversely impact women who have more caregivers’ responsibilities than men. These value norms reflecting the long hour ethos still remain, even though they have lost their basis in fact, as studies on productivity has shown and with more remote working possibilities available.<sup>129</sup> The culture of working long hours disadvantages women who have more child care and family responsibilities. There can also be a flipside stigma for those working flexible and part time. The long working hour culture is perceived as an implicit requirement for promotion. Quality is often overlooked for quantity.

Regarding the criteria for the evaluation of the rules of ethics and conduct of a judge, there is nothing explicitly about using sexist language or implicit biases.

### **International standards and good practices**

The Council of Europe Recommendation on preventing and combating sexism proposes a set of concrete measures to combat sexism including through legislation and policies and through awareness-raising.<sup>130</sup> The text contains the first ever internationally agreed definition of sexism.<sup>131</sup> The recommendation proposes specific attention to sexism in justice. This includes such measures: regular and adequate training for all judges on human rights and gender equality, and the harm caused by gender bias and gender stereotyping and the use of sexist language; and encouraging courts to be receptive to third-party interventions and expert opinions on unfamiliar topics such as sexism and gender stereotyping.

Good example: In Spain, the Decision of the Plenary of the 17th of January 2007 on “Criteria for the use of non-sexist administrative language” was distributed to members of the judiciary. This Decision introduced and standardised non-discriminatory and non-sexist criteria in the internal and external language of the General Council of the Judiciary.

Good practice: In Moldova, a report recommended the use of mandatory testing of implicit biases. This is a test to be applied by each of the judges with the results obtained to be made available only to the tested person as a possibility of perceiving one’s own biases.<sup>132</sup>

### **Recommendation**

More efforts are need to ensure that performance evaluations are gender-sensitive and do not apply criteria that indirectly discriminates against women judges. This could include considerations of introducing a mandatory testing of implicit biases for those judge members of the Performance Evaluation Commission, and training of judge members who conduct performance evaluations to interpret seemingly gender neutral standards through a gender lens. Furthermore, there could also be considerations as to developing further criteria that such evaluations will be based upon. For instance, this could include the use of non-sexist language in their work.

## **3.3.7. Disciplinary procedures**

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### **Issue 10. Disciplinary measures**

#### **Summary**

Chapter 19 of the Judicial Code covers procedures for taking disciplinary action against judges. Imposing disciplinary action is done by the SJC. Judges can be disciplined for violating deliberately or with gross negligence violating the law while administering justice or gross violation of the rules of conduct, with intent or gross negligence (Article 142). A time limit for instituting proceedings is 3 months for rules of conduct breaches (Article 144). Reporting anonymously shall not be subject to consideration. For SJC members, the disciplinary measures are covered under Article 85. For this, a motion needs to be filed by at least 3 members of the

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129. Thornton, Margaret. 2016. “The Flexible Cyborg: Work-Life Balance in Legal Practice” Sydney Law Review.

130. Recommendation CM/Rec(2019)1 adopted by the Committee of Ministers of the Council of Europe 27 March 2019 Council of Europe Recommendation on preventing and combating sexism, see <https://rm.coe.int/168093b26a>.

131. Sexism is: Any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of: i. violating the inherent dignity or rights of a person or a group of persons; or ii. resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or iii. creating an intimidating, hostile, degrading, humiliating or offensive environment; or iv. constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or v. maintaining and reinforcing gender stereotype.

132. Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

SJC. The Commission for Prevention of Corruption shall institute disciplinary proceedings only in the cases provided by points 15 and 16 of part 1 of Article 69 of the Judicial Code, which cover issues of declarations of property, income, interests and expenses accordingly to the Law on Public Service.

### **Gender impact**

There is no reference to sexual harassment or discriminatory treatment. While the recent study on gender equality and the judiciary in Armenia noted that few participants raised concern of sexual or gender-based harassment<sup>133</sup>, when the issue is studied in other countries, they show that women are more likely than men to encounter sexual harassment.<sup>134</sup> These studies show that women judges experience disparaging treatment in the form of demeaning comments, repeated interruption while speaking, often not addressed as her honor but rather ma'am. It is not uncommon for women judges to feel as females that they were treated differently by male colleagues and often afforded less respect.<sup>135</sup> Other discriminatory treatment experienced by women judges: condescension, stereotyping, sexist comments, hostility, denial of status and authority, invisibility, double standards and exclusion.

The current procedures, such as short time limits for instituting proceedings might pose barriers for those complainants of sexual harassment. While the procedures do not allow for anonymous reporting there are few safeguards in place to ensure privacy of victims in sexual harassment claims.

### **International standards and good practices**

Good practice. In the United States, a Federal Judiciary Workplace Conduct Working Group reviewed the Code of Conduct for the United State Judges and its recommendations were taken up by the Judicial Conference committees, including to expressly prohibit harassment and abusive, prejudiced, biased, or otherwise inappropriate workplace behaviour.<sup>136</sup> The revised Code of Conduct (effective 2019) includes a passage specifying that the "judge should not engage in behaviour that is harassing, abusive, prejudiced, or biased" and a commentary specifying that this includes "harassment that constitutes discrimination on impermissible grounds"; with reference to relevant Rules for Judicial-Conduct and Judicial-Disability Proceedings providing that misconduct includes: (a) Engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (b) Treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; (c) Creating a hostile work environment for judicial employees; and (d) Intentional discrimination on the basis of race, colour, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability.

### **Recommendation**

Consider including references to sexual harassment and discriminatory treatment in the judicial code in order to ensure appropriate disciplinary procedures can apply to this conduct.

## **3.3.8. Structures for the professional development of judges**

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### **Issue 11. Training**

#### **Summary**

The GAJ establishes the Training Commission. Its activities are set out in Article 78, part 3. These include: approving the procedures for training judges; submit proposes regarding the courses and topics to the Academy of Justice; and submit the list of persons to be trained. The training of judges is provided by the Academy of Justice, which is covered by another law.

#### **Gender impact**

The recent study found that the majority of the judiciary has never attended training on gender equality.<sup>137</sup> There was a belief that judges in Armenia do not need any capacity building or awareness-raising on gender

133. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

134. Raday, Frances. 1995. "Women in Law in Israel: A Study of the Relationship Between Professional Integration and Feminism" Georgia State University Law Review: Vol 12: Issue 2, Article 4.

135. Fawcett Society and Commission on Women and the Criminal Justice System. 2009. Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System.

136. United States Courts, Code of Conduct for U.S. Judges (effective March 12, 2019), available at [https://www.uscourts.gov/sites/default/files/code\\_of\\_conduct\\_for\\_united\\_states\\_judges\\_effective\\_march\\_12\\_2019.pdf](https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf).

137. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

equality. Regarding the training of candidates, there does not appear to be a focus placed on equality and non-discrimination issues; nor information, skills or specific competences relevant for gender dimensions while training the candidates to qualify for position of judges.

The promotion of gender equality extends beyond gender parity on the bench and also requires gender competence. Judges and their staff need to receive gender sensitivity training on gender stereotypes and applying trauma-informed approaches. There is a need to incorporate the relevant aspects of gender equality into other disciplines such as civil, criminal and administrative or into the practical aspects, case studies and examples used.<sup>138</sup>

Training on gender-related integrity issues should be mandatory wherever possible. Training only achieves its purpose if people participate. People may resist training on gender issues because they think they already understand these issues, do not see them as important or relevant to their work, perceive gender as a women's issue or for any number of other reasons. Making training on gender-related integrity issues mandatory would address this challenge and ensure broad participation.

The recent study provided a number of recommendations to incorporation of equality and non-discrimination as a distinct topic pursuing specific educational objectives in relation to gender equality into the initial training plan for the candidates for judge positions, and could include development of educational modules on gender equality primarily intended for the members of such commissions.

### **International standards and good practices**

CEDAW Committee, in its Concluding observations on the combined fifth and sixth periodic reports, calls Armenia to sensitise the judiciary on the need to protect women's human rights and provide capacity building to judges and other law enforcement officials on the strict application of relevant criminal law provisions.

Good example: In Spain, Articles 310.5 and 433 bis of the Organic Law on the Judiciary provide that the General Council of the Judiciary will ensure that all Magistrates and Judges will receive on-going, individualized, specialised and high-quality training throughout their professional career, focusing on the principle of equality between men and women and the gender perspective. Each year, the Judicial School will provide training courses on the judicial protection of the principle of equality between men and women and gender-based violence.

### **Recommendation**

Consider how to introduce gender equality into the syllabus of candidates to guarantee compliance with the legislation in force on equality and the principle of gender mainstreaming.

## **Issue 12. Professional associations**

### **Summary**

Article 7, part 7 of the Judicial Code provides that judges have the right to form an association as prescribed by law.

### **Gender impact**

From a formal gender equality viewpoint, this provision ensures legal recognition that women and men judges equally have a right to form and join judicial associations. However, women and men have different conditions, behaviours and needs in terms of associating, where women often lack the opportunity to network that is different than their male colleagues. Supporting women through founding professional groups to advance women's common interests can counter this lack of opportunity. In Armenia, there does not exist a women judges association, however, there is a women's unit within the judges union.

### **Recommendation**

There should be more options for women judges to network with each other, to support each other and to discuss any difficulties they face as women in their profession, as well as to serve as leaders in promoting women's rights and access to justice more broadly.<sup>139</sup>

138. Legal Resource Centre from Moldova. 2019. Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova: The Personal Price Paid by Women in the Judiciary.

139. Aleksanyan, Narine. 2020. Gender Analysis of PGG Project "Implementation of Judicial Reforms in Armenia".

### 3.3.9. Accommodating pregnancy and parenthood

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#### Issue 13. Pregnancy and parental leave

##### Summary

There are a number of provisions in the Judicial Code that specifically refers to a judge who is on “maternity, child birth or child adoption leave”. For example, in Article 86, part 3, the powers of a member of the SJC would terminate if the member could not perform his or her official duties due to temporary incapacity lasting over 4 subsequent months or over 6 months in a calendar year, except for the reasons of being on maternity leave, child birth or child adoption leave”. In Article 95 which regulates the decisions regarding lists of judge candidates, part 4 provides that persons included in the list of judge candidates having expressed disagreement to the recommendation on their appointment “for the reasons of being on pregnancy and child delivery leave, being on leave for adopting a new born child or for having been designated as a guardian of a new born child”, shall not be considered when calculating the required number of judges for filing the vacant position of judges. In Article 113 on the grounds for removal of a person from the list of contenders for judge candidates and of a judge candidate, part 10 that stipulates the ground of not being engaged as a lawyer for a period of time makes an exception for the reasons of being on pregnancy and child delivery leave, being on leave for adopting a new born child or for having been designated as a guardian of a new born child. Article 116 on the procedures for accepting the proposal by the candidate having received a proposal for a vacant position of a judge of court of first instance and consequences of not accepting it provides for a similar exception that if they refuse for such reasons, they will not be removed from the list of candidates. Article 128 covers a similar exception for candidates of the Court of Appeal. Article 159 on the termination of the powers of a judge makes a similar exception where the reasons for termination include failing to perform duties for more than 4 consecutive months.

However, Article 58 which covers leave of a judge, including annual leave, only mentions leave for reason of personal or family circumstances in part 6 and stipulates that it is up to the chairperson of the court to grant such leave which is unpaid for up to 20 days per year in total and if longer time is require then the SJC must consent.

##### Gender impact

These provisions are gender-sensitive in not penalising women who are on leave due to “maternity, child birth or child adoption leave”. No provision in the Judicial Code speaks to paternity leave. However, these provisions should be considered alongside of the Labour Code provisions. The Labor Code contains provisions to support women to re-enter the workforce after having children. Women have access to paid maternity leave that covers 140 days and up to 180 days for certain situations. The Labour Code was amended in 2020 and as of September 2020 there are provisions related to the paternity leave. In particular, according to Article 171 of the Labour Code paternity leave is a type of the special purpose leave alongside pregnancy and maternity leave; leave granted for taking care of a child under the age of three; etc. According to Article 176.1 within 30 days after the birth of the child, at the request of the child’s father, paid leave is provided for 5 working days. Women or men can request unpaid leave of up to 3 years to stay home and care for children.<sup>140</sup> While paternity leave is legally provided for, it is considerably less time than maternity leave. This discriminates against fathers who want to take a longer paternity leave, as well as maintains gender roles in terms of family responsibilities.

When women do opt to return to work after a longer maternity leave, they are faced with limited day care options, especially for infants.<sup>141</sup> In reality the requirements with regard to taking care of a child do not cease at the end of childcare leave. Judges with children have duties at work and at home. This problem has a gender dimension rather specific to women. Resuming work after a longer period of child care leave is not accompanied by a period to accommodate, during which a woman judge would be able to update her knowledge on any legislative changes.

The recent study revealed that many members of the judiciary do not have a positive approach towards maternity leave.<sup>142</sup> Others feel that their workload increases because of the maternity leave of a colleague. Even if they are not explicitly expressed, adverse attitudes may discourage female judges entitled to maternity leave to fully benefit from it. There was no information available as to whether there was a policy to accommodate

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140. International Labour Organisation (ILO). National Labour Law Profile: Republic of Armenia.

141. Asian Development Bank. 2019. Armenia Country Assessment, page 21.

142. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

mothers who return to work, such as ensuring space provided in the courts for breastfeeding or breastmilk storage; have a reserve of judges to replace the colleague on leave during her absence; flexible working hours and decreased number of cases for female judges having young children. Such a policy needs to address the concern of attitudes that the enforcement of maternity or family related rights is not perceived as being compatible with the profession of the judge.

### **Recommendations**

Consider policies or Decisions that provide clear provisions for pregnancy and parental leave. This could cover flexible working hours and decreased number of cases for female judges having young children; infrastructure for child feeding; have a reserve of judges to replace the colleague on leave during her absence. It should be clear that such measures should be available without prejudice to career advancement.

### **3.3.10. Balancing professional life with family life**

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#### **Issue 14. Assignment judges to cases and courts**

##### **Summary**

Chapter 9 covers the distribution of cases in courts. The procedures for distribution, redistribution of cases and the formation of panels of judges are defined by the SJC based on principles of specialisation and random selection, as well as these rules. The SJC uses a special computer program for this. If the computer program is not working, the chairperson of a court is to distribute the cases among judges in alphabetical order of the surnames. A case received by the court is entered into the computer program and is equally distributed among the judges of the court in question and there are also equal distribution benchmarks defined by the SJC. Article 42 provides that a judge could be temporarily removed from the distribution list or defined a different percentage of cases to be distributed to them if they have a case of particular complexity. The provision also lists other instances where a judge could be removed from the list of distribution of cases.

It is interesting to note that Article 45 provides for a lower percentage of cases distributed for different judges who also have administrative tasks, including members of the Training Commission of the GAJ, Ethics and Disciplinary Commission and Commission for Performance Evaluation of Judges, chairpersons, and judge members of the SJC.

##### **Gender impact**

While these provisions at first glance appear to be gender neutral, as the computer programme is random, factors such as specialisation and location are not. It is well known that selection of cases can impact the career path and advancement of judges. Discrimination that manifests in the nature of judicial assignments given to women judges must also be addressed. For example, in some jurisdictions women are typically appointed to low-status courts or to rural locations that are very difficult to access. In others, in the name of personal security and protection concerns, they may systematically be excluded from criminal cases.<sup>143</sup>

The provision lists instances where a judge could be removed from the list of distribution of cases. These include: in the case of leave; secondment or training. While the provisions cover leave, which would include maternity and paternity leave, there are no allowances for mothers who are breastfeeding or young children to return to work part-time with a different percentage of cases assigned to them.

##### **International standards and good practices**

Good practice: In Spain, the Organic Law on Effective Equality between Women and Men, Article 51 specifically provides that when facilitating the reconciliation of personal, family and working life, it must be done without prejudice to career advancement.<sup>144</sup> The Equality Plan for Careers within the Judiciary provides for a survey on reconciliation and family responsibilities within the judiciary to be conducted and inform the adaptation of the Reconciliation Plan and the design of the training plan grounded on the reconciliation of personal and working life. The gender impact reports must also cover the issue of reconciliation and family responsibilities. Moreover the Plan also provides for guaranteeing that the fact of having made use of the right to reconciliation is not taken into consideration, either directly or indirectly through an objective evaluation of performance, as a negative circumstance for professional advancement, even where this involves leave on personal grounds.

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<sup>143</sup> ICJ. 2014. Women and the World's Judiciaries: Identifying Challenges and Opportunities.

<sup>144</sup>. General Council of the Judiciary, Commission for Equality. Equality Plan for Careers within the Judiciary.

## Recommendation

Consider allowing for reduced case assignments for judges having young children, without prejudice to career advancement. Consider exploring the possibility of creating part time or shared positions.

## Issue 15. Internal working disciplinary rules

### Summary

The SJC has drafted a Decision on establishing internal working disciplinary rules for judges. This Decision covers such topics as working and rest schedules; official duties of the parties; and violation of the internal disciplinary working rules.

### Gender Impact

The judiciary places high demands on the hours that judges work, and office hours can be inflexible due to lengthy court sessions. While this can pose a serious barrier for judges with family responsibilities, women are more likely than men to be affected as they are primary care providers to their families. The idea that women belong primarily in the home is still very prevalent. The issue begins with biology but is strengthened by traditional culture and societal mores. Women have continued to, and are expected to, assume responsibility for the domestic sphere without any real accommodation of this reality in the workplace.

The lack of women in the judiciary and in senior positions could be because the work conditions do not take into account the difficulties women face more than men in managing family and professional lives. If the case is where access to the most relevant positions in the judiciary, women with family obligations, have less chances in comparison to their male counterparts to access such positions. There is need to have measures that reconcile this and adopt to ensure equal opportunities based on their realities, experiences and need. Women usually juggle with their familiar and professional lives since there is a lack of public measures to deal with this inequity as a mere situation of fact, but not as a problem; this lack is caused by the male culture present in most organisations, both private and public, and the absence of social sensibility.

Women judges have been expected to adapt to the prevailing norms of work, such as long hours, presenteeism, visibility. The ideal judge is still expected to be unencumbered by private sphere responsibilities in order to be able to devote themselves unconditionally to work, to be able to work on short notice, be on call, or be relocated<sup>145</sup> The latest draft Decision stipulates new regulations and establishes fixed working hours, not allowing flexibility in their time, especially when not in court and writing judgments. The entry into and out of the court is to be by magnetic cards which will result in a record being kept of the times of entry and exit. If the card is not usable, then a written record is made of the entry and exit and given to the chairperson. Such procedures ensure “presenteeism”. This will disproportionately affect women due to their time poverty concerns as they have the additional burden of family responsibilities.

### International standards and good practices

Good practice: In Spain, there is a policy that recognises adaptation of work to the person is considered as fundamental principle for the reconciliation of professional and personal life.<sup>146</sup> They have introduced reconciliation measures to prevent excessive problems in personal and family life, in those cases where professional requirements are especially significant in terms of time commitment. These reconciliation measures include: training activities at night or on public holidays or mass trials. This is to be backed up by collection of data on beneficiaries of reconciliation measures, via the Government Chambers of the High Courts of Justice in Spain. The gender impact reports are to include information on judges who have benefitted from reconciliation measures, disaggregated by sex. Then based on the data and the experience gained through the previous measures, the Commission for Equality could make proposals to the Plenary to introduce or amend Regulations governing Judicial Careers and improvements relating to co-responsibility and reconciliation.

### Recommendation

More options are needed to assist women, and encourage men, with childcare options and in dealing with work-family balance. The draft Decision on establishing internal working disciplinary rules for judges needs to ensure accommodation to support work life balance, including consideration of flexible hours and teleworking; part-time or temporarily reducing working hours; and eliminate recording entry/exit time.

145. Easteal, P., Caligari, A., Bartels, L. and Fitch, E. 2015 “Flexible work practices and private law firm culture: A complex quagmire for Australian Women lawyers” QUT Law Review Vol 15, Issue 1, p 30.

146. General Council of the Judiciary, Commission for Equality. Equality Plan for Careers within the Judiciary.

### 3.3.11. Addressing discrimination and sexual harassment

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#### Issue 16. Judicial Conduct

##### Summary

Chapter 12 sets out the rules of Judicial Conduct. The provisions are to ensure the independence and impartiality of the court and build respect for and confidence in the court (Article 66, part 3). This includes rules of ethics, general rules of conduct, rules when acting ex officio, self-recusal of a judge, and payments derived from non-judicial activities of a judge. The general rules of judicial conduct as laid out in Article 69 do not explicitly mention gender discriminatory conduct or the use of sexist language.

##### Gender Impact

The principle of gender equality includes ensuring that actions and behaviours do not constitute sexual harassment or discriminatory treatment. The Code is silent on gender-related integrity issues, and this contributes to low level of sensitivity to and awareness of these issues.<sup>147</sup> Gender-related judicial integrity issues take many forms, including sextortion, sexual harassment, sexual discrimination, gender bias, unequal gender representation, gender stereotyping or inappropriate sexual conduct. Specific guidelines are needed to provide judges with a framework for understanding which types of conduct are acceptable and which are not.

The Law on Ensuring Equality of Rights and Equal Opportunities for Women and Men provides the legislative definition of the term “sexual harassment” and obliges employers to refrain from committing sexual harassment. However, there are no mechanisms for protecting women from sexual harassment and other forms of workplace discrimination in the courts. The study found that the majority of judges did not see the necessity for an internal complaint mechanism on sexual harassment within the judiciary as there is a view that there is no sexual harassment taking place.<sup>148</sup> However, one participant in the study mentioned that women are ashamed to speak of this as it is considered taboo.

People are reluctant to report gender-related misconduct for many reasons, including uncertainty about their rights and available recourse, shame or fear of negative repercussions, lack of support and mistrust in the ability of the system to provide meaningful accountability. To address these concerns, judiciaries need to establish clear, confidential and accessible reporting channels; provide full support to victims, including protection against retaliation and legal, medical, and psychosocial assistance, and disseminate information about rights, responsibilities, complaint procedures and support services. Once a complaint is received, there needs to be an effective, fair and transparent disciplinary mechanism for investigating it and taking any corrective action that may be warranted. Finally, ongoing monitoring and assessment are critical in understanding the scope and extent of gender-related misconduct and developing effective ways to ensure that victims are heard and protected, and that misconduct is not allowed to continue with impunity.<sup>149</sup> There needs to be clear standards of judicial conduct; take steps to lower or remove barriers to reporting misconduct within the courts; establish an independent disciplinary body to hear cases of judicial misconduct; establish clear disciplinary procedures; protect confidentiality of the investigation, but provide transparency with respect to the disposition of the case; provide a sufficient broad range of corrective action to deal proportionately with the seriousness of the conduct in each case.

There needs to be guidelines or policies on how to deal with sexual harassment and discriminatory treatment. Often the best way to ensure that this is set in motion is to have a legal basis for the adoption for such guidelines making it obligatory on the SJC or GAJ to develop such guidelines. Legal provision should establish that judicial institutions have a legal obligation and responsibility to prevent sexual and gender-based harassment, and that the leaders of judicial institutions have an obligation to establish mechanisms to prevent and respond to unwanted behaviour exhibited by their employees.

##### International Standards and good practices

The Bangalore Principles of Judicial Conduct, 2002 includes as Value 5, the principle of equality. It notes that in the application of such a value - 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste,

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147. UNODC 2020. Paper – Gender-Related Judicial Integrity Issues.,

148. Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

149. UNODC. 2020. Paper – Gender-related Judicial Integrity Issues

disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”). 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds. 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties. 5.4 A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground. 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Good example: In Spain, the Equality Plan for Careers within the Judiciary includes measures for occupational health and safety, such as developing a procedure within the General Council of the Judiciary for dealing with cases of sexual harassment, harassment on the grounds of gender and psychological harassment; implementing the plan on risks in the workplace; analysing the situations of stress arising from the assumption of family responsibilities by judges and magistrates; and guaranteeing the adequate protection of the occupational health of judges and magistrates who are pregnant, have recently given birth or are breastfeeding.

### **Recommendation**

Consider including references to sexual harassment and discriminatory treatment in the Judicial Code in order to ensure appropriate disciplinary procedures can apply to this conduct. There should also be measures designed to foster a gender-sensitive working culture in the judiciary. This culture implies the existence of preventive processes and sound complaint mechanisms to deal with sexual harassment cases.

## **3.3.12. Other issues**

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### **Issue 17. Judicial statistics**

#### **Summary**

Article 19 deals with the maintenance of judicial statistics and sets out the requirements for judicial statistics. There is no explicit reference to sex or gender- and age-disaggregated statistics in this provision.

#### **Gender impact**

It is difficult to address a problem effectively until its scope and dimensions are known. As the saying goes, persons that are invisible in data are also invisible in policies. Given that there is no legal obligation to maintain judicial statistics to ensure sex or gender- and age-disaggregated statistics, it will be difficult to determine whether gender neutral provisions are in fact gender blind and discriminatory. Moreover, it will be challenging to monitor specific gender issues such as women’s participation in the judiciary related to their entrance into the profession, retention and promotion rates representation, gender pay gaps, discriminatory use of disciplinary measures, and gender budgeting.

#### **International standards and examples of good practice**

Good example: In Spain, the Organic Law on the Judiciary, Article 461.1 covers the tasks of the National Commission for Judicial Statistics. This Commission is formed by the Ministry of Justice and made up of representatives of the Autonomous Regions with competencies in the area, the General Council of the Judiciary and the Office of the Director of Public Prosecutions. The Commission is to approve the general and special statistical plans of the Judicial Administration and is to establish uniform criteria that, where applicable, consider the gender perspective and the variable of sex, which must be universally adhered to for the gathering, computer-based processing, transmission and mining of statistical data within the Spanish judicial system.

#### **Recommendation**

Sex and gender along with age-disaggregated data should be regularly collected, publicised and analysed to draw conclusions regarding women’s participation in the judiciary and gender inequalities related to the activities of the judiciary. The data needs to be systematically collected in ways that support decision-making and monitoring of gender equality strategies, including developing gender indicators.

## Issue 18. Financing the courts

### Summary

Article 38 stipulates that the courts and the SJC are to be financed from the State Budget and that the draft budget bid is prepared by the Judicial Department, which is the staff of the SJC, and approved by the SJC before being submitted to the government. There is no reference to requiring gender-responsive budgeting.

### Gender impact

In creating the conditions necessary for the realisation of gender equality within the judiciary, the preparation of budgets with a gender perspective and the elaboration of gender impact reports on the budgets submitted by the Judicial Department are important. Gender-responsive budgeting is a method of determining the extent to which government expenditure has detracted from or come nearer to the goal of gender equality. A gender-responsive budget is not a separate budget for women, but rather a tool that analyses budget allocations, public spending and taxation from a gender perspective and can be subsequently used to advocate for reallocation of budget line items to better respond to women's priorities as well as men's, making them, as the name suggests, gender-responsive.<sup>150</sup>

### International standards/good practices

The Council of Europe defines gender budgeting as a 'gender-based assessment of budgets incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality.'<sup>151</sup> Gender budgeting has a firm basis in the EU commitment to gender mainstreaming expressed in the Treaty on the Functioning of the European Union (Article 8). The European Parliament and the Council of the European Union have repeatedly called on the Member States to develop and implement gender budgeting. Common elements of gender budgeting include: analysis of budgets and policies from a gender perspective; linking gender budgeting to overall gender equality objectives; restructuring budgets and amending policies; integrating gender perspectives throughout the budget cycle; monitoring and evaluation of achievements; transparency of the budget process; and participation in the budget process.

Good example: In Spain, the preparation of budgets with a gender perspective, and the elaboration of gender impact reports on the budgets are submitted by each Department of the General Council of the Judiciary.

### Recommendation

More efforts are needed to ensure gender budgeting in the judiciary. Consideration could be given to having an explicit requirement to prepare budgets with a gender perspective and linking the budgets to overall gender equality objectives. Measures could also include the participation of gender expertise in preparation of budgets, monitoring and evaluation of achievements and ensuring that the budgetary process is transparent.

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150. UNODC. 2021. Gender Mainstreaming in the Work of UNODC: Guidance Note for UNODC Staff

151. European Institute for Gender Equality. 2017. Gender Budgeting.

## 4. Findings, Recommendations and Way Forward

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**T**he central question this report asks is whether the Judicial Code of the Republic of Armenia and the derivative legal acts *reduce, maintain or increase* the gender inequalities between women and men. The report has looked at the expected impacts on the equality of women and men, not merely on the impacts related to ban on discrimination. The report has tried to estimate different effects, positive, negative or neutral of the laws in terms of gender equality.

### 4.1. Findings

From this analysis three main findings can be drawn.

1. The Judicial Code and the derivative legal acts, for the most part, have been articulated using a gender-neutral approach based on the assumption that the formulation of the judiciary benefits all members of the judiciary equally. At first sight these provisions seem gender-neutral and non-discriminatory, however, due to the gender inequalities so deeply embedded in the social and institutional structures and internalised by many women and men, these provisions are in fact gender blind. This approach ignores the different socially determined roles and responsibilities of women and men and how this generates different experiences for women and men judges. This has the effect of ***maintaining*** gender inequalities between women and men.

2. The Judicial Code does contain some specific legal provisions that are framed using a gender-sensitive approach, in an effort to ***reduce*** gender inequalities. A legislatively prescribed quota formula attempts to redress the underrepresentation of women on the bench while the provisions that specifically refers to judges who are on “maternity, child birth or child adoption leave” allows for differences in treatment based on sex and characteristic of women and men and specifically not to penalise women judges who become mothers in certain situations.

i. i. Regarding the gender quotas, they are generally seen as effective special temporary measures aimed at overcoming considerable deficits in women’s representation in the judiciary. However, the quota formula contained in the Judicial Code to be considered when compiling the list of candidates for judges has a low threshold of 25 per cent, far below the Council of Europe recommendation of 40 per cent. The other quota formula contained in the Judicial Code is for the election of judge members to the SJC, which make up five of the ten SJC members. This formula requires the number of representatives of the same gender be restricted as possible to a maximum of three members, meaning that the underrepresented gender is left with two out of the five places (40 per cent). However, if we take into account the whole of SJC, this quota formula only requires two of the ten members of the council to be of the underrepresented gender (20 per cent), which again is far below the Council of Europe recommendation of 40 per cent. In addition, the quota formula for the election of SCJ judge members allows for two exceptions when the voting violates this formula. The first exception requires the number of representatives of the same gender be restricted as possible to a maximum of four members, meaning that the underrepresented gender is left with one out of the five places (20 per cent). The second exception allows the formula to be ignored. There are also no quota formulas applied to promotion lists or for senior positions in the courts or to ensure a gender balance on Commissions that evaluate judges or select judges.

ii. Regarding the measures dealing with maternity, child birth or child adoption, these provisions are vital in not penalising women who are on leave for these reasons. However, there is a lack of proactive measures to accommodate parenthood and the challenges disproportionately faced by women in managing family and professional lives.

3. There were no legal provisions that were overtly discriminatory. However, the one concern where there could potentially be an **increase** in gender inequalities is the provisions in the draft Decision on establishing internal disciplinary rules for judges. The draft Decision covers topics such as working and rest schedules and set working conditions that are fairly rigid in terms of presenteeism, setting inflexible office hours and requiring the use of magnet cards to clock entry and exit to the courthouse. There is a concern that the norms that are valued reflect an ideology of complete devotion and commitment to the profession. While seemingly neutral, these value norms adversely impact women who have more caregiver responsibilities than men or are viewed to have diminished commitment to work due to family responsibilities. The hope of the gender equality movement that men would share in the demands of family life equally with women has not been realised as women continue to be primarily responsible for unpaid contributions in raising children and home making. Not only do women have increased responsibilities in the home, women are often disadvantaged by the negative stereotyping associated with women caregivers. The lack of women in the judiciary and in senior positions could be because there is a lack of measures that reconcile and accommodate the difficulties women face more so than men in managing family and professional lives. The result is a lack of equal opportunities for women to participate in the judiciary based on their different experiences and needs.

The Judicial Code has no specific reference to gender equality and while it includes some proactive measures to increase gender balance, there is little focus on proactive measures for women's empowerment, such as ensuring women's participation in management and leadership roles. Nor is there any clear provision or plan on how to address and change attitudes, norms and perceptions about gender roles that prevent women from assuming their rights to equality. As the CEDAW Committee noted in its concluding observations on the combined fifth and sixth periodic report, there remains a preference for gender neutral approach to policies.<sup>152</sup> There is little to no reference to the gendered implications or the potential disproportionate impact on women. This leads to inadequate protection for women against direct, as well as indirect discrimination, hinders the achievement of formal and substantive equality between women and men, and result in a fragmented approach to the recognition and enforcement of women's human rights.<sup>153</sup>

## 4.2. Recommendations

From these findings, recommendations follow.

1. There is a need to elevate gender equality as a judicial institutional objective. When gender equality is a clear explicit objective, there is an impetus to consider developing institutional mechanisms to implement this objective. This supports a systematic and sustained effort for making women's as well as men's concerns and experiences an integral dimension of the Judicial Code so that women and men benefit equally and inequality is not perpetrated. This is necessary in order to eliminate any distinction, exclusion or restriction made on the basis of socially constructed gender roles and norms which prevents people from enjoying full human rights, resources, opportunities and the right to contribute and influence.

2. There is a need to bolster special temporary measures that are already in place in order to more effectively promote gender balance in all levels of the courts, in senior positions and in the standard setting and decision-making bodies. This involves promoting real gender balance, as described by the Council of Europe's definition of balanced participation not falling below 40 per cent of either women or men. Such critical mass can challenge the apparent "gender neutral" status quo which traditionally reflects male norms and advocate for substantial changes important for women.

3. There is a need to review the draft Decision on establishing internal disciplinary rules for judges to include measures that accommodate and reconcile work-life in ways that are gender transformative rather than reinforcing existing gender stereotypes. If measures that support work-life balance (e.g. flexible hours and teleworking; part-time or temporarily reducing working hours; and eliminate recording entry/exit time) are introduced but ignore the male-dominant culture, women who seek to avail themselves of flexible working practices may be viewed as deviant or weak professionals who choose not to invest as much as men in their careers. In exploring work-life balance measures, it is important not to characterize this as exclusively a woman's issue or that focuses narrowly on motherhood as this reinforces outdated ideas that women care less about their careers than men and that men are less interested in family life than women. There is a need to focus on the structural and institutional factors that constrain the careers pathways for both women and men in their judicial professional.

<sup>152</sup> CEDAW Committee. 2016. Concluding observations on the combined fifth and sixth periodic reports of Armenia.

<sup>153</sup> Council of Europe. 2021. Gender Equality in the Judiciary of Armenia: Challenges and Opportunities.

### 4.3. Proposals to improve the laws in terms of gender equality

The following proposals are meant to respond to the conclusions and the broad recommendations above. This section identifies some proposals on what can be done to altered and transformed processes that promote gender equality rather than perpetuate discrimination. The proposals highlight both measures to address direct practices and indirect discriminatory practices (provisions that are targeted to changing the structural, social and cultural factors that continue to discriminate against women) as well as a number of temporary special measures aimed at accelerating the improvement of the position of women to achieve their de facto or substantive equality with men. It should be noted that these proposals could be considered for amending the Judicial Code or as subject matters for Decisions adopted by the SJC or GAJ.

#### **Making gender equality as a specific objective**

More efforts are needed to elevate gender equality as a judicial institutional objective. When gender equality is a clear explicit objective in a law, there is an impetus to consider developing institutional mechanisms to implement this objective, such as creating GAJ's Commission for Equality, which then could develop a Gender Equality Strategy, which could then focus on gender mainstreaming in all the GAJ and SJC's activities. Such a legal obligation is aimed at promoting real equality between men and women within the judiciary inspired by the principle of balanced presence of women and men within the judiciary; and to combat all continuing manifestations of discrimination, removing obstacles and social stereotypes.

#### **Ensuring non-sexist language**

Mainstreaming a gender perspective is meant to ensure that the language of the law itself does not discriminate. There are no issues regarding him/her pronouns in the Armenian language. However, there might be an issue regarding the using sexist language within the judiciary. This is an issue that requires further analysis and whether measures need to be put in place to counter the use of sexist language.

#### **Measures to improve gender balance participation**

Access to judicial careers and advancement should be governed by the principles of equality as well as merit and capacity. Given that the entry procedures and competitive examinations and interviews for lists of judges' candidates are considered gender neutral but are in reality gender blind, this requires a series of more proactive measures to ensure that the criteria and the procedures are gender transformative.

**The quota formula.** This should be revised to reflect the Council of Europe's definition of balanced participation - not falling below 40 per cent of either women or men.

**Applicability of the quota formula.** The quota, as a special temporary measure should be applicable to all levels of courts, senior positions and in the standard setting and decision-making bodies.

**Resolving ties.** Consider introducing a provision that where there is a tie, preference be given to the sex that is underrepresented in the court or Commission or body.

**Redefining merit.** Criteria should define merit in a sophisticated manner and should explicitly include the goals of judicial diversity and gender equality. Moreover, consider including such qualifications such as being "gender sensitive", "knowledge of women's human rights", or "demonstrated commitment to the goal of gender equality".

**Transparent evaluation measures.** Review of the Academy of Justice syllabus for judge candidates to ensure compliance with the legislation in force on equality and the principle of gender mainstreaming.

**Performance evaluations.** Since performance evaluation plays a vital role in promotion, consider including mandatory testing of implicit biases in all performance evaluations.

**Transparent voting procedures.** The use of "inner conviction" should not be allowed to manifest gender bias. Perhaps this could be ensured if the voter is required to provide well-reasoned justification.

**Facilitate capacity and leadership development opportunities for women.** Consider developing of formal ongoing education programs targeted towards the managerial positions as an instrument to encourage women to access positions of top responsibility.

**Systematic monitoring of gender balance.** Systematic monitoring of gender balance in the judiciary, including leadership positions is necessary to evaluate how effective such measures will be.

## Measures to create the conditions necessary for the realisation of gender equality within the judiciary

Gender equality does not equate to gender parity. In addition to promoting balanced participation, there is a need to understand and address gender biases that constrain women's career choices in the judiciary. Measures should ensure equal treatment of women and men, but also address discriminatory stereotypes and biases about the roles and responsibilities of women and men in the family and society that undermine women's social status and their educational and professional careers.<sup>154</sup> This not only means dealing with maternity issues, but there must be further measures that create favorable conditions to deal with gender stereotypes and biases and unequal division of labour. Such measures should transform the institutional culture from focusing on the question of why women are not succeeding in the judiciary (which only serves to recreate the "women problem") to accommodating both women and men's needs.

**Mainstream work-life balance and family friendly practices.** Consider allowing for reduced case assignments for judges having young children and consider part-time positions. The draft Decision on establishing internal working disciplinary rules for judges needs to ensure accommodation to support work life balance, including consideration of flexible hours and teleworking; part-time or temporarily reducing working hours; and eliminate recording entry/exit time.

**Combat gender stereotypes.** Performance evaluations should include mandatory testing of implicit biases.

**Prohibit harassment.** Consider including references to sexual harassment and discriminatory treatment in the Judicial Code to ensure appropriate disciplinary procedures can apply. There should also be measures designed to foster a gender-sensitive working culture in the judiciary.

## Measures for the judiciary to advance the goal of gender equality in its delivery of justice

**Training programmes.** Consider how to introduce gender equality into the syllabus of candidates to guarantee compliance with the legislation in force on equality and the principle of gender mainstreaming.

**Judicial statistics.** More efforts are needed to ensure the quality of sex-disaggregated data as well as other gender-related information is systematically collected in ways that support decision-making and monitoring of gender equality strategies.

### 4.4. Way Forward

A GIA should be viewed as a learning process. This report should be seen only as a first step. It is hoped that the information contained in this report will be useful to activate subsequent measures to strengthen and improve the legal framework for judges from a gender perspective.

#### Involving different stakeholders to ensure relevance of proposed measures

Consulting stakeholders, including the GAJ and SJC as well as the Gender Equality Machinery and gender experts in the legal field, can contribute to a deeper analysis and insight. It can also serve to validate or disagree with the relevance of the measures proposed.

#### Ensuring political commitment

As the GIA is only a tool, any move forward requires institutional back-up and support. There needs to be buy-in from the GAJ and SJC, as implementation will require different resources, which can range from policy (Decisions) drafting; gender training; data collection; monitoring mechanisms.

#### Gender expertise

In order for the GIA to realise its transformative potential, it would be vital to mobilise the specific expertise within the judiciary to work with the SJC and GAJ in moving forward.

#### Sex and gender-disaggregated data

This GIA used available data, but there was some missing data, such as salaries, locations, and disciplinary measures. It is important to make such data and knowledge gaps explicit and visible so that these shortcomings can be taken up and remedied.

<sup>154</sup>. Committee on the Elimination of Discrimination against Women. 2016. Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Armenia. New York.

## Matrix: Analysis of the legal provisions of the Judicial Code and derivative acts

The list of issues should not be taken to reflect an order of importance.

Main Issues	Legal provisions	International standards / good practices	Analysis: gender impact	Recommendations
<b>Objectives and principles</b>				
1. Objectives and principles of the Code	Chapter 1 and 2 set out the purpose the Code and the principles of the court.	CEDAW, Article 7 and 11  Examples of where a country contains an explicit legal obligation (see Spain, the Philippines)	<ul style="list-style-type: none"> <li>– Gender blind – adopting a gender neutral approach maintains the existing situation of gender inequalities.</li> <li>– The lack of making gender equality as an explicit objective is a missed opportunity to ensure that a gender perspective is incorporated throughout the laws.</li> </ul>	More efforts are needed to elevate gender equality as a judicial institutional objective, such as including the objective of gender equality either amending the law or a specific Decision of the SJC.
<b>Composition of standard-setting bodies</b>				
2. Membership in the SJC	Chapter 14 provides for the composition and powers of the SJC. Article 80 sets out the eligibility requirements for SJC members. Article 76 sets out the procedure for the election of judge members of the SJC, with part 3 providing for a gender quota.	CEDAW, Article 11 and CEDAW Committee G.R. No. 33  CoE Rec (2003) 3  Examples: Spain	<ul style="list-style-type: none"> <li>– SJC is male dominant standard setting body, with only 1 in 10 members female.</li> <li>– The current quota formula is ineffective in changing this imbalance</li> <li>– The dominance of men in the justice sector has led to men defining “the rules of the game”, setting how competency and commitment are evaluated.</li> </ul>	<p>More efforts are needed to ensure balanced participation in SJC and accountability to mainstream gender perspective when setting standards.</p> <p>Consider reformulating or clarifying the quota formula; measures to attract and appoint women to the SJC; and an accountability reporting requirement.</p>
3. GAJ's Commissions	Article 74, part 5 provides that the GAJ is to establish three Commissions. Article 77 covers the establishment of those Commissions. The SJC Decision sets out the requirements for NGOs nominating candidates for non-judge members of the Ethics and Disciplinary Commission of the GAJ.	CoE Rec (2003) 3  Examples: Spain Bosnia and Herzegovina, Argentina	<ul style="list-style-type: none"> <li>– Lack of institutional mechanisms to implement gender equality within the judiciary and counter the gender blind approach.</li> <li>– Failure to guarantee balanced participation in the composition of the existing commissions who play key roles in interpreting and implementing standards for the judiciary.</li> <li>– Missed opportunity to ensure details of gender sensitive NGOs who can nominate candidates.</li> </ul>	<p>Consider creating GAJ Commission for Equality, which could then develop a comprehensive Gender Equality Strategy.</p> <p>More efforts are needed to ensure balanced participation of existing Commissions.</p>

Main Issues	Legal provisions	International standards / good practices	Analysis: gender impact	Recommendations
<b>Gender-related cross cutting issues</b>				
4. Gender parity in the courts: the quota formula	Article 109, part 5 - where the number of the judges of either sex is less than 25% of the total number of judges, up to 50% of places in the list of contenders for judge candidates shall be reserved to the persons of the of the sex concerned...	CEDAW Art 4: temporary special measures aimed at accelerating de facto equality between men and women is not considered discrimination CoE Rec (2003) 3 Examples: international courts	<ul style="list-style-type: none"> <li>– Gender quota formula is seen as a special temporary measure to overcome considerable deficits in women’s representation</li> <li>– Low level threshold when the quota applies (25% rather than 40%) and will not contribute to reaching a critical mass to influence transformative changes</li> <li>– Challenges to the question of quotas reflect concerns regarding viewing merit as masculine.</li> </ul>	<p>Consider improving the quota formula to reflect achieving gender balance of 40% in all levels of courts</p> <p>Efforts are needed to raise awareness among the judiciary regarding the need for quotas and understanding masculinity of merit concerns</p>
5. Formula in certain situations giving preference based on seniority and age	Article 56, parts 3 and 4 - preference to age, then seniority  Articles 75, part 5, 76, part 10, 84, part 7, 109, part 8, 115, 124, part 9, 127, 133, 134 - preferences first to seniority and then age	EU Court of Justice in Case C-409/95, Hellmut Marschall v Land Nordrhein-Westfalen formula	<ul style="list-style-type: none"> <li>– While appearing gender neutral, such a provision can have a discriminatory impact on women as they take more time off for child and family reasons.</li> <li>– Missed opportunity to address the imbalance.</li> </ul>	Consider introducing a provision that where there is a tie, preference be given to the sex that is underrepresented in the court or Commission or body.
<b>Access to Judicial Careers</b>				
6. Access to judicial careers – becoming judges of Courts of First Instance	Chapter 16 covers the compilation and approval of the list of contenders for judge candidates and the list of judge candidate procedures for appointing judges of Courts of First Instance.  Article 109, part 5 provides for quotas (discussed above)	CEDAW, Article 7 and 11 CoE Rec (2003) 3 Examples include Austria, England and Wales, Canada, Spain and Bosnia and Herzegovina	<ul style="list-style-type: none"> <li>– While the eligibility criteria and procedures appear to be gender neutral and non-discriminatory, they can operate as “a rhetorical device shaped by power”, and this is held predominately by men.</li> <li>– Criteria do not explicitly include the goals of judicial diversity and gender equality.</li> <li>– Imbalance at the institutional level, the evaluation commission, has a potential of involuntarily leading to perpetuation of gender stereotypes and discrimination</li> <li>– Concern about the vote being based on their “inner conviction”; selectors are more inclined to go with what they “know” and “feel comfortable with”.</li> </ul>	<p>It is appreciated that the methods used to recruit judges are a sensitive subject matter because it involves the issue of the independence of the judiciary. More efforts are needed to ensure that the recruitment processes guarantee transparency and fairness as well as equality of opportunities.</p> <p>Revisit the quota formula, as well as consider measures to reach gender parity in the bodies that evaluate and vote for the judges candidates.</p> <p>Criteria should define merit in a sophisticated manner and should explicitly include the goals of judicial diversity and gender equality</p>

Main Issues	Legal provisions	International standards / good practices	Analysis: gender impact	Recommendations
<b>Access to career advancement within the judiciary</b>				
7. Career advancement within the judiciary-chairpersons	<p>Article 121 provides for procedure for appointing the chairperson of a court of first instance.</p> <p>Article 130 – chairperson for court of appeal.</p> <p>Articles 134 and 135 - chairperson of a chamber of Court of Cassation and proposing a candidate for chairperson of the Court of Cassation.</p>	<p>CoE Rec (2003) 3</p> <p>Examples include Germany and Ireland</p>	<ul style="list-style-type: none"> <li>– Glass ceiling barrier, hides an indirect discrimination, not reflected in the laws and that is measured by the differential results</li> <li>– The selection process can inadvertently discriminate against women.</li> <li>– Male dominant standards assess the prima facie gender neutral qualities: criteria “quality, efficiency and integrity in the position of a judge” or “skills of the judge to perform the required job” can allow gender bias to manifest</li> </ul>	<p>Effort is needed to ensure that the evaluation and voting procedures do not allow gender bias to manifest.</p> <p>Consider requiring SJC to provide well-reasoned justification when appointing a chairperson.</p>
8. Career advancement within the judiciary-promotion to higher courts	<p>Chapter 17 of the Judicial Code covers the relevant procedures for the SJC that draws up and approves the promotion list of judge candidates for the court of appeal and the court of cassation.</p>	<p>CoE Rec (2003) 3</p> <p>Examples include Spain, Bosnia and Herzegovina, Belgium</p>	<ul style="list-style-type: none"> <li>– Concern of de facto discrimination and the need for effective special measures.</li> <li>– The criteria on which the judges are evaluated for this position may hide some indirect discrimination and allow for gender bias to manifest.</li> <li>– The selection members are predominately men.</li> <li>– The vote is ‘inner conviction’.</li> <li>– No formulas for quotas to higher courts.</li> </ul>	<p>Consider proactive measures for ensuring that the proposed lists of judicial promotions have adequate representation of women.</p> <p>Consider including knowledge of women’s human rights and demonstrated commitment to the goal of gender equality as one of the criteria in the promotion of judges</p>
<b>Performance Evaluation procedures</b>				
9. Performance evaluation procedures	<p>Chapter 18 of the Judicial Code deals with performance evaluation of judges. Article 136 sets out the aim of performance evaluations</p>	<p>Example: Spain and Moldova recommendations</p>	<ul style="list-style-type: none"> <li>– The dominance of men in the justice sector has led to men defining “the rules of the game”, setting how competency and commitment are evaluated.</li> <li>– This often disadvantages women.</li> </ul>	<p>Performance evaluations should include mandatory testing of implicit biases; training for judge members of the Commission; and develop further criteria for evaluations such as the use of non-sexist language.</p>

Main Issues	Legal provisions	International standards / good practices	Analysis: gender impact	Recommendations
<b>Disciplinary procedures</b>				
10. Disciplinary measures	Chapter 19 covers procedures for taking disciplinary action against judges.	Examples: The United States	<ul style="list-style-type: none"> <li>– The current procedures, such as short time limits for instituting proceedings might pose barriers for those complainants of sexual harassment.</li> <li>– While the procedures do not allow for anonymous reporting there are few safeguards in place to ensure privacy of victims in sexual harassment claims.</li> </ul>	Consider including references to sexual harassment and discriminatory treatment in the judicial code in order to ensure appropriate disciplinary procedures can apply to this conduct.
<b>Structures for the professional development of judges</b>				
11. Training	The GAJ establishes the Training Commission. Its activities are set out in Article 78, part 3.	Example: Spain	<ul style="list-style-type: none"> <li>– No focus placed on equality and non-discrimination issues in training.</li> <li>– Promotion of gender equality extends beyond gender parity on the bench and also requires gender competence.</li> <li>– Training on gender-related integrity issues should be mandatory wherever possible.</li> </ul>	Consider how to introduce gender equality into the syllabus of candidates to guarantee compliance with the legislation in force on equality and the principle of gender mainstreaming.
12. Professional association	Article 7, part provides that judges have the right to form an association as prescribed by law.		<ul style="list-style-type: none"> <li>– This provision ensures legal recognition that women and men judges equally have a right to form and join judicial associations.</li> <li>– Women often lack the opportunity to network that is different than their male colleagues.</li> </ul>	More options for women judges to network with each other, to support each other
<b>Accommodating pregnancy and motherhood</b>				
13. Pregnancy and maternity	There are a number of provisions in the Judicial Code that specifically refers to a judge who is on “maternity, child birth or child adoption leave” – see Articles 86, part 3, 95, 113, 116, 128 and 159.		<ul style="list-style-type: none"> <li>– These provisions are gender-sensitive in not penalizing women who are on leave due to “maternity, child birth or child adoption leave”.</li> <li>– However, the provisions in the Judicial Code do not mirror the Labour Code for parental leave.</li> </ul>	Consider policies or Decisions that provide clear provisions for pregnancy and parental leave.

Main Issues	Legal provisions	International standards / good practices	Analysis: gender impact	Recommendations
<b>Balancing professional life with family life</b>				
14. Assignment judges to cases and courts	Chapter 9 covers the distribution of cases in courts.	Example: Spain	<ul style="list-style-type: none"> <li>– While these provisions at first glance appear to be gender neutral, as the selection is random, however factors such as specialization and location are not. It is well known that selection of cases can impact the career path and advancement of judges.</li> <li>– The provision list where a judge could be removed from the list of distribution of cases parental leave.</li> </ul>	Consider allowing for reduced case assignments for female judges having young children and consider part-time positions.
15. Internal working disciplinary rules	Draft SJC Decision on establishing internal working disciplinary rules for judges.	Example: Spain	<ul style="list-style-type: none"> <li>– Inflexible office hours, magnet card, etc disproportionate impact women</li> <li>– Lack of women in the judiciary and in senior positions could be because the work conditions are not accommodating for women who face more than men in managing family and professional lives</li> </ul>	The draft Decision on establishing internal working disciplinary rules for judges needs to ensure accommodation to support work life balance, including consideration of flexible hours and teleworking; part-time or temporarily reducing working hours; and eliminate recording entry/exit time.
<b>Addressing discrimination and sexual harassment</b>				
16. Judicial conduct	Chapter 12 sets out the rules of Judicial Conduct.	The Bangalore Principles of Judicial Conduct, 2002	<ul style="list-style-type: none"> <li>– The principle of gender equality includes ensuring that actions and behaviours do not constitute sexual harassment or discriminatory treatment.</li> <li>– The Code is silent on gender-related integrity issues, and this contributes to low level of sensitivity to and awareness of these issues</li> </ul>	Consider including references to sexual harassment and discriminatory treatment in the Judicial Code in order to ensure appropriate disciplinary procedures can apply to this conduct. There should also be measures designed to foster a gender-sensitive working culture in the judiciary.

Main Issues	Legal provisions	International standards / good practices	Analysis: gender impact	Recommendations
<b>Other issues</b>				
17. Judicial statistics	Article. 19 deals with the maintenance of judicial statistics and sets out the requirements for judicial statistics	Example: Spain	– With no explicit reference to sex or gender- and age-disaggregated statistics in the maintenance of judicial statistics, it will be difficult to determine whether gender neutral provisions are in fact gender blind and discriminatory.	More efforts are needed to ensure the quality of sex-disaggregated data as well as other gender-related information is systematically collected in ways that support decision-making and monitoring of gender equality strategies.
18. Financing the courts	Article 38 stipulates that the courts and the SJC are to be financed from the State Budget and that the draft budget bid is prepared by the Judicial Department, which is the staff of the SJC, and approved by the SJC before being submitted to the government.	CoE standards on gender-responsive budgeting Example: Spain	– In creating the conditions necessary for the realization of gender equality within the judiciary, the preparation of budgets with a gender perspective and the elaboration of gender impact reports on the budgets submitted by the Judicial Department are important	Consider the requirement to prepare budgets with a gender perspective, and the elaboration of gender impact reports on the budgets.

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