

Gender equality in the judiciary of Armenia: challenges and opportunities



**Partnership for Good Governance
2019-2021**

Project "Support to the judicial reform – enhancing
the independence and professionalism of the
judiciary in Armenia"

Funded
by the European Union
and the Council of Europe



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List of Abbreviations

CEDAW - Convention on Elimination of all Forms of Discrimination against Women

FGD - Focus Group Discussions

GR- General Recommendation

KII - Key Informants Interviews

OECD - Organisation for Economic Co-operation and Development

SDG – Sustainable Development Goals

SJC – Supreme Judicial Council

1. Executive summary

The objective of the study is to identify gender challenges in the judiciary in Armenia, to explore causes and effects of gender disparities and to provide better-informed, gender-responsive solutions to the identified inequalities.

Specific objectives of the study are as follows:

- ▶ To assess the gender balance at all levels of the judiciary in Armenia;
- ▶ To identify key barriers preventing women's career development in the judiciary;
- ▶ To assess opportunities for women's participation and career development in the judiciary;
- ▶ To propose mechanisms for improving women's equal representation and career development in the judiciary.

The study also provides the legal basis of gender equality in the judiciary, as well as arguments and benefits of gender balance in the judiciary.

The study used quantitative and qualitative research methods. The qualitative study involved two techniques: in-depth interviews with the key informants from the judiciary and focus group discussions with the representatives of the judiciary. The quantitative study consisted of the online survey. Moreover, a desk review has been used to analyse relevant international and local legal frameworks.

The integrity and effectiveness of an independent judiciary is an integral arm of democratic governance. Societies in which women are excluded from public life and decision-making cannot be described as democratic. It is inherent to the nature of equal justice to represent the society in its whole. Indeed, the composition of the judiciary must reflect the composition of the society in order to be perceived as legitimate and capable of upholding equality before the law. In addition, increased judicial diversity enriches the ability of judicial reasoning by encompassing and responding to varied social contexts and experiences.

Representation of women and men in decision-making bodies is a human right inscribed in all of the core human rights instruments and is a crucial component of good governance. It is also a matter of fairness and equal opportunity and it is critical for progress on gender equality. Indeed, women's full and equal participation in the judiciary is essential not only for their empowerment, but also for the advancement of society as a whole. Courts that operate free from gender bias and other forms of discriminatory practices can be powerful drivers of social change.

Increasing women's participation in the judicial system is necessary in order to overcome judiciary's institutional prejudices and in the same time to have a judicial gender balanced system, more accessible to women and girls, a key element that directly relates to impartiality, bringing greater confidence to the public and better reflection to the society regarding the judge's law interpretations. Moreover, increasing women's representation in the judiciary is a necessity to overcome systemic bias against women present in society more generally.

The judiciary is entrusted to guarantee that state's internal normative framework, as well as the enforcement of international human rights obligations in national courts and tribunals is upheld, and therefore guarantees that rights are enjoyed without discrimination, including on the ground of sex. Judges exercise this important role whenever they ensure fair and equal access to justice and fair trial. This role is expected to be exercised by judges whenever 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.

Researchers in gender equality and judiciary advance two main dominant theories in support of increasing the representation of women in this sector. According to the first theory, women judges, tend to make judgments favourable for achieving social equality and supporting women's empowerment initiatives. According to the second theory, gender equality in the judiciary is important in order to increase public confidence to the judicial institutions.

Also, arguments have been developed based on the principles of equality and equity requiring that women must have an equal opportunity to participate in public decision-making, thus their absence undermines the democratic legitimacy of the institutions. The presence of women judges increases the democratic legitimacy of the judiciary, because courts including women are more representative of the wider society. Moreover, the presence of women judges signals equality of opportunity for women in the legal profession who aspire to judicial office, and demonstrates that judicial appointment processes are fair, meritocratic, and non-discriminatory.

International law requires states to take concrete measures to address gender imbalances in all public institutions, through the identification and removal of legal and practical barriers to women's equal participation, and through proactive steps advancing women's equal representation.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls the States to take all appropriate measures to eliminate discrimination against women in the political and public life, by *inter alia* taking special measures and implementing supporting policies. Several General Recommendations of the CEDAW Committee, such as GR No. 23, 25, 33, call the States parties to ensure women's equal participation in decision-making, including in the judiciary.

Several other instruments reaffirm the importance of women justice professionals' equal representation in political and public life, among these instruments are the Beijing Declaration and Platform for Action, the documents issued by the Commission on the Status of Women, Council of Europe, OECD, High-level Meeting of the General Assembly on the Rule of Law, Special Rapporteur on the Independence of Judges and Lawyers, etc. They call States to take necessary measures for ensuring the judiciary that guarantees gender equality within the sector and more broadly, within the society. Beijing Declaration and Platform for Action declare that States must "ensure that women have the same right as men to be judges, advocates or other officers of the court"¹ and "commit themselves to establishing the goal of gender balance...in the judiciary, including, *inter alia*, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of men and women, if necessary, through positive action"². The Commission on the Status of Women³ emphasises the goal of equal participation of men and women in decision-making for strengthening democracy and achieving the goals of sustainable development. The Council of Europe, in its 2003 recommendation⁴ endorses a minimum mass of 40% of opposite sex in any decision-making body. Moreover, the Council of Europe's Gender Equality Strategy for 2018-2023⁵ has an objective of supporting member States in achieving balanced participation of women and men in political and public decision-making.⁶ The 2015 OECD Recommendation on Gender Equality on Public Life provides a range of options to enable equal access to leadership opportunities, including in the judiciary.

Gender equality is guaranteed by Armenian legal framework too. The Constitution of Armenia defines the promotion of actual equality between women and men as one of the main objectives of state policy in the economic, social and cultural spheres. The Law on Ensuring Equal Rights and Equal Opportunities for Women and Men supports equality of opportunity and equal treatment before the law. Armenia has made progress in introducing measures into the Electoral Code to encourage the participation of women in decision-making positions. Gender quotas have also been established for the judiciary.⁷ Gender Policy Implementation Strategy and Action Plan for 2019–2023 defines advancement and equal participation of women and men in the leadership and decision-making positions as one of its objectives.

Despite several achievements gender challenges remain, including in the judicial sector, where significant gender imbalance exists at all levels. In total, there are 244 judges in Armenia, among them 26.6% are women and 73.4% - men. The percentage of female judges decreases in the higher instances. Indeed:

- ▶ Among 183 judges of the first instance 27.3% are women and 72.7% are men.
- ▶ Among 44 judges of the second instance 25% are women and 75% - men.
- ▶ Among 17 judges of the third instance only 24% are women and 76% - men.

1. Beijing Declaration and Platform for Action, para. 232. (m)

2. Beijing Declaration and Platform for Action, para. 190 (a)

3. Forty-first session of the Commission on the Status of Women, 1997. <https://www.un.org/womenwatch/daw/csw/41sess.htm>

4. 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", <https://rm.coe.int/1680519084>

5. <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>

6. Council of Europe's Gender Equality Strategy for 2018-2023, Strategic Objective 4.

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

There is a higher gender imbalance within the specialised jurisdictions of the First Instance Courts, compared to the First Instance Courts of general jurisdiction:

- ▶ Within the first instance general jurisdiction, among 147 judges 29.9% are women and 70.1% are men.
- ▶ Within the first instance specialised jurisdiction, among 36 judges only 16.7% are women and 83.3% - men.

Among 18 Presidents of the Chambers and Courts, only 2 are women, which makes only 11.1% of women at the senior positions and 88.9% men⁸.

In Supreme Judicial Council, among 10 members only 1 is a woman, which makes 11.1% of women and 88.9% of men. The one and only woman is a judge member elected by the General Assembly of Judges, and there are no women among non-judge members elected by the National Assembly.

However, regarding the assistants to judges there is a gender imbalance in favour of women. Indeed, among 257 assistants 66.1% are women and 33.9% are men.

In this unequal context, the Study tries to identify key barriers for women's full and equal participation in the judiciary, as well as the opportunities for more gender-equal justice system in Armenia.

The Study revealed, that barriers faced by women in the judiciary are similar to those encountered in other areas of public life: balancing work-life commitments, persisting gender stereotypes, the burden of unpaid family care.⁹ The study also identified the barrier related to the reluctance of women to occupy positions traditionally held by men - while when women do become judges, they are not often placed in the criminal courts. The stereotypes existing in the society about "women's" and "men's" job and unconscious gender bias is persistent in the justice sector, translated into labour division and differentiated expectation from women and men. The data shows that in all three instances of Armenian judiciary there are in total 85 criminal judges and only 16 (i.e. 18.8%) are women judges. Among 16 female criminal judges 12 are in the first instance Courts, 3 – in the Court of Appeal and 1 – in the Court of Cassation.

The study also identified barriers hindering women's career advancement in the judiciary – the lack of effective policy ensuring gender-balance in the promotion, male-dominated selection commissions and gender bias in promotions, also lack of time that disproportionately affects women, as senior positions require more intensive working conditions and women are more concerned with time poverty, as they have additional burden of family responsibilities. It is interesting to observe that often the low representation of women is attributed to women themselves. Study participants consider that opportunities are equal, but women do not want to carry the heavy burden of the senior positions in the judiciary. Gender stereotypes often causes reluctance towards women, and sometimes from women themselves, for holding high managerial and leadership positions in the judiciary. These gender stereotypes and inequalities existing in the wider society are translated in explicit or implicit gender bias in the judiciary, which hinders career promotion for women and their equal representation in the management positions.

The study found out that there are barriers related to the attitudes and perceptions on gender equality in the judiciary. Many participants do not acknowledge gender imbalance in the judiciary as problematic; many of them do not see any obstacles for women's involvement and advancement, and claim that they have the same opportunities as men; many participants think that increased participation of women will not make any substantive change within the judiciary.

The majority of the participants do not see the need of designing and implementing gender sensitive policies to support work-life balance, or the policy on sexual harassment and internal complaint mechanisms. They also do not see the need of adopting and implementing a strategic sectorial approach to gender equality within the judiciary and develop a Gender Equality Action Plan. Very few participants see the need of the Association of Women Judges.

While the majority of survey respondents consider that gender quotas can be an effective mechanism to increase the share of women in the judiciary, the idea is not welcomed by the participants of the qualitative study. Indeed, they consider that Armenian judiciary does not have any issue related to women's participation, therefore, gender quotas are not necessary in Armenia, while it can be appropriate for the countries where women face barriers for the participation in the judiciary. During the discussions, gender quotas have been

8. After conducting this study, according to the Decree of the President of the Republic of 30 April 2021 a woman judge was appointed as the President of the Civil Court of Appeal. Thus, in 2021 among 18 Presidents of the Chambers and Courts the number of women is 3.

9. Unpaid care is the domestic care work by an individual, such as cooking, cleaning, caring for children or elderly. Women typically spend disproportionately more time on unpaid care work than men. Source- OECD: https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf

qualified as “artificial” “offensive” and “humiliating” to women judges, and as measures limiting the appointment of qualified candidates.

The study revealed that the large majority of the representatives of the judiciary have never attended training on gender equality. The majority of the participants of the qualitative study and more than a third of survey respondents think that judges in Armenia do not need any capacity building or awareness raising on gender equality.

In order to address gender equality challenges identified in the judiciary of Armenia, the following recommendations have been developed:

RECOMMENDATION 1: DEVELOP STRATEGIC APPROACH AND COURSE OF ACTION ON GENDER EQUALITY

Gender Equality Strategy and Action Plan should be adopted by the Judiciary and should encompass all aspects of the judiciary and address gender challenges effectively. Also, actors in charge for its implementation should receive the necessary guidance. In order to ensure the effective implementation of Gender Equality Action Plan, necessary financial, material and human resources should be made available. Awareness raising and wide dissemination of Gender Equality Strategy and Action Plan should be ensured within the Judiciary.

RECOMMENDATION 2: INCREASE WOMEN’S PARTICIPATION IN THE JUDICIARY

In order to attract more women to the judiciary, it is recommended to carry out active outreach activities to law students and bar associations, especially targeting women from diverse backgrounds and ensure long-term relations with such associations, also to build and communicate gender-balanced image of the judiciary, and work to eradicate negative conceptions around judicial work (e.g., lack of flexible working, isolation, etc.). For the successful awareness raising campaign, it is recommended to identify female judicial role models to inspire women from diverse backgrounds to apply for judicial office.

Several other measures should also be adopted, such as the requirement of gender balance into the composition of evaluation commissions checking the results of the written examinations for qualification; providing training on gender-sensitive recruitment practices to these commissions; developing gender-sensitive interviewing guidelines for the selection panels.

RECOMMENDATION 3: DEVELOP EQUITABLE CAREER ADVANCEMENT MECHANISMS IN THE JUDICIARY

In order to achieve this objective, women’s career advancement opportunities should be supported, such as implementing a system of mentoring, as well as leadership and capacity development programmes for women and men; promoting the stories of influential female and male leaders within the judiciary on how their career path has been shaped and publish these success stories among all members of the judiciary.

Measures should be taken to ensure adequate representation of women in promotions lists, also knowledge of women’s human rights and demonstrated commitment to the goal of gender equality should be included as one of the criteria in the promotion of judges. Training on gender-sensitive recruitment practices should be provided to the members of the evaluation commission, as well as gender-sensitive interviewing guidelines for the interviewer’s panel. Furthermore, it is recommended to provide feedback to unsuccessful candidates.

RECOMMENDATION 4: PROVIDE CAPACITY BUILDING AND AWARENESS RAISING ON GENDER EQUALITY

Awareness-raising and capacity-building programmes in gender equality should be ensured for all justice system personnel to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system.

Also, specialised training should be provided for the application of international legal instruments relating to human rights, including the CEDAW Convention and the jurisprudence of CEDAW Committee, and on the application of national legislation prohibiting discrimination against women.

Moreover, a discussion on the negative impact of stereotyping and gender bias should be promoted in the justice system, as well as gender-sensitive working culture should be introduced within courtrooms.

RECOMMENDATION 5: ADOPT WORK-LIFE BALANCE SYSTEMS IN THE JUDICIARY

It will be paramount to make the perception of work-life balance systems part of the discussion on gender equality and present such measures as an opportunity for the judicial organisation to learn about the benefits of new ways of working, for example, by collecting and disseminating data on how improved work-life arrangements increase job satisfaction and productivity. Also, judges and other judiciary staff should be encouraged to benefit from maternity and paternity leave policies. It is advisable to provide incentives for men to make use of available paternity leave.

Work-life balance initiatives should also be supported and should cover a wide range of employee needs and situations. These initiatives can include measures related to work time organisation: flexible hours and teleworking, the possibility to temporarily reduce working hours, etc. They should be widely disseminated within the judiciary, moreover, work-life balance satisfaction feedback from the judges and staff should be included as part of the performance review for court managers.

RECOMMENDATION 6: PROMOTE GENDER SENSITIVE WORKING CULTURE IN THE JUDICIARY

In order to achieve this objective, several measures should be taken, such as establishing discrimination and harassment complaint mechanisms within the judiciary; ensuring that Code of Ethics and Judicial Conduct includes references to gender-sensitive conduct; ensuring the use of gender-sensitive language in courtrooms and in other public communication; supporting women’s professional groups to advance women’s common interests, and via these groups promote the opportunities of networking, mutual support and discussions about difficulties women face in their professions, advocate for women’s rights and equal access to justice, implement capacity building, develop educational programmes and guidance materials, and conduct different analysis on gender equality issues.



2. Introduction

” Developing a gender-sensitive judicial system is a prerequisite for the full and non-discriminatory realisation of human rights for all, and the achievement of gender equality on the ground.”¹⁰

Special Rapporteur on the independence of judges and lawyers¹¹, Gabriela Knaul¹²

Achieving gender equality is central to the fulfilment of the Council of Europe’s mission: safeguarding human rights, upholding democracy and preserving the rule of law.

The integrity and effectiveness of an independent judiciary is an arm of democratic governance. “Societies in which women are excluded from public life and decision-making cannot be described as democratic”.¹³ It is inherent to the nature of equal justice to represent the society in its whole. Indeed, the composition of the judiciary must reflect the composition of the society in order to be perceived as legitimate and capable of upholding equality before the law. In addition, “increased judicial diversity enriches the ability of judicial reasoning by encompassing and responding to varied social contexts and experiences”.¹⁴

Representation of women and men in decision-making bodies is a human right inscribed in all of the core human rights instruments and crucial component of good governance. It is also a matter of fairness and equal opportunity and critical for progress on gender equality. Indeed, women’s full and equal participation in the judiciary “is essential not only for their empowerment but also for the advancement of society as a whole”.¹⁵ Courts that operate free from gender bias and other forms of discriminatory practices can be powerful drivers of social change.

In recent decades, the number of women in the judiciary has significantly increased worldwide. In many countries about half of law students are women, in OECD countries women make up more than 54% of professional judges, but women are still underrepresented in top-ranking judicial positions. Indeed, in OECD countries, women only hold 33.6% of judgeships in Supreme Courts, 45.9% of presidencies in courts of lower courts, 28% in courts of appeal, and 18.6% in high courts.¹⁶ Average proportion of women among judges across European states is 51%, but there is under-representation in the number of women judges in higher courts. On average, only 35% of seats in supreme courts are occupied by women and only 33% of Presidents at all three levels are women.¹⁷

According to 2016 data¹⁸ of 43 Council of Europe member states, the percentage of women in the High/Supreme Courts of 12 of them (28%)¹⁹ fell between the 40-60% range. Four countries had over 60% women judges in their High/ Supreme Courts.²⁰ Furthermore, 13 countries (30%) had between 30% and 39.9% women judges in their High/ Supreme Court. About half of the countries studied had a proportion of women judges within the 30-60% range, which outnumbers the six countries (14%) with a percentage of women judges below 20%.

According to 2016 Council of Europe data, Armenia is in the category of countries with women’s representation in High/Supreme Courts of around 20%, with 23.5% in 2016 which is only 2.5% increase compared to 2005 data.

10. 2011 Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul: <https://cutt.ly/OkymXmt>

11. The Special Rapporteur mandate on the independence of judges and lawyers is established in 1994 by the United Nations Commission on Human Rights. This mandate was created to record attacks on the independence of judges, lawyers and prosecutors; monitor the progress made in protecting and enhancing their independence; make concrete recommendations to States and other actors; identify ways to improve the judiciary’s independence the legal profession. <https://www.ohchr.org/EN/Issues/Judiciary/Pages/SRJudgeslawyersIndex.aspx>

12. Mrs. Gabriela Knaul held Special Rapporteur functions on the Independence of Judges and Lawyers from 2009 to 2015.

13. CEDAW General Recommendation 23, para 14.

14. Women and the Judiciary, Geneva Forum Series no. 1, Materials relating to the 2013 Geneva Forum of Judges and Lawyers convened by the International Commission of Jurists

15. CEDAW General Recommendation 23, para 17.

16. <https://bit.ly/2N0paAF>

17. <https://hsf.org.za/publications/hsf-briefs/women-in-the-judiciary>

18. Balanced Participation of Women and Men in Decision-Making, Analytical Report (2016 data), Gender Equality Commission, Council of Europe

19. Bosnia and Herzegovina, Greece, Hungary, Ireland, Republic of Moldova, Serbia, Slovak Republic and Turkey.

20. Bulgaria, Latvia, Luxembourg and Montenegro.

When comparing the average percentage of women according to the appointment method, there seemed to be no clear-cut link. Countries where judges are appointed by the head of state (HS) had on average 35.3% women judges, while countries where the head of government (HG) appoints them had 27.8% women judges. Countries where the high council of the judiciary (HCJ) appoints judges had on average 32% of women judges, and countries where another entity appoints them (O) had 34.9% of women judges. It should be taken into account that the number of observations for some appointed methods was very limited (i.e. only two for HG), so these conclusions have to be treated with caution.

Out of the 32 Council of Europe countries²¹, seven²² reached the 40% minimum target (21.9%) for Constitutional Courts in 2016. Seven more countries (21.9%) were situated within the 30-39.9% range. Ten countries (31.3%) had less than 20% women judges in the Constitutional Court. Three Constitutional Courts²³ had no woman judge. According to 2016 data, Armenia had 22.2% of women judges in 2016; the country went from no women to 22% in 2016. In 2020, Armenia has only 1 woman judge out of 9 judges of the Constitutional Court, which makes 11.1% of women.

Twelve²⁴ out of the 33 Council of Europe countries went beyond the 40% target in 2016 in the High Council of the Judiciary. Three countries (9%) had a representation between 30% and 39%. Finally, ten out of 33 countries had less than 20% women in their High Council of the Judiciary. Among them, three countries had a 100% male council.²⁵

As the judiciary has to champion human rights and the rule of law, and has to be representative of the society it serves, it is essential to find ways to support women judges to reduce barriers to their effective participation and career advancement in the profession worldwide.

21. Data is not available for other Council of Europe countries

22. Bosnia and Herzegovina, Bulgaria, France, Latvia, Serbia, Slovenia and Macedonia.

23. Republic of Moldova, San Marino and Turkey.

24. Belgium, Bosnia and Herzegovina, Bulgaria, Denmark, Greece, Hungary, Latvia, Montenegro, Norway, Slovenia, Spain and Ukraine.

25. Andorra, Iceland and the Netherlands.

3. Main goals and objectives of the study

The study is implemented within Council of Europe’s project “Support to the judicial reform – enhancing the independence and professionalism of the judiciary in Armenia.” The Project supports the on-going judicial reform undertaken by the Government of Armenia. Project, among other issues, is focused on empowerment of women judges by achieving equality in terms of gender balance at all levels of the judiciary.

The overall objective of the study is to identify gender challenges in the judiciary in Armenia, to explore causes and effects of gender disparities and to provide better-informed, gender-responsive solutions to the identified inequalities.

Specific objectives of the study are as follows:

- ▶ To assess the gender balance at all levels of the judiciary in Armenia;
- ▶ To identify key barriers preventing women’s career development in the judiciary;
- ▶ To assess opportunities for women’s participation and career development in the judiciary;
- ▶ To propose mechanisms for improving women’s equal representation and career development in the judiciary.

The study also provides the legal basis of gender equality in the judiciary, as well as arguments and benefits of gender balance in the judiciary.

4. Methodology of the study

taking into consideration the objectives, the study used quantitative and qualitative research methods.

The qualitative study involved two techniques:

1. In-depth interviews with the key informants (KII) from the judiciary.
2. Focus group discussions (FGD) with the representatives of the judiciary.

The quantitative study consisted of an online survey.

Moreover, a desk review has been used to analyse relevant international and local legal frameworks.

The following research instruments have been developed: (1) questionnaire for KII (2) questionnaire for FGD, (3) questionnaire for online survey.

Five focus group discussions have been conducted with a total of 36 participants from the judiciary, NGOs and Universities in Armenia:

1. The first group of judges consisted of 8 judges of the Courts of the First Instance of Armenia, 3 of which were men from regions and 5 were women (2 of women from regions and 3 from Yerevan).
2. The second group of judges consisted of 5 judges of the Court of the First Instance of Armenia, 3 of which were men (1 from Yerevan, 2 from regions) and 2 women (from Yerevan).
3. The group of judges' assistants consisted of 7 assistants to judges - 2 (1 man, 1 woman) from Cassation Court, 1 woman from Court of Appeal, 4 (3 women, 1 man) from the Courts of the First Instance (among them 2 from regions)
4. The group of students consisted of 7 students of the final year of law studies (4 women and 3 men) from Yerevan State University, American University of Armenia, French University of Armenia and Russian Armenian University,
5. The group of experts and NGOs representatives consisted of 7 participants (5 women and 2 men) from Women Support Centre, Protection of Rights Without Borders, Helsinki Citizens' Assembly and Europe in Law.

Focus group discussions were held online from December 4th to December 11th 2020, for a duration of about 2 hours each. Fifteen questions have been discussed during the discussion.

Regarding the KII, a total of 13 people have been interviewed.

- ▶ 2 members of the Supreme Judicial Council (SJC) - 1 woman, 1 man.
- ▶ 2 judges of the Court of Cassation - 1 woman, 1 man.
- ▶ 3 judges of the Court of Appeals - 2 women, 1 man.
- ▶ 4 judges of the Courts of the First Instance – 2 women, 2 men (2 judges of the Courts of Yerevan, 2 judges of the Courts of the regions).
- ▶ 2 Experts working on the issue of the Judiciary in Armenia.

The interviews were held online from November 28th to December 11th 2020, for the duration of about 1 hour each. Twenty-one questions have been asked to each interviewee.

Eighty-nine participants – judges and assistants - took part in the online survey, representing 17.76% of the total number. Among them, 57% women and 43 % men distributed in the following way:

- ▶ 62 judges from Courts of the First Instance of Armenia, Court of Appeal and Cassation Court (21.3% of the total number of judges).
- ▶ 27 assistants to judges from Courts of the First Instance of Armenia, the Court of Appeal and the Cassation Court (9.7% of the total number of assistants of judges).

Twenty-three multiple-choice questions and 1 question for additional comments or suggestions have been submitted to the participants. An online survey has been conducted from November 30th2020 to December 12th2020.

The study's methodology, the tools of qualitative and quantitative analysis, and the study have been developed by the international consultant – Ms. Nino Janashia²⁶.

Qualitative and quantitative studies on the field have been conducted, and relevant reports have been elaborated by the national expert Ms. Lilit Petrosyan²⁷.

26. Ms. Janashia is specialised in Gender Equality and Women's Empowerment and works as an international and national consultant in several countries with various international organisations, such as UN Women, UNDP, UNFPA, FAO, EU, Council of Europe, NDI, etc. Ms. Janashia has ten years' experience working on the issues of violence against women, women's economic empowerment, women's political participation, gender equality in the judiciary, education, transport, sports, culture, and environmental protection, etc. Ms. Janashia holds a Master's Degree in International and European Law and a Bachelor's Degree in Law and Political Science from the University Paris Ouest Nanterre la Défense, France, as well as a Diploma in Protection of Human Rights from Ecole Nationale d'Administration (ENA), Paris, France.

27. Ms. Petrosyan holds an LLM degree in Law and is Ph.D. candidate, specialized in the assessment of judiciary issues with six years of experience working on judicial reforms. Since 2017, Ms. Petrosyan is a member of working groups on elaboration of the Judicial Code, the Civil Procedure Code, and since 2019 - of a working group on the elaboration of new Administrative Procedure Code, as well as the working group for the implementation of the legal and judicial strategy (2019-2023) of the Government of Armenia.

5. Structure of the study

The study's overall objective is to identify gender challenges in the judiciary in Armenia, explore causes and effects of gender disparities, and provide better-informed, gender-responsive solutions to the identified inequalities. To achieve this objective, first, it is essential to answer the question – what obliges the State to ensure gender equality at all levels of the judiciary? In other terms – what are the legal basis of gender-equal judiciary in the international law, including soft law, and also in the internal legal framework of Armenia. Thus, the first chapter will answer these questions and also, will briefly present the country's gender equality context. In the second chapter the study examines the interrogations related to the advantages and benefits of gender-balance in the judiciary and, therefore, presents relevant arguments. The third chapter briefly presents the organisation of courts in Armenia, as well as the detailed gender-segregated data, which shows significant gender imbalance in each instance and at all levels of the judiciary, especially at the senior positions. Hence, the third chapter, based on the qualitative and quantitative research conducted within this study, efforts to understand barriers and obstacles of women's full and equal participation in the judiciary of Armenia, while the fourth chapter tries to identify opportunities and pathways for a gender-equal judicial system in the country. Finally, the fifth chapter presents relevant recommendations.

6. Legal basis of gender equality in the judiciary

6.1. International legal framework

International law requires States to take concrete measures to address gender imbalances in all public institutions by identifying and removing legal and practical obstacles to women's equal participation and through proactive steps advancing women's equal representation.

According to Article 7 of the United Nations 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²⁸, the State Parties must "take all appropriate measures to eliminate discrimination against women in the political and public life of the country." To this end, they must ensure women's right "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at the level of government". According to the CEDAW Committee's General Recommendation No 23, "the political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers."²⁹

CEDAW General Recommendation ³⁰No 23 notes that "policies developed and decisions made by men alone reflect only part of human experience and potential. The just and effective organisation of society demands the inclusion and participation of all its members. Societies in which women are excluded from public life and decision-making cannot be described as democratic. The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both."³¹

Measures that should be implemented for the effectiveness of CEDAW Article 7 should ensure that barriers to equality are overcome and should result in women's enjoyment in practice of the equal right to hold public office, including the existence of recruiting processes directed at women that are open and subject to appeal, of effective legislation prohibiting discrimination against women, as well as the existence of the strategies that encourage women's representation and participation.³²

CEDAW's Article 4 encourages the use of temporary special measures to give full effect to Article 7. Indeed, Article 4 calls the State parties to the "adoption of temporary special measures aimed at accelerating de facto equality between men and women."³³ CEDAW's General Recommendation No 23 notes that the formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in their societies' public life are essential prerequisites to true equality. Therefore, it calls the States to institute temporary special measures for ensuring women's equal participation in decision-making, including the judiciary.³⁴

28. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

29. CEDAW General Recommendation (GR) 23, paras. 5. <https://bit.ly/3shzBA8>

30. Committee on the Elimination of Discrimination against Women has been established by CEDAW convention consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts are elected by States Parties from among their nationals and serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems. The Committee makes recommendations on any issue affecting women to which it believes the States parties should devote more attention.

31. CEDAW GR 23, paras. 13 and 14

32. CEDAW GR 23, paras. 45, 46.

33. These measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

34. CEDAW GR 23, para. 15.

Indeed, the adoption of temporary special measures is seen as part of a necessary strategy to achieve substantive gender equality. There is an essential difference between formal gender equality – that implies legal recognition of principles of equality of women and men, including the enjoyment and exercise of all human rights and fundamental freedoms, as well as measures providing for equal treatment of women and men in the political, economic, social, cultural, civil, or any other field - and substantive gender equality. The latter is a combination of formal gender equality with equality of outcome, meaning that equality in law, equal opportunities and equal treatment of women and men are complemented by equality in impact, outcome and result.

CEDAW General Recommendation No 33 calls the State parties to “confront and remove barriers to women’s participation as professionals within all bodies and levels of judicial systems, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities”³⁵ Moreover, the General Recommendation No 33 highlights the importance of capacity building in the judiciary and recommends that the States take measures, including awareness-raising and capacity-building programmes for all justice system personnel to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system.³⁶

CEDAW Committee in its General Recommendation No 25 also calls the State parties to adopt temporary special measures aimed at accelerating the improvement of the position of women to achieve their *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.³⁷ The Committee emphasises the importance of substantive gender equality, which is defined as the equality of results, which may be quantitative and/or qualitative in nature, in order for women enjoying their rights in various fields in reasonably equal numbers with men, enjoying the same income levels, equality in decision-making and political influence.³⁸

The gap between *de jure* and *de facto* equality is the critical issue emphasised in the Beijing Declaration and Platform for Action (1995)³⁹, which⁴⁰ reaffirmed the importance of women justice professionals’ equal representation in political and public life, declaring that states must “ensure that women have the same right as men to be judges, advocates or other officers of the court”⁴¹ and “commit themselves to establishing the goal of gender balance...in the judiciary, including, *inter alia*, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of men and women, if necessary, through positive action”⁴² Moreover, the Beijing Declaration and Platform for Action urges the States to provide gender-sensitive human rights education and training to the judiciary to enable them to better exercise the public responsibilities.⁴³

The importance of women’s full and effective participation at all levels of governance has been reaffirmed by Sustainable Development Goals⁴⁴ (SDGs) 5 (Gender Equality and Women’s Empowerment) and 16 (Peace, Justice and Strong Institutions). 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.

Furthermore, the Commission on the Status of Women⁴⁵, at its forty-first session in 1997, adopted Agreed Conclusions (1997/2)⁴⁶, emphasising the goal of equal participation of men and women in decision-making

35. CEDAW GR No 33, para 15. <https://bit.ly/2Xw43bF>

36. CEDAW GR No 33, para 29.

37. CEDAW GR No 25, para. 15 <https://bit.ly/39IQAsw>

38. CEDAW GR No 25, para. 15

39. The Beijing Declaration was a resolution adopted by the United Nations at the end of the Fourth World Conference on Women on 15 September 1995. <https://cutt.ly/Dky5RLy>

40. <https://bit.ly/38B3IQE>

41. Beijing Declaration and Platform for Action, para. 232. (m)

42. Beijing Declaration and Platform for Action, para. 190 (a)

43. Beijing Declaration and Platform for Action, para. 232 (i)

44. 17 SDGs have been adopted by the United Nations General Assembly and are intended to be achieved by 2030 <https://unstats.un.org/sdgs/indicators/database/>

They are included in a UN Resolution commonly called Agenda 2030: A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development <https://cutt.ly/lky52vH>

45. The Commission of the Status of Women is one of the commissions of United Nations Economic and Social Council (ECOSOC)

46. Forty-first session of the Commission on the Status of Women, 1997. <https://www.un.org/womenwatch/daw/csw/41sess.htm>

for strengthening democracy and achieving the goals of sustainable development. The Commission reaffirmed the need to identify and implement measures that would redress women's underrepresentation in decision-making.

The notion of equal and balanced participation is defined by the Council of Europe's Recommendation⁴⁷ on the "Balanced participation of women and men in political and public decision making", according to which it is crucial to have a "critical mass" of the opposite sex in the decision-making bodies in order to have the equal consideration of the interests of women and men. The recommended minimum is 40%, meaning that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

2012 Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels⁴⁸ recognises that "the independence of the judicial system, together with its impartiality and integrity, is an essential prerequisite for upholding the rule of law and ensuring that there is no discrimination in the administration of justice." The Declaration also "recognises the importance of ensuring that women, on the basis of the equality of men and women, fully enjoy the benefits of the rule of law, and commit to using law to uphold their equal rights and ensure their full and equal participation, including in institutions of governance and the judicial system".

International Commission of Jurists (Geneva forum No.1 on "Women and Judiciary"⁴⁹) considers that the obligations of gender-balanced and gender-sensitive judiciary derive from general international standards concerning the independence of the judiciary and from international legal requirements to ensure women's enjoyment of their human rights based on equality and non-discrimination.⁵⁰

Special Rapporteur on the Independence of Judges and Lawyers⁵¹ considers that "gender-sensitive judicial system is a prerequisite for the full and non-discriminatory realisation of human rights for all, and the achievement of gender equality on the ground." For developing gender-sensitive judicial system, the Special Rapporteur recommends to "evaluate the structure and composition of the judiciary to ensure adequate representation of women and create the conditions necessary for the realisation of gender equality within the judiciary and for the judiciary to advance the goal of gender equality." The Special Rapporteur calls the States to see women as "key actors of the administration of justice" and to ensure adequate representation of women in the judiciary, also to mainstream gender in the judiciary implying that "the multiple roles of women and men are taken into consideration in the conduct of business within the judiciary, including in the day-to-day operations and the overall planning of the judicial sector."

The 2015 OECD Recommendation on Gender Equality on Public Life is an essential tool that provides a range of options to enable equal access to leadership opportunities, including in the judiciary. It encompasses measures to strengthen institutional capacities for effective governance and mainstream gender equality across all policy areas. OECD recommends to "consider measures to achieve gender-balanced representations in decision-making positions in public life by considering greater participation of women in government at all levels"; including judiciary by considering "comprehensive regulatory measures to promote diversity, enabling equal access to opportunities in senior public services and judicial appointments, mainstreaming work-life balance and family-friendly work practices at the top-level public institutions and promoting gender-sensitive working conditions; facilitating capacity and leadership development opportunities, mentoring, networking and other training programmes in public institutions, promoting female role models in public life and encouraging active engagement of men in promoting gender equality". OECD also recommends systematic monitoring of gender balance in public institutions, including in leadership positions. The OECD Recommendation has the goals of (i) mainstream gender equality in the design, development, implementation and evaluation of relevant public policies and budgets; (ii) strengthening accountability and oversight mechanisms for gender equality and mainstreaming initiatives across and within government bodies; (iii) achieving gender-balanced representation in decision making positions in public life by encouraging greater participation of women in government at all levels, as well as in parliaments, judiciaries and other public institutions, (iv) taking adequate measures to improve the gender equality in public employment, (v) strengthening international co-operation

47. 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", <https://rm.coe.int/1680519084>

48. Resolution of the General Assembly A/RES/67/1 of 30/11/2012, paras. 13 and 16. <https://www.refworld.org/docid/50c5e6e02.html>

49. <https://www.icj.org/geneva-forum-series-no-1-women-and-the-judiciary/>

50. International Covenant on Civil and Political Rights (ICCPR), articles 2 and 3; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), particularly articles 1 and 2; International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 2 and 3.

51. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaut on the independence of judges and lawyers, A/HRC/17/30. <https://undocs.org/A/HRC/17/30>

through continuously sharing knowledge, lessons learned and good practices on gender equality and mainstreaming initiatives in public institutions.

Equal access of women to justice⁵², as well as balanced participation of women and men in public decision-making,⁵³ are among the strategic objectives of the Council of Europe's Gender Equality Strategy for 2018-2023.⁵⁴ Supporting member states in achieving balanced participation of women and men in political and public decision-making, including through the implementation of gender mainstreaming strategies and policies, is among the Council of Europe's priorities via promoting gender quotas, combatting gender stereotypes and improving the gender-sensitiveness of decision-making environments.⁵⁵

6.2. Armenian legal framework and country context

The Constitution of Armenia⁵⁶ enshrines the right to gender equality. Pursuant to article 28 of the Constitution, "everyone shall be equal before the law". Article 30 provides that "women and men shall enjoy legal equality." Promoting actual equality between women and men is defined as one of the main objectives of state policy in the economic, social and cultural spheres (article 86).

The Law on Ensuring Equal Rights and Equal Opportunities for Women and Men adopted in 2013⁵⁷ supports equality of opportunity and equal treatment before the law, with an emphasis on the public sector, labour, employment, health, education, and voting rights (Articles 1 and 2) and specifically prohibits unequal pay or working conditions as a form of direct discrimination (Article 6).

Armenia has made progress in introducing measures into the Electoral Code to encourage women's participation in decision-making positions. The new Electoral Code, which entered into force in 2016⁵⁸, establishes gender quotas contributing to women's more active participation in the country's political life and prescribes a more effective quota for women's representation (25% representation of women in elective bodies instead of 20%). At the same time, a gradual approach has been stipulated, and a higher quota has been prescribed for 2021 (30%). Moreover, the rotation mechanism is also applied, according to which in case a female deputy quits her position or assumes another one, she should again be replaced by a woman.

Gender quotas have also been established for the judiciary. Indeed, according to the article 109, part 5 of the Judicial Code⁵⁹, the gender balance is taken into account when compiling the list of candidates for judges - where the number of the judges of either sex is less than 25% of the total number of judges, up to 50% of the places in the list of contenders for judge candidates shall be reserved to the persons of the less represented sex. Moreover, the Judicial Code establishes gender quota for the Supreme Judicial Council, in particular for the purpose of gender representation of judge members within the SJC at least 3 must be of the opposite sex (article 76, part 3). The gender quota is applicable only for judge members of the SJC and not for the SJC members elected by the national assembly.

In 2015, Armenia adopted the Action Plan On Promoting Gender Balance among Candidates for Judges for 2015-2017.⁶⁰ The Action Plan 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. CEDAW Committee, in its concluding observations on the combined fifth and sixth periodic reports of Armenia, notes that this Action Plan is a positive development for the country.⁶¹

52. Council of Europe's Gender Equality Strategy for 2018-2023, Strategic Objective 3.

53. Council of Europe's Gender Equality Strategy for 2018-2023, Strategic Objective 4.

54. <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>

55. Council of Europe's Gender Equality Strategy for 2018-2023, Strategic Objective 4.

56. <https://www.president.am/en/constitution-2015/>

57. The Law on Equal Rights and Equal Opportunities for Men and Women of the Republic of Armenia <https://www.arlis.am/DocumentView.aspx?DocID=138982#>

58. Electoral Code of the Republic of Armenia <https://www.arlis.am/DocumentView.aspx?DocID=143949#>

59. Judicial Code of the Republic of Armenia <https://www.arlis.am/DocumentView.aspx?DocID=146620#>

60. <http://www.irtek.am/views/act.aspx?aid=77173>

61. Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fifth and sixth periodic reports of Armenia, 2016. Para.5 <https://www.refworld.org/docid/583863b34.html>

In 2019, the government adopted the Gender Policy Implementation Strategy and Action Plan for 2019–2023.⁶² Among the priority areas, there are objectives related to the improvement of national machinery on women's advancement and equal participation of women and men in the leadership and decision-making positions; elimination of gender discrimination in the socio-economic sphere and enhancement of economic opportunities for women, including addressing work-family balance, prevention of gender-based discrimination, including promoting increased political representation of women and addressing gender stereotypes.

Armenia has made international commitments to achieve gender equality. It ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women in 1993⁶³ and signed the Optional Protocol recognising the complaint and inquiry role of the Committee on the Elimination of Discrimination against Women in 2006.⁶⁴

As a member of the Council of Europe since 2001, Armenia is also party to several regional treaties covering principles of non-discrimination based on sex, such as the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter. Armenia committed to achieving the Council of Europe Gender Equality Strategy 2018–2023.

In 2018 Armenia signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and has expressed its intention to finalise the ratification process in May 2019, but the process is still pending.

The Council of Europe Action Plan for Armenia 2019-2022⁶⁵ includes several measures to improve the legal framework for human rights and gender equality, as well as women's equal participation in the decision-making, including the judiciary. Under the Action Plan, the Council of Europe and Armenia have agreed to carry forward reforms aiming to enhance the judiciary's independence, transparency, and efficiency to harmonise the implementation of European human rights standards, among them, to promote gender equality. The Action Plan acknowledges that many challenges remain, including persistent legal, institutional, socio-economic and cultural barriers to gender equality and women's access to justice, and limited access to legal aid and support services for women. With a view to addressing these challenges, the Action Plan envisages awareness-raising and capacity-building of the judiciary and law enforcement. The Action Plan also focuses on improving access to justice for women, especially women who are the victims of violence and in a vulnerable situation, including by ensuring that the justice chain is gender-responsive and that access to information and legal aid is enhanced. The Action Plan also focuses on promoting the participation and leadership of women judges, enhancing the number of women judges in the judiciary, and ensuring equal access to justice for women.

The Action Plan will contribute to the United Nations Sustainable Development Goals (UN SDGs), especially to goal 5, "Achieve gender equality and empower all women and girls" and 16, "Promote just, peaceful and inclusive societies". The actions to enhance gender equality and prevent and combat gender-based violence contribute to target 5.1, "End all forms of discrimination against all women and girls everywhere", and target 5.2, "Eliminate all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation".

Despite several achievements, the CEDAW committee, in its concluding observations on the combined fifth and sixth periodic reports of Armenia (2016)⁶⁶ considers that the country is still unable to ensure substantive gender equality effectively. Indeed, the committee notes that the lack of comprehensive legal provisions prohibiting discrimination against women, and the state party's preference for gender-neutral policies and programmes, which may lead to inadequate protection for women against direct, as well as indirect discrimination, hinder 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.

The country's gender equality challenges are reflected in its low positions in various worldwide rankings. Indeed, the Global Gender Gap Index (GGGI)⁶⁷, which rates gender-based gaps in resources and opportunities, shows that Armenia is making progress in gender equality. Still, it also reveals that gender gaps exist in the economic,

62. *Gender Policy Implementation Strategy and Action Plan 2019–2023 of the Republic of Armenia*
<https://www.arlis.am/DocumentView.aspx?DocID=134904>

63. <https://bit.ly/3bEikev>

64. <https://bit.ly/2XDcstG>

65. <https://bit.ly/35C7Pog>

66. Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fifth and sixth periodic reports of Armenia, 2016. Para.8 <https://www.refworld.org/docid/583863b34.html>

67. The Global Gender Gap Index measures the extent of gender-based gaps among four key dimensions: Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment.

social, and political spheres. Armenia has a GGGI of 0.684 in 2020, ranking 98th out of 153 countries,⁶⁸ which is the lowest position in the region compared to the neighbouring countries, as Georgia is at 61st position and Azerbaijan – at 94th position. Among the neighbouring countries, only Turkey holds the lower position (130th).

Another international index of gender equality - the Social Institutions and Gender Index (SIGI)⁶⁹ that looks into social norms, practices, and laws across 120 countries to assess how they succeed in terms of gender-based discrimination, shows that Armenia has low levels of gender discrimination – 28%⁷⁰ according to 2019 SIGI index.⁷¹ Indeed, SIGI Index measures four main dimensions with various sub-categories. In 2019, Armenia obtained 33% for the dimension related to the discrimination in the family, 35% for physical integrity, 23% for access to reproductive and financial resources, and 19% for civil liberties. The results indicate that improving legal frameworks for balancing work and family life, as well as for preventing violence against women, would further decrease gender-based discrimination.⁷²

68. http://www3.weforum.org/docs/WEF_GGGR_2020.pdf

69. The OECD Development Centre's Social Institutions and Gender Index (SIGI) measures discrimination against women in social institutions across 180 countries. By taking into account laws, social norms and practices, the SIGI captures the underlying drivers of gender inequality with the aim to provide the data necessary for transformative policy-change. The SIGI is also one of the official data sources for monitoring SDG 5.1.1 "Whether or not legal frameworks are in place to promote, enforce and monitor gender equality and women's empowerment."

70. Higher values indicate higher inequality, percentages go from 0 to 100.

71. Social Institutions and Gender Index, 2019 Report for Armenia: <https://cutt.ly/jkuga6k>

72. Social Institutions and Gender Index: SIGI 2019 Regional Report for Eurasia. Paris. <https://www.genderindex.org/ranking/>

7. Arguments for women's equal participation in the judiciary

The judiciary is entrusted with guaranteeing that State's internal normative framework, as well as the enforcement of international human rights obligations in national courts and tribunals is upheld, and therefore guarantees that rights are enjoyed without discrimination, including on the ground of sex. Judges exercise this important role whenever they ensure fair and equal access to justice and fair trial. This role is expected to be exercised by judges whenever they are requested to resolve disputes between parties, when they deliberate on cases, devise procedures to be applied in courts, and in general when they interpret the law.⁷³

Researchers in gender equality and judiciary advance two main dominant theories in support of increasing the representation of women in this sector. According to the first theory, women judges tend to make judgments favourable for achieving social equality and supporting women's empowerment initiatives.⁷⁴ According to the second theory, gender equality in the judiciary is important in order to increase public confidence to the judicial institutions.⁷⁵

Regarding the first theory, researchers classify four different schools, regarding the thinking and judging's way of women judges.⁷⁶

- ▶ The first school's model is the legalistic model, which is premised on the idea that judicial decision-making is mechanical and formulaic, and therefore the judge's gender does not enter into the decision-making process.
- ▶ The second - professional socialisation model suggests that judges, through their legal and judicial training, are socialised to the profession's norms, thereby preventing personal attributes or experiences from interfering with judicial decision-making.
- ▶ The realistic model assumes that judicial decision-making involves some personal discretion, thereby implicating the judge's gender. Some researchers consider that women judges are likely to have more empathy with women litigants and witnesses, including victims of crime, and thus may provide a better courtroom experience for women.⁷⁷ Researchers also highlight the argument of increased gender sensitivity - women judges will increase gender sensitivity behind the scenes, and so will operate to educate their male colleagues by not allowing sexist comments, stereotyping, and gender bias to go unquestioned.⁷⁸
- ▶ The personal attribution model extends the realistic model approach and suggests that judges' personal attributes (i.e. gender) and experiences (also informed by the judge's gender) consciously or unconsciously influence how judges interpret case facts and legal principles. Judges bring their life experience to the process of judging, and women's life experiences - in particular, their experiences of pregnancy, childbirth, child-rearing, and juggling work and family responsibilities, often sexism and gender discrimination - are different from men's. Thus, the inclusion of women's experiences will make decisions

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

74. Mobekk, 2010: 102; Chew, 2011: 341; Kim 2009: 61-77

75. Rackley, 2009: 11 - 26; Malleson, 2003: 1-24; O'Connor and Azzarelli, 2011: 3-9; Boyd, Epstein and Martin, 2010: 389-411.

76. Chew, K. Pat. (2011) Judges' Gender and Employment Discrimination Cases: Emerging Evidence-Based Empirical Conclusions. *The Journal of Gender, Race and Justice*. 14.

77. Brenda Hale, 'A Minority Opinion?' (2008) Jason Schultz, 'Can Women Judges Help Make Civil Sexual Assault Trials More Therapeutic?' (2001)

78. Mary M Schroeder, 'Judging with a Difference' (2002), *Yale JL and Feminism*

more representative of the variety of human experience.⁷⁹ The United Nations High Commissioner for Human Rights considers that the only way to ensure women's perspectives in the administration of justice, including in judgments delivered by national tribunals, is through women's life experience and therefore through the appointment of women judges who also represent the diversity of society and who are therefore able to tackle judicial issues with fitting sensitivity.⁸⁰

In support of realistic and personal attribution models, research shows that women justice professionals contribute in essential ways to improvements towards the overall justice experience of women users of the system and supporting a fairer institutional environment for women to access justice.

- ▶ First, in relation to gender-based crimes, more gender-balanced courtrooms may make the process less distressing for women and girls who appear before them, particularly trauma victims. Discriminatory attitudes towards women survivors of violence by police and prosecutors who do not believe them and by judges who are insensitive or question women survivors' motives often leads to re-victimisation.⁸¹ Women judges and prosecutors may provide a better courtroom experience for women witnesses and survivors because they usually refrain from making sexist comments or demonstrating other forms of bias, particularly in matters concerning gender-based violence or discrimination based on sex and they encourage their peers to do the same.⁸²
- ▶ Second, some women judges are taking steps to ensure that the court environment is more accommodating for women. Ex: efforts to prioritise hearing cases of women who come with young children or babies who may need to be fed, etc.⁸³
- ▶ Lastly, in gender-segregated contexts, a female justice presence can be empowering to a female victim. For example, where redress pathways are gendered, issues are sensitive and seen as "women's issues", or where survivors have limited social mobility and engagement with the opposite sex, the presence of a woman judge, prosecutor or police officer can make a meaningful difference.⁸⁴

As for the second theory related to the impact on public confidence, the Special Rapporteur on the independence of judges and lawyers in her 2011 report emphasises the argument of trust that societies and women themselves may have in the judiciary, which is essential in order to be responsive to women's needs and protect women's human rights. According to the Special Rapporteur, reflecting the diversity of societies is therefore essential to building trust in the judicial system and ensuring that women's experiences and specific needs are taken into consideration in all judicial affairs - women resorting to courts may feel that the judiciary is closer to them when it is composed of fair and impartial judges who represent the diversity of society. Women, in particular those belonging to minorities or underrepresented groups, should therefore be adequately represented in the judiciary.

Arguments are based on the principles of equality and equity requiring that women must have an equal opportunity to participate in public decision-making, thus their absence undermines the democratic legitimacy of the institutions. The presence of women judges increases the democratic legitimacy of the judiciary, because courts including women are more representative of the wider society.⁸⁵ Moreover, women judges' presence signals equality of opportunity for women in the legal profession who aspire to judicial office, and demonstrates that judicial appointment processes are fair, meritocratic, and non-discriminatory.⁸⁶

Advancing women's full participation in the judiciary also plays a role in promoting gender equality in broader ways:

- ▶ Women judges' presence provides encouragement and support for women in the legal profession, law students, and younger women and girls, to aspire, seek, and obtain judicial appointment, thus creating a virtuous circle enabling the gender balance in the judiciary to be improved.⁸⁷
- ▶ Female judicial appointments, particularly at senior levels, can shift gender stereotypes, thereby changing attitudes and perceptions of men's and women's appropriate roles. Improvements in women's numbers

79. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaut on the independence of judges and lawyers, A/HRC/17/30; Brenda Hale, "Making a Difference? Why We Need a More Diverse Judiciary"

80. Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, International Association of Women Judges, Jubilee Biennial Conference, Seoul, 12 May 2010.

81. Kalantry, "Women in Robes", p. 88.

82. Hunter, "More Than Just a Different Face?", p. 123.

83. Dawuni, "To 'Mother' or Not to 'Mother'", p. 432.

84. IDLO, "Women's Professional Participation in Afghanistan's Justice Sector".

85. Kate Malleson, 'Justifying Gender Equality on the Bench: Why Difference Won't Do' (2003) 11 Fem LS 1.

86. Brenda Hale, 'Equality and the Judiciary: Why Should We Want More Women

87. Ulrike Schultz and Gisela Shaw, *Women in the World's Legal Professions*, 2003

on the judiciary – an institution held in high esteem in many societies – may, in some cases, have a domino effect in that it contributes to women’s entrance into other professions of authority. By their presence in the judiciary, women judges play distinct roles as agents supporting women’s economic independence and more broadly, social change.

- ▶ Women’s visibility as judges, especially at the high level, can pave the way for women’s greater representation in other decision-making positions, such as in legislative and executive branches of government.
- ▶ Higher numbers and greater visibility of women judges can increase women’s willingness to seek justice and enforce their rights through the courts.

Increasing women’s participation in the judicial system is necessary in order to overcome judiciary’s institutional prejudices and at the same time to have a judicial gender-balanced system, more accessible to women and girls. This key element directly relates to impartiality, bringing greater confidence to the public and better reflection to the society regarding the judge’s law interpretations.⁸⁸ Moreover, increasing women’s representation in the judiciary is necessary to overcome the systemic bias against women present in society more generally.

88. O’Connor and Azzarelli, 2011

8. Gender imbalance and key barriers to women's full and equal participation in the judiciary of Armenia

8.1. Organisation of courts in Armenia and gender-balance in the judiciary

In Armenia, the courts operate in a three-tier system: The Constitutional Court, the Court of Cassation, Courts of Appeal, Courts of First Instance of General Jurisdiction, as well as the Specialised Courts (Article 163 of the Constitution).

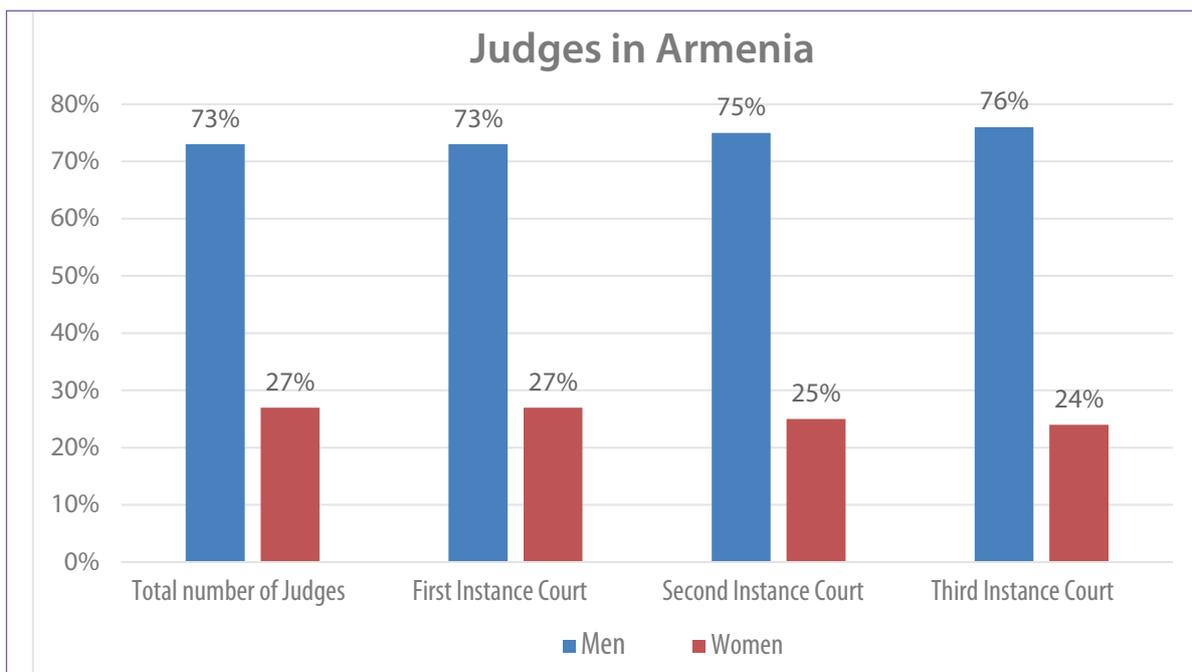
There are one First Instance Court of General Jurisdiction in Yerevan and 9 First Instance Courts of General Jurisdiction in the regions with 62 judges in Yerevan and 6 to 12 judges in the regions, depending on the Court. (Article 23 of the Judicial Code). Specialised Courts include the Administrative Court and the Court of Bankruptcy. As for the second instance, the following Courts of Appeal function in Armenia: (1) Civil Court of Appeal, composed of at least 16 judges; (2) Criminal Court of Appeal, composed of at least 18 judges; (3) Administrative Court of Appeal, composed of at least 10 judges. (Article 28 of the Judicial Code). The Civil and Criminal Appeal Court and the Administrative Court are housed adequately in the same building in Yerevan. The Courts of the First Instance and the Courts of Appeal are chaired by Presidents, with the office term of three years (Article 32 of the Judicial Code). The Court of Cassation consists of a separate civil and administrative chamber composed of 11 judges and a criminal chamber consisting of 6 judges (Article 30 (2) of the Judicial Code). Each chamber is chaired by a President for 6 years office term (article 34 of the Judicial Code), and the Court of Cassation in general is presided over by a President with also 6 years term (article 33). The seat of the Court of Cassation is in Yerevan.

There is also the Supreme Judicial Council, an independent state body that guarantees courts and judges' independence. (Article 173 of the Constitution). The Supreme Judicial Council is composed of ten members (five members elected by the General Assembly of Judges, from among judges of all court instances 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.) Members of the Supreme Judicial Council are elected for a term of five years, without the right to be re-elected. (Article 174 of the Constitution).

Constitutional Court, which is a guardian of the Constitution, functions separately from the judicial organisation determining the compliance of laws, decisions of the National Assembly, decrees and executive orders of the President of the Republic, decisions of the Government and the Prime Minister, and secondary regulatory legal acts with the Constitution (Article 168 of the Constitution of Armenia).

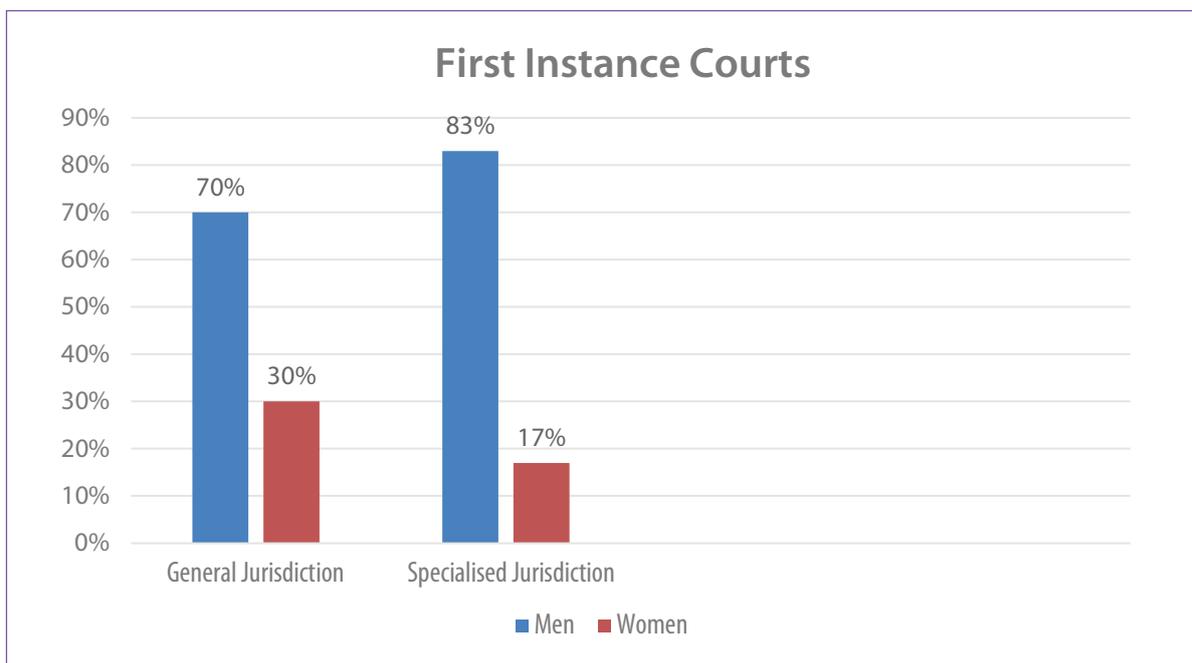
In total, there are 244 judges in Armenia, among them 26.6% are women and 73.4% - men. The percentage of female judges decreases in the higher instances. Indeed:

- ▶ Among 183 judges of the first instance 27.3% are women and 72.7% are men.
- ▶ Among 44 judges of the second instance 25% are women and 75% - men.
- ▶ Among 17 judges of the third instance only 24% are women and 76% - men.



There are differences among the composition of the general and specialised jurisdictions of the First Instance Courts. Indeed, the percentage of women judges is much lower within the specialised courts:

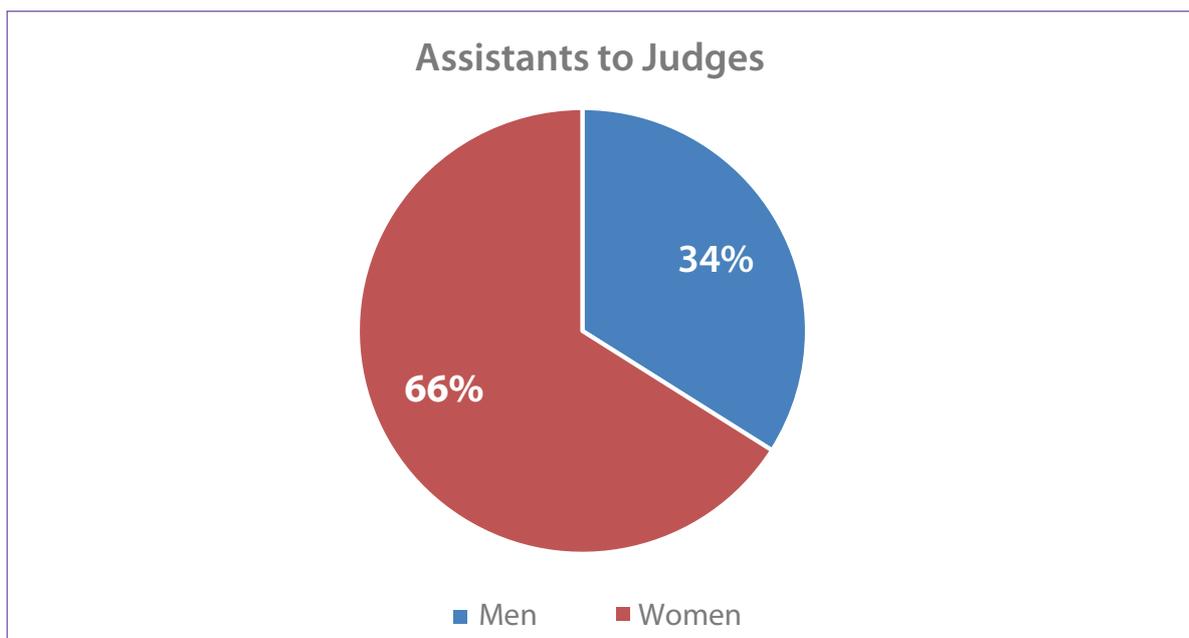
- ▶ Within the first instance general jurisdiction, among 147 judges 29.9% are women and 70.1% are men.
- ▶ Within the first instance specialised jurisdiction, among 36 judges only 16.7% are women and 83.3% - men.



As figures demonstrate, there is a significant gender imbalance within all the three instances where women represent a minority and don't have a critical mass of 40%, as defined by the Council of Europe's 2003 Recommendation.⁸⁹

However, regarding the assistants to judges there is a gender imbalance in favour of women. Indeed, among 257 assistants 66.1% are women and 33.9% are men.

⁸⁹ 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", <https://rm.coe.int/1680519084>



Regarding the senior positions in the judiciary, among 18 Presidents of the Chambers and Courts, only 2 are women, making only 11.1% of women at the senior positions and 88.9% men.

Regarding the Supreme Judicial Council, out of 10 members it has⁹⁰ only 1 woman, which makes 11.1% of women and 88.9% of men. The one and only woman is a judge member nominated by the General Assembly of Judges, and there is no woman among non-judge members elected by the National Assembly.⁹¹

8.2. Key barriers for women justice professionals to full and equal participation in the judiciary

In many contexts, women remain well below their representation in the judiciary compared to their representation in the labour pool of lawyers, which implies that their underrepresentation is a problem of direct and indirect individual, institutional and structural discrimination, potentially combined with a lack of support or motivation for women to enter the profession.⁹²

The low representation of women in the judiciary of Armenia, which is far less than the critical mass minimum as defined by the Council of Europe, suggests that several factors at play inhibit the participation of women in the sector. The existing imbalance can be ascribed to social resistance and limited institutional capacities to incorporate gender concerns.

8.2.1. Barriers to entering the justice sector related to gender norms and stereotypes

The Judicial Code of Armenia in its Article 97 defines the requirements for contenders for judge candidates, based on which persons between the ages of 25 and 60, having the right of suffrage and holding only Armenian citizenship, being proficient in the Armenian language, holding Bachelor's and Master's degree in law⁹³ can become a judge. Moreover, the candidate must have at least three years of professional experience and knowledge of at least one language from among English, Russian, and French. After being accepted as

90. The situation as of January 2021

91. Gender Statistics in the Judiciary is received from the Judicial Department by an email on December 7th, 2020. Judicial Department is a state administrative institution, which provides the full and effective execution of judicial institutions.

92. According to 2017 data, 60% of law graduates in the EU countries are women. On average, professional judge positions evenly distributed, between women and men in the EU, however in Common Law countries 60% of professional judge posts are held by men. Moreover, there is a decrease in the proportion of females as the level of court and seniority of post increases, indeed, at higher court levels and at supreme courts the average gender distribution is consistently two-thirds male and one-third female. "Mapping the Representation of Women and Men in Legal Professions across the EU", Directorate General of Internal Policies of the Union, 2017

93. Alternatively, the candidate can have qualification degree of a certified specialist in higher legal education in the Republic of Armenia, or have obtained a relevant degree in a foreign state, the recognition and approval of equivalence of which have been carried out in the Republic of Armenia as prescribed by law.

a candidate, a written examination of qualification is required (Article 100 of the Judicial Code), followed by an interview (Article 101 of the Judicial Code). The Evaluation Commission is formed by the Supreme Judicial Council for the purpose of checking and evaluating the papers of a written examination for qualification and is composed of 7 members. There is no requirement to respect the gender balance of the evaluation commissions.

The question about the issue of entering the justice sector has been asked to the survey participants conducted within this study, and it was also discussed within the focus groups and during in-depth interviews with key informants.

Despite the existing gender imbalance, 61% of survey participants think that becoming a judge in Armenia is equally accessible for women and men. Only 10% respondents believe that it is more difficult for women – it is interesting to note that the totality is women among this 10%. It is also compelling to observe that none of the participants think that becoming a judge in Armenia is more difficult for men.

Focus group discussions' participants noted the absence of legal barriers for women to enter the justice sector. According to the participants' observations, there are even more women than men among the candidates during last years, which, based on their opinion, is backed by the fact that the sector becomes less and less attractive for men *inter alia* due to the low salary and low financial benefits.

The majority of key informants shared the same opinion during in-depth interviews; however, some issues related to entering the judiciary have been raised. Indeed, based on their experience, some interviewees reported that despite the equal legal rights, women candidates having children, especially young children, hesitate more about becoming a judge since they are unsure about the location of their appointment. If women judges are appointed far from their residences, it can negatively affect their family life and their motivation to become a judge, as women have more family responsibilities than men.

Some cases have been reported where, despite the remote appointment of women judges, the family cannot move to the new location and women bear the burden of long daily travels. "I always desired to become a judge - explains a first instance woman judge - but I am appointed far from my family and I need 3 hours to go to work and 3 hours to come back. I hardly manage to take care of my family. This is the reason why many women I personally know, with sufficient skills and qualification, are reluctant to become a judge. They see my example, and they are demotivated." This can be explained by several factors, firstly by gender stereotypes existing in the society where man is considered the primary breadwinner. Another factor can be low remuneration in the judiciary. Indeed, it is difficult for a family to follow a woman in her new workplace, since the financial benefits are not sufficient to cover family needs. Thus, if the spouse has economic activity in the family's primary location, mostly it's his activity that will be prioritised.

Indeed, 43% of the survey participants agree and 29% strongly agree with the statement that to become a judge in Armenia women need, more than men, to be supported by their family. Moreover, 67% of participants agree and 22% strongly agree with the statement that in Armenian society, the primary responsibility for taking care of children/family/household chores is imposed on women. The burden of family care is similarly borne by women judges, compared to other women in Armenian society according to 80% of survey participants, among them the majority (almost 66%) are men.

The barriers faced by women in the judiciary are similar to those encountered in other areas of public life: balancing work-life commitments, persisting gender stereotypes, the burden of unpaid family care. As identified by the UN Special Rapporteur on the Independence of Judges and Lawyers⁹⁴, persistent gender stereotypes lead to discriminatory treatment of women in the justice system, including women judges. Even where direct legal and policy barriers or restrictions on women's full and equal participation in the judiciary no longer exist, serious deficits of gender diversity persist. Gender stereotypes and attitudinal barriers influence greatly women's underrepresentation in the judiciary. Participants of the first Geneva forum Women and the Judiciary⁹⁵ confirmed that prevailing gender stereotypes, norms and roles often play a significant role in preventing women's full and equal participation in the judiciary.

Armenia's Gender Policy Implementation Strategy and Action Plan (2019–2023) highlights the need to address gender stereotypes that limit women and men to defined social, domestic, and economic roles. Women's equality rights are recognised, but attitudes about acceptable roles for women and men need to be overcome for women to enjoy their rights fully.

Findings from surveys on social norms provide some insights into prevailing attitudes in Armenia on gender equality, stereotypes, and divisions of domestic and productive roles between women and men. A United

94. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaut on the independence of judges and lawyers, A/HRC/17/30

95. "Women and Judiciary" 2013 Geneva Forum no.1 of Judges and Lawyers convened by the International Commission of Jurists

Nations Population Fund 2016 survey⁹⁶ found that in Armenia gender attitudes strongly associate the breadwinner role with men. This situation may limit the support from other family members for women entering the labour force. The situation also results in the fact that man's role for sharing family responsibilities is less valued and the main burden of unpaid care work is borne by women.

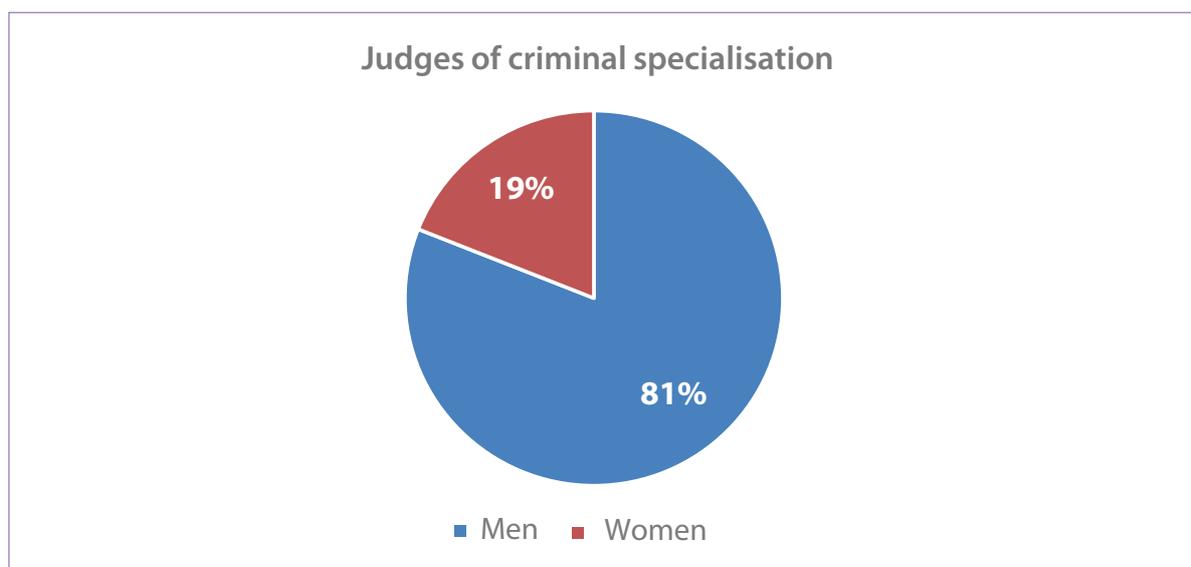
According to the same survey, gender norms influence the division of everyday labour. Irrespective of having work outside of the home or not, women are tasked with most domestic activities. These gender divisions often start at a young age. Girls are subjected to more limitations on their movements outside of the home, and are more engaged in household duties such as cooking, cleaning, doing groceries, making coffee, and taking care of younger siblings. As many as 85% of male respondents admit that their role in childcare is as a helper and their main responsibility is to be providers (89.9%). Over half of male respondents (54.8%) believed they spent too little time with their children due to the number of hours they had to devote to paid work. Relying on this stereotype, men justify spending little of their time caring for children, arguing that on account of work they cannot do that and that their role is limited to that of a provider. Indirectly, this also confirms the gender segregation existing in the labour market and more limited opportunities for women to provide for their families financially. At the same time, only half of the surveyed men would spend more time with their children if the work permitted. Hence, work is not the only cause of spending comparatively less time on childcare for men.

The issue of persisting gender stereotypes in Armenian society has been highlighted by the CEDAW Committee in its fifth and sixth periodic reports of Armenia.⁹⁷ Indeed, the Committee expressed its concerns about persistence of discriminatory stereotypes concerning women and men's roles and responsibilities in the family and in society, undermining women's social status and their educational and professional careers.

8.2.2. Reluctance to occupy the positions traditionally held by men

During in-depth interviews, the existence of differentiated attitudes toward women and men judges has been revealed regarding choosing the field of work. One of the male criminal judges noted that despite the equal rights and formally equal opportunities, there is reluctance, sometimes from women judges themselves, to examine criminal cases, because of the nature of the disputes and close contact with the criminals. "We have 3 women in the Criminal Court of Appeal who are professionals and are very respected members of judiciary – explains the interviewee - but my understanding is, that our society expects women judges examining mostly civil and administrative cases, but for the criminal cases the judge, in their view, should be a man, which is one of the reasons having fewer women examining criminal cases."

The data shows that in all three instances of Armenian judiciary there are in total 85 judges of criminal specialisation and only 16 (i.e. 18.8%) are women judges. Among 16 female judges of criminal specialisation 12 are in the first instance Courts, 3 – in the Court of Appeal and 1 – in the Court of Cassation.



96. UNFPA, Men and Gender Equality in Armenia, Report on Sociological Survey Findings, 2016 <https://bit.ly/2XDzAZd>

97. Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fifth and sixth periodic reports of Armenia, 2016. Para.14 <https://www.refworld.org/docid/583863b34.html>

There is a significant gender imbalance in other specialised courts as well. Indeed, among 45 administrative judges in Armenia (all instances) only 9 (20%) are women - 5 in 1st instance, 2 in the Court of Appeal, 2 in Cassation Court.

Studies from other countries also revealed that while women do become judges, they are often placed in the civil divisions because of perceptions around their “meticulousness, good writing and communication abilities, congeniality, and emotional nuances” that were thought to serve them well in mediation and dispute resolution roles. Male judges were frequently associated with alleged masculine qualities such as “tough”, “energetic”, “authoritative” and “intimidating”. Interestingly, many of these stereotypes were shared by women judges themselves, with younger women judges suggesting that they would avoid working in the criminal division because they could not stand the “horrifying” and “bloody” photos of murder cases and the “dark” execution scenes or the “weeping of family members”.⁹⁸

Some research has highlighted the phenomenon of “adverse incorporation” whereby women are included in the judiciary but on unequal terms. For example, gender stereotypes influence women judges’ assignments to positions in family or juvenile courts, while women are excluded from certain experiences and responsibilities, and thereby prevented from being groomed for leadership positions.⁹⁹In such circumstances, women often do not “even realise this exclusion is taking place until it is too late.”¹⁰⁰Moreover, studies identify a “glass cliff syndrome” whereby women are given precarious projects within the judiciary. Glass cliff syndrome was described as a phenomenon of women being likelier than men to achieve leadership roles when the probability of failure is higher. These are high-risk leadership assignments for which women and diverse leaders may take the blame if the organisation or situation does not rapidly improve under their leadership.

As observed, the stereotypes existing in the society about “women’s” and “men’s” job and unconscious gender bias is persistent in the justice sector, translated into labour division and differentiated expectation from women and men. As identified in the report by the UN Special Rapporteur on the independence of judges and lawyers, pervasive and persistent gender stereotypes lead to discriminatory treatment of women in the justice system, including women judicial officers.

8.2.3. Barriers to women’s advancement in the justice sector

Several studies point out that judges’ selection mechanism to the highest courts can often advertently or inadvertently discriminate against women. The core finding of research studying the highest courts in 50 democracies is that the strongest predictor of women’s presence in the high court is whether the selection process is “exposed” versus “sheltered”. The selection process is exposed in cases where the selectors are elected, visible and accountable to the public and are therefore able to claim credit for their actions in diversifying the bench. Conversely, the selection is sheltered when it’s undertaken by a group of unelected people or persons without public scrutiny (for instance by a non-partisan nominating commission, such as a judicial commission), and the selectors who make the appointment are thus sheltered from voters and lack incentives to claim credit for their actions.¹⁰¹The researchers found that women are more likely to be appointed through exposed selection processes and highlight that this finding applies to the highest courts.

The 2016 Study has made some conclusions on Council of Europe member states - when comparing the average percentage of women according to the appointment method, there seemed to be no clear-cut link. Countries where the head of state appoints judges had on average 35.3% women judges, while countries where the head of government appoints them had 27.8% women judges. Countries where the high council of the judiciary appoints judges had on average 32% of women judges and countries where another entity appoints them had 34.9% of women judges.¹⁰²

In Armenia, in order to appoint the Presidents of the first, second or third instances (in case of the Court of Cassation only Presidents of the Chambers are appointed, the Presidents of the Court of Cassation is elected), the Judicial Department submits to the Supreme Judicial Council the list of candidates, 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

98. Chunyan Zheng, Jiahui Ai and Sida Liu, “The Elastic Ceiling: Gender and Professional Career in Chinese Courts”, *Law & Society Review*, vol. 51, No. 1 (2017)

99. ICJ, “Women and the Judiciary”, p. 17.

100. Virtue Foundation, “Senior Roundtable on Women and the Judiciary”, p. 25.

101. Valdin and Shortell, “Women’s Representation in the Highest Court”, p. 14.

102. Balanced Participation of women and Men in Decision-Making, Analytical Report – 2016 data, Council of Europe Gender Equality Commission.

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, who confirms the appointment. Where the President of the Republic fails to carry out the appointment, the President of the Republic's decree on appointing the relevant candidate shall enter into force by virtue of law. (Articles 121, 130 and 134, 135 of the Judicial Code).

The participants of the qualitative study did not raise any concern regarding transparency and fairness of the process. Only a few participants pointed out the lack of policy ensuring the gender-balance in senior appointments. Based on their perception of internal dynamics and attitudes within the judiciary, focus group participants predict the impossibility of adopting such policy for at least the next 10 years. Among the survey participants, 46% think that the rule of appointing judges at senior positions in the judiciary needs to be changed, among this 46%, 61% are women, 39% are men, however, based on the discussions, the reasons for the change are generally not linked with the concerns related to gender imbalance.

As one woman judge explained during the focus group discussion, the promotion lists are mainly composed by men - she takes an example the last promotion lists, both for the Court of Appeal and Cassation Court, consisted mostly of men.

Occupying a senior position in the judiciary is more difficult for women according to only 14% of survey participants, however, it's interesting to note that among them the majority - 92.9% are women and only 7.1% are men. At the same time, 49% thinks, that occupying a senior position in the judiciary is equally accessible for women and men, while 34% thinks it's equally difficult for women and men. The results seem surprising considering that senior position in the Armenian judiciary are mainly occupied by men and only 11.1% of senior judicial officers are women.

Regarding the attitudes towards women's leadership, it seems that it's positively perceived as only 21% of survey's participants the majority of them – men, believe that men are proven to be better managers in the judiciary than women, and 79% disagree with this opinion. At the same time, 79% of survey respondents consider women judges as ambitious as men to take high-ranking positions in the judiciary.

54% of survey participants consider that Armenian society expects men to succeed more in professional careers than women, however, 56% disagree or strongly disagree with the opinion that the profession of a judge is perceived to be more suitable for men than for women.

Some of the participants highlighted the presence of two women Presidents of the Chambers in the Court of Cassation. It should be noted that they are only two women Presidents of the Courts in the judiciary of the country, which indicates that there are several factors at play that inhibit the rise of women to positions of power in the sector, lack of development opportunities and gender bias in promotions. However, for the first time since February 2021, the position of the President of the Court of Cassation, elected by the Parliament, is held by a woman, which indeniably constitutes a positive development.

Interestingly, 36% agree or strongly agree with the opinion that senior positions in the judiciary are less appealing for women because of the family responsibilities, as 64% consider that these positions are also appealing to women despite of family responsibilities – the presented position is almost evenly shared by women and men survey participants.

However, one of the factors mentioned during the focus group discussions as preventing women from occupying Presidents' positions is the additional burden of organisational and administrative tasks, requiring extra time. The interviews also revealed that the lack of time is a significant constraint for judges to occupy leadership positions, especially for women. Many women judges confirm that they are already overloaded with their functions and are not ready to accept additional responsibilities. A woman judge considers that "being a President of a Court is not desirable for women, since they do not imagine how they can manage the additional responsibilities and at the same time, take care of the family." At the same time, family responsibilities have never been mentioned as an obstacle for men judges in order to occupy senior positions.

Time poverty emerges as a barrier in many countries for women to standing out for positions of advancement. Indeed, many women consider time poverty as a barrier to advancement in the judiciary; unlike their male counterparts, women judges often struggle to balance work and family responsibilities. The burden of administrative tasks related to the judiciary's managerial position makes it less attractive to women; thus women often choose to refuse advantages linked to the high positions and spend more time with children and family.

Participants also expressed their concerns about the risk of tensions that the leadership position generates since it requires reconciling different groups' interests within the judiciary. According to them, women try to avoid the decision-making positions by the fear of such tensions within the system.

It is interesting to observe that often the low representation of women is attributed to women themselves. A female representative of the Court of Cassation reports that she didn't face any difficulty as a woman to advance in her career. In her opinion, opportunities are equal, but women do not want to carry the heavy burden of the position of President. The same opinion is shared by other participants, including the representative of SJC.

It can be concluded that the representatives of the judiciary do not see barriers for women's advancement to the senior positions in the judiciary, considering that everyone has the same opportunities; they ascribe the low representation of women to women's lack of will and desire. The qualitative study demonstrates that the obstacles faced by women, conditioned by external factors and stereotypes in the society, as well as internal attitudes within the judiciary, are not acknowledged within the system, including by women who succeeded in attaining the highest positions. Moreover, the discussions, as well as the results of the quantitative study show that the low representation of women in the judiciary is not seen as an issue by the representatives of the judicial system. In the discussions they refer to very few examples of women's leadership as a demonstration of acceptance of women by the system. The representatives of the judicial system describe women as perfectly able to handle any task, including management and leadership obligations, however, the expressed opinions are not translated into the reality of the judiciary where women are under-represented at all levels, especially at senior positions.

Experts having taken part in the qualitative study think that the reason of gender imbalance at senior positions is the low level of trust towards women as Court Presidents, which is an echo of the perceptions in a wider society, considering women primarily as responsible for the family.

Several other studies from different countries point out male judges' attitudes, highlighting three main ways in which gender stereotypes about women may affect women's hiring and career advancement and ultimately exclude large numbers of women from leadership positions. First, the "deeply held cognitive association connecting women to the home and family continually affects the workplace assumptions made by employers".¹⁰³ Second, assumptions about women's and men's work styles, character traits and job competencies tend to undermine women's opportunities to be promoted to the managerial positions. Third, because some jobs are consciously or unconsciously perceived as male jobs, females will be evaluated less favourably for those positions.

Reluctance towards women, and sometimes from women themselves, for holding high managerial and leadership positions in the judiciary, is greatly influenced by gender stereotypes and inequalities existing in the wider society translated in explicit or implicit gender bias in the judiciary, which hinders career promotion for women and their equal representation in the management positions.

8.2.4. Barriers related to attitudes and perceptions on gender equality within the judiciary

According to the quantitative study, 40% think that more women in the judiciary, including at the senior positions will not change anything. Among this 40%, 33.3% are women, 66.7% are men. 42% consider that women's increased participation in the judiciary will help to break gender stereotypes and will make the judiciary more gender-sensitive in its work. The rest of the participants do not know or are not interested in the possible impact of gender balance on the judiciary.

35% of survey participants are not against increasing the number of women at the senior positions of the judiciary, however, they think that it will not change anything substantially. Among those who believe so, 61.3% are men. 29% think that increasing the number of women at the judiciary's senior positions is an important step towards more gender equality in the system. Among this 29%, 84.6% are women, 15.4% are men. 36% consider that women's participation at the judiciary's senior position is not an issue that needs to be addressed.

Within the qualitative study, the participants expressed their opinion about the benefits of gender-equal judiciary. Some of them mentioned that women could bring a different perspective to the system. "When discussing legal issues, women sometimes have different opinions which is related to women's nature and psychology. I am sure that the difference of opinions ensures good discussion and better solutions" - ex-

103. Joan C. Williams, *The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defend the "Cluelessness" Defense*, cited by JUSTIN D. LEVINSON & DANIELLE YOUNG *Implicit Gender Bias in the Legal Profession: An Empirical Study*

plained one female judge. One of the judges' assistants stated that gender-balanced judiciary can be a good example to follow for the rest of the society. "Men and women are different, this is why I believe more women in judiciary, especially those examining the cases in 3 or 5 judges, will help to find the best balance and come to the best solution." – stated one female judge. The majority of the students having participated in focus group discussions consider that women judges can "bring new quality to the decisions." However, part of these students mostly sees the benefits of women's participation in examining family disputes and other gender-sensitive issues.

Despite some opinions about the positive aspects of gender balance in the judiciary, most of the judiciary representatives consider that increased involvement of women will not make significant impact or will not have important benefits for the judiciary. Some participants highlighted the fact that women also have gender stereotypes and only increased numbers cannot guarantee substantive change.

The participants believe that the judiciary's role is to strengthen gender equality by adjudication based on the elimination of gender discrimination, ensuring procedural rights and opportunities for everyone. Also, there is a consensus within the judges and assistants that the judiciary accomplishes this role perfectly.

To understand the participants' attitudes and perception on different issues, questions have been asked on several topics, such as the need for internal complaint mechanism on sexual harassment within the judiciary. The majority of the participants representative of the judiciary do not see the necessity of such a mechanism. Several arguments have been advanced, among them, the absence of sexual harassment within the system - "Sincerely, I do not understand why we are discussing this question. We cannot have such problems in our culture, maybe in other systems it is necessary, but in the judiciary there is no need for it" – stated one male judge. Many participants said that they "never heard" about sexual harassment in the judiciary; thus, there is no need for any complaint mechanism. A Court of Appeal judge explained - "Complaint mechanisms are needed when there is an issue, a conflict to solve, but we do not have such cases, so there is no need to have complaint mechanisms." Many participants stated that the cases of sexual harassment could only be addressed by criminal justice and they "cannot imagine what kind of preventive processes will work."

Students participating in the discussion stated that they "cannot imagine sexual harassment in the judiciary." Many participants prefer to solve any issue by direct contact with the supervisor, as they believe that it's the most effective way to deal with any internal issue. Others prefer to assess the need of an internal complaint mechanism by surveying the members of the judiciary and asking for their opinion, some of them evoked the possibility of an anonymous survey.

Only a few representatives of the judiciary and NGO representatives, admit the need for the complaint mechanism on sexual harassment. "Other issues can be discussed and dealt within the judiciary with different officials, but women are ashamed to talk about sexual harassment. Moreover, in our society, women are afraid to talk about it, because they will be blamed." – explains an NGO representative. "Since there is nowhere to apply for these cases, women will not talk about it and the cases will not be revealed – adds another representative of an NGO - women should be sure, that their case will not be disclosed and they will get the proper protection."

Only a man judge expressed the need for the complaint mechanism on sexual harassment. "Talking about this issue is a taboo in our society in all the systems. I do not want to talk in details, but the issue exists in relation to judge and their staff or citizens. I am aware that judicial servants use their authorities, but our society does not understand that this behaviour is a sexual harassment or does not want to talk about it. That is why we need complaint mechanisms in order to prevent sexual harassment,"- he stated.

Istanbul Convention 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."¹⁰⁴ Sexual harassment is sex-based and sexual behaviour that is unwelcome, unreasonable and offensive to its recipient.¹⁰⁵

Sexual harassment in the workplace could take several forms: explicitly sexual verbal and nonverbal behaviours; insulting verbal and nonverbal behaviours that are not sexual but drawing on gender-based beliefs, including sexist hostility; sexist humour or jokes; unwanted sexual attention; sexual coercion (requests or threats for sexual cooperation in return for job security or benefits).

While unequal power relationships exist in many sectors of society, they tend to appear the most in the workplace, where hierarchies are common. Both women and men may experience sexual harassment in

104. Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 40. <https://rm.coe.int/168008482e>

105. ILO, general Observation 2003. <https://bit.ly/38N3yAp>

employment, but mostly women experience it and they tend to be more vulnerable to harassment by men, because relative to men, more women hold lower-authority and lower-status jobs. Sexual harassment creates a hostile working environment and can also endanger the continued employment of the harassed person by negatively affecting work performance, undermining a sense of personal dignity, and in some cases causing physical and emotional illness.

OECD Toolkit for Mainstreaming and Implementing Gender Equality, implementing 2015 OECD Recommendation on Gender Equality in Public Life¹⁰⁶ recommends designing measures fostering a gender-sensitive working culture in the judiciary. This culture, among other elements, implies the existence of preventive processes and sound complaint mechanisms to deal with sexual harassment cases.

Council of Europe Recommendation on preventing and combating sexism¹⁰⁷ notes that sexism¹⁰⁸ constitutes a barrier to the empowerment of women and girls, who are disproportionately affected by sexist behaviour; and further noting that gender stereotypes and inherent biases shape the norms, behaviour and expectations of men and boys, and therefore lead to sexist acts. The recommendation acknowledges that sexism and sexist behaviour are perpetrated at the individual, institutional and structural levels, and experienced with detrimental effect at all three levels, and that measures to prevent and combat sexism should therefore be taken at all levels and recommends member states to take measures to prevent and combat sexism and its manifestations in public and private spheres, and encourage relevant stakeholders to implement appropriate legislation, policies and programmes.

106. <https://bit.ly/39E33Ys>

107. Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism. <https://rm.coe.int/168093b26a>

108. The recommendation defines sexism as 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: violating the inherent dignity or rights of a person or a group of persons; or resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or creating an intimidating, hostile, degrading, humiliating or offensive environment; or constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or maintaining and reinforcing gender stereotypes.

9. Opportunities for women’s full and equal participation and career advancement in the judiciary

9.1. Supportive social network

Survey participants were asked about what they consider necessary to occupy a senior position in the judiciary. Only 25% think that it is important to be supported by the social network within the system. As for gender-segregation of this response, the majority (78.3%) is women. Also, 16% consider that in order to occupy a senior position in the judiciary women need, more than men, to be supported by their family, among these respondents, 71.4% are women. However, most survey respondents – 59% think that to occupy a senior position in the judiciary, women and men only need to comply with the objective selection criteria and succeed in the competition, the support of the social network, or the family is not important. Regarding the access to social networks, the majority of survey respondents 65% consider that male judges do not specifically have more access to these networks, however 35% think the opposite.

The qualitative study reveals divided opinions on women’s and men’s opportunities for accessing social networks – some of the participants think that men in the judiciary have more robust social networks, while others consider that this is the case for women as well. Among the survey participants, 35% consider that male judges have more access than female judges to the social networks within the judiciary.

According to one of the participants, a member of the SJC, “Sometimes women do not want to be in the supervisor’s position and to manage the court, where most of the judges are men.” It is widely acknowledged that the lack of role models also discourages women from joining leadership positions. Role models can play an important role, not just in encouraging women to enter the sector but also to remain in it and to seek professional advancement. Role models, mentors, solidarity and support networks have an important role in this regard.

It is interesting to note that the qualitative study participants do not find necessary establishment of the Association of Women Judges. They point out the fact that the existing Women’s Section in the Union of Judges unites women judges and addresses issues raised by them. Furthermore, participants consider that the Union of Judges is a body for all judges, and all matters concerning the judiciary should be solved together. A judge from the Court of Appeal explains - “Women are respected and heard within the judiciary, and there is no need to protect or present their interests collectively.” A female participant of the focus group discussion stated: “I really do not understand the necessity of such association, why should we differentiate ourselves from men judges, when our responsibilities, roles, and issues are the same?” Experts having participated in the interviews shared the same view, indeed, one of them stated: “all the problems woman judge can have, a man judge can also have, and the Union of Judges is the right place to discuss these issues.”

The qualitative study participants do not explicitly mention the role and achievement of the existing Women’s Section in the Union of Judges. However, 25% of survey participants indicated that strengthening the Women’s Section in the Association of Armenian Judges would encourage gender balance in the judiciary, including at the senior positions. Among this 25%, 81.8% are women. At the same time, 19% think that strengthening the Women’s Section will not change anything related to women’s participation in the judiciary. 47% of survey respondents are not interested or do not see the need for such association.

These opinions clearly demonstrate the lack of understanding of gender-specific needs in the judiciary, as well as the acknowledgement of the positive impact of women’s associations and networks, as it is widely acknowledged that collective action is one of the main drivers of change.

Only one female interviewee and one female participant of the focus group discussion stated that Women's Association would be a positive step for creating an environment for discussing gender-specific needs, such as balancing family life and work, issues related to being appointed far from the family residence, etc. The positive and successful experience of other countries having the Association of Women Judges has also been mentioned during the discussion.

Research in different countries shows that women lack the legal and political networks and connections that facilitate advancement for male judges in the judiciary.¹⁰⁹ In the selection process, selectors, especially those who are not elected, are more inclined to go with what they "know" and "feel comfortable with". In particular, male judges, whether consciously or subconsciously, tend to prefer male candidates to female ones.¹¹⁰

UN Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, in her 2011 Report draws attention to the vital role of women's associations, which contribute to the exercise of women's right of association, and are instrumental actors in gender mainstreaming, capacity-building efforts and know-how exchange. Special Rapporteur considers that such associations play an important role in know-how exchange among women judges and lawyers from a diversity of legal and judicial systems.¹¹¹

9.2. Gender quotas

61% of survey respondents consider that gender quota can be an effective mechanism to increase women's share in the judiciary, including at the senior positions. In comparison, 39% (among them majority of men - 60%), disagreed or strongly disagreed with this approach.

On the contrary, in depth-interviews with key informants, as well as focus group discussions, revealed that the majority of the participants do not agree on the necessity of gender quotas. The majority, including representatives of SJC and the Court of Cassation, consider that Armenian judiciary does not have any issue related to women's participation, therefore, according to them gender quotas are not necessary in Armenia, while it can be appropriate for the countries where women have barriers to their involvement in the judiciary. "I do not think that gender quotas are necessary, since we have all the capabilities and opportunities to become a judge and to have a promotion if we wish and work hard for that" – stated a female judge of First Instance Court.

During the interviews, gender quotas have been qualified as "artificial", "offensive" and "humiliating" to women judges, and as measures limiting the appointment of qualified candidates. This position is largely within the qualitative study participants, including students, who think that quotas alter professionalism or it's a "last resort solution" to address the problem. At the same time, students do not see any issue for women in accessing the judiciary. "We understand that we have all the opportunities and skills to become a judge – explains a female student – so, there is no need for gender quota". Another student stated: "Now we have quotas, but it is only to show to the world that we ensure women's involvement in the judiciary."

Participants of the qualitative study consider that quotas can create practical problems, for example, in case of quotas for President's position, regional Courts will not have Presidents, since most of them are only composed of men judges and the chairperson has to be elected among the Court's judges. A judge of the Criminal Court of Appeal explained - "Imagine, there is a gender quota to have a court President in our court, it would be too difficult to comply with this rule, since out of 18 judges only 3 are women. If these women do not correspond to the criteria or refuse to take the position, we can't have a President".

Participants of the qualitative study think that adopting gender quotas will result in appointing less qualified professionals. A representative of Women's Section in the Union of Judges stated: "the involvement and promotion in judiciary should only be based on skills and qualification". Interestingly, experts having participated in the qualitative study do not see gender quotas as a tool for promoting equality. "Gender quotas are negative, because professionalism is being sacrificed for the idea, that hundred years ago women and men did not have equal opportunities. The quota is not a mechanism ensuring equality; it is a forced system obliging to change a gender picture influencing the professionalism – explained the expert and added - women and men have equal opportunities to succeed in the judiciary."

Only a few participants have expressed a positive attitude towards gender quotas and stated that it could be a useful tool to increase women's participation at all levels of the judiciary. One participant expressed the

109. Virtue Foundation, "Senior Roundtable on Women and the Judiciary", pp. 17–18.

110. Virtue Foundation, "Senior Roundtable on Women and the Judiciary", p. 29.

111. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30. <https://undocs.org/A/HRC/17/30>

following opinion: “Armenian mentality can hardly accept women as a judge or as a President, since women are mostly evaluated as being responsible for family and children. That is why in certain cases we need these quotas in Courts, in the SJC and in the commissions established by the General Assembly of judges.” Another participant stated: “Gender quotas will increase women’s participation in the judiciary, which will result in a better quality of decisions in SJC, Courts and General Assembly of Judges.”

The study shows that the large majority of judges do not have any will for the imperative change in order to establish gender balance, including for senior positions. However, as mentioned previously, Armenia already adopted gender quotas for the judiciary. Indeed, according to the article 109, part 5 of the Judicial Code¹¹², the gender balance should be taken into account when compiling the list of candidates for judges - where the number of the judges of either sex is less than 25% of the total number of judges, up to 50% of the places in the list of contenders for judge candidates shall be reserved to the persons of the less represented sex. Moreover, the Judicial Code establishes gender quota for the Supreme Judicial Council, indeed among 5 judge-members of the SJC, the representative of one sex must be as restricted as possible to maximum three members (article 76, part 3, exceptions stipulated in the part 12 and 13 of the same article)¹¹³. The quota does not apply to the members elected by the National Assembly.

Gender quotas, recommended by various international legal instruments, are seen by the judges as a discriminatory and unnecessary measure. Moreover, the interviews show that the concept of affirmative action is misunderstood and seen as a negative approach – indeed, the study shows that gender quotas are unreasonably seen as offensive and humiliating, and compromising the appointment of qualified professionals. Some women judges declare not willing to access to high leadership positions by dint of gender quotas.

Participants of the first Geneva forum Women and the Judiciary¹¹⁴ spoke about how gendered assumptions as to women’s roles in society have affected how they are treated by male colleagues and authority figures. For example, some participants noted how women’s appointment or promotion within the judiciary is often discussed in terms of assumptions that women are children’s primary caregivers and will stop working or reduce work levels if and when they become mothers. A number of Forum’s participants expressed the view that the implementation of quotas may be a necessary measure to advance women judges’ recruitment and appointment. They highlighted the importance of quotas as effective temporary measures through which it may be possible to overcome and redress significant historical gender imbalances within the judiciary. They emphasised that quota systems must operate to ensure that judicial appointments are based on qualifications and skills.

Balancing the composition of a country’s judiciary and ensuring women’s full and equal participation in practice require dedicated commitment and action. According to CEDAW Committee¹¹⁵, it may not be possible to effectively overcome considerable deficits in women’s representation and participation without the establishment of quota systems. Thus, quotas as temporary special measures are recommended to ensure in practice women’s equal enjoyment of the right to hold judicial office.¹¹⁶ Indeed:

- ▶ CEDAW’s Article 4 calls the State parties to the “adoption of temporary special measures aimed at accelerating de facto equality between men and women.”¹¹⁷
- ▶ CEDAW’s General Recommendation No 23 calls the States to institute temporary special measures for ensuring women’s equal participation in decision-making, including the judiciary.¹¹⁸
- ▶ CEDAW Committee in its General Recommendation No 25 also calls the State parties to adopt temporary special measures aimed at accelerating the improvement of the position of women to achieve their de

112. Judicial Code of the Republic of Armenia <https://www.arlis.am/DocumentView.aspx?DocID=146620#>

113. Judicial Code of the Republic of Armenia, Article 76, part 3: 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. Part 12: Where, after considering the replacement of all the candidates having received the maximum number of votes through the process prescribed by part 11 of this Article, the requirements prescribed by parts 1-3 of this Article are violated anyway, the process shall be repeated, restricting gender representation to four members. Part 13: Where, as a result of the process provided for by part 12 of this Article, the vacant positions are failed to be filled, the process prescribed by part 11 of this Article shall be repeated once again, without considering the requirement prescribed by part 3 of this Article. Where, in case of repetition, the vacant positions are failed to be filled again, a new election shall be held.

114. “Women and Judiciary” 2013 Geneva Forum no.1 of Judges and Lawyers convened by the International Commission of Jurists

115. CEDAW General Recommendation 23, paras 15

116. CEDAW General Recommendation 23, paras 15 and 43; Beijing Declaration and Platform for Action, para 190(a); Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30

117. These measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

118. CEDAW GR 23, para. 15.

facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women.¹¹⁹

- ▶ CEDAW General Recommendation No 33 calls the State parties to “confront and remove barriers to women’s participation as professionals within all bodies and levels of judicial systems, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary”.¹²⁰
- ▶ Balanced participation of women and men in public decision-making¹²¹ is among the strategic objectives of the Council of Europe’s Gender Equality Strategy for 2018-2023¹²² including via promoting gender quotas, combatting gender stereotypes and improving gender-sensitiveness of decision-making environments.¹²³

Gender quotas play an important, yet insufficient role in realising gender equality: they are critical to help to realise the right of women to be represented in the high leadership positions in the judiciary and thus, necessary for the higher legitimacy, representativeness and democracy of the judiciary. A more representative decision-making body produces more gender-sensitive outcomes. Council of Europe’s Recommendation¹²⁴ on the “Balanced participation of women and men in political and public decision making” highlights the importance of “critical mass” of 40% of the opposite sex in any decision-making body. Indeed, it is acknowledged that every woman and man have different experiences in life that lead to different perspectives, which can enrich the decision-making process.

CEDAW Committee, in its Concluding Observations on the combined fifth and sixth periodic reports, specifically calls Armenia to adopt measures, including temporary special measures, in accordance with Article 4, paragraph 1, of the Convention and the Committee’s General Recommendation No. 25 (2004) on temporary special measures and General Recommendation No. 23 (1997) on women in political and public life, in order to accelerate women’s full and equal participation in elected and appointed bodies, including the judiciary.¹²⁵

9.3. Policy supporting work-life balance

Men’s and women’s ability to work as legal professionals is not equally affected by their family obligation. Worldwide, women face an additional hurdle in being involved in or promoted in the judiciary. Often, women refuse promotions, as a promotion may involve relocation, possibly to a distant area. Unlike their male colleagues whose families will easily move with them to the new job location, female spouses cannot usually expect their spouses to be uprooted.¹²⁶ Researches highlight that women who have entered the profession have often benefited from a supportive family network.¹²⁷

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 issue has been discussed within the qualitative study during interviews and focus group discussions. All the participants agree that work-life balance is not ensured, since judges are too overloaded with the cases, indeed, according to some testimonials, judges often treat up to 1500 cases a year.

Participants expressed the need for the policy to ensure better work-life balance, such as flexible working hours, however, the latest amendments to the Judicial Code, which are still in the process of elaboration,¹²⁸ stipulate new regulations and establishes fixed working hours, which, according to the participants will create problems for judges with family responsibilities.

Participants expressed their concerns about the workload and noted that even flexible working hours would not be sufficient to support. Moreover, First and Second Instance judges examining criminal cases explained

119. CEDAW GR No 25, para. 15 <https://bit.ly/39lQAsw>

120. CEDAW GR No 33, para 15. <https://bit.ly/2Xw43bF>

121. Council of Europe’s Gender Equality Strategy for 2018-2023, Strategic Objective 4.

122. <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>

123. Council of Europe’s Gender Equality Strategy for 2018-2023, Strategic Objective 4.

124. See supra, note 13

125. Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fifth and sixth periodic reports of Armenia, 2016. Para.21 <https://www.refworld.org/docid/583863b34.html>

126. Virtue Foundation, “Senior Roundtable on Women and the Judiciary”, p. 29.

127. IDLO-CAWTAR, “Study on the Professional Participation of Women in the Justice Sector in Tunisia”; and IDLO, “Women’s Professional Participation in Afghanistan’s Justice Sector”, p.44.

128. According to amendments made in 2020, SJC will adopt rules on internal labor ethics for judges (a draft is currently being elaborated by SJC, the initial version includes working 8 hours a day and being present in the court each day)

that for examining motions on detention, operative-investigative measures, etc. they stay in the court at nights too. According to some participants, the solution would be to decrease the number of cases for women judges with young children in charge.

The discussions and the interviews revealed that many members of the judiciary do not have a positive approach towards maternity leave. According to the Armenian Labour Code “parental leave before the child is three years of age shall be granted at the choice of the mother (step-mother), father (step-father), grandmother, grandfather of the family or any other relatives, who are actually raising the child as well as of the employee who has been the guardian of the child. The leave may be taken as a single period or be used in parts. The employees entitled to this leave may take it out of turn. During the period of this leave, the employee shall retain his/her job/position.”¹²⁹

The qualitative study revealed that, as other judges' workload increases because of the maternity leave of a colleague, judges do not always have a positive attitude towards it. Even if they are not explicitly expressed, adverse attitudes may discourage female judges entitled to maternity leave to fully benefit from it. Even though the legislation allows, it can also discourage male judges from taking such leave.

One of the participants' suggestions to decrease workload due to the maternity leave of a colleague is to have a reserve of judges to replace the colleague on leave during her absence. Other suggested mechanisms are flexible working hours and decreased number of cases for female judges having young children, or facilities for children in the Court's premises.

Interestingly, not everyone agrees on introducing policies supporting female judges. Most of the participants were against decreasing the number of cases to female judges with young children in charge, since, according to them, this measure would be discriminatory. Indeed, participants explained that “female and male judges should accomplish equally their roles”, or “if women want to be judges, they should be ready for difficulties, if not, they should stay longer on maternity leave, return after and equally share the responsibilities”.

A SJC member explained - “during the interview we ask women or men 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. Every candidate understands the difficulties of the position”.

Qualitative study reveals the lack of awareness about differentiated needs of women and men. The neutrality and the same-approach policy prioritised by the majority of participants is, in reality, a gender-blind approach and a failure to recognise that the roles and responsibilities of women and men are different in the society and the workplace should address such disparities by creating enabling working environment in order to guarantee equal opportunities for everyone effectively. When disadvantages in a given society, such as the unequal distribution of unpaid family care is attached to gender, a gender-blind approach will not achieve substantive equality.

As the discussions revealed, most of the participants are against gender-sensitive approaches which, in contrast to the gender-blind approach, attempt to redress gender inequalities by considering the specificities of women's and men's needs. It requires paying attention to the different roles and responsibilities of women and men present in specific social, cultural, economic and political contexts. This approach is required if the objective is to guarantee substantive gender equality.

As mentioned, the specific measures to be adopted for ensuring better work-life balance for women in charge of young children have been described as discriminatory by the judges. However, according to the CEDAW Committee, identical treatment may constitute discrimination if it impairs women's rights. This occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women.¹³⁰ Indeed, CEDAW requires states parties to take all appropriate measures to ensure substantive equality between women and men. The Committee has explained that State parties must ensure that women are given an equal start (equality of opportunity) and are empowered by an enabling environment to achieve equality of results (equality of results); meaning that it is not enough for state parties to guarantee women's treatment that is identical to that of men; they must also take into account biological, socially and culturally constructed differences between women and men, which may require non-identical treatment to address those differences.¹³¹

129. Article 173 of the Labour Code of the Republic of Armenia. <https://www.ilo.org/dyn/travail/docs/961/Labour%20Code%20ENG.pdf>

130. CEDAW General Recommendation 28, para.16.

131. General Recommendation 25, para.10.

The OECD Toolkit for Mainstreaming and Implementing Gender Equality, implementing 2015 OECD Recommendation on Gender Equality in Public Life¹³², recommends gender sensitive practices in the judiciary. Measures for work-life balance systems are recognised as essential for the justice sector.

The Council of Europe, in its Recommendation on Reconciling Work and Family Life¹³³ affirms that the reconciliation of work and family life is a precondition for a meaningful quality of life and for the full exercise of fundamental human rights in the economic and social sphere. The Council of Europe recognises that it is women who most often continue to bear the principal burden of family responsibilities and that the numerous obstacles, especially social and cultural, stand in the way of a more equal sharing between women and men of their family responsibilities. The Council of Europe considers that labour market actors continue to take insufficient account of the family responsibilities of women and men and therefore recommends to member states to take action, enabling women and men, without discrimination, to better reconcile their working and family lives.

9.4. Capacity-building and awareness-raising on gender equality

Based on the survey results, 70% of the judiciary representatives have never attended training on gender equality during their career, while 23% attended such training only once, 4% - three times or more and only 3% attend gender equality trainings on a regular basis.

At the same time, 56% of survey participants consider that training on gender equality should be voluntary for the judges and assistants to judges, 14% think that such practice is not necessary at all for the judges and assistants to judges, 19% does not have an opinion or are not interested in the topic and only 11% of respondents consider that training on gender equality should be mandatory for the judges and assistants to judges. 36% of survey respondents think that the representatives of the judiciary in Armenia today do not need any awareness raising on gender equality and 33% believe that on the contrary, they need such awareness raising.

The qualitative study participants almost unanimously confirm this opinion; indeed they consider that judges are well informed on the topic and do not need additional capacity building. According to the judges, such training might be interesting for assistants to judges.

Very few judges expressed the need for such training by explaining that even the concept of gender is not correctly understood and well-received in the society, including judges, considering it as “artificial separation between women and men”, thus the training is necessary even for clarifying the basic concepts. Some judges who believe that such training can be helpful, see their need only for examining the cases of domestic violence; others think that gender equality training can be incorporated within the general training of judges. Some judges stated that the trainer should be carefully selected for such a topic and should be “someone who understands our society’s psychology.”

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 provisions¹³⁴. The Committee also calls the country to provide capacity building for the judiciary, on a zero tolerance and gender-sensitive approach to dealing with gender-based violence cases and providing assistance to victims.¹³⁵

Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul in her 2011 report¹³⁶ encourages States to design gender-sensitive interventions (including capacity-building efforts) in the justice sector to integrate gender considerations in both civil and criminal justice systems. Special Rapporteur considers that judges and all judicial affairs staff should be adequately trained and sensitised on gender equality and women’s human rights and strategies to avoid gender stereotyping.¹³⁷

132. <https://bit.ly/39E33Ys>

133. Recommendation No.R(96) of the Committee of Ministers to member States on Reconciling Work and Family Life. <https://cutt.ly/ekuQyfD>

134. Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fifth and sixth periodic reports of Armenia, 2016. Para. 11 (c) <https://www.refworld.org/docid/583863b34.html>

135. *Ibid.* para 17(d)

136. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30. <https://undocs.org/A/HRC/17/30>

137. *Ibid.* para. 93

9.5. Strategic course and action for gender equality

The judiciary in Armenia currently does not have any gender equality strategy or action plan. An action plan On Promoting Gender Balance among Candidates for Judges for 2015-2017¹³⁸ has been designed in 2015. However, this action plan was limited by defining capacity building and awareness raising activities.

The majority of the qualitative study participants stated that they do not see any need for a gender equality strategy and action plan. According to one of the participants: “the grounds for elaborating the strategy are the existence of the issues or limitations to the rights and the necessity to address them - the judicial sector does not have such issues.” According to SJC members “there is no need for a strategy or action plan on gender equality in the judiciary - if an action plan is directed to involve more women in the judiciary, nowadays women are actively involved and their number increases after each appointment of judges.”

During focus group discussions, only one female judge expressed the need for such a strategy and action plan, as according to her, it can support the participation of more women in the judiciary.

It can be concluded, that the representatives of the judiciary do not acknowledge the existence of any gender challenges, including the gender imbalance; also, gender equality in their understanding is mainly linked to women’s representation.

Furthermore, the need for gender-segregated statistics has been discussed. During the focus group discussions, some participants were indifferent to the issue. In contrast, some others found such statistics necessary in order to have the full information about women’s participation in the judiciary.

UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul in her 2011 report highlights the need to mainstreaming gender within the judiciary which implies that the multiple roles of women and men are taken into consideration in the conduct of business within the judiciary, including in the day-to-day operations and the overall planning of the judicial sector. She urges States to adopt sectorial strategies and also collect sex-disaggregated data.¹³⁹

According to the OECD Toolkit for Mainstreaming and Implementing Gender Equality, implementing the 2015 OECD Recommendation on Gender Equality in Public Life¹⁴⁰ justice sector has to develop a strategic course of action for gender equality. Indeed, the judiciary needs to identify gender gaps and to set gender equality and mainstreaming objectives across the justice sector. Also, roles and responsibilities have to be defined to achieve the objectives and to oversee their implementation. The OECD recommends involving a broad range of stakeholders within the justice and legal sector to elaborate a strategic plan for gender equality.

Court management can play an essential role by providing leadership and accountability for implementing this strategic course of action. Senior managers within the judicial organisation can be powerful actors of change by stressing the importance of gender equality and voicing their support for gender mainstreaming to the rest of the organisation.

Moreover, Council of Europe in its Recommendation on gender mainstreaming¹⁴¹ considers that one of the main strategies to achieve effective equality between women and men is gender mainstreaming, which will also result in improved decision-making and enhance the functioning of democracy. Therefore, Council of Europe recommends the member states to use gender mainstreaming in public and private sectors.

138. <http://www.irtek.am/views/act.aspx?aid=77173>

139. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30. Para 53. <https://undocs.org/A/HRC/17/30>

140. <https://bit.ly/39E33Ys>

141. Recommendation No.R (98) 14 of the Committee of Ministers to member States on gender Mainstreaming. <https://cutt.ly/IkuTtXY>

10. Addressing the obstacles: recommendation for ensuring gender equality in the judiciary of Armenia

According to the UN Special Rapporteur on the independence of judges and lawyers, developing a gender-sensitive judiciary within the broader context of the administration of justice should be a priority for the State. States should endeavour to evaluate the judiciary's structure and composition to ensure adequate representation of women and create the conditions necessary for the realisation of gender equality within the judiciary and for the judiciary to advance the goal of gender equality.¹⁴²

Special Rapporteur considers that developing a gender-sensitive justice system involves mobilising the full range of processes, mechanisms, laws and policies to strive to ensure women's human rights and achieve gender equality in society. A truly independent, impartial, transparent and reliable judiciary and legal profession must be aligned with the international legal and policy framework on women's human rights and gender equality so that it can truly strive for the application of international human rights obligations and effectively advance women's rights.¹⁴³

Improving the numbers of women in the justice sector should not be a "battle of the sexes"; efforts should not focus on women's narrow symbolic representation or should not turn into political point-scoring. The numbers do matter but increasing the raw numbers of women should not be the sole objective. Gender justice is best achieved when both women and men understand and respond appropriately to the existing gender challenges. At the same time, it is well recognised that a critical mass of women in the courts can support attitudinal change in society regarding women's role in decision-making positions.

In order to address challenges identified in the judiciary of Armenia, different measures have to be taken. The recommendations developed below seek to respond to the challenges identified within the Study and are based on several international instruments, such as General Recommendations of CEDAW Committee, CEDAW Committee's Concluding observations on the combined fifth and sixth periodic reports of Armenia, Rapport of 29 April 2011 of Special Rapporteur Gabriela Knaul on the Independence of Judges and Lawyers, OECD Recommendation on Gender Equality on Public Life (2015), OECD Toolkit for Mainstreaming and Implementing Gender Equality.

RECOMMENDATION 1: DEVELOP STRATEGIC APPROACH AND COURSE OF ACTION ON GENDER EQUALITY

Special Rapporteur on the independence of judges and lawyers recommends to the States to build sectorial strategies¹⁴⁴ in order to implement effectively and in a sustainable manner gender equality initiatives in the justice sector.

142. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30. Para.47. <https://undocs.org/A/HRC/17/30>

143. *Ibid*, para. 83.

144. *Ibid*, para. 53.

Therefore, it will be recommended for the General Assembly of Judges, in its competences of improving the operation of Courts in Armenia (article 74 of the Judicial Code), to develop a Gender Equality Strategy, as well as the Action Plan implementing the said Strategy, supported by clear objectives, targets, timelines, capacities and resources, by taking into account the following considerations in mind:

- ▶ To ensure that gender equality objectives encompass all aspects of the judiciary and address gender challenges effectively;
- ▶ To ensure that those involved in setting gender objectives have enough expertise on gender issues and understand gender challenges;
- ▶ To consider external support and broad participation of different experts and academia representatives;
- ▶ To provide actionable guidance to relevant actors for the effective implementation of Gender Equality Action Plan;
- ▶ To make available necessary financial, material and human resources (working time-of) for the implementation of Gender Equality Action Plan;
- ▶ To build incentives for increasing judges and staff compliance with gender equality objectives;
- ▶ To foresee mechanisms to hold court management accountable for achieving gender equality goals. Creating accountability involves, first of all, formal mechanisms, such as integrating gender equality objectives within the job descriptions of relevant officials and second - informal mechanisms, for example how the objective of gender equality is kept on the court agenda, how the managers demonstrate their support to gender equality by their actions, etc.
- ▶ To set up a platform for discussion and planning where judges and court staff can present ideas aimed at promoting gender equality;
- ▶ To raise awareness and widely disseminate the Gender Equality Strategy and Action Plan in the sector.

Mainstreaming gender within the judiciary requires relevant gender statistics, which are an essential tool for advancing gender equality. Gender-segregated data should be regularly collected, publicised and analysed to draw conclusions regarding women's participation in the justice sector related to their entrance into profession, retention and promotion rates. According to the Special Rapporteur on the independence of judges and lawyers sex-disaggregated data has to guide efforts to plan and build sectorial strategies¹⁴⁵

Moreover, a mapping of major issues affecting women as users of the judiciary should be carried out (for example as victims in the civil and criminal jurisdictions; as witnesses, particularly in cases of sexual and gender-based violence; and as offenders).¹⁴⁶

RECOMMENDATION 2: INCREASE WOMEN'S PARTICIPATION IN THE JUDICIARY

UN Special Rapporteur on the Independence of Judges and Lawyers recommends promoting women's participation from various segments of society as key actors within the justice sector in their roles as judges, including at the senior positions.¹⁴⁷ Special rapporteur urges the States to ensure in the proposed lists of judicial candidates for appointments and promotions adequate representation of women and minorities at all levels within the judicial system.¹⁴⁸

CEDAW Committee, in its Concluding observations on the combined fifth and sixth periodic reports, recommends Armenia to adopt measures, including temporary special measures in order to accelerate women's full and equal participation in the judiciary; the Committee also recommends increasing the availability of training and capacity-building programmes for women wishing to hold public office.¹⁴⁹

To attract and recruit women to judicial positions, firstly it is important to identify barriers to women's full and equal participation in the judiciary. Further, the following actions can be considered to be accomplished by the General Assembly of Judges:

- ▶ Build a pool for future judicial candidates through active outreach activities to law students and bar associations, especially targeting women from diverse backgrounds and ensure long-term relations with such associations;
- ▶ Identify female judicial role models to inspire women from diverse backgrounds to apply for judicial office;

145. *Ibid*, para.53, 91.

146. *Ibid*, para. 57

147. *Ibid*, para. 87

148. *Ibid*, para. 87

149. Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fifth and sixth periodic reports of Armenia, 2016. Para.21 <https://www.refworld.org/docid/583863b34.html>

- ▶ Build and communicate a gender-balanced image of the judiciary, and eradicate negative conceptions around judicial work (e.g., lack of flexible working, isolation, etc.).

Also, it will be critical for the Supreme Judicial Council, based on its function of compiling and approving the list of judges candidates, including the promotion, to consider the following actions for the judicial selection and appointment procedures:

- ▶ Establish the requirement of gender balance into the composition of evaluation commissions checking the results of the written examinations for qualification;
- ▶ Provide training on gender-sensitive recruitment practices to the members of evaluation commissions in order to mitigate potential implicit gender bias within selection and appointment procedures;
- ▶ Develop gender-sensitive interviewing guidelines for the selection panel;
- ▶ Provide feedback to unsuccessful candidates.

Regarding the training development and capacity building, the Training Commission of the General Assembly of Judges should be responsible.

RECOMMENDATION 3: DEVELOP EQUITABLE CAREER ADVANCEMENT MECHANISMS IN THE JUDICIARY

CEDAW Committee, in its Concluding observations on the combined fifth and sixth periodic reports of Armenia, is concerned about persistently low levels of participation of women at the highest levels of decision making in the judiciary,¹⁵⁰ and recommends Armenia to introduce a gender parity system for appointments and accelerated recruitment of women in senior positions.¹⁵¹

In order to promote women's full and equal participation at the senior level in the judiciary, the following actions should be considered for the General Assembly of Judges:

- ▶ Ensure that Court management pro-actively supports women in career advancement opportunities from the entry level;
- ▶ Implement a system of mentoring, as well as leadership and capacity development programmes for women and men;
- ▶ Promote the stories of influential female and male leaders within the judiciary on how their career path has been shaped and publish these success stories among all judiciary members.

Moreover, the following actions should be considered for the promotion process for the Supreme Judicial Council:

- ▶ Ensure that proposed lists of judicial promotions provide an adequate representation of women;
- ▶ Include 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;
- ▶ Provide training on gender-sensitive recruitment practices to the members of the evaluation committee in order to mitigate potential implicit gender bias within promotion procedures;
- ▶ Develop gender-sensitive interviewing guidelines for the interviewer's panel;
- ▶ Provide feedback to unsuccessful candidates.

RECOMMENDATION 4: PROVIDE CAPACITY BUILDING AND AWARENESS RAISING ON GENDER EQUALITY

Supporting gender equality in the justice sector extends beyond gender-balance in the judiciary and also requires gender competence. CEDAW General Recommendation No.33 highlights the importance of capacity building in the justice sector to overcome stereotyping and gender bias, which have far-reaching consequences for women's full enjoyment of their human rights. Stereotyping and gender bias impede women's participation in the judiciary, but also women's access to justice in all areas of law, affects the credibility of women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws.¹⁵²

UN Special Rapporteur on the Independence of Judges and Lawyers stresses on the importance of mainstreaming gender in the judiciary by raising awareness among judges and court officials on women's human rights and the prohibition of discrimination. Special Rapporteur considers that judges and all judicial affairs staff

150. *Ibid*, para.20

151. *Ibid*, para. 21

152. CEDAW GR No.33, para 26.

should be adequately trained and sensitised on gender equality and women's human rights and on strategies to avoid gender stereotyping.¹⁵³

CEDAW Committee, in its Concluding observations on the combined fifth and sixth periodic reports recommends that Armenia implement educational and awareness-raising measures on gender equality aimed at the judiciary and sensitise the judiciary, on the need to protect women's human rights.

Based on the above considerations, the following actions should be considered by the Training Commissions of the General Assembly of Judges (Article 74, (5-2) of the Judicial Code), also by the Supreme Judicial Council (Article 89, (36) (37) (38) of the Judicial Code)

- ▶ Ensure awareness-raising and capacity-building programmes in gender equality for all justice system personnel to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system;
- ▶ Include other professionals, in particular health-care providers and social workers, who potentially play an important role in cases of violence against women and in family matters, in the awareness-raising and capacity-building programmes;
- ▶ Promote a dialogue on the negative impact of stereotyping and gender bias in the justice system;
- ▶ Encourage advocacy to address stereotyping and gender bias in justice systems, especially in gender-based violence cases;
- ▶ Provide capacity-building programmes for judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments relating to human rights, including the CEDAW Convention and the jurisprudence of CEDAW Committee, and on the application of legislation prohibiting discrimination against women;
- ▶ Develop guidelines and provide training for promoting gender-sensitive working culture within courtrooms.

RECOMMENDATION 5: ADOPT WORK-LIFE BALANCE SYSTEMS IN THE JUDICIARY

The study revealed that women bear more than men the burden of domestic care and responsibilities and thus, face more difficulties with balancing work and private life, which can impede their career advancement in the judiciary. Therefore, it is crucial to create enabling working environment taking into consideration specific needs of women and men and mobilising workplace support to provide equal opportunities for participation and career advancement to women and men.

In order to design policies in the judiciary to support work-life balance, including at most senior levels and across different occupational groups, the following actions should be considered by the Supreme Judicial Council based on its competence of improvement of regulatory legal acts pertaining to the judiciary via submitting recommendations to the competent State bodies (Article 89 (19) of the Judicial Code)

- ▶ Make the perception of work-life balance systems part of the discussion on gender equality and present such measures as an opportunity for the judicial organisation to learn about the benefits of new ways of working, for example, by collecting and disseminating data on how improved work-life arrangements increase job satisfaction and productivity;
- ▶ Encourage judges and other judiciary staff to benefit from maternity and paternity leave policies and provide incentives for men to make use of available paternity leave;
- ▶ Adopt measures related to work time and organisation: flexible hours and teleworking;
- ▶ Ensure the possibility to temporarily reduce the working hours;
- ▶ Ensure that work-life balance initiatives remain relevant by regularly reviewing the needs of staff and the courts to reflect necessary changes;
- ▶ Cover a wide range of employee needs and situations, including at the most senior positions, within work-life balance policies;
- ▶ Widely disseminate information about the range of work-life balance options that make staff aware of what is available, including at the most senior judicial posts;
- ▶ Consider including work-life balance satisfaction feedback from the judges and staff as part of the performance review for court managers.

153. Rapport of 29 April 2011 of Special rapporteur Gabriela Knaut on the independence of judges and lawyers, A/HRC/17/30. Para.49. <https://undocs.org/A/HRC/17/30>

RECOMMENDATION 6: PROMOTE GENDER SENSITIVE WORKING CULTURE IN THE JUDICIARY

Changing the organisational culture and removing stereotypes in the legal profession is crucial for a gender-balanced judiciary. Gender-sensitive working culture should provide a respectful and empowering environment for women and men. It implies incorporating gender considerations in the day-to-day operations, using gender-sensitive language, removing sexist behaviour, and establishing a sound process to deal with sexual harassment cases.

The following actions should be considered by the General Assembly of Judges (a special working group can be created based on the Article 74 (5-3) of the Judicial Code to address the issues):

- ▶ Establish discrimination and harassment complaint mechanisms within the judiciary
- ▶ Ensure that Code of Ethics and Judicial Conduct includes references to gender-sensitive conduct;
- ▶ Ensure the use of gender-sensitive language in courtrooms and in other public communication;
- ▶ Support women's professional groups to advance women's common interests, and via these groups promote the opportunities of networking, mutual support and discussions about difficulties women face in their professions, advocate for women's rights and equal access to justice, implement capacity building, develop educational programmes and guidance materials, and conduct different analysis on gender equality issues.

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Annex 1

Questionnaire for Online Survey

Preliminary questions before completing the questionnaire:¹⁵⁴

a. Role in the Judiciary:

- ▶ Judge
- ▶ Assistant to Judge

b. Place of work:

- ▶ First Instance Court
- ▶ Court of Appeal
- ▶ Court of Cassation

c. Gender:

- ▶ Female
- ▶ Male

1. Becoming a judge in Armenia:

- ▶ Is more difficult for women.
- ▶ Is more difficult for men.
- ▶ Equally difficult for women and men.
- ▶ Equally accessible for women and men.

2. Occupying a senior position in the judiciary.

- ▶ Is more difficult for women.
- ▶ Is more difficult for men.
- ▶ Equally difficult for women and men.
- ▶ Equally accessible for women and men.

3. To become a judge, women need, more than men, to be supported by their family.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

154. All the responses should be analyzed based on the distribution of the answers by: (1) gender; (2) role in the judiciary, (3) place of work. Example: X% of survey participants consider that occupying senior position in the judiciary is more difficult for women than for men, among them:

- X% are women and X% are men.
- X% are judges and X% are assistants to judges.
- X% are the judges of the first instance, X% - of the second instance and X% of the third instance.

4. In order to occupy a senior position in the judiciary:

- ▶ It is important to be supported by the social network within the system.
- ▶ Women need, more than men, to be supported by their family.
- ▶ Women and men only need to comply with the objective selection criteria and succeed in the competition, the support of the social network or the family is not important.

5. Male judges have more access than female judges to the social networks within the judiciary.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

6. To what extent do you agree with the statement that women judges are less ambitious to take high-ranking positions than men judges?

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

7. Senior positions in the judiciary are less appealing for women because of the family responsibilities.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

8. In the judiciary, men are proven to be better managers than women.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

9. How much do you agree with the statement - in our society the main responsibility for taking care of children/family/household chores is imposed on women?

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

10. Our society expects men to succeed more in professional careers than women.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

11. To what extent do you agree with the statement that similar to other women in our society, women judges have more responsibilities than men judges for children/family/household chores?

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

12. In our society, the profession of a judge is perceived to be more suitable for men than for women.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

13. Being President is an additional burden more for women judges than for men judges.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

14. In order for women judges to be more successful in their work and career advancement, the term of the maternity leave has to be increased.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

15. Children-friendly spaces within working premises would be more helpful:

- ▶ For women judges/assistants
- ▶ For men judges Assistants
- ▶ For both – women and men judges/assistants
- ▶ For None of them

16. Gender quota can be an effective mechanism to increase the share of women in the judiciary, including the senior positions.

- ▶ I strongly agree.
- ▶ I agree.
- ▶ I disagree.
- ▶ I strongly disagree.

17. More women in the judiciary, including at the senior positions:

- ▶ Will help to break gender stereotypes.
- ▶ Will make the judiciary more gender sensitive in its work.
- ▶ Will not change anything.
- ▶ Will decrease the quality of work of the judiciary.
- ▶ I don't know, I am not interested in this topic.

18. Strengthening Women's Section in the Association of Armenian Judges:

- ▶ Will help the integration of gender equality principles in the judiciary.
- ▶ Will encourage gender balance in the judiciary, including at the senior positions.
- ▶ Will not change any of the above.
- ▶ I don't see the need for such association.
- ▶ I don't know, I am not interested in this topic.

19. Increasing the number of women at the senior positions of the judiciary:

- ▶ It is an important step towards more gender equality in the system.
- ▶ Is not currently the issue that needs to be addressed.

- ▶ I am not against it, but it will not change anything substantially.
- ▶ I don't know, I am not interested in this topic.

20. Did you attend the capacity building trainings on gender equality:

- ▶ Yes, I attend training on gender equality on a regular basis, at least once every year.
- ▶ I have attended once or twice the training on gender equality during my career in the judiciary.
- ▶ I have attended three times or more the training on gender equality during my career in the judiciary.
- ▶ I have never attended training on gender equality during my career in the judiciary.

21. The trainings on gender equality should be:

- ▶ Mandatory for the judges and assistants to judges.
- ▶ Voluntary for the judges and assistants to judges.
- ▶ Are not necessary at all for the judges and assistants to judges.
- ▶ I don't know, I am not interested in this topic.

22. The representatives of the judiciary in Armenia today:

- ▶ Needs awareness raising on gender equality.
- ▶ Doesn't need any awareness raising on gender equality.
- ▶ I don't know, I am not interested in this topic.

23. The rule of appointing judges at senior positions in the judiciary:

- ▶ Needs to be changed.
- ▶ Does not need to be changed.
- ▶ I don't know, I am not interested in this topic.

24. Please feel free to make any comment that is relevant to the topic.

Annex 2

Questionnaire for In-Depth Interview with Key Informant

Preliminary questions before completing the questionnaire:

a. *Place of work:*

- ▶ *Judge at the First Instance Court*
- ▶ *Judge at the Court of Appeal*
- ▶ *Judge at Court of Cassation*
- ▶ *Judge of the Supreme Judicial Council*

b. *Gender:*

- ▶ *Female*
- ▶ *Male*

1. In your opinion, becoming a judge in Armenia is more difficult for women than for men and why?
2. In your opinion, occupying a senior position in the judiciary in Armenia is more difficult for women than for men and why?
3. What is necessary to succeed for occupying senior positions? (Support from the family, support from the colleagues, OR ONLY the compliance to the objective criteria and passing a fair competition?)
In your opinion, is the selection rule for occupying senior positions in the judiciary fair and transparent or you believe that it needs to be modified and how?
4. Do male judges have a stronger social network within the judiciary than women judges and what do you think – why?
5. In your opinion, is the role of President in the judiciary more suited for men than for women and why?
6. Do existing policies in the judiciary support work-life balance, including at most senior levels and how?
7. Do you think that supporting mechanisms – such as longer maternity leave, flexible hours or decreasing the amount of distributed cases etc. will help women’s career advancement in the judiciary?
8. What do you think about gender quotas? – Can these quotas be effective to increase women’s share at the senior positions in the judiciary?
9. What do you think about establishing *Association of Women Judges* and what should be its role?
10. Do you think judges and assistants to judges should receive specialized trainings on gender equality and how often?
11. Do you think there is a need for awareness raising about gender equality within the judiciary?
12. Is there any gender equality strategy or action plan for the justice sector and in your opinion, are such strategies and action plans necessary and why?
13. Does the judiciary in Armenia have elaborated any measures to widen gender balance in the pool of applicants for judicial office?
14. Do you think a gender balance requirement needs to be included into the composition of the Commissions established by the General Assembly of Judges (Evaluation, Disciplinary and Educational Commissions)? And have these Commissions received gender training? In your opinion, are these trainings necessary?

15. In your opinion, are the opportunities for a judge within judiciary, such as inclusion in the promotion list, exchange of the positions, transfer to another court, e.t.c. more accessible for men or women? Are the procedures fair and transparent?
16. Have existing career advancement policies and procedures been scrutinized for possible gender bias and evaluated for gender balance and how?
17. Are judicial composition gender statistics regularly collected, disclosed and discussed by judicial leadership?
18. Are there any effective internal complaint mechanisms within the judiciary?
19. Are there preventive processes and sound complaint mechanisms to deal with sexual harassment cases? In your opinion, are such policies necessary within the judiciary?
20. In your opinion, what will be the benefits of a more gender-equal judiciary?
21. In your opinion, what has to be the role of the judiciary to strengthen gender equality in the country and how, you think, the judiciary in Armenia accomplishes this role?

Annex 3

Questionnaire for Focus Group Discussions

Preliminary information about the Focus Groups:

- ▶ Description of the Focus Group
- ▶ Number of participants (gender-segregated)
- ▶ Duration of the Focus Group Discussion
- ▶ Date

1. In your opinion, becoming a judge AND occupying a senior position in the judiciary in Armenia is more difficult for women than for men and why?
2. In your opinion, is the selection rule for occupying senior positions in the judiciary fair and transparent or you believe that it needs to be modified and how?
3. In your opinion, is the role of President in the judiciary more suited for men than for women and why?
4. Do existing policies in the judiciary support work-life balance, including at most senior levels and how? Do you think that supporting mechanisms – such as longer maternity leave, flexible hours, decreasing the amount of distributed cases etc. will help women’s career advancement in the judiciary?
5. What do you think about gender quotas? – Can these quotas be effective to increase wom
6. What do you think about establishing *the Association of Women Judges* and what should be its role?
7. Do you think judges and assistants to judges should receive specialized trainings on gender equality and how often?
8. Do you think there is a need for awareness raising about the gender equality within the judiciary?
9. Do you think the Judiciary in Armenia has to have its Gender Equality Strategy and Action Plan why?
10. Do you think, that the composition of selection committees should be gender-balanced?-
11. Do you think, judicial composition gender statistics have to be regularly collected, disclosed and discussed by judicial leadership and why?
12. Do you think that the judiciary needs effective internal complaint mechanisms?
13. Do you think, that preventive processes and sound complaint mechanisms to deal with sexual harassment cases should be in place within the judiciary and why?
14. In your opinion, what will be the benefits of a more gender-equal judiciary?
15. In your opinion, what has to be the role of the judiciary to strengthen gender equality in the country and how, you think, the judiciary in Armenia accomplishes this role?

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