

## **Fourth ICJ Geneva Forum of Judges and Lawyers**

**5-6 December 2013**

### **Women and the Judiciary**

The fourth annual Geneva Forum of Judges and Lawyers was convened 5-6 December 2013 by the International Commission of Jurists (ICJ), on the topic of women and the judiciary.

The Forum was organised jointly by the ICJ Centre for the Independence of Judges and Lawyers (CIJL) and the ICJ's Women's Human Rights programme. The Forum brought together women judges and senior women lawyers from around the world, but with a particular focus on countries from the Middle East / North Africa and Sub-Saharan Africa, where the ICJ had held two regional colloquia.

Participants drew on personal opinions, their professional experiences and their legal skills in discussing the obstacles that continue to impede women's full and equal participation in the judiciary, the important roles that women judges can play, and the mechanisms to improve women's representation.

Participants attended in their personal capacities and on the understanding that remarks would not be attributed to named speakers.

This document provides a brief summary of the two days of discussions, presenting key points thematically rather than in a strictly chronological order.

The list of participants and programme are included, in Annex I and II.



### **The IMPORTANCE OF WOMEN'S FULL AND EQUAL PARTICIPATION IN THE JUDICIARY**

Participants emphasized the importance of judicial independence, impartiality and integrity. They stressed that the composition of the judiciary must reflect the

composition of society if it is to be perceived as legitimate and capable of delivering equal justice and upholding equality before the law. They underlined the importance of judicial diversity and of ensuring women's full and equal participation in the judiciary. It was noted that States are obliged under international law to guarantee women's ability, in law and practice, to participate fully in the judiciary (see the list of sources cited in Annex III).

A range of participants pointed out that women who appear before the courts as criminal defendants or as civil litigants have the right to full equality before the law, to non-discrimination in the administration of justice, and to have access to a fully independent and impartial court. Their individual human rights will not be fulfilled if the judicial profession excludes women in law or in practice.

A number of participants raised the question of whether women judges improve judicial reasoning and improve the protection of women's human rights and give rise to better justice sector outcomes for women. Many stressed that increased diversity within a judiciary, and ensuring judges are representative of society, enables the judiciary as a whole to better respond to diverse social and individual contexts and experiences. In the view of many participants without full and equal representation of women in the judiciary, the overall quality of judicial decision making is impoverished, and this impacts generally and also specifically in cases particularly affecting women.

Some participants expressed the opinion that women judge differently than men and are more likely to advance the legal protection of women's human rights. They highlighted examples of how women judges in some jurisdictions had played an important role in addressing discrimination against women and violations of women's human rights. Others were not necessarily of this view but stressed that more analysis and reflection on this question was necessary as up until now relevant research had focused on only a small handful of western jurisdictions.



## OBSTACLES TO WOMEN'S FULL AND EQUAL PARTICIPATION IN THE JUDICIARY

### *a. Recruitment and appointment processes*

Participants highlighted that while a diversity of judicial recruitment and appointment systems may be acceptable, they must always ensure judicial independence and impartiality, guard against improper political or other influence, and prioritize diversity and gender equality, in terms of composition and in the criteria and procedures that are applied.

Many participants stressed the importance for sustainable equality and participation of women of appointment processes that ensure judicial independence and impartiality. They expressed the view that where women judges are appointed through other means by nondemocratic governments their presence within the judiciary can become tainted or undermined.

A number of participants recalled facing great challenges in entry to and acceptance within the judiciary and highlighted a range of persistent flaws in appointment and recruitment procedures.

For example some denounced the lack of transparency in certain appointment processes and there were particular criticisms of informal consultation processes in which Chief Justices inform judges and lawyers when a position is vacant, and seek their recommendation for suitable candidates. Many participants stressed that often when such practices are the norm female legal professionals are not directly informed of openings, nor properly consulted during selection process. They highlighted that as a result women have had to identify informal strategies to work around the problems caused by such processes, using networks and outreach to male peers to persuade them to propose female candidates.



Several participants also expressed considerable concerns regarding appointment systems in which the power of judicial appointment is concentrated in a single person, noting that this tends to have a negative impact on women's inclusion.

Some participants highlighted the importance of public advertisement of judicial vacancies. Others observed that in fact female candidates may often be reluctant to apply due to lack of empowerment and fears of harassment and rejection.

A number of participants expressed the view that the implementation of quotas may be a necessary measure to advance the recruitment and appointment of

women judges. 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 emphasized that quota systems must operate in a manner that ensures that judicial appointments are based on qualifications and skills.

### ***b. Opposition, gender roles and stereotypes***

Many participants expressed the view that prevailing gender stereotypes, norms and roles often play a significant role in preventing women's full and equal participation in the judiciary.

In some contexts these manifest in serious opposition to women's participation in the judiciary. For example a range of participants noted that in many jurisdictions religious interpretations as to women's roles in society or specifically in the judiciary continue to exclude women from the judiciary or from particular courts. Sometimes the authorities strictly apply religious edicts as to the role of women in the judiciary. Sometimes conservative religious beliefs as to women's roles in society provide the authorities with pretexts to restrict women's participation.



A number of participants spoke about the way in which gendered assumptions as to women's roles in society have affected the way in which they are treated by male colleagues and authority figures. For example some participants noted the way in which 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.



Other participants spoke of widely held assumptions among the general public that judges are, or should be, men. For example one judge explained that when she was first appointed, someone came into her court and asked where the judge was. Others noted that when they were first appointed, many men and women had refused to appear before them or had sought to have their cases transferred.

### *c. Harassment and discrimination*

Many participants recalled the fact that they or female colleagues had faced harassment and discrimination because of being female. They also noted that often women judges are subject to additional scrutiny and criticism, as well as gendered forms of intimidation.

For example, one participant recalled that when she became pregnant she faced great pressure to resign, and had to struggle in order to obtain two-months maternity leave. Although she eventually obtained maternity leave, she was deprived of her end-of-year bonus.

One participant recalled the negative way in which male colleagues received her promotion to a senior position. Following her promotion they treated her with increased suspicion and attempted to undermine her in different ways. On one occasion a senior district registrar sought her expulsion from the government housing she had been living in and was entitled to. At another time she was denied the same benefits as male colleagues, such as a judicial vehicle, until three years after her appointment.

A number of participants related experiences of their cases being reallocated and reassigned by superiors to male judges, on the basis of assumptions that as women they would be biased in judging cases that dealt with women's human rights issues.

Participants also addressed the way in which women judges face public scrutiny and criticism. One judge recalled how when overturning an acquittal in a rape case on appeal she was labeled a "man hater" in media publications and accused of bias.



#### ***d. Reluctance to join the judiciary***

Some participants expressed the view that in some contexts women remained reluctant to enter the judiciary. They explained that the various forms of discrimination, opposition and harassment that women judges face often acts as a powerful deterrent to entering the profession.

Some participants also noted that a lack of self-confidence on the part of some women sometimes impedes their willingness to apply for judicial positions. They expressed the view that this originated in cultural and societal pressure.

Many participants stressed that outreach efforts should be made to encourage women to join the judiciary. Additionally, the establishment of mentoring and support networks, and other practical measures designed to allay women's concerns about being a judge, should be pursued.

#### ***e. Lack of training and outreach***

Many participants underscored the need for training programmes to adequately prepare male and female judges for the responsibilities involved in the profession. In particular, a number of participants highlighted the need for continuing judicial education on gender discrimination and educational programmes to ensure all members of the judiciary practice gender, racial and cultural sensitivity.

Some participants expressed the view that in efforts to advance women's participation, the judiciary should engage with law faculties and academics, both in terms of educational curriculums and in terms of research concerning the impact of women within the judiciary.

Some participants noted the important role that the media can play in countering these attitudes and assumptions, raising the visibility of women within the judiciary as positive role models.

Many participants underlined that ensuring the equality of women's access to the judicial profession and their equal representation in the judiciary is not the exclusive responsibility of women judges; men too have a crucial role to play. Several participants emphasized that outreach and engagement with male judges to ensure their solidarity, support and leadership in efforts to advance women's full and equal participation in the judiciary is vital.



## **ANNEX 1**

### **PARTICIPANTS LIST**

Dr Catherine ALBERTYN (South Africa), Professor

Ms Esra Al AMIRI (Kuwait), Lawyer

Judge Hasna BEN SLIMANE (Tunisia), Administrative Tribunal, Tunis

Ms María Paula CASTAÑEDA (Mexico), Project Coordinator, Equis: Justicia para las Mujeres

Ms Evelyn EDROMA, United Nations Development Programme Regional Office for Eastern and Southern Africa

Judge Kholoud Al FAQEEH (Palestine), Sharia Tribunal

Judge Malika HAFID (Morocco), Family Court of Appeal

Mme Rachida HLIMI (Morocco), President of Tribunal of first instance, Sefrou

Ms Houria El HAMMS (Morocco), Lawyer

Judge Zhor HORR (Morocco), Casablanca Family Court (retired)

Ms Lamya JUBREEN (Palestine), Women's Center for Legal Aid and Counselling

Judge Jean Rosemary KAYIRA (Malawi), Acting Chief Resident Magistrate-East

Ms Reem KHALAF (Bahrain), Lawyer

Justice Engera KILEO MAMMARI (Tanzania), Court of Appeal

Justice Martha KOOME (Kenya), Court of Appeal

Justice Qinisile MABUZA (Swaziland), High Court, ICJ Commissioner

Justice Nthomeng MAJARA (Lesotho), Court of Appeal

Judge Gift Dorothy Mtendere MAKANJE (Malawi), Assistant Registrar of the Malawi High Court-Commercial Division

Judge Gabriella MATEFI (Switzerland), Court of Appeal of Basel-Stadt

Justice Jennifer Yvonne MOGKORO (South Africa), South Africa Law Reform Commission, Constitutional Court (retired)

Justice Sanji Mmasenono MONAGENG (Botswana), International Criminal Court, ICJ Commissioner

Judge Suntariya MUANPAWONG (Thailand), Nakhon Pathom Juvenile and Family Court

Justice Eusebia Nicholas MUNUO (Tanzania), Court of Appeal

Judge Zione Jane NTABA (Malawi), Malawi High Court Judge

Judge Mushtaq al QADDI (Palestine)

Judge Michèle RIVET (Canada), ICJ Commissioner, former President of the Quebec Human Rights Tribunal, former judge of Court of Quebec

Ms Patricia SCHULZ (Switzerland), Member UN Committee on the Elimination of Discrimination against Women

Justice Lilian TIBATEMWA-EKIRIKUBINZA (Uganda), Court of Appeal/Constitutional Court

Judge Sandra Luz VERDUGO PALACIOS (Mexico), Magistrado de la Primera Sala Mixta Primera Ponencia, Sonora

*Participants in part of the meeting only:*

Judge Navanethen PILLAY (South Africa), United Nations High Commissioner for Human Rights

Ambassador Patricia O'BRIEN, Permanent Mission of Ireland, Geneva

Ms. Louise ABBOTT, Permanent Mission of Australia, Geneva

Mr Edward SMALL, Peace Nexus

*International Commission of Jurists staff:*

Wilder TAYLER, Secretary General

Alex CONTE, Director, International Law and Protection Programmes

Ian SEIDERMAN, Director, Legal and Policy Office

Leah HOCTOR, Senior Legal Adviser, Women's Rights

Ilaria VENA, Associate Legal Adviser, Centre for Independence of Judges and Lawyers

Laurens HUETING, Associate Legal Adviser, Centre for Independence of Judges and Lawyers

Matt POLLARD, Senior Legal Adviser, Centre for Independence of Judges and Lawyers

Quin LEONG, Consultant, Thailand Office

Nuntaporn MASUPAP, Consultant, Thailand Office

Sheila VARADAN, Legal Adviser, Thailand Office

Giulia SOLDAN, Field Presence, Tunisia

Marya FARAH, Legal Adviser, Middle East & North Africa

Alice GOODENOUGH, Legal Adviser, Middle East & North Africa

Lucie SERVOZ, Fundraising Officer

Priscilla GONZALEZ, Associate Fundraising Officer

Emilie MAX, Intern

*Students from the Geneva Academy for Human Rights and International Humanitarian Law:*

Kylie PEARCE and Thaila POLI



## **ANNEX 2:**

### **FORUM PROGRAMME**

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#### **DAY I, DECEMBER 5<sup>TH</sup> 2013- CONFERENCE CENTRE VAREMBÉ (CCV), ROOM B**

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- 09.30-10.00**
- INTRODUCTIONS
  - WELCOME FROM ICJ SECRETARY GENERAL, WILDER TAYLER
  - REMARKS FROM ICJ EXECUTIVE COMMITTEE, MICHELE RIVET

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**10.00**                      **SESSION I: STORIES FROM THE FRONTLINE**

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**MODERATOR: SANJI MONAGENG**

**KEY NOTE ADDRESS: YVONNE MOKGORO, SOUTH AFRICA**

**STORY I: JUSTICE MUNUO, TANZANIA**

**STORY II: JUDGE MABUZA, SWAZILAND**

**STORY III: JUSTICE KHOLOUD FAQEEH, PALESTINE**

**STORY IV: REEM KHALAF, BAHRAIN**

**ROUNDTABLE – PARTICIPANTS’ STORIES**

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**14.00**                      **SESSION II: COMMON ISSUES**

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**MODERATOR: CATHI ALBERTYN, SOUTH AFRICA**

**14.00 – 14.45**            **A. RETAINING IMPARTIALITY & ADVANCING WOMEN’S RIGHTS:**

- JUSTICE MOKGORO, SOUTH AFRICA
- ROUNDTABLE

**14.45 – 15.30**            **B. ENSURING INDEPENDENCE WHILE ADVANCING WOMEN’S REPRESENTATION: AVOIDING WOMEN AS ‘WINDOW DRESSING’**

- JUSTICE HLIMI, MOROCCO
- ROUNDTABLE

**15.45 – 16.15**            **ADDRESS BY UN HIGH COMMISSIONER FOR HUMAN RIGHTS, JUDGE NAVANETH PILLAY**

**16.15 – 17.15**            **C. DISTILLING THE CHALLENGES:**

- JUDGE KOOME, KENYA
- ROUNDTABLE

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**18.00**                      **RECEPTION HOSTED BY AMBASSADOR O’BRIEN**

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**DAY II, DECEMBER 6<sup>TH</sup> 2013- CONFERENCE CENTRE VAREMBÉ (CCV), ROOM B**

**09.30**

**SESSION III : MAKING CHANGE**

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**MODERATOR: CATHI ALBERTYN, SOUTH AFRICA**

**9.30 - 10.15**

**A. GETTING WOMEN INTO THE JUDICIARY & KEEPING THEM THERE: REMAINING OBSTACLES & LESSONS LEARNED**

- ESRA AMIRI, KUWAIT
- ROUNDTABLE

**10.30 – 11.15**

**B. JUDICIAL COUNCILS & APPOINTMENT AUTHORITIES: OVERCOMING DEFICITS OF REPRESENTATION**

- JUSTICE KILEO, TANZANIA
- ROUNDTABLE

**11.30-12.30**

**C. IDENTIFYING THE ALLIES: WHO NEEDS TO ACT, WHY AND HOW?**

WHAT IS THE ROLE OF CHIEF JUSTICES & JUDICIARIES, EXECUTIVES, JUDICIAL COUNCILS, LEGISLATURES AND INTERNATIONAL ORGANISATIONS?

- JUSTICE MONAGENG, BOTSWANA
- PATRICIA SCHULZ, SWITZERLAND (CEDAW MEMBER)
- ROUNDTABLE

**14.00-15.00**

**D. IDENTIFYING THE ALLIES: WHO NEEDS TO ACT, WHY AND HOW?**

WHAT IS THE ROLE OF CIVIL SOCIETY INCL. BAR ASSOCIATIONS, LAW SOCIETIES, WOMENSS RIGHTS ORGANISATIONS?

- JUSTICE HAFID, MOROCCO
- ROUNDTABLE

**15.00 – 15.45**

**CLOSING SESSION**

### **ANNEX 3:**

#### **Selected International Instruments**

International Covenant on Civil and Political Rights (ICCPR), entry into force 23 March 1976, Articles 2, 3, 4(1), 14, 25 and 26.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), entry into force 18 December 1979, Articles 1, 2 and 7.

Universal Declaration of Human Rights, adopted by UN General Assembly resolution 217 A (III) of 10 December 1948, articles 2, 10 and 21.

UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principles 1, 2, 5 and 6.

Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26 2002, Values 3.2 and 5.1

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and Peoples' Rights DOC/OS(XXX)247 (2001), Principles A(4)(j), K(b), M(7)(b), P(b).

Beijing Declaration and Platform for Action, adopted at the 16<sup>th</sup> plenary meeting of the World Conference on Women, 15 September 1995, paragraph 13.

Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), as set out by the UN Special Rapporteur on Independence of Judges and Lawyers in UN Doc E/CN.4/Sub.2/1988/20/Add.1 and received by the UN Commission on Human Rights in resolution 1989/32) of 6 March 1989, General Principles 74, 75 and 76.

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