
WRITTEN SUBMISSION

TO: U.N. Committee on the Elimination of Discrimination against Women
FROM: Global Justice Center, New York
SUBJECT: Written Submission on the General Recommendation on “Access to Justice”
DATE: February 1, 2013

The Global Justice Center¹ (GJC) is a US based human rights organization with consultative status to the United Nations focusing on advancing gender equality through the rule of law.

The GJC welcomes the Committee’s Concept Note and looks forward to the general discussion on “Access to Justice” in preparation for a General Recommendation on the subject.

In general, access to justice for women is essential to the advancement of women’s rights, including the prevention of any form of discrimination against women, including gender based violence, and the full implementation of the rights in the UN Convention on the Elimination of all Forms of Discrimination against Women.² In this context, it is essential that women are able to assert their rights in a judicial system, have access to redress and reparation, including compensation, and have perpetrators of crimes against women held accountable.

This written submission focuses on one particular area of access to justice: the necessity to ensure equal participation in the judiciary by women, in particular through the use of quota systems. Gender parity in the judiciary is essential in order to ensure the advancement of the rule of law, and high quality, non-discriminatory decisions.

Although judicial quotas are not as prevalent as legislative quotas, adjudicative institutions are increasingly calling awareness to the importance of gender parity among judges. In fact, international tribunals for the former Yugoslavia (“ICTY”) and Rwanda (“ICTR”) both contain a requirement within their operating statutes to appoint a significant number of women judges.³ For example, 23 women have served at the ICTY.⁴ In contrast the 15-

¹ <http://www.globaljusticecenter.net/>.

² Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR, Supp. No. 46, U.N. Doc. A/34/46 at 193 (Sept. 3, 1981) [hereinafter “The Convention”].

³ See Statute of the International Criminal Tribunal for the Former Yugoslavia arts. 5, 13 *ter*(b), U.N. Doc. S/RES/827(May 25, 1993)(subsequently amended, citations omitted), available at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf; Statute of the International Criminal Tribunal for Rwanda arts. 3-4, 12 *ter* (b), U.N. Doc. S/RES/955 (Nov. 8, 1994)(subsequently amended, citations omitted), available at <http://www.unictcr.org/Portals/0/English/Legal/Statute/2010.pdf>.

member International Court of Justice had only three female judges serve in its 68 year history. Currently women remain underrepresented in the police, prosecution services and judiciary, with women only accounting for 27 percent of all judges and very few women being chief justices.⁵

I. Barriers for women being appointed as judges

Reasons why women are not appointed to the judiciary diverse. One key factor is unequal access to high-level education, including financial barriers posed by the high costs of higher education. Additionally, the sometimes male-only consultations surrounding the appointment of judges have been seen as a barrier⁶, and as well as the often cited problem of balancing family responsibilities with work.⁷ Further, the networks and political connections that male practitioners benefit from have been shown to disadvantage female counterparts who lack these connections.⁸ In contrast, in some judicial systems where exams, not appointments processes, are used to select judges, women tend to be represented in higher numbers. For example, France, which uses an exam based model, has over 50 percent female judges.⁹

II. Requirements under the Convention to Ensure Gender Parity in the Judiciary

As recognized in the Concept Note on the General Recommendation on Access to Justice¹⁰, the Convention sets out specific obligations on State Parties to ensure that the judicial systems guarantee women's access to justice and the principle of equality:

- Article 2(a) requires State Parties to “embody the principle of the equality between men and women into their national constitutions or other appropriate legislation” to ensure “the practical realization of this principle” through **“law and other appropriate means”**;

⁴ This information has been taken from the website of the ICTY. *Chambers*, UN ICTY, <http://www.icty.org/sid/141> (last visited Feb. 1, 2013).

⁵ UN Women, *Progress of the World's Women: In Pursuit of Justice*, at 60 (2011), available at: <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>.

⁶ Sital Kalantry, *Women in Robes*, *Americas Quarterly*, at 85 (Summer 2012), available at: <http://www.americasquarterly-digital.org/americasquarterly/summer2012?pg=90#pg90> where the author describes how an “old boys’ club” mentality surrounding judicial appointments poses a crucial barrier for women.

⁷ Conference Report: *Virtue Foundation Senior Roundtable on Women and the Judiciary*, United States Supreme Court et al., at 6, 58 (Mar. 31- Apr. 1, 2011), available at: <http://www.lawschool.cornell.edu/womenandjustice/upload/Virtue-Foundation-2011-Senior-Roundtable-Conference-Report.pdf>.

⁸ Sital Kalantry, *Women in Robes*, *Americas Quarterly*, at 85 (Summer 2012).

⁹ Sital Kalantry, *Women in Robes*, *Americas Quarterly*, at 85 (Summer 2012).

¹⁰ Committee on the Elimination of Discrimination against Women, *Access to justice – Concept Note for Half Day General Discussion endorsed by the Committee on the Elimination of Discrimination against Women at its Fifty-Third Session*, available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/Discussion2013/ConceptNoteAccessToJustice.pdf> [hereinafter “Concept Note”].

- Article 2(c) requires State Parties “to establish legal protection of the rights of women on an equal basis with men and to ensure **through competent national tribunals** and other public institutions the effective protection of women against any act of discrimination.”

This is further detailed in the Concept Note which states: “The structures and institutions comprising the justice system must ensure legal protection of the rights of women on an equal basis with men. Therefore, they should be impartial, efficient, adequately resourced and free from gender bias and negative stereotypes in the administration of justice.”¹¹

The Concept Note further acknowledges that “[u]nder-representation of women in courts also needs to be addressed through institutional measures to increase participation and gender balance in the judiciary and other relevant structures”¹² and that “[j]udges may also lack a substantive equality perspective in conducting cases and prescribing remedies leading to discriminatory judgments and further violations of women’s human rights in the course of seeking justice.”¹³

Therefore in order to ensure legal protection of the rights of women on an equal basis with men, women judges should be represented equally. When a court only appoints male judges it does not only violate the principle of equality, but it also limits the legal capacity of the court because the female perspective brought by women judges on decisions is not available. A court that does not guarantee the full inclusion of women in its applications process also risks not having the highest skilled professionals.

III. The Role of Women Judges

While the appointment of a female judge cannot guarantee bias free decisions, there is strong evidence which supports the need to ensure a female’s perspective on cases: (1) Ensuring that decisions are made on a diverse range of opinions and expertise as possible avoiding biased opinions, (2) the advancement of the rule of law, (3) equal opportunity and a true representation of the population in order to maintain the public’s trust and (4) the provisions of Security Council Resolution 1325.

1. Inclusion of a Gender Perspective in Legal Decisions

Female judges will bring to the judiciary their own experiences with discriminatory behavior and personal experiences on being confronted with certain gender stereotypes which makes them more sensitive in evaluating the information presented in a case.

In 2009 the National Organization of Women reported that “women judges were more likely than their male counterparts to have experienced sex discrimination and conflict

¹¹ Concept Note at 3.

¹² Concept Note, at 10.

¹³ Concept Note, at 11.

between their work and family roles” and that “women repor[t] observing both gender disparagement and sexual harassment more frequently than...men.”¹⁴

The different, varied backgrounds of practitioners can bring a broader range of expertise to the decision-making processes which can result in judicial processes and decisions that improve women’s access to justice. This perspective is essential to broaden gender-sensitivity in the judiciary, including with male colleagues.

For example, a study carried out in the US showed that women judges were 11 percent more likely to rule in favor of the plaintiff in employment discrimination cases, while another study concluded that male judges on federal appellate panels were significantly more likely to support the plaintiff in sexual harassment or sex-discrimination cases if there was also a woman judge on the panel.¹⁵

2. Advancing the rule of law

Women judges have advanced women’s rights in many fields of the law. One example is the progress achieved in international criminal law, where women judges have played a significant role in eradicating gender-based violence through programs and initiatives and by playing critical roles in shaping international law relating to gender-based violence through their participation on international tribunals.¹⁶ Key examples are Judge Florence Mumba who was instrumental in the treatment of rape and other gender based crimes as crimes against humanity and war crimes at the ICTY and Judge Navanethem Pillay, who is often credited with guiding the seminal *Akayesu*¹⁷ decision at the ICTR which was the first decision declaring that rape could be a constitutive act of genocide. Of the *Akayesu* decision, the New York Times wrote: “Without female judges and investigators, this cruel aspect of the Rwandan genocide might never have been addressed.”¹⁸

The precedents set by the ICTY and ICTR, including on gender crimes, formed the basis of the Rome Statute International Criminal Court (“ICC”), which was the first time an international treaty codified heinous forms of violence against women as crimes against humanity, war crimes, and genocide. As a result, the Rome Statute classifies an expansive (though not exhaustive) list of gender crimes including rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilizations, sexual violence, gender-based violence, gender-based persecution and trafficking of persons.¹⁹

¹⁴ Rosalind Dixon, *Female Justices, Feminism and the Politics of Judicial Appointment: A Re-Examination*, 21 Yale J.L. & Feminism 279, 2010, at 7, available at: <http://www.law.uchicago.edu/files/file/283-rd-female.pdf>.

¹⁵ UN Women, *Progress of the World’s Women: In Pursuit of Justice* (2011), at 61.

¹⁶ With several examples on an international and national level: Sandra O’Connor & Kim Azzarelli, *Sustainable Development, Rule of Law, and the Impact of Women Judges*, 44 Cornell In’L L.J. 3, 2011, at 6 & 7, available at: <http://www.lawschool.cornell.edu/research/ILJ/upload/O-Connor-Azzarelli-final.pdf>.

¹⁷ Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 731 (Sept. 2, 1998).

¹⁸ *When Rape becomes Genocide*, New York Times (Sept. 05, 1998), available at: <http://www.nytimes.com/1998/09/05/opinion/when-rape-becomes-genocide.html>.

¹⁹ Danya Chaikel, *Does Gender Matter at the International Criminal Court?*, Mar. 08, 2011, available at: <http://www.haguejusticeportal.net/index.php?id=12400>.

Bearing the legacy of the international criminal tribunals in mind, the ICC was designed as a gender sensitive court and requires State Parties to take “into account the need for fair representation of female and male judges”²⁰ in appointments to the court. The impact of this requirement is tangible, in 2011, more than half of the ICC’s judges were women – 11 of 19.

3. Equal Representation

Like legislatures, courts should be representative of the public and accordingly requires gender parity in the judicial system. As legal experts point out: “Women’s participation in the judiciary is important to establishing a judiciary that is reflective of the society of whose laws it interprets. People are more likely to put their trust and confidence in courts that represent all of the individuals that constitute society.”²¹

Another benefit is that gender-balanced court rooms can make the process less agonizing for girls and women who appear before them, particularly in cases of sexual violence crimes.²² A female victim may feel less exposed when having to testify before a female judge than a male judge.

4. Security Council Resolution 1325

Gender parity in the court system is also required by United Nations Security Council Resolution 1325²³ (“UNSCR 1325”) which was the first Security Council Resolution to link women’s experiences in conflict to the maintenance of international peace and security. CEDAW provisions on access to justice must be read in line with UNSCR 1325, which recognized that women are disproportionately affected by conflict and calls for their active participation at all levels of decision making processes in conflict prevention, conflict resolution, peace processes, post-conflict peace building and governance.

UNSCR 1325 also calls for the effective protection of women from sexual and gender-based violence in conflict settings, for the mainstreaming of gender perspectives in all aspects of peace operations and for the promotion of women’s rights and gender equality. Courts and other transitional justice mechanisms, such as truth commissions must be made more accessible to women, which requires that women play a central role in the design and operation of any of post-conflict justice mechanisms.

A minimum quota for the appointment of women judges would fulfill the obligation set out in the Resolutions which “Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions.”²⁴

²⁰ Statute of the International Criminal Court (Rome Statute), art.36(8)(a)(iii).

²¹ Sandra O’Connor & Kim Azzarelli, *Sustainable Development, Rule of Law, and the Impact of Women Judges*, 44 Cornell In’L L.J. 3, 2011, at 5.

²² Sital Kalantry, *Women in Robes*, *Americas Quarterly*, at 88 (Summer 2012).

²³ UN Security Council Resolution 1325, S.C. Res. 1325, U.N. Doc. S/Res/1325 (Oct. 13, 2000), available at: http://www.un.org/events/res_1325e.pdf [hereinafter S.C. Res. 1325, U.N.].

²⁴ S.C. Res. 1325, ¶ 1, U.N.

Furthermore, UNSCR 1325 explicitly calls on actors to include “measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate ... to the judiciary.”²⁵

UNSCR 1325 also asks for the prevention of violence against women through the promotion of women’s rights, accountability and law enforcement, including by strengthening women’s rights under national law and by supporting local women’s peace initiatives and conflict resolution processes. The inclusion of women’s voices is particularly important in transitional justice initiatives which strive to reform cultures of impunity and to re-establish rule of law.²⁶

As a publication by the Institute for Inclusive Security points out:

Crimes of war are more likely to be addressed during transitional justice efforts when women contribute. Women link official processes to communities and often provide information about crimes. They have knowledge of the distinct, complex violations of rights women suffer that can significantly inform truth commission mandates, judicial opinions, reparations schemes, and proposals for policy reform. Temporary courts and commissions function better when women are included throughout. Witnesses speak more freely to female judges...When a female judge presides, courts are more gender sensitive and provide more sophisticated witness protection. Moving women to actively participate in consolidating peace ensures that their voices, concerns, and needs are recognized and addressed.²⁷

These essential requirements of UNSCR 1325, which intertwine with State Parties’ obligations under the Convention, require the appointment of women judges who are actively involved in any and all transitional justice mechanisms.

IV. Female Quotas in the Judiciary

1. The Committee’s General Recommendations with Respect to Quotas

Quotas represent an adequate and appropriate tool to ensure the equal appointment of women judges. The usage of quotas for similar fields of political and public life have consistently been suggested by this Committee in both its General Recommendations and Concluding Observations to State Parties.

In States where vast inequality persists between genders with regard to political participation, education, the workforce, and various other aspects of life, the Committee believes that quotas are an effective tool in ensuring that equality helps to overcome existing cultural

²⁵ S.C. Res. 1325, ¶ 8 (c), U.N.

²⁶ Michelle Page, *Improving Liberia’s Transitional Justice Process by Engaging Women*, Institute for Inclusive Security, (April 2010).

²⁷ Michelle Page, *Improving Liberia’s Transitional Justice Process by Engaging Women*, Institute for Inclusive Security, (April 2010).

stereotypes.²⁸ In the General Recommendation on political and public life, it is suggested that countries implement gender neutral quotas requiring that neither sex constitute less than 40% of a public body, quotas for women in public office, and rules giving preference to women nominees.²⁹ The Committee also notes that “research demonstrates that if women’s participation reaches 30 to 35 percent (generally termed a ‘critical mass’), there is a real impact on political style and the content of decisions, and political life is revitalized.”³⁰

The Committee also suggests that in order to achieve the goal of gender equality, State Parties utilize temporary special measures: The Committee’s General Recommendation 25 on temporary special measures gives the basis for State Parties to impose such quotas.³¹ The Recommendation explicitly names quotas as one of the measures to achieve the goals of the Convention: “The term “measures” encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems.”³²

2. Successful Usage of Quotas

Quotas have successfully been used, to increase female participation in legislatures, and in judiciaries, such as the example noted about the ICC.³³

Rwanda, though it does not have quotas in place for female judges is a powerful example of how quota systems can be used to increase women’s participation in politics. With women currently making up 56% of the lower house of the legislature (Chambre des Députés) and 38% of the upper house of the legislature (Sénat), Rwanda greatly surpasses the 19% average of women’s participation in legislative bodies around the world.³⁴

Rwanda’s constitution contains several provisions dealing with women and political participation. Article 9, which applies to both the Chambre des Députés and the Sénat, proclaims that “The State of Rwanda commits itself ... [to] equality of all Rwandans and

²⁸ U.N. Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation 23 on Women in Political and Public Life*, ¶¶ 15, 29, U.N. Doc. A/52/38 (1997), available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23>. [hereinafter GR No. 23].

²⁹ GR No. 23 at 29.

³⁰ GR No. 23 at 16.

³¹ U.N. Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 25, on article 4, paragraph , on temporary measures*, ¶¶ 78, 22, UN Doc A/59/38 (2004), available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20%28English%29.pdf> [hereinafter GR No. 25].

³² GR No. 25 at 22.

³³ See under III. Nr. 2.

³⁴ *Rwanda, QuotaProject*, available at: <http://www.quotaproject.org/uid/countryview.cfm?ul=en&country=192> (last updated Dec. 2, 2011).

between women and men reflected by ensuring that women are granted at least thirty percent of posts in decision making organs....”³⁵

Article 76 of Rwanda’s constitution applies to the *Chambre des Députés*, requiring that “The *Chambre des Députés* shall be composed of 80 ... 24 women; that is: two from each Province and the City of Kigali. These shall be elected by a joint assembly composed of members of the respective District, Municipality, Town or Kigali City Councils and members of the Executive Committees of women’s organizations at the Province, Kigali City, District, Municipalities, Towns and Sector levels...”³⁶ Article 82 of Rwanda’s constitution, which applies to the *Sénat*, ensures that “The *Sénat* shall be composed of 26 members...at least thirty per cent (30%) of whom are women...The organs responsible for the nomination of Senators shall take into account national unity and equal representation of both sexes.”³⁷

Rwanda also established a quota in an electoral law to ensure women’s participation at the sub-national level. “There is a parallel system of women’s councils and women-only elections guaranteeing a women’s mandate for all elected bodies. The electoral law for local authorities concludes that 30 percent of members in all indirectly elected councils at district and city of Kigali levels shall be women.”³⁸

While it does not apply to the judiciary, Rwanda’s laws which provide for gender quotas, both in their constitution and national legislation, illustrate the power of such systems in achieving gender parity in public life. Such laws should also be utilized to improve the participation of women in the judiciary, with goal of achieving equality of representation.

V. Recommendations

The Global Justice Center recommends the following:

- Use of objective criteria such as exams as the basis for judicial appointments;
- Use of quota systems for the appointment of female judges at all levels of the judiciary, including at national and higher courts;
- The establishment of programs and trainings to mentor, to reach out to and strengthen the skills of potential female judicial candidates.

³⁵ Republic of Rwanda Const. art. 9.

³⁶ Republic of Rwanda Const. art. 76.

³⁷ Republic of Rwanda Const. art. 82.

³⁸ *Rwanda*, QuotaProject, available at: <http://www.quotaproject.org/uid/countryview.cfm?ul=en&country=192> (last updated Dec. 2, 2011).