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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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

Summary

The present report is the second report submitted to the Human Rights Council by the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, since her appointment in June 2009. The report covers the activities carried out by the Special Rapporteur in 2010, in accordance with Council resolution 8/6.

The thematic section of the report focuses on some aspects of the multi-faceted relationship between gender and the judiciary, within the broader context of the administration of justice. Within the thematic cluster on gender and the administration of justice, the report addresses major obstacles to women's access to justice, including the feminization of poverty as well as laws, policies and practices that discriminate against women, and elaborates on the conditions required for the effective realization of women's rights to access to justice. Within the thematic cluster on gender and the judiciary, the report focuses on the conditions for developing a gender-sensitive judiciary, and the role of the judiciary in advancing women's human rights.

The Special Rapporteur also presents a number of good practices and makes recommendations to Governments, the international community and other stakeholders.

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I. Introduction

1. The present report is the second submitted to the Human Rights Council by the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, since her appointment in June 2009. The report begins by presenting the activities carried out by the Special Rapporteur in 2010, to focus subsequently on some aspects of the multi-faceted relationship between gender and the judiciary, within the broader context of the administration of justice.

2. The report focuses on two main thematic clusters. Within the thematic cluster on gender and the administration of justice, the report addresses major obstacles to women's pathways to justice, including the feminization of poverty as well as laws, policies and practices that discriminate against women, and sets out the conditions required for the effective realization of women's right to access to justice. Within the thematic cluster on gender and the judiciary, the report focuses on the conditions for developing a gender-sensitive judiciary, and the role of the judiciary in advancing women's human rights. The Special Rapporteur also presents a number of good practices and makes recommendations to Governments, the international community and other stakeholders.

II. Activities of the Special Rapporteur

3. The activities of the Special Rapporteur are carried out in accordance with Human Rights Council resolution 8/6. Human Rights Council Resolutions 12/3 and 15/3 provide further thematic guidance for the Special Rapporteur.

A. Country visits and communications with Member States

4. Since her appointment to the mandate in June 2009, the Special Rapporteur has requested invitations to visit the following countries: Argentina, Bulgaria, Colombia, Guinea-Bissau, India, Iran (Islamic Republic of), Mexico, Mozambique, the Philippines, Romania and Turkey. She has visited Colombia,¹ Mexico,² and Mozambique.³ She plans to visit Bulgaria and Romania in May 2011. She has also been invited to visit Turkey and Guinea-Bissau. The Special Rapporteur would like to thank the Governments of those States that have responded positively to her requests for visits and urges Governments that have not yet provided a response to do so.

5. From 1 January 2010 to 15 March 2011, the Special Rapporteur sent a total of 114 communications alleging violations of human rights in the context of her mandate to 48 Member States and one to another actor. Of the communications that were sent, 97 were urgent appeals and the remaining 17 were letters of allegation. A summary of all communications sent from 16 March 2010 to 15 March 2011 is included in A/HRC/17/30/Add.1.

¹ A/HRC/14/26/Add.2.

² A/HRC/17/30/Add.3.

³ A/HRC/17/30/Add.2.

B. Other activities

6. From 12 to 14 April 2010, the Special Rapporteur participated in the Congress of the Latin American Federation of Magistrates (FLAM) in Mar del Plata, Argentina, where she gave a speech and facilitated a section on the independence of the judiciary in the region.
7. On 21 April she was the keynote speaker on “Human Rights and Judicial Independence” at the International Seminar on Human Rights and Judicial Independence organized by the Association of Judges for Democracy and the Center for Justice and International Law, in Tegucigalpa, Honduras.
8. From 11 to 15 May 2010, the Special Rapporteur participated in the 10th Biennial International Conference of the International Association of Women Judges, where she presented a statement entitled “Terrorism and global security: threats to the independence of the judiciary in a changing world”, in Seoul, Republic of Korea.
9. On 3 June 2010, the Special Rapporteur addressed a side event on “Protective measures for judges and lawyers”, organized by Lawyers for Lawyers and Lawyers Rights Watch Canada, in collaboration with Judges for Judges and the International Commission of Jurists (ICJ) at the 14th session of the Human Rights Council at the United Nations Office in Geneva.
10. On 4 June the Special Rapporteur chaired a side event on “Capacity building and human rights training as a fundamental pillar for judicial independence”, convened by the Office of the High Commissioner for Human Rights, in cooperation with the Permanent Missions of Brazil and Hungary at the 14th session of the Human Rights Council at the United Nations Office in Geneva.
11. On 25 June the Special Rapporteur attended an event organized by Judges for Judges in Amsterdam, the Netherlands, speaking on the issue of “The Effective Role of the Special Rapporteur and NGOs” and participated in a panel focusing on different cases around the world in which the independence of the judiciary had been compromised.
12. From 28 June to 2 July, the Special Rapporteur participated in the seventeenth meeting of mandate holders of the special procedures, held in Geneva (28 June - 2 July).
13. On 29 September 2010, the Special Rapporteur participated in the “Attention to Victims of Terrorism and Other Violent Crimes” training course, organized by the Spanish Cooperation Training Centre in Montevideo, Uruguay.
14. On 22 October 2010, the Special Rapporteur submitted her annual report to the General Assembly⁴ on the role of judicial actors in ensuring accountability for human rights violations and combating impunity.
15. On 1 November 2010, the Special Rapporteur gave some of the opening remarks at the International Summit of High Courts, organized by the Court of Cassation of Turkey and the United Nations Development Programme, in Istanbul, Turkey.
16. From 7 to 11 November 2010, the Special Rapporteur attended the annual meeting of the International Association of Judges, in Dakar, Senegal.
17. On November 12, she participated in the Solemn Session of signing the constitution of the International Union of Portuguese-Speaking Judges with a speech on the exchange of best practices as a way to strengthen the administration of justice and the independence of the judiciary, in Praia City, Cape Verde.

⁴ A/65/274.

III. Gender and the administration of justice

18. Developing a gender-sensitive judicial system is a prerequisite for the full and non-discriminatory realization of human rights for all, and the achievement of gender equality on the ground. Despite important progress over the past few decades, globally women have yet to be considered as key actors in the administration of justice, and their equality before the law and the courts has yet to become a reality in many countries.

19. Many gender-specific obstacles that stand in the way of women's equality in the administration of justice include the feminization of poverty as well as laws, policies and practices that discriminate against women. These factors manifestly limit women's ability to seek redress and resort to tribunals in their quest for justice.

A. The feminization of poverty and the administration of justice

20. Discrimination based on sex is often at the root of women's poverty⁵ as this is commonly the result of exclusion, and the absence of equal opportunities between women and men. This is also frequently an element that exacerbates vulnerability for certain groups of women such as asylum-seekers, refugees and migrants and those belonging to minorities and indigenous peoples, who frequently struggle not to be left on the outskirts of society.

21. Historical denial of autonomy, lack of access to education and support services, together with women's minimal participation in decision-making processes have also had the detrimental effect of leaving women at the periphery of societies. Additional factors that exacerbate the so-called "feminization of poverty" include harmful practices, the absence of economic opportunities for women, gender inequalities in economic power-sharing, unequal distribution of unremunerated work between women and men, lack of technological and financial support for women's entrepreneurship, unequal access to, and control over, capital, particularly land and credit, and access to labour markets.

22. The Special Rapporteur is deeply concerned that deep economic inequalities continue to seriously hamper women's human rights and are a common obstacle for women's access to justice. She also notes that socio-economic conditions and, sometimes stereotyping,⁶ are obstacles faced by the great majority of women around the globe when attempting to enforce their rights. This is the case in countries where women may find themselves widowed and heads of households with no property rights, including the right to inherit the property of their deceased husbands, which they have lived in for years. As a result, they may be displaced from their land, and left behind without adequate housing and means to generate income for themselves and their children.⁷

23. In this regard, the Special Rapporteur expresses concern about the consequences of judicial rulings which enforce laws that discriminate against women. Unsatisfactory divorce settlements, courts' refusals to grant emergency financial relief when victims of domestic violence apply for a civil court protection order, and judicial decisions that do not

⁵ Several studies and surveys indicate that poverty is becoming increasingly feminized, that is, an increasing proportion of the world's poor are female. See, *inter alia*, Valentine M. Moghadam, "The 'Feminization of Poverty' and Women's Human Rights", SHS Papers in Women's Studies/Gender Research, No. 2 (UNESCO, July 2005), p. 2.

⁶ A stereotype is a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group. See Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives*, (University of Pennsylvania Press 2010), p. 9.

⁷ See, for example, A/HRC/14/31/Add.1, paras. 18 and 20.

recognize, for example, women's rights to an effective judicial remedy, contribute to an increase in the feminization of poverty.

24. In many countries, a lack of access to the formal justice system, sometimes due to economic reasons, demonstrates that women's access to justice is frequently through traditional or community-based justice mechanisms, and sometimes through alternative dispute resolution mechanisms.

25. While the Special Rapporteur welcomes the availability of those mechanisms in some States, and acknowledges their advantages in terms of proximity, costs and efficiency, she wishes to draw attention to the need to establish oversight mechanisms to ensure that traditional, community and alternative justice mechanisms uphold human rights norms and effectively protect and empower women. In this regard, the Special Rapporteur is concerned that, in some instances, traditional or community-based justice mechanisms reinforce gender stereotypes and disregard gender considerations and women's rights. Furthermore, in most places, they are constituted by male elders, and sometimes reportedly apply a male-biased interpretation of customary laws.⁸

26. In line with the foregoing, the Special Rapporteur wishes to recall that, under international law and human rights standards, States have the obligation to remove socio-economic barriers which impede access to justice.

B. Laws, policies and practices that discriminate against women

27. The most comprehensive international treaty focusing explicitly on the rights of women is the Convention on the Elimination of All Forms of Discrimination against Women,⁹ which sets out measures required for the elimination of any "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".¹⁰ It enshrines the minimum standards that States must uphold for every woman under their jurisdiction to enjoy human rights without discrimination and recognizes the particular risk of women to discrimination in specific circumstances due to gender roles and stereotypes within the public and private spheres.¹¹

28. Under the Convention, States parties have the obligation to take all appropriate measures, including legislative measures, to modify or abolish customs and practices which discriminate against women.¹² States are further required to take steps to eliminate prejudices and change practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.¹³ States parties to the Convention are obliged to ensure that its provisions and principles are fully reflected and given legal effect in relevant domestic legislation, as well as through competent national tribunals and other public institutions¹⁴ and through the issuance of sanctions where

⁸ Shelby Quast, *Justice Reform and Gender*, United Nations International Research and Training Institute for the Advancement of Women, 2008, p.13.

⁹ See United Nations General Assembly Resolution 34/180 of 18 December 1979.

¹⁰ Convention on the Elimination of All Forms of Discrimination against Women, art. 1.

¹¹ See, for example, Convention on the Elimination of All Forms of Discrimination against Women, art. 5 (b).

¹² *Ibid.*, art. 2 (f).

¹³ *Ibid.*, art. 5 (a).

¹⁴ *Ibid.*, art. 2 (c).

appropriate.¹⁵ The Convention is therefore an essential instrument to ensure gender equality and that the administration of justice is free from discrimination.

29. Despite the comprehensive legal framework and some progress made, major gender-specific obstacles remain to ensuring women's effective protection and the realization of women's right to access to justice. These include laws that discriminate against women; policies, plans and programmes that disregard the goal of gender equality; and the persistence, in some countries, of practices that discriminate against or are harmful to women.

30. In certain countries, laws, policies, plans and programmes disregard the goal of gender equality and exclude, or seek to exclude women (and not men in similar conditions) from entitlements, opportunities, or benefits, for example, when laws or policies give the right of final decision in the exercise of parental rights and duties to fathers but deny this to mothers.

31. Some areas where the achievement of equality appears to be a challenge still today include education, labour, land property, inheritance and family law (e.g. alimony, child custody, the right to divorce, and property division rights). Some examples of laws that discriminate against women include those that prohibit women from entering certain occupations or professions, such as performing jury duty or certain duties within the military.

32. In certain countries, the lack of recognition of equal rights of women and men, or even the institutionalization of inequality, seriously hampers women's access to justice. This is the case of male guardianship, when women must have the backing of a male member of their family in order to have access to justice.¹⁶ In some cases women are not allowed to file a complaint, serve as witnesses or appear in court without the agreement of a male member of the family, or being accompanied by a male guardian. This is of particular concern, for example, in cases of domestic violence where the guardian and the alleged perpetrator may be one and the same. This is also a serious concern in cases of rape and other forms of sexual and gender-based violence (SGBV), mainly affecting women, which are connected with shame for the family, and may result in a male guardian not facilitating access to justice.

33. In other countries, gender equality is recognized by law but is not reflected in practice. Sometimes harmful practices and prejudices continue to be at the root of the most serious, routine violations of women's right to equality before the courts and the principle of non-discrimination. For example, crimes against women committed in the name of "honour" are sometimes not effectively sanctioned as they are sometimes wrongly considered a cultural or institutionalized practice and therefore mildly penalized or not sanctioned by criminal law). In other countries, crimes against women are not prosecuted or suspects can easily be exonerated of penal liability, for example when a rapist marries, or offers to marry, the victim (in some extreme cases even when the victim is a minor).

34. While acknowledging progress made in addressing SGBV¹⁷, the Special Rapporteur wishes to recall that under international law and human rights standards, States are obliged to protect women from violence, which is a violation of human rights.¹⁸ In her view,

¹⁵ Ibid., art. 2 (b).

¹⁶ See for example, CEDAW/C/SAU/CO/2, para. 21; CEDAW/C/ARE/CO/1, para. 47.

¹⁷ United Nations Office on Drugs and Crime, Handbook on effective police responses to violence against women, Criminal Justice Handbook Series (New York, 2010), p. 2.

¹⁸ See, inter alia, A/HRC/7/4, paras. 55-58 and Convention on the Elimination of All Forms of Discrimination against Women, general recommendation No.19, on violence against women, 1992.

preventing the recurrence of SGBV, including by protecting victims and witnesses of gender-based discrimination and re-victimization, and ensuring that SGBV in its multiple forms constitutes criminal offences are prerequisites for overcoming impunity, and guaranteeing women's protection, and equal access to courts and tribunals.¹⁹ Some of the steps that should be undertaken by States include granting victims of violence the access to immediate means of redress and reparation and ensuring the prosecution, punishment and rehabilitation of perpetrators. Moreover, States should ensure that mechanisms for prosecuting and punishing SGBV perpetrators are available, effective and sensitive to the special needs of women victims.

35. The Special Rapporteur further invites States to give serious consideration to the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly in 2010.

36. In light of the above, courts and tribunals should play a key role in the elimination of laws and practices that discriminate against women. As highlighted by the honourable Justice of Appeal A.E.N. Mpagi-Bahigeine, referring in 2010 to the practice of female genital mutilation: "it is now incumbent upon the judiciary to play the very important role in completely eliminating any form of violence against women including female genital mutilation. The judiciary being part of the State machinery is enjoined to address this issue aggressively whenever it comes before court by involving innovative and progressive interpretation of the laws. Failure to do so would be tantamount to a breach by the State of its international obligations".²⁰

C. Conditions required for the effective realization of women's right to access to justice

37. In previous instances, this mandate has highlighted that the legal complexity and richness of the concept of access to justice lies in the fact that it is both a right in itself and the means of restoring the exercise of rights that have been disregarded or violated.²¹ As an indispensable component of specific rights such as the right to liberty and to personal safety, it is closely linked to the right to effective judicial protection (fair trial or due process),²² the right to an effective remedy²³ and the right to equality.²⁴ The effective realization of the right to access to justice is directly related to the institutional and material conditions in which the justice administration system operates, and the factors affecting that operation and access to justice.²⁵

38. The legal recognition of women's rights, gender equality and the right to effective judicial protection are prerequisites for women's right to access to justice. The right of women to effective judicial protection entails the recognition of women's right to an

¹⁹ See Set of principles for the protection and promotion of human rights through action to combat impunity, principle 1, E/CN.4/2005/102/Add.1, Addendum.

²⁰ Constitutional Court of Uganda, Law & Advocacy for Women in Uganda v. Attorney General, Constitutional Petition No. 8 of 2007, judgment of 28 July 2010.

²¹ A/HRC/8/4, para. 17.

²² Universal Declaration of Human Rights, art. 10; International Covenant on Civil and Political Rights, art. 14. See also A/HRC/8/4, para. 18.

²³ See, inter alia, article 2 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

²⁴ See, inter alia, article 14.1 of the International Covenant on Civil and Political Rights.

²⁵ A/HRC/8/4.

effective remedy and fair trial guarantees. Laws, plans, policies or programmes that do not give women and men the right to a fair and public hearing within a reasonable time by an independent and impartial court or tribunal previously established by the law are discriminatory.

39. Remedies should be available and adequate, and therefore, gender-sensitive. These are basic conditions for the effective realization of women's right to access to justice. Women should therefore be knowledgeable of their rights and of all mechanisms that are available to them to seek redress. The State is under the obligation to ensure that those mechanisms are accessible to women and that redress is provided with impartiality and without discrimination, in particular on the ground of gender. States are therefore obliged not to obstruct the right of access to judicial and other remedies against violations of human rights, and to remove all obstacles (be they legal, social, cultural, economic or other) that prevent or hinder the possibility of access to justice by women.

40. Affirmative action, including temporary special measures,²⁶ by States should aim to guarantee access to justice on an equal footing by means, for example, of the granting of legal aid and assistance for the purposes of securing the effectiveness of this right. Women should therefore receive adequate legal aid and counsel as may be required according to their specific situation.

41. In this regard, the Special Rapporteur wishes to insist on the need to establish within the State a system to provide adequate legal aid and counsel, with specific focus on women from vulnerable backgrounds. In specific circumstances, this system may include for example, free public defence for facilitating access to justice by the poor. Adequate legal aid and counsel impact positively on other fair trial rights, including the right of equality of arms, as the unequal economic or social status of the litigants is usually translated into the unequal possibility of defence in trial.²⁷

42. The judicial system should enjoy independence and impartiality in the adjudication and determination of the most adequate type of redress or compensation to violations of women's rights and the State apparatus should have the capacity to enforce orders, judicial decisions and other agreements and settlements that advance gender equality and ensure women's rights protection. Moreover, the judiciary should enjoy the full cooperation of law enforcement officials specially trained on gender issues and women's human rights so as to uphold accountability.

43. States should show their serious resolve, commitment and political will to empower women, put an end to discrimination and violence against women, and achieve gender equality and advance women's protection. Some of the indicators of the State commitment to take all steps that are necessary to achieve gender equality include the creation of an environment where the rule of law can flourish, together with gender-oriented policy analysis, mainstreaming gender in the planning of courses of action to follow in line with the international obligations of the State, gender-sensitive justice reform initiatives, and marshalling of resources for ensuring gender-sensitive administration of justice. Where capacity gaps remain (e.g. lack of human, financial or other resources), the Special Rapporteur encourages international cooperation and technical assistance to help in building the capacities of Governments, and other stakeholders to identify and address gender-specific barriers for the full enjoyment of human rights, filling in protection gaps and providing effective remedies and mechanisms for reparation and redress.

²⁶ See Convention on the Elimination of All Forms of Discrimination against Women, art. 4.1.

²⁷ See A/HRC/8/4, para. 21.

44. Furthermore, the system of administration of justice should take into consideration the predominant gender role of women as caretakers, whether of children or elderly parents. An administration of justice system which does not take this into account (i.e. assistance/relief in taking care of children or other dependants) results in women not being able to seek justice.

IV. Gender and the judiciary

45. From a rule of law perspective, achieving gender equality and empowering women not only requires a legal system that is consistent with international human rights norms and standards. It also requires an independent judiciary able to exercise its role to uphold the rule of law and make all persons, institutions and entities, public and private, accountable to gender-sensitive laws. An independent, impartial and gender-sensitive judiciary therefore plays a crucial role in advancing women's human rights, achieving gender equality and ensuring that gender considerations are mainstreamed into the administration of justice. Judges, prosecutors and lawyers have a special duty at all times to be alert to any sign of violence against women, whether State-sponsored, institutional, State-tolerated, community violence or violence in the private sphere. The legal protection of women must be scrupulously applied in the face of religious, cultural or other local customs that may resist the view that a woman's life is of equal value to that of a man.

46. The Special Rapporteur refers hereinafter to the conditions required to develop a gender-sensitive judiciary and the role of the judiciary in advancing women's human rights.

A. Developing a gender-sensitive judiciary

47. Developing a gender-sensitive judiciary within the broader context of the administration of justice should be a priority for the State. States should therefore endeavour to evaluate the structure and composition of the judiciary to ensure adequate representation of women and create the conditions necessary for the realization of gender equality within the judiciary and for the judiciary to advance the goal of gender equality.

1. Ensuring adequate representation of women in the judiciary

48. The trust that societies and women themselves may have in the judiciary is essential if courts and tribunals are to be responsive to women's needs and protect women's human rights. In this regard, the Special Rapporteur shares the position expressed by the United Nations High Commissioner for Human Rights, Navanethem Pillay, according to which 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.²⁸

49. 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. It is clear that 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.

²⁸ See Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, International Association of Women Judges, Jubilee Biennial Conference, Seoul, 12 May 2010.

50. The importance of ensuring adequate representation of women in public offices has been recognized at the international level, *inter alia*, in the Convention on the Elimination of All Forms of Discrimination Against Women²⁹ and the Beijing Declaration and Platform for Action.³⁰ In this regard, the Special Rapporteur welcomes efforts by international and regional courts and tribunals for the inclusion of adequate gender representation as a criterion for the selection of judges.³¹

51. The Special Rapporteur wishes to highlight the fact that equal representation of women in the judicial system also includes the defence counsel. In this regard, she wishes to draw attention to the creative approach adopted by the International Criminal Court, when it was found that in January 2010 that only 61 of the total of 335 counsel registered to practise before the Court were women, and less than four per cent of counsel were African women. To bridge this gap the Court, in cooperation with the International Bar Association, launched the campaign "Calling African Female Lawyers".³² This innovative effort has resulted in an increase in the number of female African counsel on the defence counsel list and these female lawyers have also been provided with relevant training.³³

52. Increasing steps to ensure the equal representation of women and men in the judicial system is essential. Where challenges exist in identifying female legal professionals to be appointed as judges, prosecutors or included in the list of defence counsel, creative strategies, including broadening outreach and networking activities, should be implemented.

2. Mainstreaming gender within the judiciary

53. In the Special Rapporteur's view, mainstreaming gender within the judiciary 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. For example, data collection should be sex-disaggregated to guide efforts to plan and build sectorial strategies and gender-neutral language should be preferred in the rulings, minutes and briefing notes to avoid reproducing and promoting a male-centred vision of the world.

54. Efforts should be strengthened to ensure that women are not only considered as victims or clients within the judiciary, but also as key actors in the administration of justice. Women should also be seen as legal professionals with strengths and capacities to contribute to the integrity of the justice system.

55. In this regard, judges and all judicial staff should be adequately trained and sensitized to treat female judges as competent and impartial judges who are committed to exercising independent judgement and are capable of taking on cases in all areas of the law. The Special Rapporteur deeply regrets that in some instances female judges are considered

²⁹ For example, article 7 (b) of the Convention on the Elimination of All Forms of Discrimination against Women recognizes women's right "to perform all public functions at all levels."

³⁰ See Beijing Declaration and Platform for Action, Strategic objective G.1., para. 190 (a).

³¹ See, *inter alia*, article 14.3 of the Protocol on the Establishment of an African Court on Human and Peoples' Rights; Rule 14 of the European Court of Human Rights Rules of Court; Article 36.8 (a) (iii) of the Rome Statute of the International Criminal Court.

³² International Criminal Court, Calling African Female Lawyers. Available from: <http://femalecounsel.icc-cpi.info/>

³³ Assembly of States Parties to the International Criminal Court, report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court, document No. ICC-ASP/9/30, December 2010, para. 4.

"a soft touch" and therefore are not allocated cases of political, social or economic importance on the sole basis of gender stereotyping.

56. Developing a gender-sensitive judiciary therefore also implies addressing gender stereotyping, which is one of the State obligations under the Convention.³⁴ Stereotyping is directly related to the adoption and/or implementation of laws, policies and practices that discriminate against women.

57. States should therefore strive to create the necessary conditions for the mainstreaming of gender in the judiciary, for example, through raising awareness among judges and court officials on women's human rights and the prohibition of non-discrimination and carrying out a mapping of major issues affecting women as users of the judiciary (for example as victims in the civil and criminal jurisdictions; as witnesses, particularly in cases of SGBV; and as offenders). Likewise, States and academic institutions should consider including courses on gender mainstreaming and women's human rights as part of the legal studies curricula.

58. Including knowledge of women's human rights and demonstrated commitment to the goal of gender equality should be considered as requirements in the selection and appointment of judges and justices. Proposed lists of judicial candidates, appointments and promotions should ensure adequate representation of women and minorities at all levels in the judicial system.

B. The role of the judiciary in advancing women's human rights

59. The judiciary is broadly entrusted to guarantee that State obligations stemming from international human rights law are enforced in national courts and tribunals, and therefore that rights are enjoyed without discrimination, including on the ground of sex.

60. Judges exercise this important role whenever they ensure fair and equal access to justice and fair trial guarantees. This role is also 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.

61. In light of the foregoing, the Special Rapporteur wishes to provide several examples of cases decided by international, regional, and national judicial instances over recent years, which illustrate the key role played by judges at the national, regional and international levels in advancing women's protection through the use of international norms and standards, and the various tools offered by the international human rights machinery. For example, treaty bodies have also issued general recommendations, comments or observations which States may use as a guide to interpret the rights enshrined in the conventions and ensure common understanding and greater respect for women's human rights. Some examples include the two general observations issued by the Human Rights Committee on article 3 of the International Covenant on Civil and Political Rights³⁵ and the general comment issued by the Committee on Economic, Social and Cultural Rights on article 3 of the International Covenant on Economic, Social and Cultural Rights.³⁶

62. The special procedures of the Human Rights Council have also provided legal analysis and doctrinal positions which States may use as a guide to interpret the scope of

³⁴ Convention on the Elimination of All Forms of Discrimination against Women, art. 2(f).

³⁵ See general comment No. 4 on equal enjoyment of civil and political rights by men and women and general comment No. 28 on the equality of rights between men and women.

³⁶ See general comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

the existing legal and policy frameworks and ensure a common ground of understanding for the protection of women's human rights. These may also complement the existing legal and policy framework, for example, on reparations to women who have been subjected to violence³⁷ and on a gender-sensitive interpretation of torture.³⁸

63. Regarding impunity and the need to incorporate a gender perspective in the administration of criminal justice, in *González et al. ("Cotton Field") v. Mexico*,³⁹ the Inter-American Court of Human Rights determined that the longstanding failure to investigate, prosecute, or prevent sex crimes and other heinous crimes against women and girls in Ciudad Juárez over the past fifteen years violated the obligations of Mexico under the American Convention of Human Rights, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and international human rights norms, such as those contained in the Convention on the Elimination of All Forms of Discrimination Against Women. It also stressed that the State is obliged to combat impunity by all available means and that the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for the victims, who have the right to know the truth about what happened.⁴⁰

64. In the "Cotton Field" case the Court ordered that the State should effectively conduct the criminal proceedings that were under way and, if applicable, those that might be opened in the future, to identify, prosecute and punish the perpetrators and masterminds of the crimes committed against the victim, *inter alia*, by ensuring that the investigation should include a gender perspective; undertake specific lines of inquiry concerning sexual assault, which must involve lines of inquiry into the corresponding patterns in the area; regularly provide the victims' next of kin with information on progress in the investigation, and give them full access to the case files, and the investigation should be carried out by officials who are highly trained in similar cases and in dealing with victims of discrimination and gender-based violence.⁴¹

65. Regarding the State obligation to prevent violations and discrimination against women, in *Carmichele v. Minister of Safety and Security*,⁴² the Constitutional Court of South Africa noted the recommendations of the Committee on the Elimination of Discrimination against Women that "States may ... be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".⁴³ The Court further stressed that South Africa should prohibit all gender-based discrimination that has the effect or purpose of impairing the enjoyment by women of fundamental rights and freedoms and take reasonable and appropriate measures to prevent the violation of these rights.⁴⁴

66. Regarding the State obligation to eliminate discrimination against women, in *Vishaka v. State of Rajasthan*, the Supreme Court of India⁴⁵ held that by ratifying the Convention, India had accepted legal obligations to eliminate discrimination against

³⁷ See A/HRC/14/22.

³⁸ A/HRC/7/3.

³⁹ See Inter-American Court of Human Rights, Case of *González et al. ("Cotton Field") v. Mexico*, judgement of November 16, 2009.

⁴⁰ *Ibid.*, para. 454.

⁴¹ *Ibid.*, para. 455 (b).

⁴² Constitutional Court of South Africa, *Carmichele v. Minister of Safety and Security*, Case CCT 48/00, judgement of 16 August 2001.

⁴³ *Ibid.*, para. 62, footnote 67.

⁴⁴ *Ibid.*, para. 62.

⁴⁵ Supreme Court of India, *Vishaka and others v. State of Rajasthan and others*, judgement of 13 August 1997.

women, which required ensuring their protection from sexual harassment in the workplace in a case where the local officials failed to investigate the gang rape of a social worker campaigning against child marriage. The Court also drew on general recommendation 19 of the Committee on the Elimination of Discrimination against Women to formulate a set of guidelines on sexual harassment to bind private and public employers pending the introduction of suitable legislation.

67. Regarding violence against women as a gender-based form of discrimination, in *Opuz v. Turkey*,⁴⁶ the European Court of Human Rights, drawing on the work of the Special Rapporteur on violence against women and views adopted by the Committee in several petitions relating to domestic violence, decided for the first time that gender-based violence is a form of discrimination under the European Convention on Human Rights. In *Prosecutor v. Kunarac*,⁴⁷ the International Criminal Tribunal for the former Yugoslavia, drawing on comparative law, expert analysis and advice contained in reports of the Special Rapporteur on torture as well as the former Commission on Human Rights, concluded that rape and other forms of sexual assault against women held in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, and that accordingly they constituted an act of torture.

68. The Special Rapporteur applauds all these, and many other decisions in which national and regional courts and tribunals have drawn on human rights standards and the contributions made by the international human rights mechanisms to uphold respect for women's human rights over recent decades. She further encourages information-sharing on case law across jurisdictions, countries and regions and invites international organizations to support efforts by Governments, High Courts, civil society, women's organizations and other stakeholders to make available to the judiciaries and the general public case-law decisions which advance women's protection worldwide.

V. Good practices

69. The Special Rapporteur wishes to stress the importance of increasing efforts to exchange information on the ways and means in which stakeholders, including Governments, civil society organizations, international and regional organizations, the private sector and others, are seeking to uphold their commitment to the realization of gender equality in the administration of justice, and the protection of women's human rights in the judicial system. In her view, information-sharing is an essential tool to help States to fill in policy and protection gaps at all levels.

70. The Special Rapporteur wishes to draw attention to the important 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. She commends information-sharing efforts by civil society and women's associations, particularly concerning the worldwide gender justice observatory⁴⁸ and the Jurisprudence of Equality Programme Decisions⁴⁹ and encourages know-how exchange among women judges and lawyers from a diversity of legal and judicial systems.

⁴⁶ European Court of Human Rights, *Opuz v. Turkey*, judgement of 9 June 2009.

⁴⁷ International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, judgement of 12 June 2002.

⁴⁸ Gender justice observatory. Available from: <http://www.womenslinkworldwide.org/observatory/#>

⁴⁹ Jurisprudence of Equality Program Decisions. Available from: <http://www.iawj.org/jep/jep.asp>

71. The Special Rapporteur further encourages legal professionals, lawyers' associations, civil society organizations and academic institutions worldwide to continue strengthening avenues of dialogue and exchange of information among judges, lawyers, prosecutors, auxiliaries of justice, law schools, national human rights institutions and civil society. She also praises and encourages the continued collaborative efforts of High Courts at the global and regional levels. In this regard, she welcomes the timely development of judicial diplomacy⁵⁰ and encourages legal professionals in general, and High Court magistrates in particular, to continue working towards legal integration and knowledge-sharing across countries, regions and beyond.

72. In light of the foregoing, the Special Rapporteur wishes to highlight some examples of initiatives, activities and policies that have been brought to her attention and that reflect the commitment of stakeholders to the realization of gender equality and the protection of women's human rights in the administration of justice. She hopes that these examples will serve to inspire others in developing a gender-sensitive approach in the administration of justice at large, contributing to women's daily enjoyment of human rights worldwide.

A. Working to improve women's access to justice

73. The Special Rapporteur has been encouraged by several initiatives undertaken by international organizations⁵¹ to help States and other stakeholders to improve women's access to justice. She commends the mainstreaming of gender in the work of the World Bank in particular, through its research and development programme Justice for the Poor (J4P). The gender approach to this programme aims to develop strategies to address gender inequalities, inter alia, by identifying the underlying concepts and power structures at the root of women's exclusion.

74. She also welcomes the work of the United Nations Development Programme through its global programme on Rule of Law and Access to Justice. The gender focus of this global programme includes the protection of women's human rights and access to legal services while seeking to improve justice service delivery and enforce the law with particular attention to the poor.

75. At the national level, the Special Rapporteur applauds the establishment of legal information services on the rights of women within the judiciary. This is the case of the Grand Duchy of Luxembourg where the judiciary provides free information once a week on family law (divorce and separation); domestic violence; filiation and parental authority; sexual abuse and discrimination.

B. Developing a gender-sensitive administration of justice

76. The Special Rapporteur draws attention to the importance of the various international and regional human rights mechanisms that remind States of their obligation to ensure women's access to justice. She especially draws attention to the work of treaty

⁵⁰ Judicial diplomacy is understood as "collaborative action and communication among national courts". See Ricardo L. Lorenzetti (President of the Supreme Court of Argentina), *Global Governance: Dialogue between Courts*, International Summit of High Courts, Istanbul, Turkey, 1-3 November 2010, p. 1.

⁵¹ See, for example, Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights, March 2011; Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, (Kabul, UNAMA, OHCHR, December 2010).

bodies, in particular the Committee on the Elimination of Discrimination against Women through its study of periodic reports by States and communications submitted on behalf of individuals or groups of individuals on alleged violations of the Convention on the Elimination of All Forms of Discrimination against Women; the work of the special procedures of the Human Rights Council, in particular the Special Rapporteur on violence against women, its causes and consequences, who has included in several of her thematic and country-specific reports considerations on the rights of women victims⁵² and the work of the Commission on the Status of Women and its Expert Groups Meetings, for example on good practices in legislation on violence against women.⁵³

77. The Special Rapporteur commends the establishment of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and its operationalization, which will strengthen the ability of the United Nations to support States in the achievement of gender equality and the empowerment of women worldwide. She also commends the establishment of a working group to address discrimination against women, in law and in practice as a special procedure of the Human Rights Council⁵⁴ and the efforts made by the Office of the High Commissioner for Human Rights to this end.

78. At the regional level, she welcomes the work of the Special Rapporteurship on the Rights of Women of the Inter-American Commission on Human Rights, in particular, the study on access to justice for women victims of violence in the Americas⁵⁵ and the work of the Special Rapporteur on the rights of women of the African Commission on Human and Peoples' Rights, in particular, the study on gender equality in the national legislations of Member States of the Economic Community of West African States (ECOWAS), which contains statistical data and examples of cases of women's discrimination and abuse that have been brought before the Courts.⁵⁶

C. Developing a gender-sensitive judiciary

79. The Special Rapporteur praises, *inter alia*, the Supreme Court of Justice of Argentina for leading a gender mapping of the justice sector (March 2010)⁵⁷ and establishing the Women's Bureau (Oficina de la Mujer) in June 2010. She especially welcomes the fact that this newly established Bureau is aimed at formulating and implementing gender-sensitive policies within the judiciary. This includes facilitating women's access to justice, *inter alia*, through training on gender mainstreaming throughout the country. She encourages the judicial system of Argentina, together with international organizations and other stakeholders, to continue cooperating in this endeavour.

80. The Special Rapporteur commends efforts undertaken at the regional level to develop a gender-sensitive judiciary across countries and regions. She especially welcomes the final declaration of the VI Ibero-American Summit of Presidents of Supreme Courts and Supreme Tribunals of Justice,⁵⁸ which is centred in both gender mainstreaming and gender

⁵² See, *inter alia*, A/HRC/17/26.

⁵³ See Expert Group Meeting on good practices in legislation on violence against women, May 2008. Available from:

http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm

⁵⁴ See Human Rights Council resolution 15/23 of 8 October 2010.

⁵⁵ OEA/Ser.L/V/II, Doc. 68, January 2007.

⁵⁶ African Union, Inter Session Report, Banjul, November 2009, para. 39.

⁵⁷ See report: "Mapa de género de la justicia argentina". Available from: <http://www.csjn.gov.ar/om/mapa.html>.

⁵⁸ Final Declaration, VI Ibero-American Summit of Presidents of Supreme Courts and Superior Tribunals of Justice, Tenerife, 2001 (unofficial translation).

equality within the judiciaries of Ibero-American countries. She also commends Mercosur⁵⁹ for the development and implementation of the project of institutional strengthening and gender mainstreaming (“Fortalecimiento de la institucionalidad y la perspectiva de género”)⁶⁰ and invites the Permanent Forum of Supreme Courts of Mercosur to consider adopting a gender approach, including staffing, training and academic exchange efforts.

D. Ensuring adequate representation of women in the judiciary

81. The Special Rapporteur especially welcomes initiatives to promote the participation of women in the conduct of public affairs, seeking to increase the representation of women in publicly elected office, including the legislature, as well as in high-ranking civil service positions and the judiciary, in accordance with international standards.⁶¹ She especially welcomes efforts undertaken over the past two decades, inter alia, in a number of Latin-American, African and Asian countries that have adopted quotas to increase the representation of women mostly in parliament⁶² and in some instances in all public offices including the judiciary.⁶³ The Special Rapporteur invites States to monitor the compliance of all State institutions with these laws and encourages the judicial power to take all necessary steps to ensure that women and men are equally represented in the judicial systems at all levels. Further study on the adequate representation of women in the judiciary is required.

VI. Conclusions

82. **The system of administration of justice plays a crucial role in the effective protection of women’s human rights, the empowerment and development of women and the advancement of gender equality. The Special Rapporteur highlights the importance of an adequate legal and policy framework for the protection and empowerment of women and the achievement of gender equality, including through the ratification of international human rights instruments and other relevant legal instruments and their translation into effective laws, policies and programmes at the national level. An independent and impartial judiciary, an independent legal profession and the integrity of the judicial system based on equal gender opportunities are essential prerequisites to effectively protect women’s human rights and ensure that the administration of justice is free from discrimination on the ground of gender.**

83. **In the Special Rapporteur's view, developing a gender-sensitive justice system involves mobilizing the full range of processes, mechanisms, laws and policies in place within the structure of the State to strive to ensure women’s human rights and achieve gender equality in the society. A truly independent, impartial, transparent and solid 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**

⁵⁹ Mercosur Member States are Argentina, Brazil, Paraguay and Uruguay. States with associate membership status include Bolivia, Chile, Colombia, Ecuador and Peru.

⁶⁰ See Fortalecimiento de la Institucionalidad y la perspectiva de género en el MERCOSUR, available at: http://www.mercosurmujeres.org/XXIIIacta_documento2.htm

⁶¹ General comment No. 28, para. 29: Equality of rights between men and women (article 3): 03/29/2000. CCPR/C/21/Rev.1/Add.10, general comment No. 28.

⁶² Afghanistan (2004); Argentina (1991); Brazil (1997); Burundi (2004); Costa Rica (1997); Dominican Republic (1997); Ecuador (1997); Liberia (Gender Equity in Politics Act of 2010); Mexico (1996); Panama (1997); Paraguay (1996); Rwanda (2003), Timor Leste (2000); Uganda (1995).

⁶³ Colombia (Law 581 of 2000).

for the application of international human rights obligations and effectively advance women's rights.

84. There is no doubt as to the crucial role played by courts and tribunals in the adherence to the rule of law at the national, regional and international levels and the advancement of women's protection. International norms and standards may be translated into deeds through judicial decisions by independent, impartial and transparent national courts that are responsive to women's needs and effectively uphold the obligation of the State to protect women's human rights.

VII. Recommendations

85. As discussed throughout the report and despite progress made, many challenges remain to ensure that the administration of justice, including that the judiciary effectively protects women's human rights and strives for the achievement of gender equality. Several issues of concern warrant further attention, cooperative effort and protection-sensitive and human rights-tailored responses. In light of the foregoing the Special Rapporteur wishes to put forth a number of general recommendations for further consideration and action:

1. Developing a gender-sensitive administration of justice

86. States should effectively promote and protect the human rights and fundamental freedoms of all, in particular those of women, in conformity with the Charter of the United Nations and international human rights law obligations.

87. States that have not yet done so should:

(a) Ratify and incorporate the applicable legal and policy framework on women's human rights and gender equality, including the elimination of discrimination and violence against women, into their national laws, plans, policies and programmes, and their bilateral and regional agreements regarding the justice sector;

(b) Review their national and regional laws and policies in order to harmonize them with the international legal framework on the protection of women, with particular attention to the goal of eliminating discrimination against women, and achieving gender equality, including equal representation of women and men in public office;

(c) Include gender considerations in the elaboration and implementation of national development frameworks, poverty reduction strategies, human rights action plans and programmes and strategies for human rights education and the advancement of women's rights;

(d) Adopt and develop programmes and policies to address significant gaps on women's protection in social policies and other areas;

(e) Promote the participation of women (and men) from various segments of society, as key actors within the justice sector in their roles as judges, prosecutors, lawyers, legal counsel and court administrators;

(f) Develop procedures, policies and practices that are gender-tailored to promote equal access to justice for all, in formal, informal and alternative justice systems, as well as in transitional justice mechanisms and other mechanisms to adjudicate rights.

88. The Special Rapporteur encourages States to avail themselves of the expertise of relevant special procedures of the Human Rights Council and the technical cooperation and assistance of the United Nations Office of the High Commissioner for Human Rights, and other relevant agencies to complement ongoing efforts to:

(a) Assist in conducting a comprehensive gender assessment of the justice system to identify challenges, gaps and opportunities and determine further areas of technical assistance and cooperation;

(b) Assist in the design of gender-sensitive interventions (including capacity-building efforts) in the justice sector to integrate gender considerations in both civil and criminal justice systems;

(c) Assist in the development of indicators and the determination of baselines for gender mainstreaming across the justice sector.

89. The Special Rapporteur encourages international and regional organizations, technical cooperation agencies and bilateral and multilateral donors to continue contributing to build the capacities of Governments, and other stakeholders, to identify gender-specific barriers for the full enjoyment of human rights and tailor gender-sensitive responses to discrimination and violence against women, including effective remedies and mechanisms for reparation and redress.

90. The Special Rapporteur encourages civil society organizations and national human rights institutions, and other stakeholders to establish partnerships with States to help them in addressing gender-specific barriers to the access of justice and develop a gender-sensitive administration of justice.

2. Developing a gender-sensitive judiciary

91. The judiciary and the bodies in charge of their administration and oversight should:

(a) Incorporate gender considerations in the day-to-day operations and overall planning of the judicial sector;

(b) Collect and use sex-disaggregated data in the planning and building of sectorial strategies;

(c) Use and promote the use of gender-neutral language whenever possible in the rulings, minutes and briefing notes, so as to avoid reproducing and promoting a male-centred vision of the world;

(d) Redouble efforts to ensure that women are not only considered as victims or clients within the judiciary, but also as key actors in the administration of justice, as legal professionals with strengths and capacities to contribute to the integrity of the justice system;

(e) Include knowledge of women's human rights and demonstrated commitment to the goal of gender equality as requirements in the selection and appointment of judges and justices at all levels. Proposed lists of judicial candidates for appointments and promotions should ensure adequate representation of women and minorities at all levels within the judicial system;

(f) Create equal conditions based on merit for appointment of judges to any kind of courts, not only family and children courts;

(g) Create the conditions necessary for the mainstreaming of gender in the judiciary, for example through raising awareness among judges and court officials on women's human rights and the prohibition of non-discrimination and carrying out a

mapping of major issues affecting women as users of the judiciary (e.g. as victims in the civil and criminal jurisdictions; as witnesses, particularly in cases of SGBV; and as offenders);

(h) Take all necessary steps to ensure a systematic gender analysis of the judicial sector, and the incorporation of a gender perspective in the administration of justice.

92. National courts and tribunals should resort more actively to the use of comparative law and the tools available at the international level, including international customary law, international treaties, treaty bodies' jurisprudence, the conclusions and recommendations stemming from the universal periodic review (UPR) mechanism and expert analysis and advice contained in reports of thematic or country-specific special procedures of the Human Rights Council.

93. Judges and all judicial affairs staff should be adequately trained and sensitized on gender equality and women's human rights and on strategies to avoid gender stereotyping.

3. Other recommendations

94. The Special Rapporteur encourages the Office of the United Nations High Commissioner for Human Rights and the United Nations, in collaboration with all United Nations Agencies when appropriate, to:

(a) Compile the legal analysis and doctrinal positions by the Special Procedures of the Human Rights Council together with the recommendations adopted within the framework of the universal periodic review mechanism and the practice of treaty bodies, in contributing to make the human rights principles of equality and non-discrimination a reality in women's daily lives, with a view to making them available to judiciaries across countries and regions;

(b) Compile, in collaboration with all United Nations Agencies, the legal analysis and doctrinal positions developed by the United Nations system, with a view to making them available to the judiciaries across countries and regions.
