

**The East African Magistrates and Judges Association**  
**Regional Gender Policy for Judiciaries in East Africa**

**Gender Policy for Judiciaries in East Africa**

Developed in 2019  
**Document for validation**

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## **1 Forewords**

### **1.1 EAMJA Sub Committee on Gender**

The Judiciaries in East Africa are at the cusp of the emerging dawn for Africa where there has been a paradigm shift in different degrees in how the Judiciaries have been run. There is a lot of judicial reform, greater judicial independence and jurisprudential challenges that the bench has had to grapple with. Against this backdrop there has been a growing concern about the lack of a harmonized judicial policy on gender be it in the sphere of discrimination, abuses, mainstreaming and the like.

The 2017-2019 Council of EAMJA took up office at a time when it was ripe to explore a regional gender policy for the Judiciaries upon realizing that most jurisdictions did not have any in place, or had one form or another in rudimentary form.

The Regional Gender Policy that has been developed is a first step as iterations and improvements on this policy will be welcome and most importantly, necessary as the challenges keep morphing and we must be equipped as Judicial Officers and Jurists of no mean feat to deal with them appropriately. In the Policy developed we have endeavored to remain true to the discourse by approaching the matters from a country and region prism so as to ensure we capture best practices and spread the efficient systems and approaches for replication in the other countries so that the East African Region can be a premier bench with the requisite tools to enforce as well as apply the Regional Gender Policy intra the Judiciaries as institutions and to society as large – the inward and outward perspective.

We hope this will enrich your appreciation of the issues at play and ensure there is a harmonized approach in the region on matter gender policy. Suggestions on improvement of the Regional Gender Policy are welcome.

**Nzioki wa Makau**

## 2 Abbreviation/Acronyms

*[select repeated abbreviations used in the policy]*

AU African Union

ACHPR African Charter on Human and People's Rights

AIDS Acquired Immune Deficiency Syndrome

CEDAW Convention on the Elimination of all forms of Discrimination Against Women

EAC The East African Community

EAMJA The East African Magistrates and Judges Association

GBB Gender Bench Book

GBV Gender Based Violence

GFP Gender Focal Point

GIMS Gender Information Management System

MDG Millennium Development Goals

SDG Sustainable Development Goals

SIGI Social Institutions and Gender Index

### 3 PART A

#### 3.1 Chapter One

##### 3.1.1 Background

#### About EAMJA

EAMJA was launched in 2001 with the mission of: *“Promoting, Enhancing, and Protecting the Rule of Law, and Accessibility to Justice for all, through Harmonization of the Judicial Systems and the Development of the Capacities of Judicial Officers in East Africa.”* To achieve these goals, EAMJA organizes a number of activities for its members, including trainings, workshops and conferences to allow them to discuss, exchange and share experiences and good practices on relevant subjects. The

EAMJA draws membership from the organizational bodies representing magistrates and judges in five East African countries namely; Kenya Magistrates and Judges Association (KMJA), Uganda Judicial officers Association (UJOA), the Judges and Magistrates Association of Tanzania [JMAT], the Rwanda Judges and Registrars Association, and the Zanzibar Judicial Officers Association (ZAJOA). The Association aims to develop, promote and protect the highest standards of integrity and ethical behaviour among judicial officers by among others:

- a. Harmonizing judicial practice in East Africa
- b. Promoting and protecting the independence of the judiciaries
- c. Advocating for the improvement and maintenance of competitive terms of service and conducive working environment for judicial officers
- d. Enhancing faster dispensation of justice through the development, promotion and maintenance of high standards of performance by judicial officers
- e. Developing its institutional base through the development of and adherence to management and administrative policies

The EAMJA Council is the policy making organ of the Association, and therefore have power to influence, change and improve judicial policy in the East Africa region. The EAMJA Council is committed to supporting and enhancing the working practices of the judiciaries in the region. Further, EAMJA Council also works to articulate and safeguard the interests of judicial officers which remains a critical aspect in realizing the commitment to Goal 16 of the SDGs to promote peaceful and inclusive institutions at all levels. The EAMJA Council also outlines and creates policies that have momentous effects on the judiciary in East Africa.

#### About ICJ Kenya

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is the oldest non-partisan and non-profit autonomous organization promoting human rights, the rule of law and democracy in Kenya and around Africa since 1959. It is an autonomous national section of the

Geneva-based International Commission of Jurists. ICJ Kenya has a robust membership comprising over five hundred (500) members of the Bench and Bar with a cumulative legal expertise of over two and a half (2.5) centuries. ICJ Kenya's mission is to promote human rights, justice and democracy in Kenya and around Africa through the application of legal expertise and international best practice.

In furtherance of its objectives, ICJ Kenya has had a long history of supporting judicial reforms in the region and considers the Judiciary a key ally in the realization of human rights, democracy and the rule of law. ICJ Kenya therefore recognizes and appreciates the unique and pertinent role that judicial officers play not only as citizens, duty bearers, leaders, interpreters of law, law makers, but also as champions of human rights, democracy and the rule of law.

ICJ Kenya enjoys a cordial relationship with East African Magistrates and Judges Association (EAMJA) and the Kenya Magistrates and Judges Association (KMJA) and has been supporting their activities over the past several years, including legal conferences. These conferences have brought together judicial officers from all over East Africa to discuss issues affecting our judiciaries and provided a platform for judicial education, benchmarking, and the sharing of emerging best practice.

### **ICJ Kenya and EAMJA Council Partnership: The Birthing of the Regional Gender Policy for East African Judiciaries**

In the past years, ICJ Kenya has worked closely with EAMJA Council towards promoting the appreciation and application of the Maputo Protocol by Judicial officers in East Africa in decision making both internally and externally in their judgments and rulings. ICJ Kenya and the EAMJA Council have in previous conferences managed to embed the gender agenda in the discussions and deliberations by participants.

In 2016, the 13<sup>th</sup> EAMJA Conference passed a resolution that urged the East African courts to “apply in their decisions, as far as practicable, international and regional instruments which specifically address the cultural and belief systems that undermine women’s and children’s rights”.

The 2017 Pre-Conference presented a platform for policy dialogue on the role of EAMJA Council in protection of women rights within the judiciary and for court users. The gap identified was the lack of a regional gender policy which could be mainstreamed in the administration of justice across the region. The Council was committed to ensuring that a regional gender policy was developed and adopted. To spearhead this, the Council resolved to form a Sub Committee on gender with representation from Kenya, Uganda, Tanzania, Zanzibar and Rwanda. The work of the Sub Committee is to advise the Council and national Associations on gender related issues and to spearhead discussions and initiatives geared towards gender and human rights.

Specifically, the Sub Committee was tasked with the following:

- a. To develop a regional policy framework on gender for gender mainstreaming in judicial institutions and in administration of justice

- b. To develop of a mentorship framework for women Judges and Magistrates in the region to promote mentorship programmes that will nurture women Judges and Magistrates in leadership
- c. To advise country organizing committees to include relevant sessions on gender and human rights in every EAMJA annual Conference to discuss the gender discourse and promotion and protection of women rights in the region.
- d. To ensure continuous training of judicial officers on gender and women rights with a view to information sharing through discussions on regional jurisprudence on women rights cases and interpretation of legal frameworks through comparative jurisprudence. This includes utilizing the EAMJA website for sharing information including online courses for Judges and Magistrates to take up.

### **Participation of ICJ Kenya:**

ICJ Kenya aims to consolidate the gains achieved in its previous interventions and to create a sustainable and incremental approach in the manner in which these gains will be protected and promoted in the future.

ICJ Kenya committed to provide technical support for the approval, adoption and implementation of the regional gender policy, and also ensure that it reflects the spirit and letter of the Maputo Protocol, adheres to international principles and standards and promotes gender responsiveness and diversity in all policies and practices at the judiciary.

Throughout the process of development of this Policy, ICJ Kenya has provided ongoing support to the newly established Gender subcommittee of the EAMJA Council to develop, disseminate and advocate for the adoption and implementation of the regional gender policy. This is to ensure that there is a standardized system of addressing structural gender gaps in the administration of justice within and by the Courts

### **3.1.2 Introduction**

It is generally acknowledged that the realisation of gender equality through promotion of gender equity in the work environs brings positive impact with respect to:

- a) compliance with national, regional and international regulations
- b) well-being at work
- c) social dialogue and cooperation among stakeholders
- d) internal decision-making and career management procedures
- e) inclusiveness and the sense of community
- f) the quality of administration of justice
- g) the overall profile of the organisation in a competitive environment

These broad areas of impact help build the case for gender equality policies but are however not sufficient, and potential benefits should be formulated so as to be directly relevant to the judiciaries. The main forms of benefits are:



- a) Compliance with laws
- b) Creating better work environments
- c) Attracting and retaining talents
- d) Economic benefits
- e) Excellence and judicial quality
- f) Effectiveness and efficiency of the judiciaries
- g) A leverage for organisational change

Promoting gender equality in respect to equal access to training, health care, decent work conditions, and representation in decision-making processes will fuel the realisation of an independent and effective judiciary.

Gender equality is not only a fundamental human right, but a necessary foundation for the judicial sector. Gender equality is achieved when women and men enjoy the same rights and opportunities across all sectors, including economic participation and decision making, and when the different behaviours, aspirations and needs of women and men are equally valued and favoured.

“Gender equality means the equal visibility, empowerment and participation of both sexes. Gender equality is the opposite of gender inequality, not of gender difference, and aims to promote the full participation of women and men in the judiciary. It means accepting and valuing equally the differences between women and men and the diverse roles they play in society.

“Gender equality” includes the right to be different. This means taking into account the existing differences among women and men, which are related to class, political opinion, religion, ethnicity or race.

“Gender equality” means discussing how it is possible to go further, to change the structures in the judiciaries which contribute to maintaining the unequal power relationships between women and men, and to reach a better balance in the various female and male values and priorities,

Gender equity a sine qua non for realising gender equality.

Acceptance of these principles implies not only the elimination of all forms of discrimination, legal or otherwise, on the basis of sex, but also the fulfilment of a number of other requirements that must be seen as qualitative indicators of political will to achieve substantive gender equality or de facto equality”.

A “Gender Equality Policy” is therefore the setting of legal standards to guarantee the enjoyment of the principle of gender equality and non-discrimination. The judiciaries in the Eastern Africa region must put in place and efficiently implement proactive policy measures and various strategies which have been internationally recognised as indispensable to pursuit of the objective of gender equality in an effective way.



### 3.1.3 Justification

Globally, over a long period, there has been much progress realized towards gender equality under the Millennium Development Goals (including equal access to primary education between girls and boys). However across the societies gender discrimination and violence subsists and as a result for example women present 39% of the work force and only 27% in managerial positions. This success this far has been harnessed in the Sustainable Development Goals and given prominence under Goal 5 on realisation of gender equality by 2030.

Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world. Providing women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes will fuel sustainable economies and benefit societies and humanity at large. SGD Goal 5 underscores the importance of implementing legal frameworks regarding female equality in the workplace and in this particular instance the Judiciary.

Societies globally including those found within Eastern Africa have been affected by large scale structural changes such as globalization, increasing access to education and the rapid spread of communication technology which have affected gender norms profoundly. While these have largely led to more egalitarian gender norms, they also evoke resistance which assert discriminatory gender norms. It is no wonder, the 2030 Agenda for sustainable development, shaped by both public and private sectors and the voices of civil society, provides a blueprint for making our world more equitable, sustainable and liveable.

A key target in the 2030 Agenda is to end all forms of discrimination against all women and girls, everywhere. This is so important because of the crushing impact of laws and policies that explicitly restrict men and women's ability to engage fully economically and socially, coupled with the less visible but equally powerful cultural and social norms that portray women as unequal to men and make them so in the process. Negative stereotypes of women and men have become deeply rooted, even in communities with strong anti-discrimination legislation. Confronting and changing stereotypes is therefore central to evolving how both women and men are able to operate in society and in the economy.

The Protocol to the African Charter on Human Rights and Peoples' Rights [the Maputo Protocol] was adopted on 11 July 2003 by the African Union (AU). The Protocol aims to confront the continual discrimination, abuse and marginalization of women. Implementation of the Protocol serves as a key tool of lasting change inspiring the employment of the standards and obligations of the protocol, by government officials and other actors engaged in governance.

One of the most progressive elements of the Protocol is that it provides clarity on the protracted public/ private dichotomy debate as to the extent to which the state should intervene in the 'private sphere'. Unfortunately, it is in the so- called 'private sphere' that numerous violation of gender rights occur, for example sexual harassment and other forms of sexual violence. The

EAMJA, keeping abreast to the provisions of the Maputo Protocol in 2018 established an adhoc sub-committee on gender.

The EAMJA noting that implicit bias, also known as unconscious bias, [which is the act of judging people based one's unconscious thoughts, beliefs, or feelings] and unconscious bias [which is where a person's background, personal experiences, societal stereotypes and cultural context impact their decisions and actions without them realizing] has developed this Gender Policy to ensure that the member judiciaries deliver on their part towards the 2030 agenda. This policy will ensure that the policies and practices relevant to administration of the judiciary do not lead to targeted discrimination and thus discontent and even lacklustre performance of the judiciary. Some examples of subtle but lethal gender biases include:

**Interview/promotion questions;** to determine the age of your children bear no relation to an interviewee's capability in relation to the job.

**Glass ceilings;** can a male and female employee climb equally high on the ladder of opportunity? If not, why? What makes a male or female better qualified to climb higher in judiciary? Each employee, regardless of gender, should have the same opportunity. All things being equal, men and women should be able to reach as high as possible, given their skills and performance.

**Positional bias;** what makes a woman better suited to be a secretary or receptionist? Why shouldn't a man fill that position? Why shouldn't a woman serve as your first line of security? It is important to remain open minded to the ability of either/any gender being competent to execute the task.

**Terminations/Suspension/Reprimanding;** what are the reasons for terminating or reprimanding an employee? Has a female employee ever been victimized for asking to be treated equally? Has a male employee ever NOT been reprimanded when facing allegations of sexual harassment? Disciplinary processes need be handled without bias. Rules and policies should apply for both genders—across the board.

**Outdated views;** It is an undisputed fact that society has changed a great deal over the last decade. Is there a dress code? Does it apply across genders? Women can be professional without dresses and pantyhose just as men can be professional without a tie.

The removal of unnecessary practices and regulations in the workplace that stifle the space for individual growth and participation must be addressed so that the judiciaries deliver at full per.

### 3.1.4 Contextual Analysis

A targeted scrutiny of the legal and administrative framework within which this gender policy shall operate will enable policymakers to understand gender inequalities in a given situation as it is not static. It is important to note that even within the driving call in the region “development”, the new agenda is to leave no one behind as we aspires to transform the world in which we live.

## The Development Goals

At the time when the EAMJA was launched in 2001, a key development instrument adopted by world leaders at the UN summit was the United Nations Millennium Declaration which became better known as the Millennium Development Goals [MDGs]. These 8 international development goals committed nations to a new global partnership. The promotion of gender equality was given prominence [Goal 3].

These Goals gave way to the bold and transformative agenda for Sustainable Development [SDGs], adopted by all United Nations Member States as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. Goal 5 of the SDGs on gender equality intends to achieve gender equality and empower women and girls; Goal 8 on decent work and economic growth advocates of sustained inclusive and sustainable economic growth, full and productive employment and decent work for all; while Goal 16 on peace justice and strong institutions promotes stability, human rights and effective governance based on the rule of law. One of the targets under this Goal [16.3] advocates for the promotion of the rule of law at the national and international levels and ensures equal access to justice for all. Target 16.6 aims to develop effective accountable and transparent institutions at all levels. While 16.7 aims at ensuring responsive, inclusive participatory and representative decision making at all levels. 16. B aims to promote and enforce non-discriminatory laws and policies for sustainable development.

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### The African Union

A long tradition of striving for determination and realization of gender equality guides the AU's approach to the advancement of gender equality. The global trend that led to the 1948 United Nations Charter and the Universal Declaration on Human Rights, the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), the Vienna Declaration on Human Rights, the Nairobi Forward Looking Strategies, Beijing Platform for Action, the outcome of the International Conference on Population and Development (ICPD), Palermo Protocol on Trafficking in Humans, and the Millennium Declaration and Millennium Development Goals (MDGs) as well as the SDGs impacted the AU approach.

The African Charter on Human and Peoples Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Solemn Declaration on Gender Equality in Africa (SDGEA) and the Post Conflict Reconstruction and Development adopted by the Heads of State and Government in 2006 informed the development of the African gender policy. The African Union Gender Policy takes into account the AU Policy on Migration, the AU Nutrition Strategy, the African Position on the Family, the African Social Policy Framework, the Maputo Plan of Action on Sexual and Reproductive Health, the African Youth Charter, the outcome of the African Development Forum on Gender Empowerment and Ending Violence Against Women, the Comprehensive Africa Agricultural Programme (CAADP) and other key AU Decisions, Declarations and instruments having a bearing on the advancement of women and gender equality.

The main purpose of the Policy is to establish a clear vision and make commitments to guide the process of gender mainstreaming and women empowerment to influence policies, procedures and practices that accelerate the achievement of gender equality, gender justice, non-discrimination and fundamental human rights in Africa.

The vision is to achieve an African society founded on democracy, gender equality, human rights and dignity and recognizes the equal status of women and men, girls and boys, with both sexes thriving together harmoniously, in a peaceful and secure environment characterized by equal partnership in decision-making in the development of the Continent.

The main goal is to adopt a rights' based approach to development through evidence based decision-making and the use of gender-disaggregated data and performance indicators for the achievement of gender equality and women's empowerment in Africa. It seeks to promote a gender responsive environment and practices and undertake commitments linked to the realisation of gender equality and women's empowerment in Member States, and at the international, continental, regional and national levels.

Its objectives include:-

- a) To advocate for the promotion of a gender responsive environment and practices
- b) To initiate and accelerate gender mainstreaming in institutions, legal frameworks, policies and programmes
- c) To promote the development of guidelines and enforcement of standards against sexual and gender-based violence
- d) To develop a Gender Management System (GMS) within the AU
- e) To address gender-based barriers to the free movement of persons and goods across borders throughout the Continent;
- f) To promote equitable access for both women and men to and control over resources

### **The East African Community**

The promotion of gender equality and the empowerment of women is central to the mandate of The EAC and intrinsic to its development approach. This includes advocating for women's and girls' equal rights, combatting discriminatory practices and challenging the roles and stereotypes that affect inequalities and exclusion.

The EAC gender policy champions home-grown solutions to the regions gender and affirmative action development challenges and serves as a tool for results oriented measures for Gender Equality and Women's Empowerment so as to ensure that gender equality and the empowerment of women are integrated into every aspect of its work to eradicate poverty and reduce inequalities and exclusion.

The policy provides a strong situation analysis and outlines key priority areas in the region both at the Partner State and at the secretariat. It also provides mechanisms that provide a platform for accountability. The policy takes cognizance of the fact that Partner states have their own national Gender policies and other legal frameworks to enhance gender equality and

affirmative action at the national level. Thus harmonization, standardization tracking and reporting are the key driving factors in the EAC Gender policy. The EAC recognizes that achieving progress on gender equality and women's empowerment requires working collaboratively with Partner States' governments, the private sector, the civil society, religious institutions, development partners, and other actors.

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## 3.2 Chapter Two

### 3.2.1 Situational Analysis

The Organisation for Economic Co-operation and Development (OECD) is an international organisation that works to build better policies for better lives. A look at the data in OECD Development Centre's Social Institutions and Gender Index (SIGI) provides the realities of the situation on the ground within which the lofty legal framework and ideals for gender equality operate. As underlying drivers of gender inequalities, discriminatory social institutions perpetuate gender gaps and hinder progress towards rights-based social transformation that benefits both women and men.

The SIGI covers four dimensions of discriminatory social institutions, spanning major socio-economic areas that affect women's lives: discrimination in the family, restricted physical integrity, restricted access to productive and financial resources and restricted civil liberties. The SIGI's variables quantify discriminatory social institutions such as unequal inheritance rights, child marriage, violence against women, and unequal land and property rights. Through its 180 country profiles, country classifications, unique database and its innovative simulator, the SIGI provides a strong evidence base to effectively address the discriminatory social institutions that hold back progress on gender equality and women's empowerment and allows policy makers to scope out reform options and assess their likely effects on gender equality in social institutions. The role of the judiciaries in promoting gender equality in social institutions is evident in the impact of the decisions that they make in for example family law matters.

The SIGI sub-Saharan region report highlights the stark challenges that women and girls in the region face in overcoming entrenched gender discrimination in areas such as land rights and violence as well as areas where they have seen unprecedented progress, such as in political voice and comprehensive efforts to reduce rates of early marriage. The sub-Saharan Africa Regional Report draws on SIGI's 14 variables that measure gender-based discrimination in social norms, practices and laws. The Regional Report reveals both the heterogeneity between countries and issues that affect women across the region such as violence against and an economic analysis of the development cost of discriminatory.

### At The Judiciaries Level

#### Judicial Bench Book on Violence Against Women in Commonwealth East Africa

Strides have already been made within the judiciaries in East Africa to promote gender equality. This is done in recognition of the central role it plays in enhancing and protecting women's rights, as well as the development and enforcement of formal legal responses to discriminatory and criminal activities, including violence against women (VAW). The Judicial Bench Book on Violence Against Women in Commonwealth East Africa situates VAW in four member countries, Kenya, Rwanda, Tanzania and Uganda.

The Bench Book is a quick reference for judicial officers, in line with the foundations of the common law system –stare decisis and judicial precedent. Through case law, the book discusses measures to address VAW and the role of the judiciary in ensuring that the state

fulfils its obligations. It also includes examples of how a lack of appreciation of the lived realities of women victims of violence can lead to denial of justice.

### **Gender Bench Book (Uganda)**

Access to justice for women is a critical component of delivery of justice globally and at the national level. In Uganda, the Justice Law and Order Sector (JLOS) work plan, under the Strategic Investment Plan (SIP) III (2011 - 2016), has as one of the key strategies identified for addressing this gender capacity gap in the judiciary, the development of gender bench briefs for judicial officers to use and refer to in adjudication of cases. The Gender Bench Book presents judicial officers with local and international best practices, including recommendations from treaty bodies such as the Committee on the Elimination of Discrimination against Women. It offers guidelines for use by court officials when determining cases where women's rights are involved. It also assists judicial officers in addressing procedural issues that impede access to justice. It helps operationalize the Judiciary Gender Policy and Strategy for Uganda which was developed in 2012.

The Gender Bench Book (GBB) has been developed for judges, magistrates, and all other judicial office holders to use and refer to in the adjudication of cases in the hope that it will influence the exercise of proper judicial discretion and decision-making, using local and international "best practices", in the interest of enhancing the gender-responsiveness of the judiciary to improve access to justice for women. It aims to increase the procedural and substantive knowledge of judicial officers about existing laws, the national constitution, regional treaties and international human rights standards, pointing out gender-biased and gender-neutral laws, and how these have been applied and interpreted by courts and administrative bodies from various jurisdictions. The GBB provides judicial officers with skills to interpret the existing laws, traditions, cultural and religious practices that are discriminatory with a view to taking affirmative action to promote gender equality. It is hoped that the GBB, will shape and nurture a positive gender attitude and influence judicial officers to deliver justice based on gender equality in line with the national constitution, regional treaties and international human rights laws. The GBB provides guidance on how Uganda can work towards creating a sound legal system that guarantees a better understanding of gender-based violence, prevents all forms of Violence Against Women, and provides complete protection of their rights.

### **Tanzania**

TAWJA [Tanzania Women Judges Association] currently has about 250 paid-up members who comprise of Hon. Justices of the Court of Appeal, High Court Judges, Magistrates at all levels, Judges' Assistants, as well as Hon. retired Judges and Magistrates.

Between 2017 - 2019 there has been appointments of 6 female Justices of the Court of Appeal, 7 female High Court Judges, 1 Senior Deputy Registrar and 9 Deputy Registrars. The result is that now there is a total number of 7 Female Court of Appeal Justices out of 21 serving Justices, 27 High Court female Judges out of 72 High Court serving Judges. 17 Female Deputy



Registrars out of 49 Deputy Registrars. The period has seen the recruitment of 30 new female Hon. Magistrates now sitting at the Primary, District and Resident Magistrate Courts.

## **Rwanda**

While the quota requirement may be easy to implement in political and administrative positions, its implementation in the judiciary in Rwanda is not without challenges. The Judiciary's need for independence and more objective criteria in the recruitment makes it difficult to incorporate subjective political considerations such as quotas and affirmative action. However the number of women judges moved from 9.1% in 1998 to 39% in 2014. By 2019 women comprise 49.6% of the judicial staff and judges. Courts President at different levels, women represent 27.4%; For Courts Vice Presidents women represent 21.4%. For Chief Registrars women represent 52.6%.

## **Kenya**

At an institutional level, the Kenya Judiciary has made tremendous progress in advancing gender equality. According to the institutional demographic survey (2016), out of 4326 employees (Judges, Magistrates, and Staff), 2032 are women. The distribution of men to women was at about 53% against 47% as at Jun 28, 2017. However, the Global Gender Gap Report 2017 ranks Kenya 76 out 144 globally with significant inequalities between males and females in education attainment, health outcomes, representation in parliament and participation in the labour market.

## **Burundi**

In Burundi, a general study reported under the Afrobarometer Policy Paper No. 22/72015 series on the perceptions as to whether women are treated equally, respondents were asked: In your opinion, how often, in this country:

- a) Are women treated unequally by employers? 43% felt that this never happened; 29% felt it rarely happened while 17% felt it often happened, 4% felt it was always while 7% did not know,
- b) Are women treated unequally by the police and courts? 45% felt that this never happened; 32% felt it rarely happened while 18% felt it often happened, 3% felt it was always while 2% did not know,
- c) Are women treated unequally by traditional leaders? 44% felt that this never happened; 31% felt it rarely happened while 20% felt it often happened, 4% felt it was always while 1% did not know,

## South Sudan

Part 7 of the Transitional Constitution of South Sudan establishes the Judiciary of South Sudan, and articulates judicial power and where it is derived from, independence of the institution, and its role in adjudication. The said Transitional Constitution of South Sudan mentions the need for a reasonable number of women to be appointed to the Judiciary, while having regard to competence, integrity, credibility and impartiality. Article 123(6) of the Transitional Constitution, required the Judiciary, in its appointments, to pay regard to the issue of the inclusion of women as judges. However, the initial judicial appointments featured male judges almost exclusively and only two females. Currently, the Judiciary struggles with a host of challenges, relating to weak capacities, lack of infrastructure and resources to function properly further compounded by the instantaneous change of the legal system in South Sudan from civil law and sharia law to the English common law, creating more pressure on the Judiciary to deliver, let alone ensure that it executes its role in promoting gender equality.

## Questionnaire Summary Analysis

In spite of the newfound emphasis on influencing new policies in order to guide gender equality, too little attention is directed to the less alluring and equally important work of implementing the policies. This focus is the next logical step if the gains of the existing contextual framework is to gain impetus from this policy.

The gaps that present in the realization of gender equality is felt at the individual level as represents from the analysis of the questionnaires that were filled by judicial staff at the start of developing this policy.

It is noteworthy that there is a regional gender policy, however most of the membership did not have a gender policy fashioned to suit their local circumstances. Only 17% of the EAMJA membership has a gender policy within the judiciary.

It was noted that largely the actualization of provisions and processes that recognise and address gender concerns in the work place were not in place. These include maternal health medical cover, prostrate health cover, sexual harassment policies, secure complaints process among others. Indeed only 17% of the EAMJA membership has a sexual harassment policy.

Gender biases can only be mitigated through trainings and mentorship programs that provide opportunity to share experiences and note individual biases. The judiciaries in the region do not have systematic training programs on mentorship and indeed where there has been training, the same was largely adhoc.

If women and men are to perform at their highest possible capabilities, the work situation need to conducive to the realities of their gender. This would imply for example that transfer policies are not gender blind. From the initial questionnaires filled by judiciary staff at the start of developing this policy, this is a situation largely lacking across the EAMJA national judiciaries.

Largely women and men are included in the decision making levels within the national judiciaries. This was the situation in 50% of the membership.

### 3.3 Chapter Three

#### 3.3.1 Legal Framework

#### National legal frameworks

##### Uganda

The Constitution of the Republic of Uganda of 1995 guarantees gender equality through Objective VI and Objective XI of the “National Objectives of State Policy” section (11). Objective XV recognises the significant role that women play in society. Gender is mainstreamed throughout the Constitution and within chapters related to the Protection of Human Rights, Land and Environment, and Institution of Traditional or Cultural Leaders. These chapters contain provisions that are directly related to women’s equal right to land and that specifically outlaw customs that are against the dignity of women or that undermine their status. Article 2(1) states that the Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. In its second clause, it states that: “If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void”.

Article 21 confirms the equal status of all citizens under the law and prohibits discrimination on a number of grounds, including sex.

Article 26(1) provides for every person, including women, the right to own property.

Article 31(1) guarantees women’s equal rights upon, during and after marriage and provides for the protection of the rights of widows and widowers to inherit the property of their deceased spouses. It also sets the legal age for marriage at eighteen for both men and women.

Article 32(1) compels the State to take affirmative action in favour of groups marginalized on the basis of gender.

Article 33 specifically describes the status and rights of women and enshrines women’s right to equal treatment with men. Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited.

Article 78 stipulates that Parliament shall consist of, inter alia, one woman representative for every district.

Article 180(2) (b): one-third of the membership of each local government shall be women. Chapter 15, which deals with Land and Environment, does not contain specific gender provisions, nor does it exclude them.

Article 246(4) safeguards the allegiance and privileges accorded to traditional and cultural leader which under the Constitution are not regarded as a discriminatory practice prohibited under Article 21; but only insofar as the custom or practice, usage or tradition relating to a traditional or cultural leader does not detract from the rights of any person as guaranteed by this Constitution.

##### Tanzania

The 1977 Constitution of the United Republic of Tanzania (Articles 12 and 13) guarantees equality between men and women and supports their full participation in social, economic and political life. Gender equality and women’s empowerment also forms a major component of

the National Poverty Reduction Strategies (MKUKUTA II in Mainland and MKUZA II in Zanzibar) under the goals on governance, education and health

In addition to national strategies, Tanzania recognizes the following international commitments to women's rights;

- a) United Nations Security Council Resolution 1325 (2000) and Resolution 1820 (2006) on gender equality, protection and participation of women in conflict resolution, peace-making and state building
- b) Universal Declaration on Democracy (1997)
- c) Cairo Declaration on Population and Development-ICPD (1994)
- d) Millennium Declaration and Development Goals (which include MDG 3 on gender equality and women empowerment)
- e) Convention on the rights of the child (CRC) (1989)
- f) Convention on the political rights of women (1952)
- g) Beijing Declaration and the Beijing Platform for Action (1995) on women's economic and political empowerment, education and training.
- h) United Nations convention on the elimination of all forms of discrimination against women (1979)

There are also several policies, strategies and plans that aim to promote gender equality such as;

- a) the Women and Gender Development Policy of 2000;
- b) National Strategy for Gender Development of 2005;
- c) National Policy on Research and Development of 2010;
- d) National Economic Empowerment Policy of 2004;
- e) Rural Development Strategy of 2001;
- f) National Cultural Policy of 1997;
- g) Policy on Women in Development in Tanzania of 1992;
- h) Community Development Policy of 1996;
- i) National Plan of Action for Prevention and Eradication of GBV against Women of 2001-2015; and
- j) National Strategy for Growth and Reduction of Poverty (MKUKUTA II) of 2010.

## Rwanda

Article 9 of the Constitution on fundamental principles proclaim the state as governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least 30 percent of posts in decision making organs. The State of Rwanda commits itself to conform and to promote and enforce the set of fundamental principles.

At Article 11 it provides that all Rwandans are born and remain free and equal in rights and duties. Discrimination of whatever kind based on, inter alia, ethnic origin, tribe, clan, colour, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social

status, physical or mental disability or any other form of discrimination is prohibited and punishable by law.

Article 16: all human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law.

Article 26: only civil monogamous marriage between a man and a woman is recognised. No person may be married without his or her free consent. Parties to a marriage have equal rights and duties upon and during the subsistence of a marriage and at the time of divorce.

Article 29: every person has a right to private property, whether personal or owned in association with others. Private property, whether individually or collectively owned, is inviolable. The right to property may not be interfered with except in public interest, in circumstances and procedures determined by law and subject to fair and prior compensation.

Article 30: private ownership of land and other rights related to land are granted by the State. The law specifies the modalities of acquisition, transfer and use of land.

Article 76: the Chamber of deputies shall be composed of 80 members including 24 women with 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;

Article 82: the Senate shall be composed of 26 members serving for a term of 8 and at least 30 percent of whom are women.

Article 185: establishes a Gender Monitoring Office to monitor and supervise on a permanent basis compliance with gender indicators of the programme for ensuring gender equality and complementarity in the context of the vision of sustainable development and to serve as a reference point on matters relating to gender equality and non-discrimination for equal opportunity and fairness; to submit to various organs recommendations relating to the program for the promotion of gender equality and complementarity for national development. The gender Monitoring Office shall submit each year its program and activity report to the Cabinet and submits copies thereof to other State organs determined by law.

Article 187: establishes a National Council of Women which is responsible for advocacy, capacity building and social mobilization under the guidance and supervision of the Ministry of Gender and Family promotion.

Article 190: upon their publication in the official gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of non-compliance by one of the parties.

Article 201: the unwritten customary law remains applicable as long as it has not been replaced by written laws, is not inconsistent with the Constitution, laws and regulations, and does not violate human rights, prejudice public order or offend public decency and morals.



The Rwanda National Gender Policy highlights principal guidelines on which sectoral policies and programmes are expected to base their gender integration processes in their respective social, cultural, economic and political planning and programming. Implementation of the policy requires joint action of different actors, decision-makers, development workers and the entire population.

In 2009, parliament voted to make labour laws more ‘investor friendly’ by increasing the working week by 13% to 45 hours per week. Arguably, this had serious implications for working mothers, although provision for breast-feeding mothers was also bolstered in the same legislation. The value of providing women with a full salary over their twelve-week maternity leave has been acknowledged. In 2012, parliament legalised abortion “in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus”. This is an important milestone, but the remaining restrictions continue to have deleterious effects on women’s health and wellbeing.

## Kenya

The Constitution 2010 recognizes dignity, economic, social and cultural rights including the right to education, housing and right to health including reproductive health care. The principle of equality and non-discrimination is established as a core value of leadership. The national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of marginalized groups among others. For the first time since independence, Kenyan women are enabled to give citizenship to children born outside Kenya with non-Kenyan men and also to their foreign spouses.

Chapter four of the Kenyan Constitution is the Bill of Rights. Under the said bill of rights every person is equal before the law and has the rights to equal protection and benefit of the law. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social sphere. Both direct and indirect discrimination is forbidden. The State is expected to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

Other additional gains for women from the 2010 Constitution include:

- a) Equality in leadership with 33% as the critical mass preferred for women leadership
- b) Equality in marriage
- c) Equality in employment
- d) Equality in access to education
- e) All discriminatory customary practices are prohibited
- f) Matrimonial property is protected
- g) Women rights to inheritance and to own land is guaranteed
- h) Equal parental responsibility

- i) Requirement for both public and private entities to comply with the inclusion principles and gender, among others

Kenya has made strides in realizing gender equality but a lot more needs to be done to make the legal framework a reality. Currently the supportive legal framework includes;

The Kenya Constitution has been hailed as one of the most progressive constitutions in the world. It has very progressive articles that indicate the commitment with the international and regional obligations arising from treaties and conventions and other commitments signed and or ratified. The Convention on Elimination of All forms of discrimination against women and the Protocol to the African Charter on human and People's Rights on the Right of Women are key treaties promoting women's rights which Kenya has ratified. The African Call is to have 50:50 gender representation.

In the recent past, the Kenyan parliament has passed enabling legislative frameworks that give implementation impetus to the Constitution. These include: -

- a) Marriage Act (No. 4 of 2014)
- b) Protection Against Domestic Violence Act (No. 21 of 2015)
- c) Basic Education Act
- d) Matrimonial Property Act (No. 49 of 2013)
- e) Micro and Small Enterprises Act (No 55 of 2012)
- f) Employment and Labour Relations Court Act
- g) Treaty making Ratification Act 2012
- h) The prohibition of female Genital Mutilation Act 2011
- i) Counter Trafficking in Persons Act 2010
- j) Sexual offences Act 2006
- k) Citizenship and Immigration Act, 2011
- l) Law of Succession Act 2012
- m) National Gender and Equality Act 2011

Policy framework has also been developed and include among others: -

- a) National Gender and Development Policy 2000 reviewed to align it to the current constitution
- b) The Kenya Vision 2030 the government's blue print on the development agenda and its medium Term Plans (2008-2012, 2013-2017 and 2017-2020)
- c) Sessional paper No 2 on gender equality and Development 2006
- d) Kenya Economic Recovery Strategy for Wealth Creation (2003-2007)
- e) National Land policy
- f) National Policy for Response to Gender Based Violence
- g) National Policy for the Abandonment of Female Genital Mutilation

In ensuring accountability on equality and non-discrimination, the Constitution established an independent commission, the National Gender and Equality Commission with the mandate to promote gender equality and freedom from discrimination and to hold the government accountable on implementation.



Gender-based violence is pervasive with almost half (45 percent) of women aged 15-49 having experienced either physical or sexual violence at some point in their life (Kenya Demographic Health Survey 2014). Despite the introduction of the gender equality requirements into property and inheritance laws, there is still a significant gender gap in access to land. Access to formal sources of credit is also limited, and is more pronounced for women. Unpaid care and domestic work burdens limit women's contributions in and benefit from productive activities, constrains their mobility, and limits their access to market resources.

## South Sudan

Article 16 Transitional Constitution, 2011 “16. (1) provides on the equality between men and women that women shall be accorded full and equal dignity of the person with men. (2) Women shall have the right to equal pay for equal work and other related benefits with men. (3) Women shall have the right to participate equally with men in public life. (4) All levels of government shall: (a) promote women participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs, and traditions; (b) enact laws to combat harmful customs and traditions which undermine the dignity and status of women; and (c) provide maternity and child care and medical care for pregnant and lactating women.

The continuing conflict which began in December 2013 is having a devastating impact on the lives and livelihoods of millions of South Sudanese women, men, boys and girls. Conflict has displaced population and disrupted livelihoods. Women and men of all ages are suffering from the effects of conflict, including abuses and loss of control over, and access to, vital resources.

## Burundi

The Constitution (Article 129) stipulates a minimum quota of 30 percent women in government and the National Assembly (Article 164). Article 143 provides for a public administration representative of the population, including women. The judicial system is organized through the Code of Organization and Judicial Competence of 17 March 2005. The independence of the judiciary is guaranteed by the constitution, which separates the judiciary, the executive and legislative body. There are formal and informal mechanisms of conflicts management provided under the Code. Article 19 of the Constitution provides thus:

“The rights and duties proclaimed and guaranteed, among others, by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples Rights,, the Convention on the Elimination of all Forms of Racial Discrimination against Women and the Convention on the Rights of the Child are an integral part of the constitution of the Republic of Burundi.”

## 4 PART B

### 4.1 Chapter Four

#### 4.1.1 Laying the basis

The Committee on the Elimination of Discrimination against Women General Recommendation On Women's Access to Justice; 23 July 2015 stated that the right of access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women and men in the judiciary and other law implementation mechanisms. The right to access to justice is multidimensional. It encompasses

- (a) Justiciability; requires the unhindered access by both men and women to justice as well as their ability and empowerment to claim their rights as legal entitlements. This could be done by for example improving men and women's unhindered access to justice systems and thereby empowering them to achieve de jure and de facto equality, ensuring that the professionals of justice systems handle cases in a gender sensitive manner; and confronting and removing barriers to women's participation as professionals within all bodies and levels of judicial and quasi-judicial systems and as providers in justice related services.
- (b) Availability; requires the establishment of courts and other quasi-judicial or other bodies across the state in urban, rural and remote areas, as well as their maintenance and funding. This will for example include ensuring the creation, maintenance and development of courts, tribunals and additional entities, as needed, that guarantee the right of access to justice without discrimination on the whole territory of the State party, including in remote, rural and isolated areas. In addition the creative use of modern IT solutions when feasible as well as an oversight mechanism by independent inspectors to ensure the proper functioning of the justice system and address any gender discrimination committed by justice system professionals need be applied.
- (c) Accessibility; requires that all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible and are adapted and appropriate to the needs of women and men including those who face intersectional or compounded forms of discrimination. For example by removing linguistic barriers by providing independent and professional translation and interpretation services when needed; providing individualized assistance for illiterate men and women in order to guarantee their full understanding of the judicial or quasi-judicial processes; in addition by developing targeted outreach activities and distributing information about available justice mechanisms, procedures and remedies in various formats, and also in community languages such as through specific units or gender desks. Such activities and information should be appropriate for all ethnic and minority groups in the population and designed in close cooperation with key stakeholders.

- (d) Good-quality; requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all. It also requires that justice systems are contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice. This could entail measures such as adopting gender disaggregated indicators to measure access to justice; in addition implementing mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice.
- (e) Accountability of justice systems; is ensured through the monitoring of the functioning of justice systems to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility in cases in which they violate the law. Actions that would ensure this is provided would include developing effective and independent mechanisms to observe and monitor gender disaggregated data reflecting access to justice in order to ensure that justice systems are in accordance with the principles of justiciability, availability, accessibility, good quality and effectiveness of remedies. This includes the periodical audit/review of the autonomy, efficiency and transparency of the judicial, quasi-judicial and administrative bodies taking decisions. In addition there is need to conduct and facilitate qualitative studies and critical gender analysis in collaboration with civil society organizations as well as academic institutions of all justice systems in order to highlight practices, procedures and jurisprudence that promote or limit men and women's full access to justice.
- (f) Provision of remedies for victims; requires the ability of men and women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer. Innovative measures that ensure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered need be applied. Remedies should include, as appropriate, restitution (reinstatement); compensation (whether provided in the form of money, goods or services); and rehabilitation (medical and psychological care and other social services). Remedies for civil damages and criminal sanctions should not be mutually exclusive; In addition they need take full account of the unremunerated domestic and caring activities in assessments of damages for the purposes of determining appropriate compensation for the harm, in all civil, criminal, administrative or other proceedings.

International and regional human rights treaties and declarations and most national constitutions contain guarantees relating to sex and/or gender equality before the law and an obligation to ensure that everyone benefits from equal protection of the law. While differences in prevailing legal, social, cultural, political and economic conditions necessitate a differentiated application of these features in each State party, the basic elements of the approach are of universal relevance and of immediate application.

#### 4.1.2 Inward looking

It is key that each judiciary ensures that the organisational structure, systems and processes support the implementation of this Regional Gender Policy for Judiciaries in East Africa. To ensure this the EAMJA Secretariat must ensure it builds capacity to monitor for and promote gender equality in the judiciary. The suggestions that will promote the realization of this are outlined under the monitoring and evaluation section and will include strategies that will ensure that a robust research, data collection and collation process is in place and that the data is used in progressive planning, programming and other processes. For example the daily reporting system already being used by some of the judiciaries, such as in Kenya, need elicit gender disaggregated information.

Each judiciary must ensure that that human resources policies, procedures and practices promote a gender-sensitive organisational culture. This is to say that the policies in place must take into account the unconscious gender biases that for example do not protect realization of paternity leave even where it is provided for. Practices such as construction of adequate facilities including children rooms for accompanied female employees and other users must be consciously considered. In addition the judiciaries must ensure non-discrimination and equality of opportunity for women and men in all organs and at all levels of and in all processes of the judiciary. Dedicated affirmative action need be applied to reduce disparities in gender representation at different levels. This would for example mean that the affirmative action measure envisioned for the other arms of government for example in Rwanda need be replicated in the judiciary. Indeed data on the gender representation at all work levels need be ensured. In addition, there is need to relook at resource policies that address insurance covers, leave [paternity, maternity, compassionate, sick] etc.

Resource must be directed at ensuring that judiciaries in the region are poised to promote gender equality. This will include incorporating a gender perspective into the organisation's financial management and accounting policies, systems and practices, and ensuring that revenues and expenditures are structured in a way that promotes gender equality. Specifically, a system for tracking gender-related expenditure across the organisation need be established. For example ensuring that resource allocation for facilities provision for staff take into account gender concerns, needs and realities. Strategies such as training on and use of gender responsive budgeting, planning etc. must be applied.

Judiciaries must support the sustainability of the gender equality process by ensuring that results-based management systems and processes facilitate the extraction of sex-disaggregated data and that such data is used to inform strategic planning and decision-making.

In addition, the individual judiciary Secretariats need incorporate measures to follow the accepted ‘twin-track’ approach of focusing both on women as a separate target in programme delivery and addressing the inequalities between women and men in overall programming. To further strengthen this approach the language, policies and processes used must avoid stereotypical representation of women and men, boys and girls.

All programs and projects carried out by the judiciary in each Member State must promote gender equality by ensuring gender mainstreaming guidelines are developed and implemented through effective programme/project design and implementation. The use of such gender checklist among other tools will compose part of the reporting relayed from the national level to the EAMJA.

This policy intends that all personnel working within the judiciary execute their tasks while donning a gender lens. As such all the judiciaries that are Members must build the memberships capacity by for example undertaking gender sensitisation programs and providing gender analysis and mainstreaming training and tools to all. The step commenced by Uganda which other than the gender policy, has developed the Gender Bench Book provides a good case study.

Gender discrimination is largely a social construction and *unschooling* people off what they have long known requires systematic and longer term approach. For sustainability a robust gender mentoring programme must be adopted and implemented.

Each judiciary that is a member of the EAMJA must be urged to appoint dedicated gender equality “Champions” to act as information focal points and coordinators for gender mainstreaming processes.

#### 4.1.3 Outward looking

It is essential that the organisational structure, systems and processes support the implementation of this Regional Gender Policy for Judiciaries in East Africa by:-

Incorporating a gender perspective into the organisation’s strategic engagement policies and partnerships to impact the systems and practices and ensure that external relations promote gender equality. For example the strategic plan must incorporate a distinct gender component. In addition, public engagement activities need purposely be applied donning a gender lens. The nature of information developed and disseminated need incorporate the gender realities of the target group.



It is important that the national judiciaries ensure that results-based management systems and processes facilitate the extraction of sex-disaggregated results data as well as their use to inform strategic planning and decision-making. For example data on number of cases filed or concluded need be sex disaggregated.

This policy aims to ensure that data collection processes in the judiciaries takes into account the consideration of the gender dimensions of justice. This involves understanding women's and men's use of judicial system; identifying the institutions – both mainstream and inter-linked that influence women's and men's use and engagement with the judicial sector; and examining how different practices and processes within the judiciary impact women and men differently. This will require the judiciaries to take into account existing structures of gender inequality and proactively aim to overcome and remove those inequalities in order to contribute to gender equality. This for example requires that protective measure are put in place to allow men to pursue domestic violence cases.

The EAMJA Secretariat need develop an analytical framework tool to promote reporting and tracking the state of the art of gender equality in the individual judiciaries.

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## 5 PART C

### 5.1 Chapter Five

#### 5.1.1 Monitoring & Evaluation

##### Introduction

There are many components to implementing this policy. Once implementation commences, it must be monitored and evaluated intermittently to determine if adjustments are necessary. This gender policy for judiciaries in East Africa is designed to strategically assist the said judiciaries accomplish the gender equality goal. In order to make progress in gender equality a collective commitment and ownership by all actors within the judiciaries must display and targeted action seen. The EAMJA will put in place a monitoring, evaluation and reporting system to ensure that planned activities are implemented, and setbacks and variations are addressed as they arise. The impact of implemented plans will be assessed.

In addition, the EAMJA will urge national judiciaries to establish institutional framework to ensure the effective implementation, co-ordination and sustainability of the gender equality and mainstreaming strategy, by:

- i. establishing clear roles, responsibilities, mandates and lines of accountability of national focal points and oversight bodies in implementing gender equality and mainstreaming initiatives;
- ii. strengthening vertical and horizontal co-ordination mechanisms for policy coherence across the nations and within nations that involve relevant non-governmental stakeholders to ensure synergies and effective implementation of gender equality initiatives.

#### 5.1.2 Monitoring, Evaluation and Reporting (ME&R) Strategies

EAMJA will ensure that routine data will be collected and analyzed and regularly reported on at all levels as necessary for follow-up and record keeping.

To facilitate this, each national judiciary shall:

- i. Develop an annual work plan with appropriate targets, activities, performance indicators and budgets.
- ii. Measure progress for each action/activity against specific targets and schedules.
- iii. Capture data using standardized data collection tools that shall be developed and used for data collection
- iv. Analyze and report relevant information to various users.

The reporting shall be done yearly to the national judiciaries as well as to the EAMJA. Results from the analysis shall then be used to inform decision-making, help to identify challenges and take immediate corrective action where deviations in implementation noted.

#### Monitoring and Evaluation Team

For the effective implementation of this Policy, ME&R shall be coordinated by the EAMJA



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(EAMJA)





[through the Gender Sub-Committee] and to Heads of Human Resource at the national judiciaries. The Gender Sub-Committee shall ensure that strategies are being implemented, performance is being measured, progress reports are made and discussed, and corrective action is taken where necessary. Respective national focal points responsible shall be accountable for the completion of stated tasks. However, responsibility for data collection, aggregation, analysis and reporting on the Policy will rest with the respective national Heads of Human Resource. Where necessary, capacity of various national judiciaries to undertake ME&R activities will be built.

Appropriate linkages shall be established to ensure relevant internal and external follow-ups and controls. The overall responsibility of overseeing and managing the monitoring and evaluation of the Policy lies with the EAMJA Council.

### **Cascading the Policy to all National Judiciaries**

For the policy to be effectively implemented, it will be adopted at the national judiciaries' level and thus cascaded to all levels within the judiciaries in the region.

### **Data and Information Collection Procedures**

Elaborate data and information collection templates and procedures shall be developed and used by the national judiciaries to measure progress and performance as per the indicators and report to management at the national level which will then transmit the information and data to the EAMJA Council. The reports shall describe actions taken by the national judiciaries towards implementing the policy and will include achievements, challenges and emerging issues, costs, benefits and recommendations.

### **Linking ME&R to Performance Management**

For the implementation of the Policy to be effective, the ME&R will be an integral part of national judiciaries' performance management system and will be linked to staff performance appraisal system.

### **Progress Reports**

Reporting the progress of implementation will be critical in adjusting strategic directions and measuring performance. The reports shall be as follows

- i. Biannual report – to management at the national level
- ii. Annual Report – to the EAMJA Council

### **Evaluation and Review**

There will be periodic evaluation and review of the policy to assess the extent to which it is meeting its implementation objectives and ensuring that it remains relevant and feasible. The review will be done by the Gender Sub-Committee in liaison with the EAMJA Council and national judiciaries to ensure objectivity.

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## Regional Gender Policy for Judiciaries in East Africa

### 5.1.3 Implementation Matrix

	Goal	No.	Key Activities	Performance Indicators	Responsible
	<b>Goal 1:</b> A judicial system that is free of gender discrimination				
1	An improved gender responsive and sensitive working environment for judicial officers		Audit reports from and of the national HR manuals and policies, with recommendations for amendments [where/if necessary] Specific reference to procedures on:- Recruitment Promotion Leave Benefits	Framework for gender equality developed and in place	Gender Sub-Committee
			Base reports on state of national gender policies & related policies for member judiciaries Specific reference to; Sexual harassment Disciplinary process Deployment and Transfers		Gender Sub Committee

	Goal	No.	Key Activities	Performance Indicators	Responsible
2	Increased collaboration with key stakeholders working on gender matters		Reports from each member judiciary on the new partnerships on gender related issues		Council
<b>2</b>	<b>Goal 2: Strengthened capacity of Judiciaries in East Africa to be gender responsive in adjudication of cases</b>				
1	Enhanced capacity of the judiciaries in the region to promote realization of gender equality		Training reports from individual national member judiciaries on the extend if any that gender is incorporated in the status of;	Systematic capacity building in place	Council

	Goal	No.	Key Activities	Performance Indicators	Responsible
			Induction training Professional progression training		
2	Increased gender responsive decisions		Skills in research and use of gender progressive literature		Council
<b>3 Goal 3: To strengthen oversight capacity to oversee the implementation of the policy</b>					
1	Enhanced monitoring of gender equality within the judiciary		Reports on established;- Technical working committees from each national judiciary to support gender mainstreaming	An effective monitoring and reporting framework in place	Gender Sub Committee
2	Increased gender disaggregated data from the judiciary		Development on and tools in place for disaggregated data at each stage [planning, implementation and reporting]		Gender Sub Committee

## Guidance For A Regional Approach On Building Capacity In Gender To Support The Policy Implementation

Goal one				
Judicial system that is free of gender discrimination				
<b>Polices: List the relevant policy, manual, tool</b>	Score 1 to 5	1- Not available 2- Being developed 3- In place 4- Being implemented 5- Implemented		
Goal two				
Capacity enhancement				
<b>Trainings: List the relevant training</b>	Score 1-to-5	1. Not available 2. Being developed 3. In place 4. Being implemented 5. Implemented		
<b>Information; State of reporting system</b>	Score 1-to-5	1. Not available 2. Being developed		

		3. In place 4. Being implemented 5. Implemented		
<b>Goal three</b>				
<b>Capacity enhancement</b>				
<b>State of m&amp;e process</b>	Score 1-to-5	1. Adhoc Gender Sub Committee regularised 2. Committees established at national level 3. Committees operational 4. Committees submitting reports 5. All reporting up to date		

# **The East African Magistrates and Judges Association**

## **Regional Gender Policy for Judiciaries in East Africa**

### **6 Annexures**

- *Annex 1* – Definition of key terms/ phrases
- *Annex 2* – Summary of cases that show how courts impact gender equality
- *Annex 3* – Glossary for references

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## **Annex 1 -Definition of key terms/phrases**

“*Gender*” refers to the social attributes and opportunities associated with being male and female and the relationships among and between women, men, girls and boys. These attributes, opportunities and relationships are socially constructed and are learned through socialisation processes. They are context- and time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age”.

“*Gender equality*” refers to the equal rights, responsibilities and opportunities of women, men, girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration – recognising the diversity of different groups of women and men. Gender equality is not a “women’s issue” but should concern and fully engage men as well as women. Equality between women and men are seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development”.

“*Gender equity*” means fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities.

“*Gender mainstreaming*” is the process of assessing the implications for women and men of any planned action including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and strategies of women and men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all spheres, so that women and men can benefit equally, and inequality is not perpetuated. The ultimate goal of gender mainstreaming is to achieve gender equality.

“*Women’s empowerment*” refers to the process of women gaining power and control over their own lives. It constitutes an important part of the efforts to bring about equal opportunities for men and women and involves awareness raising, building self-consciousness, expanding choices, increasing access to and control over resources and actions to transform the structures and institutions.

“*Gender sensitive programming and policies*” are those that are aware of and address gender differences.

*“Gender stereo-typing”* ascribing certain attributes, characteristics and roles to people based on their gender. Gender stereotypes can be negative (i.e., women are bad drivers, men can’t change diapers) and benign (i.e., women are better caregivers, men are stronger). Gender stereotyping becomes harmful when it limits a person’s life choices, such as training and professional path, and life plans. Compounded gender stereotypes occur when layered with stereotypes about other characteristics of the person, such as disability, ethnicity or social status.

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## **Annex 2 – Summary of Examples of Cases That Show How Courts Impact Gender Equality**

In the High Court of Kenya at Bungoma, in Petition Case no. 5 of 2014; Josephine Oundo Ogwen (also known as Josephine Majani) vs The Hon Attorney General, County Government of Bungoma & Others, the court ruled that medical workers slapping a woman awake after leaving her to deliver her baby on a concrete floor violated her rights to health, dignity, and to be free from cruel inhuman and degrading treatment.

The Matter Of Assoc'ation Poitr Le Progres Et La Defense Des Dro'its Des Femmes Maltennes (Apdf) And The Institute For Human Rights And Development In Afrtca (Ihrda) V Republic Of Mali Application No. 046/2016; For the first time, the African Court of Human and Peoples Rights found state violation of women's rights under international law. The Court ruled that Mali should amend its Family Code to uphold women's and girls' rights. [Date of the Decision: 11/05/2018]

Guilty of ending a "harmonious marriage" Judge Francisco René Ramírez Rodríguez in Mexico, was presented with a case of a mother who was looking for her son's father to pay child support. Because of his refusal, she told the father's wife the situation. The current wife sued her for moral damage. The court sentenced the woman for breaking the harmony and dignity of the marriage.

Minimum Age for Marriage; In High Court of Tanzania (Dar-es-Salaam main registry) Misc. Civil Case No. 5 of 2016; Rebeca Z. Gyumi vs The Attorney General; The High Court of Tanzania ruled that the Law of Marriages Act violated equality provisions of the Constitution by setting a minimum age to marry of 18 for men, but only 15 for women. Date of the Decision: 08/07/2016.

In Charo V Republic [2016] Eklr Republic Of Kenya, the High Court Of Kenya at Malindi, Criminal Appeal No. 32 Of 2015\_(Appeal Originating From The Conviction And Sentence By Hon. L. N. Wasige-SRM In Kilifi CR NO.16 Of 2012) Martin Charo vs Republic, the High Court Of Kenya found a 23-year-old man not guilty of the crime of child defilement, claiming that girls' often make false reports of non-consensual sex.

In Maagwi Kinito v Gibeno Warema (Court of Appeal of Tanzania at Dar es Salaam) unreported) Civil Appeal number 20/1984 para 8, the highest court in Tanzania, the Court of Appeal stated that the position of the customary laws of the country have the same status in the courts as any other law, subject to the Constitution and any other statutory law that may provide to the contrary.

In Kenya, in a case filed by the National Gender & Equality Commission & Another v Judicial Service Commission [2017] eKLR (<http://kenyalaw.org/caselaw/cases/view/135563/>) being Petition No. 446 of 2016 (as consolidated with Petition No. 456 of 2016). The application sought to ensure gender principle realisation in appointment of the judges to the Supreme Court. The ultimate conclusion was that the case was without merit and was dismissed.

# Document for validation

### **Annex 3 – Glossary for references**

- <https://www.unicef.org/gender/training/content/resources/Glossary.pdf>.  
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- UNDP, Human Development Index. <http://hdr.undp.org/es/content/gender-development-index-gdi>
- <http://www.unwomen.org/en/news/in-focus/csw59/feature-stories>  
<https://sustainabledevelopment.un.org/topics/genderequalityandwomensempowerment>
- SG Report on the Girl Child 2017. <http://www.un.org/womenwatch/daw/cedaw/>.
- OSAGI, 2001, ‘Gender Mainstreaming: Strategy for Promoting Gender Equality Document’.
- ECOSOC, ‘Report of the Economic and Social Council’, A/52/3, chapter IV, ‘Special Session on Gender Mainstreaming.’
- World Conference on Human Rights, Vienna Declaration and Programme of Action, A/CONF.157/23, paragraph 17.
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[<http://www.un.org/popin/unfpa/taskforce/guide/iatfwemp.gdl.html>]
- Millennium Project Task Force on Education and Gender Equality, 2005, Taking action: achieving gender equality and empowering women.
- UNDP Gender Parity Report 2017.
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[[www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm](http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm)].
- DEVAW, Article 1.