



The Doha Declaration:
**PROMOTING A CULTURE
OF LAWFULNESS**



GLOBAL
**JUDICIAL
INTEGRITY
NETWORK**

Gender-related Judicial Integrity Issues

PRODUCED BY THE GLOBAL JUDICIAL INTEGRITY NETWORK





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GENDER-RELATED JUDICIAL INTEGRITY ISSUES



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INTRODUCTION

The Global Judicial Integrity Network is a new initiative and a key outcome of the Judicial Integrity component of UNODC's [Global Programme for the Implementation of the Doha Declaration](#). Officially launched in April 2018 at a high-level event in Vienna, the Network aims to create networking opportunities for judges, facilitate information-sharing and dissemination of existing resources and to respond to existing and emerging challenges related to judicial integrity, for example through the development of various knowledge products. More information about the Global Judicial Integrity Network, its activities, services and events can be found at www.unodc.org/ji.

The launch event of the Global Judicial Integrity Network concluded with the adoption of a landmark [Declaration on Judicial Integrity](#), which set the priorities for the future work of the Network. In paragraph 7 of the Declaration, the launch participants decided that “without prejudice to judicial independence, [participants should] support initiatives that promote continuous judicial education and in particular training on effectively complying with relevant standards of conduct and on gender-related topics, such as sextortion and sexual harassment, recognizing that judicial training is essential for objective, impartial and competent performance of judicial functions and for securing public trust and confidence”.

With the Declaration in mind, the [Advisory Board of the Global Judicial Integrity Network](#) developed the Network's 2018-2019 workplan and decided to use the potential of the Network to raise awareness among judges and judiciaries about particular integrity challenges, including gender-related integrity issues, such as sextortion and sexual harassment. To this end, the Advisory Board envisaged the development of a dedicated issue paper on existing practices, cases and experiences in training and accountability, as well as expert consultations in the context of the Network.

In December 2018, an expert group meeting was organized with the aims of: (i) discussing a first draft of the issue paper drafted by UNODC's expert consultant; (ii) gathering additional cases and resources, with a view not only to enriching the issue paper, but also to disseminating the resources through the Network's [online library](#) and other channels; and (iii) making recommendations on how to develop national and regional standards on gender-related judicial integrity issues and, in particular, how the Global Judicial Integrity Network can assist judiciaries in this endeavour.¹ The meeting brought together over 30 participants from 16 countries and five relevant judicial associations and international organizations.

Following the expert group meeting, the issue paper was updated and enriched with new cases, experiences and practices from across the world and circulated online via the website of the

¹ Global Judicial Integrity Network Expert Group Meeting: Gender-Related Judicial Integrity Issues, held on 6-7 December 2018 in Seoul, Republic of South Korea. <https://www.unodc.org/ji/restricted/gender-egm.html>

Global Judicial Integrity Network for comments. The present paper has been further revised in light of those comments.

EXECUTIVE SUMMARY

This inquiry into gender-related judicial integrity issues occurs at a time when new attention is being focused on the role that power and gender play in the workplace. The #MeToo movement has given a voice to women who have experienced a range of types of sexual misconduct at the hands of men in positions of power.² The extent of the problem has long been masked by a reluctance to confront those who wield such power and by a failure to address the organizational culture that allows such conduct to continue with impunity. Even when people have had reason to know or suspect sexual misconduct, it has often taken many years before an incident has been investigated or addressed. When the silence has finally been broken, others have come forward with similar allegations, revealing that the misconduct was not an isolated occurrence, but part of a long-standing pattern. As more women have spoken out, there has been increasing recognition that the problems are both pervasive and under-reported. That recognition has, in turn, prompted judiciaries to examine what lessons the #MeToo movement may have for judicial integrity.

Reliable data is not available about the prevalence of gender-related integrity issues in the judiciary. Allegations of misconduct, investigations and disciplinary proceedings are often shrouded in confidentiality, and the information that is publicly available may not be easy to access or search. In addition, judges confronting a disciplinary proceeding may choose to resign, which typically halts the proceeding and any further inquiry into or release of information about the alleged misconduct. An additional challenge is posed by the breadth of conduct encompassed by the notion of ‘gender-related integrity issues.’ There are many ways in which societies use gender to draw invidious distinctions and treat certain people differently from others. As a product of its society, the justice system may reflect these social norms, behaviours and the accompanying gender-related integrity issues, including sextortion, sexual harassment, sex discrimination, gender bias, unequal gender representation, gender stereotyping and other forms of inappropriate sexual conduct.³ What research does exist reveals persistent and widespread gender problems in society, in the legal profession and in the courts.⁴

² For more information, please visit: <https://metoomvmt.org/>

³ ‘Sextortion’ is a term coined by the International Association of Women Judges (IAWJ) to describe “the abuse of power to obtain a sexual benefit or advantage ... In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.” *Toolkit on Naming, Shaming and Ending Sextortion, 2012*, International Association of Women Judges, available at: https://www.unodc.org/ji/resdb/data/2012/80/naming_shaming_and_ending_sextortion.html?lng=en&match=toolkit%20on%20naming

⁴ The U.S. Equal Employment Opportunity Commission undertook a comprehensive study of all forms of harassment in the workplace and found it remains a persistent problem and too often goes unreported. U.S. Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic at iv-v (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

“A comprehensive survey of the New Zealand legal profession shows nearly one third of female lawyers have been sexually harassed during their working life and more than half of all lawyers have been bullied at some time in their working life.” New Zealand Law Society, *Commitment to tackle cultural crisis within legal profession*

For example, the International Bar Association recently completed a global survey on sexual harassment and bullying in the legal profession that confirmed the troubling prevalence of this conduct.⁵

The present paper aims to examine the ways in which gender-related issues may affect judicial integrity and the adequacy of existing safeguards in promoting appropriate conduct and taking corrective action with respect to inappropriate conduct. That inquiry begins with the consideration of the notion of ‘gender-related integrity issues’ and the ways in which gender plays a role in the integrity of judicial conduct and decision-making, court administration and public perceptions of the judiciary.

Defining gender-related judicial integrity issues. Gender-related judicial integrity issues take many forms, including sextortion, sexual harassment, sexual discrimination, gender bias, unequal gender representation, gender stereotyping or inappropriate sexual conduct. While some gender-related conduct might be seen as more offensive or egregious than other conduct, none of it is compatible with the principles of judicial ethics. Judges are expected to set an example for the rest of society and are held to a higher standard of conduct that is defined not merely by what is lawful or intentional, but by what is ethical. Lawful conduct may still lack integrity and undermine public trust and confidence in the judiciary. Conduct that reflects lack of knowledge or unconscious bias may still be inappropriate, unfair and harmful.

A comprehensive approach to addressing gender-related judicial integrity issues should recognize that these issues:

- Have a disproportionate impact on women, but may also affect men, and that the intersectionality of gender with other social identities can create inequalities for other vulnerable groups, such as the Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) community;
- May occur at all levels of the judiciary, including all instances of the courts, court administration, judicial councils, or regional and international courts;
- May involve and affect all those within the justice system, including judges, other judicial office holders, prosecutors, attorneys, litigants, witnesses, law clerks, court personnel, court registrars, bailiffs and police officers;

(May 30, 2018), <https://www.lawsociety.org.nz/news-and-communications/news/commitment-to-tackle-cultural-crisis-within-legal-profession>.

⁵ Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (International Bar Association, 2019). The IBA received approximately 7,000 responses from 136 countries, of which 3% were from the judiciary and the rest were from lawyers. The responses revealed that bullying has a distinctly gendered dimension in the legal profession. In the judiciary, approximately 71% of women vs. 25% of men reported bullying. Concrete behaviour included misuse of power, ridicule or demeaning language, and overbearing supervision. Sexual harassment is even more gendered. No men in the judiciary reported being harassed, but approximately one in two women had been harassed.

- May undermine the integrity of the adjudication process and the court’s ability to provide substantive equality for all;
- May arise in any aspect of the judge’s professional or personal life, including rendering decisions, presiding over a courtroom, interacting with court personnel or colleagues, fulfilling administrative duties, making work assignments, providing professional opportunities or engaging in private social activities; and
- May affect any stage of a judicial career, including appointment, selection, recruitment, retention, promotion and retirement.

There are three primary safeguards for promoting and protecting judicial integrity: (i) the judicial codes of conduct and other policies that provide guidance about what constitutes inappropriate conduct; (ii) the judicial accountability mechanisms that provide procedures for identifying and correcting misconduct; and (iii) the educational and training programmes that raise awareness about gender-related integrity issues and promote appropriate conduct. As many of these existing safeguards were developed prior to heightened global awareness of gender issues, they do not give sufficient consideration to the full range of gender-related integrity issues. To fill these gender gaps, it is incumbent on judiciaries to consider ways to strengthen these safeguards and clarify standards of judicial conduct, hold those who violate the standards accountable and educate and inform people about their ethical responsibilities, legal rights and available recourse.

Clear and comprehensive guidance about gender-related integrity issues. Addressing the information and accountability gaps with respect to gender-related integrity issues begins with providing clear guidance about the ethical standards to which judges are held and the behaviours that are incompatible with those standards:

- ***Incorporate gender-specific provisions in ethical codes.*** Most codes of judicial conduct are silent on gender-related integrity issues, which contributes to a low level of sensitivity to and awareness of these issues. Specific guidelines are needed to provide judges with a framework for understanding which types of conduct are acceptable and which are not. Clarity with respect to the legal concepts, definitions and interpretations is also important. In this regard, the efforts of the International Association of Women Judges to define and criminalize sextortion are welcome.
- ***Strengthen the Bangalore Principles of Judicial Conduct to address the full range of gender-related integrity issues and provide clearer guidance and more examples.*** Gender-related integrity issues implicate, in some measure, each of the six values set forth in the internationally accepted *Bangalore Principles of Judicial Conduct*, namely independence, impartiality, integrity, propriety, equality and competence and diligence. These values are broad enough to address gender-related integrity issues, but, in a specific case, their very breadth may make it difficult to discern where the ethical line between appropriate and inappropriate behaviour lies. *The Bangalore Principles* and associated *Commentary on the Bangalore Principles of Judicial Conduct* could benefit from more explicit references to and examples of gender-related integrity issues. *The Bangalore Principles* could take the lead in recognizing the complexity of the problem

and addressing it, and could play a key role in raising awareness, providing guidance to judiciaries around the world and influencing domestic and regional standards.

- ***Adopt codes of judicial conduct that are consistent with the Bangalore Principles of Judicial Conduct.*** Where such standards exist, judiciaries should be encouraged to update them to provide clearer and more specific guidance regarding gender-related integrity issues.
- ***Consider adopting and implementing gender-sensitive policies and other guidance.*** Gender protocols, bench books, sexual harassment policies and other guidance can be effective tools for raising awareness about gender issues and providing practical advice about good practices in addressing those issues in the courtroom and the courthouse.
- ***Anchor judicial integrity in the international gender equality and anti-corruption framework.*** There is value in recognizing universally-accepted standards of judicial conduct and anchoring them in the international gender equality and anti-corruption framework, in particular, the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and the Sustainable Development Goals (SDGs) promoting gender equality (SDG 5) and peace, justice and strong institutions (SDG 16).

Judicial accountability for gender-related misconduct. The first challenge in ensuring accountability for gender-related misconduct is the limited reporting of this misconduct. People are reluctant to report gender-related misconduct for many reasons, including uncertainty about their rights and available recourse, shame or fear of negative repercussions, lack of support and mistrust in the ability of the system to provide meaningful accountability. To address these concerns, judiciaries need to establish clear, confidential and accessible reporting channels; provide full support to victims, including protection against retaliation and legal, medical, and psychosocial assistance, and disseminate information about rights, responsibilities, complaint procedures and support services. Once a complaint is received, there needs to be an effective, fair and transparent disciplinary mechanism for investigating it and taking any corrective action that may be warranted. Finally, ongoing monitoring and assessment are critical in understanding the scope and extent of gender-related misconduct and developing effective ways to ensure that victims are heard and protected, and that misconduct is not allowed to continue with impunity.

Although disciplinary mechanisms operate differently in different countries, and what works well in one country might not work as well in another, certain considerations are broadly applicable in preventing, detecting, reporting, investigating, and sanctioning gender-related misconduct. Some good practices that judiciaries might adopt to improve performance of their judicial disciplinary and accountability mechanisms include:

- ***Adopt clear standards of judicial conduct and make that information readily available through a variety of channels.*** It is important not only to have clear standards of appropriate conduct, but also to communicate that information broadly – to law students, judges, court personnel and the general public. As there are grey areas in any

standards of conduct, it is helpful to have an advisory body to which judges or others can turn for an advisory opinion about the ethics of engaging in particular conduct. Maintaining an accessible database of ethics advisory opinions becomes an important resource for others who may have similar questions about allowable conduct. Creating an accessible database of disciplinary cases and decisions provides valuable guidance about how broad ethical standards apply to concrete situations. Compiling frequently asked ethical questions and answers and making them readily available online or in another accessible format can help everyone understand what is expected of judges in different situations.

- ***Take steps to lower or remove barriers to reporting misconduct within the courts.*** The complaint system should be as accessible as possible. Accessibility requires both that people have a clear understanding of the available complaint mechanisms and that they have access to multiple avenues for reporting misconduct, so they can select the one with which they are most comfortable. Strategies for improving accessibility include:
 - Disseminating posters and pamphlets in courts and legal communities to inform people about the complaint process;
 - Providing information in the language used by the target audience;
 - Providing training on how to report misconduct;
 - Providing alternative pathways for people to raise misconduct issues formally or informally and anonymously or on the record;
 - Providing a 'hotline' to report misconduct;
 - Providing an online complaint filing system;
 - Designating court personnel with whom complainants can talk confidentially about misconduct issues and seek assistance in addressing them;
 - Ensuring that complainants receive appropriate support services and are protected against retaliation and re-victimization; and
 - Making an effort to be out in the community and available to respond to public concerns about the judiciary.
- ***Establish an independent disciplinary body to hear cases of judicial misconduct.*** Several factors may enhance the actual and perceived independence of a disciplinary body, including: a diverse membership, so that different interests are represented; an objective and impartial selection process; and internal rules for disciplinary procedures, preferably with a statutory foundation.
- ***Establish clear disciplinary procedures.*** The rules and regulations governing judicial disciplinary proceedings should be clear and readily available so that judges and the public can know what to expect and have confidence in the fundamental fairness with which they are conducted.
- ***Allow those who witness or learn of misconduct to initiate investigations.*** There are many reasons why someone who experiences gender-related misconduct may be reluctant to bring a complaint. Although others may have witnessed the misconduct or become aware of it, the misconduct may continue and remain an open secret as long as

the victims are reluctant to pursue a complaint. It damages the integrity of the judiciary to allow those who engage in misconduct to avoid accountability. To ensure that known misconduct is addressed, people other than the victim should be allowed to initiate an investigation. Judges should receive guidance and training about their responsibility to prevent, intervene to stop or report gender-related misconduct by another judge or by court personnel.

- ***Protect the confidentiality of the investigation, but provide transparency with respect to the disposition of the case.*** To maintain public confidence, the work and decisions of the disciplinary body should be fair and transparent. At the same time, there are legitimate privacy interests to protect. During the investigation, the balance between confidentiality and transparency should be struck in favour of granting the complainant and the accused protections that are at least comparable to those available in a civil or criminal proceeding. That balance shifts once the case has been decided, and the disposition should be made public, even if certain confidential information needs to be withheld. It not only promotes public confidence in the judiciary to know that allegations of misconduct have been dealt with appropriately, but it also helps judges and the public know what is expected, clarifies grey areas, encourages reporting and deters others from engaging in similar misconduct.
- ***Ensure that the complaint process is prompt, thorough and impartial.*** Disciplinary bodies should have the necessary authority, as well as the technical and other resources, to conduct full and timely investigation of alleged misconduct. Proceedings should be conducted expeditiously and in accordance with established rules that ensure due process protections for the judge.
- ***Provide a sufficiently broad range of corrective action to deal proportionately with the seriousness of the conduct in each case.*** It is important to have a range of meaningful disciplinary remedies that are appropriate and proportionate to the range of gender-related misconduct. If the only remedies are dismissal or removal, people may be afraid to report misconduct. The disciplinary body needs to have middle ground alternatives, such as suspension or reprimand, to address less serious forms of gender-related misconduct. It should also have authority to continue investigations so judges cannot evade responsibility for misconduct by retiring or resigning.
- ***Provide adequate resources to prevent, monitor, and address gender-related misconduct.*** Resources are inevitably a constraint, but devoting sufficient resources to addressing gender-related integrity issues signals the seriousness of leadership's commitment to fostering a culture that promotes respect and civility and does not tolerate gender-related misconduct. The availability of sufficient resources makes it possible to undertake more effective prevention efforts and, where prevention fails, to investigate and deal with misconduct in a prompt and thorough manner. Major investigations can be costly, and disciplinary bodies cannot fulfil their responsibilities without adequate funding.
- ***Exercise judicial leadership to mainstream gender sensitivity into all aspects of the justice system.*** Judicial leadership is needed to ensure that gender-related integrity

issues are addressed within the courts. Gender Equality Commissions can play an important role in addressing gender issues at the national level. At the international level, gender-related integrity issues should be integrated into the monitoring, reporting, and discussion framework of the Sustainable Development Goals and the *Convention on the Elimination of All Forms of Discrimination against Women* CEDAW.

- ***Take gender issues into consideration in appointing judges and in monitoring and evaluating their performance.*** The assessment of a person's fitness to serve as a judge should include whether the person has demonstrated the gender sensitivity required of a judge. Attention should be paid to the gender representation in courts and proactive steps should be taken to ensure that the courts are reflective of the larger society. Ongoing monitoring and evaluation should examine whether there are any gender-related issues in the way judges manage their courtroom, render decisions or fulfil administrative and supervisory responsibilities.
- ***Gather information and conduct empirically-informed research to identify gender-related issues and develop effective strategies for correcting inappropriate conduct.*** It is difficult to address a problem effectively until its scope and dimensions are known. Gender-related integrity issues have existed in the judiciary but remained largely unaddressed until recent efforts to give them greater visibility. Research on these issues has been very limited. Regular and ongoing assessments are needed to identify gender-related issues and develop effective strategies for correcting inappropriate conduct.
- ***Undertake a regular examination and evaluation of how well the complaint process works.*** Procedures should be established for collecting and maintaining the data needed to evaluate the performance of the complaint process on a regular basis.

Effective judicial education and training. Given the crucial role of judicial training, judiciaries might consider adopting the following good practices to strengthen their education and training on gender-related integrity issues:

- ***Mainstream consideration of gender issues into every stage of legal education.*** Understanding gender justice is key to addressing the gender bias, prejudice and stereotypes that are still prevalent and give rise to gender-related integrity issues. This understanding begins with the way law is taught in law schools and judicial training institutes. It continues with the way bar associations promote a culture of professional responsibility and ethical conduct within the legal profession, and the way judiciaries implement and oversee compliance with standards of conduct for judges and court personnel.
- ***Education and training about gender-related integrity issues should target all those within the justice system.*** Gender-related integrity issues should be part of the orientation for newly appointed judges and court personnel and included in ongoing, workplace training thereafter. Additional training should target those with supervisory responsibilities.

- ***It is important that the public understand what is expected of judges.*** Media campaigns, civics education, information materials and other public communication efforts can help to educate and raise awareness among the public about the role of judges and the ethical standards to which they are held.
- ***Judicial leadership is key in addressing gender-related integrity issues.*** Senior judges and judges in supervisory roles should not only lead by example, but also participate in training.
- ***Training on gender-related integrity issues should be mandatory wherever possible.*** Training only achieves its purpose if people participate. People may resist training on gender issues because they think they already understand these issues, do not see them as important or relevant to their work, perceive gender as a women’s issue or for any number of other reasons. Making training on gender-related integrity issues mandatory would address this challenge and ensure broad participation.
- ***Gender training should be engaging and valuable for both men and women.*** It is not enough for participants to attend a training if they do not engage with and learn from it. Efforts should be made to ensure that men derive as much value from gender training as women. Good practices for engaging participants include: making training as interactive as possible; using realistic case studies and examples; employing a variety of styles and approaches; mainstreaming gender into existing training; and tailoring training to meet the needs of different target audiences and the local cultural context.
- ***Training should be comprehensive and address the full range of gender-related integrity issues.*** Gender-related judicial integrity issues take many forms, including sextortion, sexual harassment, sexual discrimination, gender bias, unequal gender representation, gender stereotyping or inappropriate sexual conduct. They may affect women and men, occur at all levels of the judiciary, affect all those in the justice system, and arise in any aspect of the judge’s professional or personal life and at any stage of a judicial career. All these aspects should be reflected in the training.
- ***Compliance training should be a key component of any training on gender-related integrity issues.*** Compliance training serves to educate and inform people about applicable standards of conduct, individual rights and responsibilities, avenues for lodging a complaint or seeking assistance, protection and support available for complainants and disciplinary procedures and corrective action.
- ***Training should address the attitudes, behaviours and institutional culture that allow gender-related misconduct to occur.*** Gender sensitivity training can help people to recognize and understand gender bias, whether conscious or unconscious and enhance their awareness of gender issues. Workplace civility training can help to foster an institutional culture of respect and civility that does not tolerate gender-related misconduct.

- ***Bystander intervention training should be included in efforts to address gender-related integrity issues.*** Bystander intervention training can help to change the culture of silence that enables gender-related misconduct and encourage people to speak up when they experience or observe such misconduct.
- ***Education and training programmes should be evaluated on a regular basis, using a variety of evaluation methods, to ensure their continued relevance and effectiveness.*** Evaluations should be conducted in a way that is mindful of the need to protect judicial independence.
- ***Share good practices within judicial networks.*** The Global Judicial Integrity Network should collect, disseminate and share good practices so judiciaries can benefit from the experience of others in addressing gender-related judicial integrity issues.

The Global Judicial Integrity Network is well placed to address gender-related judicial integrity issues, promote a global discussion on these issues, share good practices and identify effective ways forward. Everyone should be involved in the dialogue – non-governmental organizations, academia, the legal profession, associations, researchers, the media – and these partnerships should be forged domestically, regionally and internationally.

1. GENDER-RELATED JUDICIAL INTEGRITY ISSUES: OVERVIEW

The notion of ‘gender-related integrity issues’ covers the myriad ways in which gender issues may influence judicial conduct and implicate judicial integrity. It is a broad topic and not yet well defined, but it requires looking at integrity from a gender perspective and considering all the ways in which judges interact with others and are responsible for promoting public confidence in the courts:

- In presiding over a courtroom, judges are responsible for ensuring that everyone – parties to the proceeding, witnesses, attorneys, other professionals in the courtroom and colleagues on the bench – are treated with respect, not only by the judge, but by others in the courtroom, and are not subjected to inappropriate demands, comments or behaviour.
- In rendering decisions, judges have a duty not to allow personal bias or prejudice to affect the outcome of a case. When conscious or unconscious biases, stereotypes and prejudices are allowed to shape the way judges interpret the law, the justice system becomes a mechanism for preserving inequality rather than protecting equal rights and human dignity.
- In hiring, supervising and working with court personnel and law clerks, judges are responsible not only for ensuring the propriety of their own conduct, but also for ensuring that the interactions of court personnel with other employees and with members of the public meet the ethical and professional standards expected of the justice system. The fair and impartial administration of justice depends on the integrity of personnel at each level of the justice system. It is not enough to render a fair and impartial decision if, for example, the bailiff plays a critical role in enforcing judgments and demands an additional private benefit to perform his or her duty.
- In fulfilling administrative duties, making work assignments, providing professional opportunities and interacting with judicial colleagues, judges are responsible for acting in a manner that is sensitive to gender issues and promotes public confidence in the judiciary as it is representative of the larger society, not just a narrow segment of it.
- A judge’s conduct off the bench is also subject to scrutiny, and inappropriate social conduct, emails or personal history can undermine public confidence in the judge’s personal and professional integrity.

Judicial integrity requires addressing the full-range of gender-related issues that arise in each of these judicial roles. While some issues may be seen as more serious than others, all are part of the larger challenge of ensuring that the justice system is sufficiently sensitive to gender and the ways in which it intersects with other vulnerabilities. Conduct that involves sexual impropriety, such as sextortion and sexual harassment, is readily seen as an intentional and knowing transgression of ethical bounds. Other gender-related integrity issues, such as discrimination on the basis of gender, unequal gender representation, gender stereotyping and gender bias, may not involve sexual impropriety, but also affect the impartiality and integrity

of the judiciary. Whether a bias is conscious or unconscious, if it distorts the outcome of a case, it affects the integrity of the judicial process and the public’s perception of that process. Accordingly, it is as important to address gender issues that involve unconscious bias or lack of knowledge as it is to address those issues that involve knowing of misconduct. However, different strategies may be appropriate for addressing these different issues, and corrective action should be commensurate with the seriousness of the conduct.

While gender-related integrity issues have a disproportionate impact on women, discussion of these issues should not be limited to conduct affecting women. It is important to be inclusive and recognize that individuals of any gender, orientation, identity or presentation may experience sextortion, sexual harassment, and gender discrimination, stereotyping or bias.

The following cases illustrate some of the ways in which gender-related integrity issues have manifested themselves in the judiciary.

1.1. SEXTORTION

A key element of judicial integrity is a justice system that operates in a transparent and non-corrupt manner to serve the interests of justice rather than the personal interests of judges or court personnel. The anti-corruption community has increasingly recognized the ways in which gender inequality and corruption are mutually reinforcing. The power dynamics that contribute to gender inequality place those who are most vulnerable in a position where they are least able to resist corrupt demands. Acceding to those demands exacerbates the inequality. In looking at the corruption aspect of integrity, it is important to consider the role gender plays and how it affects the ways in which men and women experience corruption.

As the #MeToo movement has highlighted, women may be especially – although not exclusively – likely to confront demands for sexual favours. The International Association of Women Judges (IAWJ) coined the term ‘sextortion’ to describe these quid pro quo exchanges of sex for the favourable exercise of power.⁶ In effect, according to IAWJ, sextortion is a form of corruption in which sexual favours are the currency of the corrupt transaction. The key components of sextortion according to IAWJ are:

- A person entrusted with authority;
- Who abuses that authority by exercising it in exchange for a sexual favour;
- And relies on the coercive power of authority rather than physical violence or force to obtain the sexual favour.

The corrupt exchange of power for sex is at the heart of sextortion and consistent with the way the *United Nations Convention against Corruption (UNCAC)* defines corruption. UNCAC requests States parties to criminalize bribery, trading in influence, abuse of functions and other forms of corruption and uses the notion of “undue advantage” for the benefits involved in a

⁶ *Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion* (IAWJ 2012), https://www.unodc.org/ji/resdb/data/2012/80/naming_shaming_and_ending_sextortion.html

corrupt transaction. The term is intended to apply as broadly as possible, including instances where intangible items or non-pecuniary benefits (for instance honorary positions and titles or sexual favours) are offered, insofar as they create or may create a sense of obligation on the side of the recipient towards the giver. In the context of the UNCAC Implementation Review Mechanism, the narrow scope of the undue advantage, in particular as regards non-material benefits such as sexual favours, has been identified by States as a gap.⁷

1.1.1 SEXTORTION IN THE CONTEXT OF JUDICIAL PROCEEDINGS

The Ellis case (Canada). Stevan Ellis was the Canadian immigration adjudicator responsible for deciding whether a woman from the Republic of Korea would receive refugee status. After hearing the case, Mr. Ellis sought the woman out at her place of work and eventually arranged to meet her at a coffee shop to discuss her case. She and her fiancé secretly recorded and videotaped the meeting. At the meeting, Mr. Ellis told the woman he had planned to deny her application, but, if they could “do things on the side” – and she kept the affair secret – he could issue a favourable decision. The couple gave the audio and video tapes to the Immigration and Refugee Board and the media.⁸ The woman later explained that she had recorded the meeting because she feared she would not be believed without any corroboration.

Mr. Ellis was charged and convicted of criminal breach of trust and agreeing to accept a benefit in violation of the Immigration and Refugee Protection Act. The Law Society of Upper Canada waited until after the conclusion of the criminal appeals to initiate disciplinary proceedings. It found that Mr. Ellis had engaged in conduct unbecoming a barrister and solicitor:

“Mr. Ellis’s actions bring discredit on the legal profession. He committed a criminal act that reflects on his trustworthiness and fitness as a lawyer. He offered to exchange a favourable quasi-judicial decision for sex, rather than deciding it on its merits. Acting as a decision maker, he met with a party before him outside the formal hearing without her lawyer to discuss her case, having sought her out on multiple occasions and set up a meeting.”⁹

Although the charges warranted license revocation, Mr. Ellis asked for permission to surrender his practice on the grounds that his behaviour had been affected by an undiagnosed bipolar disorder. In weighing the appropriate penalty, the Law Society considered the gravity of the misconduct and the need to maintain public confidence in the profession:

⁷ *State of Implementation of the United Nations Convention against Corruption: criminalization, law enforcement and international cooperation*, second edition 2017, p.19. United Nations document CAC/COSP/2017/10 https://www.unodc.org/ji/resdb/data/2017/state_of_implementation_of_the_united_nations_convention_against_corruption_second_edition.html.

⁸ *Law Society of Upper Canada v. Ellis*, 2016 ONLSTH 20 (2 February, 2016), <https://www.canlii.org/en/on/onlst/doc/2016/2016onlst20/2016onlst20.html?searchUrlHash=AAAAAQAGc3RldmFuAAAAAAE&resultIndex=1>.

⁹ *Id.* at para. 28.

“We begin with the effect on the reputation of the legal profession and the need for general deterrence. It is hard to imagine more egregious actions from this point of view. Mr. Ellis’s actions infringed three fundamental values of the legal profession: honesty and integrity, the rule of law and equality.

First, Mr. Ellis was dishonest and failed in his duties as a decision maker entrusted with significant public responsibility. He was proposing to make a statutory decision for reasons other than the evidence, merits and justice of the case. He behaved with an utter lack of integrity.

Second, Mr. Ellis was proposing an exchange of a positive decision for something he wanted. In doing so, he also violated the integrity of the administration of justice and the rule of law, a fundamental part of Canada’s democracy. The public relies on the fact that quasi-judicial and judicial decision makers will make decisions in the public interest, not for their own personal gain.

Third, Mr. Ellis’s actions were discriminatory. He sexually harassed the complainant and thereby discriminated against her based on her gender. She was particularly vulnerable as an immigrant, a refugee claimant and a racialized woman. Her refugee claim was based on her prior experience of male violence against women, of which Mr. Ellis was aware. In the face of all of that, Mr. Ellis chose to prey on her for his own sexual purposes [...]”¹⁰

After considering the mitigating effects of Mr. Ellis’s disability, the Law Society concluded:

“Given this, and how contrary his actions were to the core values of the legal profession, reassurance to the public requires that Mr. Ellis no longer practise law. The public’s confidence in the legal profession would be diminished if Mr. Ellis continued to be licensed to practise law. His illness’ impact on his inhibitions and feeling of grandiosity are not sufficient to overcome the lack of integrity in the choices he made.

On the other hand, we find the circumstances sufficiently exceptional to justify granting Mr. Ellis permission to surrender his licence [...]”¹¹

Ten years after the encounter at the coffee shop, Mr. Ellis lost his license to practice law.

The Boeckmann case (United States of America). While sextortion may disproportionately affect women, men can also be victims – vulnerability is the key. Arkansas District Judge O. Joseph Boeckmann Jr. was indicted on bribery charges, and sentenced to five years in prison, for offering leniency to male defendants in exchange for posing for nude or compromising

¹⁰ *Id.* at para. 39-42.

¹¹ *Id.* at para. 49-50.

photos.¹² The judge’s misconduct came to light when the Arkansas Judicial Discipline and Disability Commission (JDDC) was investigating a conflict of interest complaint against him, and court employees asked, “Do you know about the boys?”¹³ Further inquiry revealed that police officers and prosecutors had observed a certain pattern in Judge Boeckmann’s courtroom: When a certain type of young man appeared before Judge Boeckmann, he frequently dismissed the case and ordered the defendant to perform community service, such as picking up aluminium cans. Meanwhile, women and other male defendants received the maximum sentences. From the bench, Judge Boeckmann would hand the defendant a piece of paper with instructions about the community service, which sometimes included delivering the cans to his home address. When the young men arrived with the cans, the judge would ask them to bend over and pick up the cans while he photographed them from behind. In some cases, the men were asked to strip and bend over for nude photos.

While police officers and prosecutors had observed and been frustrated by this pattern, they had done nothing to investigate it. In fact, the JDDC investigation uncovered evidence that Judge Boeckmann’s requests for sexual favours in exchange for leniency dated back almost 40 years to his time as a prosecuting attorney. One man alleged that he had twice rebuffed sexual overtures from Boeckmann in exchange for not sending him to prison. The second time, he alleged that Boeckmann told him, “You remember I’m the prosecutor. I can help you or I can hurt you. No one will know.”¹⁴ After being rebuffed, Boeckmann took the case to trial without offering a plea deal and sought – and obtained – a sentence of life imprisonment for the man.

Judge Boeckmann resigned before a disciplinary hearing could be held. The JDDC filed a statement of allegations setting forth the evidence against the judge.¹⁵ The United States Department of Justice conducted a criminal investigation that resulted in the subsequent indictment and sentencing.

1.1.2 SEXTORTION IN THE WORK ENVIRONMENT

Court employee in the United Republic of Tanzania. Sextortion also affects those who work within the court. In Tanzania, women judges assumed leadership in addressing this issue after learning about a sextortion case involving a court employee who supervised an office of about ten women. The matter first came to people’s attention because of the high incidence of illness

¹² U.S. Department of Justice Press Release, “Former Arkansas State Judge Sentenced to Prison for Dismissing Cases in Exchange for Personal Benefits and Tampering With a Witness” (21 February 2018), <https://www.justice.gov/opa/pr/former-arkansas-state-judge-sentenced-prison-dismissing-cases-exchange-personal-benefits-and>.

¹³ “Witnesses to the investigator: ‘Do you know about the boys?’” *Arkansas Money and Politics*, <https://amppob.com/witnesses-investigator-know-boys/>.

¹⁴ David Koon, “Injustice: Investigators say Judge Joseph Boeckmann Jr. of Wynne abused his position to serve his sexual desires – Power, truth, justice and whispers in a Delta town.,” *Arkansas Times* (16 June 2016), <https://www.arktimes.com/arkansas/injustice-investigators-say-judge-joseph-boeckmann-jr-of-wynne-abused-his-position-to-serve-his-sexual-desires/Content?oid=4454784>.

¹⁵ Press Release and Statement of Allegations (Arkansas Judicial Discipline & Disability Commission 15 November 2017), http://media.arkansasonline.com/news/documents/2015/11/17/Boeckmann_SOA_Press_Release.pdf.

in the office. Upon further investigation, it was learned that, to earn overtime pay, female employees had to sleep with their male supervisor. The male supervisor, who had HIV, spread the infection to all his female employees, with tragic consequences. That experience motivated the women judges to conduct seminars on sextortion for employees in every one of the country's High Court Centres. In this case, the sextortion did not involve a judge, but the women judges saw it as part of their responsibility as judges to help protect court personnel from sextortion.

1.2. SEXUAL HARASSMENT

Sexual harassment takes many forms, ranging from the abuse of power and sexual coercion found in sextortion, to other types of unwanted sexual attention and gender harassment that is offensive but not overtly sexual. The laws of each country define at what point unwanted gender-based conduct becomes legally actionable. However, judicial integrity requires more than simply not violating the law. Judges are also expected to serve as models of integrity, propriety, fairness and impartiality within their communities. In addressing gender-related integrity issues, it is appropriate to consider all unwanted gender-based conduct, whether or not it is legally actionable. Such unwanted conduct is often of a sexual nature and may include unwelcome sexual advances, requests for sexual favours and other verbal or physical harassment of a sexual nature. It may affect men as well as women. Gender-based harassment may include unwelcome conduct that is not overtly sexual but is unprofessional because it is overly friendly or offensive. This latter category of conduct would include offensive comments about a person's gender, gender identity or sexual orientation and other behaviour that aims to insult and reject people on the basis of their gender.

Sexual harassment in the courthouse is not limited to judges harassing subordinates, but also includes situations in which a judge sexually harasses another judge, counsel, a witness or a litigant, or in which court personnel sexually harass their subordinates, colleagues or a member of the public.

1.2.1 QUID PRO QUO SEXUAL HARASSMENT

In some cases, judges have made sexual demands of court employees in exchange for employment opportunities. When this type of sexual coercion occurs in the employment context, it may be characterized as either sextortion or quid pro quo sexual harassment. Like sextortion, quid pro quo sexual harassment conditions favourable treatment upon the performance of sexual favours, but, unlike sextortion, it may be limited to the employment or educational context and may not reach other abuses of power. In such jurisdictions, quid pro quo sexual harassment could apply to a judge who demands sexual favours from a subordinate but not from a litigant, as there is an employment relationship in the first case but not in the second.¹⁶ This is one of the gaps the term 'sextortion' was coined to fill. While sextortion

¹⁶In the Ellis case, for example, the judge was charged with criminal breach of trust and agreeing to accept a benefit in violation of the Immigration and Refugee Protection Act, but not with *quid pro quo* sexual harassment. There are, however, jurisdictions where sexual harassment legislation applies more broadly. In a

overlaps quid pro quo sexual harassment, it does not overlap sexual harassment more broadly. Sexual harassment encompasses many forms of unwanted and inappropriate conduct that do not involve perpetrators entrusted with authority, abuse of that authority, or a quid pro quo exchange of sexual favours – all of which are key elements of the corruption component of sextortion.

The Esteban case (the Philippines). A young woman was appointed as a bookbinder in a Municipal Trial Court in the Philippines, but when she asked her supervisor, Judge Esteban, to sign her appointment papers, he failed to act. After repeated unsuccessful efforts to get her papers signed, Judge Esteban told her, “What can you give me in exchange for my signature? From now on, you are my girlfriend. You will enter my office every day, and every day, give me a kiss.” When the young woman refused, he signed the papers and kissed her. Thereafter, she sought to avoid the judge, but one day she was summoned to his office and asked if she were receiving her bookbinder’s salary. When she answered in the affirmative, he said, “So, you’ve been receiving your salary already. Why did you not come to my chambers? Didn’t I tell you, you are already my girlfriend?” The woman protested, but the judge embraced and kissed her and touched her breast.¹⁷

In convicting him of sexual harassment, the court observed that, “The gravamen of the offense of sexual harassment is not the violation of the employee’s sexuality but the abuse of power by the employer or superior [...]” The court fined Judge Esteban and sentenced him to more than two years in prison.¹⁸ The Supreme Court of the Philippines subsequently found that his conduct violated the Code of Judicial Conduct and dismissed him from the service, with forfeiture of all retirement benefits and leave credits and with prejudice to re-employment in any branch or instrumentality of the government.¹⁹

1.2.2 UNINVITED SEXUAL ACTIVITY, TOUCHING AND SEXUAL COMMENTS

The Johnson case (United States of America). The California Commission on Judicial Performance issued a Notice of Formal Proceedings charging Justice Jeffrey W. Johnson, a Second District Court of Appeal justice, with 20 years of harassing behaviour involving 16 women, including a fellow justice, police officers, attorneys, and court personnel.²⁰ The case is notable for the breadth of the allegations and the fact that one of the accusers is a fellow justice. The Notice charges Justice Johnson with engaging “in a pattern of conduct towards Justice Victoria Chaney that was unwelcome, undignified, discourteous, and offensive, and

case similar to the Ellis case, a judge in the Philippines offered to dismiss the case pending against a woman if she would agree to be his mistress. The Supreme Court found the judge’s solicitation of sexual favours from a litigant constituted sexual harassment and dismissed him from service. *Uy v. Tapucar*, A.M. No. 2300-CFI, 31 January 1981, 102 SCRA 493 (1981).

¹⁷ *People v. Esteban*, Crim. Cases Nos. 24490, 24702-04 (Sandiganbayan, Quezon City, First Division, 15 April 2008).

¹⁸ *Id.*

¹⁹ *Simbajon v. Esteban*, 312 SCRA 192 (1999).

²⁰ *In re Johnson*, Notice of formal Proceedings (California Commission on Judicial Performance 4 January 2019) https://cjp.ca.gov/wp-content/uploads/sites/40/2019/01/Johnson_NFP_01-04-19.pdf

that would reasonably be perceived as sexual harassment or as bias or prejudice based on gender” and details conduct occurring over an eight-year period that included: asking her to have an affair; repeatedly hugging her, pressing against her and putting his hand on her breast; making comments such as “Mm-hmm” or “You feel good”; patting her on the buttocks; making a sexually explicit comment during a holiday party and then stating, “It can’t be sexual harassment because we’re both on the same level,” or words to that effect; and, in the context of a discussion about sexual harassment complaints against other judicial officers, asking, “You would never report me, would you?”²¹ Justice Johnson allegedly harassed a second judicial colleague when he saw her bend over to tie a shoelace and told her she had “the greatest ass in the Second District,” or words to that effect.²² The disciplinary proceeding against Justice Johnson was slated to begin in August 2019. After hearing testimony and considering all the evidence, the panel was supposed to report its findings to the Commission, which would decide what punishment, if any, to impose.²³

These allegations of misconduct over many years underscore the delicacy of dealing with harassment by a judicial colleague. While judges receive training about sexual harassment, it often focuses on preventing harassment within the workplace and does not necessarily provide guidance about how to deal with harassment by another judge.

The Gangele case (India). As a case from India illustrates, the risks of complaining may be as great for a judge as for any other victim. Judge Sangeeta Madana, an Additional District and Sessions Judge in Gwalior, alleged sexual harassment by Justice S.K. Gangele, a justice of the Madhya Pradesh High Court and Administrative Judge of the Gwalior Bench and Portfolio Judge of the Gwalior District, with the responsibility of supervising the complainant’s court and assessing her work. Judge Sangeeta Madana claimed she was subjected to intense surveillance and harassment in her professional work as a consequence of rebuffing the sexual advances of Justice Gangele. The complainant and her husband sought to meet with Justice Gangele to resolve her employment grievances, but without success. The complainant was suddenly transferred, mid-session, to a remote district. She alleged that the transfer was in retaliation for not responding to Justice Gangele’s overtures. She sought an extension to remain at Gwalior, but was unsuccessful:

“The Complainant alleged that when she called Justice Gangele on 10.07.2014 to consider her application seeking extension, as he was supposed to give a no-objection certificate to her application, according to her, the respondent Judge stated that ‘your transfer is for not fulfilling my aspirations and for not visiting my bungalow alone even once. I will spoil your career completely.’”²⁴

The complainant resigned from the post of Additional District and Sessions Judge, alleging that she was left with no other option. Following a parliamentary motion for removal of Justice

²¹ *Id.* at 1-3.

²² *Id.* at 10.

²³ For updates on the case: https://cjp.ca.gov/pending_cases/.

²⁴ *In re Motion for the Removal of S.K. Gangele, Judge, Madhya Pradesh High Court*, Report of the Judges Inquiry Committee at 15,

http://164.100.47.194/loksabha/writereaddata/Updates/EventLSS_636491971746375435_JIC_Report_eng.pdf.

S.K. Gangele, an investigation was conducted, and a three-member Judges Inquiry Committee found the evidence was insufficient to substantiate the complainant’s charges.

The LoRusso case (United States of America). The New York Commission on Judicial Conduct determined that removal was the appropriate sanction for Judge Anthony P. LoRusso, a Family Court judge who “engaged in a course of offensive, undignified and harassing conduct in which he subjected subordinate women in the court system to uninvited sexual activity, touching and crude and suggestive comments.”²⁵ The Commission commented on the damage his conduct had done to the integrity of the judiciary:

“Respondent used female court employees to satisfy his sexual desires and fantasies. This constituted a gross abuse of his power as a judge and damaged public confidence in the integrity of the judiciary. Female employees were repeatedly subjected to humiliating and unwanted verbal and physical abuse. Even if respondent did not have direct responsibility for hiring and firing, as a judge he was an intimidating figure. Some women nevertheless protested his conduct. Others felt compelled to endure his improper behavior in silence.”²⁶

The Pacuribot case (the Philippines). The Supreme Court of the Philippines dismissed Judge Rexel Pacuribot, a Regional Trial Court Judge, for subjecting two women to unwelcome sexual advances and acts of lasciviousness.²⁷ One woman was a court stenographer and the other a clerk at the Gingoog City Parole and Probation Office. Both alleged that Judge Pacuribot took them to a motel, where he forced them to engage in sexual acts, and that he subjected them to additional harassment at the office. When the stenographer would enter his chamber, Judge Pacuribot would grab her blouse, kiss her neck, and tell her how sweet she smelled. He would summon the clerk to his office on the pretext of discussing probation matters, then grab and kiss her, leaving marks on her neck and chest. The Supreme Court found that:

“Judge Pacuribot’s conduct indubitably bears the marks of impropriety and immorality. His severely abusive and outrageous acts, which are an affront to women, unmistakably constitute sexual harassment because they necessarily result in an intimidating, hostile, or offensive environment for the employee(s).”²⁸

The Court stressed that Judge Pacuribot “violated the trust reposed on his high office and completely failed to live up to the noble ideas and strict standards of morality required of members of the Judiciary.”²⁹ The Court ordered that he be dismissed from the service with

²⁵ *In re LoRusso*, Determination (New York Commission on Judicial Conduct June 8, 1993) at 10, (<http://cjc.ny.gov/Determinations/L/LoRusso.Anthony.P.1993.06.08.DET.pdf>).

²⁶ *Id.* at 14.

²⁷ *Tan v. Pacuribot*, (A.M. No. RTJ-06-1882, Dec. 14, 2007); Sandy Araneta, “SC sacks RTC judge of Gingoog,” *PhilStar Global* (Dec. 23, 2007), <https://www.philstar.com/nation/2007/12/23/34967/sc-sacks-rtc-judge-gingoog>

²⁸ *Id.*

²⁹ *Id.*

forfeiture of all retirement benefits and with prejudice to re-employment in any government service.³⁰

1.2.3 PORNOGRAPHY IN THE WORKPLACE

The Kozinski case (United States of America). Recent high-visibility allegations of sexual misconduct involved Judge Alex Kozinski, a judge on the U.S. Court of Appeals for the Ninth Circuit. The allegations came to light when *The Washington Post* reported that six former clerks or externs alleged that Judge Kozinski had subjected them to a range of inappropriate sexual conduct or comments.³¹ Several former law clerks alleged that he called them into his chambers to show them pornography on his computer, unrelated to any case they were working on. A misconduct investigation was initiated and nine more women came forward with allegations of inappropriate sexual conduct.³² The earliest of the allegations dated back to the mid-1980s. As more people came forward to talk about their experiences with Judge Kozinski, it became evident that concerns about his interactions with women had been an ‘open secret’ for years, but nothing had been done to address those concerns. Judge Kozinski retired before the misconduct investigation could be concluded.³³

While Judge Kozinski’s retirement effectively ended the investigation, the concerns this matter raised about sexual harassment in the judiciary prompted U.S. Chief Justice John G. Roberts, Jr. to create a working group to evaluate whether the federal judiciary’s “standards of conduct and its procedures for investigating and correcting inappropriate behaviour are adequate to ensure an exemplary workplace for every judge and every court employee.”³⁴ The working group found that steps taken to prevent harassment had not proven sufficient to address the issue fully and recommended action in three areas:

³⁰ The Supreme Court of the Philippines has taken similar disciplinary action against other judges who engaged in sexual harassment. In *Talens-Dabon v. Arceo*, the judge was dismissed from service for lewd and lustful acts towards his subordinate. A.M. No. RTJ-96-1336, July 29, 1996, 259 SCRA 354 (1996). In *Dawa, et al. f. De Asa*, the judge was dismissed from service for making amorous advances towards court employees, which created a hostile and offensive environment. A.M. No. MTJ-08-1144 & 1148, 22 July 1998, 292 SCRA 703 (1998). In less egregious cases of sexual harassment, the Supreme Court has suspended judges without pay. *See, e.g., Vedana v. Valencia*. A.M. No. RTJ-96-1351, 3 September 1998, 295 SCRA 1 (1981); *Veloso et al. v. Caminade*, A.M. No. RTJ-01-165, 8 July 2004, 434 SCRA1 (2004).

³¹ Matt Zapotosky, “Prominent appeals court Judge Alex Kozinski accused of sexual misconduct,” *The Washington Post* (8 December 2017), https://www.washingtonpost.com/world/national-security/prominent-appeals-court-judge-alex-kozinski-accused-of-sexual-misconduct/2017/12/08/1763e2b8-d913-11e7-a841-2066faf731ef_story.html?utm_term=.3e822d5147c3.

³² Matt Zapotosky, “Nine more women say judge subjected them to inappropriate behavior, including four who say he touched or kissed them,” *The Washington Post* (15 December 2017), https://www.washingtonpost.com/world/national-security/nine-more-women-say-judge-subjected-them-to-inappropriate-behavior-including-four-who-say-he-touched-or-kissed-them/2017/12/15/8729b736-e105-11e7-8679-a9728984779c_story.html?utm_term=.9724c59c46b3.

³³ Robert Barnes, “Chief Justice Roberts says courts will examine protections against sexual harassment,” *The Washington Post* (31 December 2017), https://www.washingtonpost.com/politics/chief-justice-roberts-says-courts-will-examine-protections-against-sexual-harassment/2017/12/31/94a55d00-ee40-11e7-97bf-bba379b809ab_story.html?utm_term=.d647320668a1.

³⁴ 2017 Year-End Report on the Federal Judiciary at 11, <https://www.supremecourt.gov/publicinfo/year-end/2017year-endreport.pdf>.

“First, the Judiciary should revise its codes and other published guidance in key respects to state clear and consistent standards, delineate responsibilities, and promote appropriate workplace behavior. Second, the Judiciary should improve its procedures for identifying and correcting misconduct, strengthening, streamlining, and making more uniform existing processes, as well as adding less formal mechanisms for employees to seek advice and assistance. Third, the Judiciary should supplement its educational and training programmes to raise awareness of conduct issues, prevent harassment, and promote civility throughout the Judicial Branch.”³⁵

1.2.4 UNPROFESSIONAL AND OVERLY FRIENDLY CONDUCT

The Saucedo case (United States of America). The California Commission on Judicial Performance removed Judge Valeriano Saucedo, a County Superior Court judge, for misconduct that included manipulative efforts to promote a closer personal relationship with his courtroom clerk through numerous text messages and gifts.³⁶ The clerk stated that “other than the hugs, Judge Saucedo’s conduct was not ‘sexual’ in nature.”³⁷ Nonetheless, the Commission agreed with the masters that the judge “improperly used his position and financial rewards to pressure his court clerk into maintaining an inappropriate and unwanted personal relationship.”³⁸ The Commission rejected the judge’s claim that he intended only to ‘mentor’ the clerk:

“Mentoring involves advice, direction, referrals and encouragement. As stated by the special masters, ‘Mentoring is not accomplished by providing a subordinate with thousands of dollars in gifts, including a BMW car and vacation,’ an offer to pay for ‘body sculpting’ or expecting a ‘special’ friendship in exchange.”

Further, the overly personal and emotional language the judge used in his text messages and notes to [the clerk] is far from the type of supportive but professional communication one would expect in a mentoring relationship [...]³⁹

The Commission found that Judge Saucedo’s conduct “violates the high standards required of a judge, undermines the integrity of the judiciary, diminishes public confidence in the integrity of the judiciary, and manifests favoritism toward a subordinate employee.”⁴⁰

³⁵ Report of The Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States at 20 (1 June 2018), https://www.unodc.org/ji/resdb/data/usa/2018/report_of_the_federal_judiciary_workplace_conduct_working_group_to_the_judicial_conference_of_the_u.s.html.

³⁶ *Inquiry Concerning Saucedo*, Decision and order (California Commission on Judicial Performance 1 December 2015), https://cjp.ca.gov/wp-content/uploads/sites/40/2016/08/Saucedo_12-01-15.pdf.

³⁷ *Id.* at 35.

³⁸ *Id.* at 43.

³⁹ *Id.*

⁴⁰ *Id.* at 47.

The California Judges Association Judicial Ethics Committee issued a formal advisory opinion underscoring the need for judges to “remain aware of any bias or favoritism, as well as the appearance of bias or favoritism, that gift-giving may create and be sensitive to the possibility that the judge’s gift giving practices (e.g., only giving gifts to women) may be perceived as sexual harassment or creating a hostile workplace.”⁴¹

1.3. SEX DISCRIMINATION

Sex discrimination involves treating someone unfavourably because of that person’s sex. While sex discrimination can adversely affect men as well as women, there is a long history of male dominance in judiciaries around the world. That dominance has repercussions not only for the women denied opportunities within the judiciary, but also for complainants seeking access to justice. Public trust and confidence in the judiciary is enhanced when people see it as representative of the society and believe they will receive a fair and sympathetic hearing of their case. If the justice system is perceived as insufficiently sensitive to gender issues, it may deter women from pursuing cases, especially those involving sexual offences.

1.3.1 GENDER REPRESENTATION WITHIN THE JUDICIARY

Access to the judiciary. For women, the most fundamental discrimination occurs when they are not permitted, solely because of their gender, to become judges or hold particular positions within the judiciary. While much progress has been made in this regard, there have been many instances where women have been denied appointment because of their gender.

Promotion within the judiciary. Gender discrimination is often deeply rooted in society, and judiciaries represent that society. Judicial appointments are just one step towards addressing the situation. It is also important to look at the representation of women at higher levels of the judiciary and in managerial and advisory positions within the courts. A 2019 study conducted by the Italian High Council of the Judiciary illustrates the challenge.⁴² While female judges and prosecutors (5,013 or 53 per cent) outnumber their male counterparts (4,388 or 47 per cent), there is a significant gender imbalance in the highest positions, where males hold 74 per cent of those positions and females only hold 26 per cent. This experience is repeated around the world. In Brazil, for example, there is a national policy that encourages female participation in the judiciary. Based on 2018 research by the Brazilian National Justice Council, approximately 45 per cent of first instance judges are women. However, that number declines precipitously at higher levels, where women represent only 23 per cent of the second instance

⁴¹ Judicial Ethics Committee of the California Judges Association Opinion No. 70 “Judges Giving Gifts To Court Staff” (October 2015), https://www.unodc.org/ji/resdb/data/usa/formal_ethics_opinion_no.70_judges_giving_gifts_to_court_staff.html

⁴² Official Statistics: Gender Distribution of Magistral Personnel (Italian High Council of the Judiciary 2019), <https://www.csm.it/documents/21768/137951/Donne+in+magistratura+%28aggiorn.+marzo+2019%29/164355b0-4710-f3d8-cf63-9a0a54f1069f>

judges and only 16 per cent of the judges appointed to higher courts.⁴³ Similarly, data collected by the Gender Equality Commission in Spain revealed that, in 2018, the percentage of women (53.2 per cent) in the judiciary was greater than the percentage of men (46.8 per cent), but that percentage decreased significantly in positions at the top of the judicial hierarchy: 14.5 per cent women on the Supreme Court, but none was President of the Court or of a Chamber; 36.2 per cent women on the Superior Courts of Justice, but women occupied only one (5.88 per cent) of the 17 Court Presidencies and 12 (20.34 per cent) of the 59 Chamber Presidencies; 37.6 per cent women on the Provincial Courts, but women occupied only 8 (16 per cent) of the 50 Court Presidencies.⁴⁴

1.3.2 DISCRIMINATORY WORKING CONDITIONS

Even when women are successful in securing judicial positions, discrimination can occur at any point along a judge's professional career path, affecting promotions, judicial assignments, professional opportunities and working conditions (from inadequate bathroom facilities to scheduling that disregards family responsibilities). When women take maternity leave, they may be particularly vulnerable to gender stereotyping that adversely affects their professional standing and opportunities.

Judges should be aware of the ways in which sex discrimination might affect not only their judicial colleagues, but also law clerks and court personnel. At every level, there is the potential for sex discrimination to affect the available professional opportunities, candidate selection and terms and conditions of employment for all who work in the courts. Such discrimination may affect individuals of any gender, orientation, identity or presentation.

1.4. GENDER BIAS

Gender bias reflects a preference or prejudice towards one gender over the other. It can be conscious or unconscious, and manifests itself in many ways, both subtle and obvious. In some cases, the bias is so blatant and damaging to the integrity of the judicial system that disciplinary action is appropriate. In other cases, the bias may be unconscious and unarticulated, but still exert an improper influence over legal proceedings. While disciplinary action may not be warranted, it is important to recognize and address the threat that gender bias - even if unconscious - poses to judicial integrity and the fairness of judicial decisions. Gender protocols are just one of the tools at the judiciary's disposal to help judges adjudicate cases with greater sensitivity to gender issues.

⁴³ Social demographic profile of Brazilian judges at 10 (Brazilian National Justice Council 2018), <https://static.poder360.com/br/2018/09/49b47a6cf9185359256c22766d5076eb.pdf>.

⁴⁴ Report of Gender Equality Commission (Gender Council of the Judiciary 2018), <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Infornes/Estructura-demografica-de-la-Carrera-Judicial/>.

1.4.1 HOSTILE, SEXIST OR MISOGYNISTIC STATEMENTS

Sexism and misogyny in the judiciary can create a hostile environment not only for female judges but also for female attorneys, litigants, witnesses, law clerks and court personnel. Through modern technology, views that might have been expressed privately to only a few people, can now be broadcast to many via email or social media. The use of social media is a comparatively new phenomenon and the Global Judicial Integrity Network has been addressing its implications for judicial integrity.⁴⁵

The Maggio case (United States of America). The Arkansas Judicial Discipline and Disability Commission recommended that Circuit Court Judge Michael Maggio be removed from office for, among other misconduct, posting inappropriate comments about women on a Louisiana State University forum. The comments, posted under the name “geauxjudge,” included sexist statements such as:

“From my years in the courtroom:

- 1) All women have an agenda.
- 2) Women look at 2 bulges on a man A) the front and/or B) the back (wallet).
- 3) As long as either one is big enough they can make do without the other.”⁴⁶

The Arkansas Judicial Discipline and Disability Commission found that such statements violated the ethical canon regarding extrajudicial activities that would appear to undermine the judge’s independence, integrity or impartiality. The Comment to that canon states: “Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality.”⁴⁷ The Commission elaborated on the ways in which the judge’s improper comments undermined public confidence in the judiciary and its integrity:

“The volume of your comments results in much more than a problem of taste, decorum or personal opinion. It adds up to someone who demonstrates that he is unfit for the bench. Your actions offended and, even worse, gave rise to legitimate concerns that bias would overcome fairness and due process for a large number of potential litigants and their attorneys. Even the cases that you decided based purely on the facts and the law are now suspect by parties who look at the kind of statements you made. Whether it is race, gender, sexual orientation or specific subject matter, your comments made it impossible for you to be taken seriously as a judge who would be fair and impartial. You essentially disqualified yourself from the bench.”⁴⁸

⁴⁵ Please visit the website of the Global Judicial Integrity Network (www.unodc.org/ji/) for more information.

⁴⁶ Letter of Suspension and Removal from Office (Arkansas Judicial Discipline & Disability Commission 6 August 2015) at 5-6, https://www.unodc.org/res/ji/import/disciplinary_proceedings/gender/maggio.pdf.

⁴⁷ *Id.* at 12.

⁴⁸ *Id.* at 19.

The Cebull case (United States of America). Judge Richard Cebull, a U.S. District Court judge in Montana, sent hundreds of inappropriate emails from his federal court account, including a significant number concerning women and/or sexual topics that were disparaging of women.⁴⁹ The Ninth Circuit Judicial Council concluded that the emails reflected negatively on Judge Cebull and undermined public trust and confidence in the judiciary. Even if Judge Cebull intended his emails to remain private, the ethical canon enjoining judges to avoid impropriety and the appearance of impropriety applies to both professional and personal conduct.⁵⁰

The Judicial Council issued a public reprimand of Judge Cebull, ordered that no new cases be assigned to him for 180 days, ordered him to complete training on judicial ethics, racial awareness and elimination of bias, and to issue an apology acknowledging “the breadth of his behaviour and his inattention to ethical and practical concerns surrounding personal email.”⁵¹ When Judge Cebull announced that he would retire, the Judicial Council vacated its earlier Order as moot. The complainant petitioned for review, expressing “concern about the propriety of a Judicial Council issuing a final order making detailed findings of extensive judicial misconduct and then, after the subject judge retires, *sua sponte* vacating its own final order and issuing a new order that effectively conceals the judicial misconduct that previously had been identified and detailed.”⁵² On review, the Committee on Judicial Conduct and Disability concluded that the first Order was subject to the publication requirement under the Judicial Conduct and Disability Act and observed:

“The publication requirement in the Act and in the JCD Rules balances the need to preserve the confidentiality of the identity of a judge who is subject to a complaint of misconduct or disability to which no merit has yet been ascribed, with the need for transparency and public confidence once the Circuit Judicial Council has adjudicated the matter on the merits.”⁵³

1.4.2 GENDER STEREOTYPING

Gender stereotyping refers to preconceived ideas about attitudes and behaviours believed to be typical of and determined by a person’s gender. Within the courtroom, these preconceived ideas may affect the legal outcome in inappropriate ways. Occasionally, the stereotyping is blatant, as in the case of the Russian judge who threw out a sexual harassment case, not for lack of evidence, but because he saw nothing wrong with the employer’s demands that female workers have sex with him: “If we had no sexual harassment we would have no children,” the judge

⁴⁹ *In re Complaint of Judicial Misconduct (Cebull)*, Order and Memorandum (Ninth Circuit Judicial Council 15 March 2013) at 5, <http://www.uscourts.gov/sites/default/files/ccd-13-01order-final-01-17-14.pdf>.

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 16.

⁵² Memorandum of Decision (Committee on Judicial Conduct & Disability of the Judicial Conference of the U.S. 17 January 2014) at 8, <http://www.uscourts.gov/sites/default/files/ccd-13-01order-final-01-17-14.pdf>.

⁵³ *Id.* at 9.

ruled.⁵⁴ More often, the stereotyping is subtle and unacknowledged. For example, when judges view female witnesses as less credible than male witnesses, they are effectively putting a gendered thumb on the scales of justice. Ugandan Supreme Court Judge Lilian Tibatemwa described how such gender stereotypes may be embedded in legal education:

“I remember sitting in a law class and being told that when someone comes before you as a complainant in a sexual offence case, you should warn yourself of the danger of convicting an accused person in a sexual offence on the basis of testimony of the complainant without seeking independent evidence to support that story— that is a stereotype. If somebody is a liar, then they are a liar. You can’t say that women tell false stories in sexual assault cases, and when it comes to women appearing before you in a property-related case, that you can believe their stories without corroboration.”⁵⁵

Gender stereotypes have deep cultural roots, and female judges may be as vulnerable as their male counterparts to absorbing these cultural messages and allowing them to influence their decisions. Two cases in Italy provoked public outrage at what were perceived to be sexist decisions by female judges.⁵⁶ In one case, a panel of three female judges overturned the rape conviction of two men, finding the young woman’s account of events not sufficiently credible, in part because she was “too masculine” to have been an attractive victim. Italy’s highest court rejected that decision and ordered a retrial for the two men. In the second case, a female judge imposed a reduced sentence on a man who had killed his wife, explaining that the wife’s relationship with another man and behaviour towards her husband was a mitigating context for the husband’s emotional and violent reaction.

Among the most common gender stereotypes are ‘rape myths’ tied to preconceived ideas about how victims of rape should behave before, during and after they have been sexually assaulted. The effect of these rape myths is to shift blame from the perpetrator to the survivor. When judges allow these or other gender stereotypes to influence their conduct or decisions, the damage to the integrity of the judicial process extends beyond the result in a particular case and undermines public trust and confidence in the judiciary.

The Baugh case (United States of America). The Montana Supreme Court censured U.S. District Court Judge G. Todd Baugh and suspended him for 31 days for using rape myths to trivialize the rape of a 14-year-old girl by her high school teacher. While the trial was pending, the girl committed suicide. The teacher eventually pled guilty to one count of sexual intercourse without consent. The state sought a sentence of 20 years in prison with ten years suspended. The teacher asked that all but 30 days be suspended. The judge sentenced him to 15 years with

⁵⁴ Adrian Blomfield, “Sexual harassment okay as it ensure humans breed, Russian judge rules,” *The Telegraph* (29 July 2008), <https://www.telegraph.co.uk/news/worldnews/europe/russia/2470310/Sexual-harrassment-okay-as-it-ensures-humans-breed-Russian-judge-rules.html>.

⁵⁵ Melissa Evans, “Opinion: When justice rests only in the hands of men, women are less likely to pursue it,” *Apolitical* (13 September 2019), https://apolitical.co/solution_article/why-the-gender-of-your-judge-matters/?share=email.

⁵⁶ Gaia Pianigiani, “A Sexism Storm Over Italy’s Courts, With Female Judges at Its Center,” *The New York Times* (18 March 2019), <https://www.nytimes.com/2019/03/18/world/europe/italy-sexism-courts.html>.

all but 31 days suspended and credit for one day served. Speaking from the bench about the rationale for his sentence, the judge commented that the victim was “a troubled youth, but a youth that was probably as much in control of the situation as [the teacher], one that was seemingly, though troubled, older than her chronological age.”⁵⁷ He later explained to the press, “it was horrible enough as it is just given her age, but it wasn’t this forcible beat-up rape.”⁵⁸

There was an immediate public outcry and hundreds of complaints. Six women’s groups filed an amicus brief that focused on rape myths and their impact in adjudicating and sentencing sexual assault cases. The amicus brief supported the Montana Attorney General’s call for overturning the original sentence and asked the court to take the effect of these rape myths into account and remand the case for resentencing.⁵⁹ The Montana Supreme Court found that “Judge Baugh’s statements reflected an improper basis for his decision and cast serious doubt on the appearance of justice” and concluded that “reassignment to a new judge is necessary to preserve the appearance of fairness and justice in this matter.”⁶⁰

Complaints about Judge Baugh’s comments were addressed in a separate disciplinary proceeding that resulted in a censure and suspension for ethical violations:

“Judge Baugh’s comments in open court in this case disregarded longstanding Montana law that a person under the age of 16 is legally incapable of consenting to sexual intercourse. His assertion that the victim was “older than her chronological age” is inconsistent with Montana law categorizing child victims of sexual offenses based on their chronological age alone, rather than on subjective perceptions of physical maturity and situational control ... Through his unlawful sentence, inappropriate rationale, and subsequent public comments, Judge Baugh has eroded public confidence in the judiciary and created an appearance of impropriety, therefore violating the Montana Code of Judicial Conduct. He has caused Montana citizens, as well as others, to question the fairness of our justice system and whether prejudice or bias affected the outcome of the Rambold case. There is no place in the Montana judiciary for perpetuating the stereotype that women and girls are responsible for sexual crimes committed against them.”⁶¹

The Camp case (Canada). The Canadian Judicial Council recommended that Federal Court Justice Robin Camp be removed from office for serious misconduct that included asking the

⁵⁷ *Inquiry Concerning Baugh*, 334 P.3d 352 (Montana 2014) at para. 6, <https://bloximages.chicago2.vip.townnews.com/billingsgazette.com/content/tncms/assets/v3/editorial/a/e4/ae480892-26f2-5183-884f-3b78c3bac2c1/53921647c0665.pdf.pdf>.

⁵⁸ *Id.*

⁵⁹ “Judge G. Todd Baugh (MT),” *Civil Rights Advocacy Blog* (31 December 2014), <https://civilrightsadvocacy.net/category/people/judge-g-todd-baugh-mt/>.

⁶⁰ *Montana v. Rambold*, at para. 22, <https://bloximages.chicago2.vip.townnews.com/billingsgazette.com/content/tncms/assets/v3/editorial/1/3b/13b2315d-a13d-59cc-9ea7-7c477ffc05c3/53619a55ad3b2.pdf.pdf>.

⁶¹ *Inquiry Concerning Baugh*, 334 P.3d 352 (Montana 2014) at para. 11, <https://bloximages.chicago2.vip.townnews.com/billingsgazette.com/content/tncms/assets/v3/editorial/a/e4/ae480892-26f2-5183-884f-3b78c3bac2c1/53921647c0665.pdf.pdf>.

19-year-old complainant in a rape case, “why couldn’t [she] just keep [her] knees together” and other questions reflecting stereotypical assumptions about how someone confronted with sexual assault would behave and/or blaming her for not doing more to prevent the alleged sexual assault.⁶² The Council found that:

“[...] the Judge’s conduct, viewed in its totality and in light of all of its consequences, was so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role that public confidence is sufficiently undermined to render the Judge incapable of executing the judicial office.”⁶³

In reaching this decision, the Council rejected Judge Camp’s argument that a lesser sanction was warranted because the bias was unconscious:

“The Judge’s misconduct was manifestly serious and reflected a sustained pattern of beliefs of a particularly deplorable kind, regardless of whether he was conscious of it or not. As the Committee wrote at para. 293, one consequence of the Judge’s misconduct in the trial is that it: ... adds to the public perception that the justice system is fuelled by systemic bias and it therefore courts the risk that in other sexual assault cases, unpopular decisions will be unfairly viewed as animated by that bias, rather than by the application of legal principles and sound reasoning and analysis.”⁶⁴

The Council also rejected the argument that removal was not necessary in light of Judge Camp’s remorse and efforts to educate and rehabilitate himself:

“In our view, the statements made by Justice Camp during the trial and in his decision, the values implicit in those statements and the way in which he conducted himself are so antithetical to the contemporary values of our judicial system with respect to the manner in which complainants in sexual assault case should be treated that, in our view, confidence in the system cannot be maintained unless the system disassociates itself from the image which the Judge, by his statements and approach, represents in the mind of a reasonable member of the public. In this case, that can only be accomplished by his removal from the system which, if he were not removed, he would continue to represent.”⁶⁵

The Vertido case (CEDAW Committee). The Committee on the Elimination of Discrimination against Women (CEDAW Committee) found that the rights of Karen Tayag Vertido, a Filipino national, had been violated when Judge Virginia Hofileña-Europa acquitted the man Ms. Vertido accused of raping her and based her assessment of Ms. Vertido’s credibility on rape stereotypes about the rational and ideal response of a woman threatened

⁶² *Canadian Judicial Council Inquiry into the Conduct of the Honourable Robin Camp*, Report to the Minister of Justice (8 March 2017),

https://www.cjc-ccm.gc.ca/cmslib/general/Camp_Docs/2017-03-08%20Report%20to%20Minister.pdf.

⁶³ *Id.* at para. 53.

⁶⁴ *Id.* at para. 24.

⁶⁵ *Id.* at para. 47.

with rape. The CEDAW Committee explained the obligation of States parties to ensure that judges do not allow gender stereotyping to affect their decisions:

“The Committee further reaffirms that the Convention places obligations on all State organs and that States parties can be responsible for judicial decisions which violate the provisions of the Convention. It notes that by articles 2 (f) and 5 (a), the State party is obligated to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In this regard, the Committee stresses that stereotyping affects women’s right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.”⁶⁶

The recommendations to the State party included:

“Ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women. Concrete measures include:

- (i) Review of the definition of rape in the legislation so as to place the lack of consent at its centre;
- (ii) Remove any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:
 - requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or
 - requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.”
- (iii) Appropriate and regular training on the Convention on the Elimination of All Forms of Discrimination against Women, its Optional Protocol and its general recommendations, in particular general recommendation No. 19, for judges, lawyers and law enforcement personnel;
- (iv) Appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid revictimization of

⁶⁶ *Case of Vertido v. Philippines*, Committee on the Elimination of Discrimination against Women (CEDAW/C/46/D/18/2008; 16 July 2010) at 14, http://www.bayefsky.com/docs.php/area/jurisprudence/treaty/cedaw/opt/0/node/4/filename/philippines_t5_cedaw_18_2008.

women having reported rape cases and to ensure that personal mores and values do not affect decision-making.”⁶⁷

The McEwan case (Guyana). Gender stereotyping is not limited to cases of sexual assault. After an eight-year legal battle, the Caribbean Court of Justice (CCJ) struck down a vaguely-worded cross-dressing law as unconstitutional, overturning the decisions of the trial court and the Court of Appeal of Guyana.⁶⁸ Among other legal arguments, the appellants claimed that the cross-dressing law (section 153(1)(xlvii)) infringed upon their fundamental rights because it was rooted in gender stereotypes of how women and men should dress. The trial judge found there was no sex discrimination because the law was “directed against the conduct of both male and female persons,” and the Court of Appeal expressed “complete agreement” with the trial judge’s view that the law “carried no taint of gender discrimination.”^{69, 70} The CCJ concluded that this reasoning was in error:

“Although it is true that cross dressing is practiced by persons of several types of sexual orientation, both on its face and in its application, section 153(1)(xlvii) has a disproportionately adverse impact on transgendered persons, particularly those who identify with the female gender. It infringes on their personal autonomy which includes both the negative right to not be subjected to unjustifiable interference by others and the positive right to make decisions about one’s life. The formulation and operation of section 153(1)(xlvii) also reinforce stereotyping. The section conduces to the stigmatisation of those who do not conform to traditional gendered clothing.”⁷¹

The appellants also claimed that the presiding magistrate infringed upon their constitutional rights to equality and freedom of conscience when she told them, at sentencing, that “they must go to church and give their lives to Jesus Christ” and that “they were confused about their sexuality; that they were men, not women.”⁷² The trial judge rejected the constitutional arguments and held that, “at worst, the Magistrate’s statements amounted to ‘proselytising’, but they did not constitute a hindrance to freedom of thought and of religion.”⁷³ The Court of Appeal also dismissed the constitutional arguments and “pointed out that the Magistrate made her comments after imposing sentence and therefore what was said could not have influenced the proceedings.”⁷⁴ As the CCJ found, this begs the question whether the remarks reflected any preconceived ideas about gender that might have influenced the Magistrate’s decision:

⁶⁷ *Id.* at 16-17.

⁶⁸ *McEwan et al. v. Attorney General of Guyana* (CCJ, 13 November 2018)

<https://www.humandignitytrust.org/wp-content/uploads/resources/MC-EWAN-et-al-v-AG-OF-GUYANA-Copy.pdf>.

⁶⁹ *Id.* at para. 17, p. 5.

⁷⁰ *Id.* at para. 24, p. 7.

⁷¹ *Id.* at para. 72, pp. 23-24.

⁷² *Id.* at para. 10, p. 4.

⁷³ *Id.* at para. 18, p. 6.

⁷⁴ *Id.* at para. 26, p. 8.

“The remarks made by the Magistrate, after sentencing the 1st - 4th named appellants, while the Magistrate was still sitting, were inappropriate. The courts below should not have excused those remarks. Judicial officers may not use the bench to proselytise, whether before, during or after the conclusion of court proceedings. Secularism is one of the cornerstones upon which the Republic of Guyana rests. But these remarks went beyond proselytising. They revealed stereotypical thinking about transgendered persons. It is not possible to know whether the 1st - 4th named appellants would have been dealt with differently by a Magistrate with impartial views about persons of the LGBTI community. On the charge being read, a more informed Magistrate may have, for example, rejected the Guilty pleas and stated a case for the Constitutional court; or, recorded a conviction but discharged the 1st - 4th named appellants; or taken some other step short of the punishment which was actually recorded against the 1st - 4th named appellants.

Section 144 of the Constitution promises all persons charged with a criminal offence a fair hearing by an impartial tribunal. By reason of the remarks made by the Magistrate, the 1st - 4th named appellants would have been justified in believing that in their case this promise was not manifested.”⁷⁵

1.5. INAPPROPRIATE SEXUAL CONDUCT

Judges have also been disciplined for various types of consensual but inappropriate sexual conduct. While certain conduct might seem consensual, the power imbalance between judges and others in the courtroom (litigants, attorneys, witnesses, bailiffs, reporters) or the courthouse (clerks, subordinates, judicial colleagues) may make it difficult to ascertain whether it is truly consensual. More importantly, even consensual conduct can raise integrity issues and undermine public confidence in the judiciary if the nature of the conduct or the manner in which it occurs is inappropriate.

The Steiner case (United States of America). The California Commission on Judicial Performance censured County Superior Court Judge Scott Steiner for engaging in sexual activity in his chambers with a former intern and an attorney practising before the court. The Commission found Judge Steiner had committed numerous ethical violations, including:

- “Failure to observe high standards of conduct;
- Failure to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;
- Failure to conduct himself in a manner that does not demean the judicial office;
- Misuse of court facilities; and
- Conduct prejudicial to the administration of justice that brings the judiciary into disrepute.”⁷⁶

⁷⁵ *Id.* at paras., 90-91, pp. 28-29.

⁷⁶ *In re Steiner*, Decision and Order Imposing Censure Pursuant to Stipulation (California Commission on Judicial Performance 22 July 2014) at 2,

2. CLEAR AND COMPREHENSIVE GUIDANCE ABOUT GENDER-RELATED INTEGRITY ISSUES

As the cases reveal, when confronted with a range of gender-related integrity issues, judicial disciplinary bodies have found ethical violations. They also reveal that judges who are otherwise beyond reproach, and even highly regarded, may engage in inappropriate conduct that has a gender dimension. The reasons for these ethical lapses may be as varied as the judges who commit them, but they raise the question of whether judiciaries provide sufficiently clear guidance to judges regarding gender-related integrity issues.

2.1 CODES OF JUDICIAL CONDUCT

Providing clear and comprehensive guidance is an important safeguard in promoting judicial integrity. At the international level, the *Bangalore Principles of Judicial Conduct*, together with its associated *Commentary*, is the most well-known and comprehensive effort to articulate the core standards of conduct to which judges should aspire.⁷⁷

While an increasing number of countries have adopted codes of judicial conduct, many countries still enforce judicial discipline without a code of conduct. In addition, the countries that have adopted such codes have taken different approaches to structuring and enforcing them.⁷⁸

While there is no uniform practice, both the *Bangalore Principles of Judicial Conduct* and the codes of judicial conduct adopted in most common law countries follow a similar model: articulating the broad principles essential to maintaining public confidence in the integrity of the judiciary; applying those principles to rules of conduct that guide judges in confronting particular situations; and providing additional guidance through associated commentary, definitions or advisory opinions. This model reflects the inevitable tension in trying to provide guidance that is both clear and comprehensive. On the one hand, standards need to be sufficiently broad and flexible to encompass the myriad – and continually evolving – ways in which a judge’s conduct might violate those standards. On the other hand, those standards need to be sufficiently clear so there is no ambiguity about whether inappropriate conduct falls within their ambit. Periodic review can help to maintain the proper balance between these competing goals and ensure appropriate consideration of the integrity issues that accompany change – whether the technological changes that give rise to social media or the social changes that heighten sensitivity to gender issues.

https://cjp.ca.gov/wp-content/uploads/sites/40/2016/08/Steiner_DO_Censure_09-02-14.pdf.

⁷⁷https://www.unodc.org/res/ji/resdb/data/220/2007/commentary_on_the_bangalore_principles_of_judicial_conduct_html/Bangalore_principles_English.pdf.

⁷⁸ See UNODC Resource Guide on Strengthening Judicial Integrity and Capacity at 127-131 (2011), https://www.unodc.org/res/ji/import/guide/resource_guide/resource_guide.pdf.

2.1.1 CODES OF JUDICIAL CONDUCT

Most codes of judicial conduct do not address gender-related integrity issues with sufficient specificity. In some countries, gender-related misconduct, such as sexual harassment, is viewed through an employment lens and not through a professional conduct lens. There may be civil or criminal penalties for engaging in sexual harassment, but it is not explicitly addressed in codes of judicial conduct. These codes of conduct may require judges to conduct themselves with an integrity and propriety that would be inconsistent with sexual harassment, but it is only the civil or criminal code that expressly prohibits sexual harassment, not the ethical one.

It could be argued that it is not necessary to address sexual harassment as an ethical issue as long as it is prohibited by other laws. However, sexual harassment is not a crime in some jurisdictions and may, for example, be considered ‘teasing.’ In other jurisdictions, sexual harassment may apply to employment relationships but not necessarily to other professional relationships between a judge and judicial colleagues, counsel, litigants, witnesses or others in the courtroom. Even the broadest sexual harassment laws would not encompass all gender-related judicial integrity issues.

More importantly, the boundaries for lawful conduct are not always the same as the boundaries for ethical conduct. Failing to provide greater clarity and more precise guidance leaves open to interpretation whether and how the broad principles in codes of conduct apply to gender-related misconduct. Many consensual sexual relationships may be lawful, but that does not mean they are all appropriate in the courthouse. When one of the parties to the relationship is a judge and the other is a law clerk, litigant or lawyer, there is a power imbalance in the relationship that draws into question whether it is truly consensual. One expert group participant shared a case in which the court concluded that the courtroom atmosphere was sufficiently intimidating that the conduct could not be seen as consensual.⁷⁹ As the earlier cases illustrate, lawful and consensual sexual conduct may raise other ethical concerns relating to the propriety and dignity of the judicial office, impartiality and independence from extraneous influences and inducements.

Even where the judicial code of conduct specifically references gender bias or prejudice, discrimination, sexual harassment or other gender-related integrity issues, questions may remain. For example, if the ethical rules for judges address gender bias in the course of ‘performing the duty of a judge,’ how is the scope of that duty defined? Does it include the judge’s personal interaction with other judges, attorneys, clerks or people in the community? Does it apply to judicial decision-making? Would it damage judicial independence to have a disciplinary body review decision-making? Judges should not have to guess at these answers. To ensure that everyone understands what conduct is, and what is not, appropriate, it is important to have clear and openly stated ethical standards.

⁷⁹ Global Judicial Integrity Network Expert Group Meeting: Gender-Related Judicial Integrity Issues, held on 6-7 December 2018 in Seoul, Republic of South Korea. <https://www.unodc.org/ji/restricted/gender-egm.html>.

The Group of States against Corruption (GRECO), established by the Council of Europe to monitor compliance with Council of Europe anti-corruption standards and share good practices, has repeatedly stressed that a code of conduct is most valuable when it provides practical guidance on how principles apply and helps solve concrete situations -- for example, conflicts of interest, incompatibilities, gifts, how to behave when magistrates are faced with undue influence, etc. A code of ethics needs to be conceived as a living document, complemented by explanations, interpretative guidance and concrete examples.⁸⁰

2.1.2 BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

The *Bangalore Principles of Judicial Conduct* establish a high bar and underscore that judges should: (i) promote high standards of conduct in and out of court in order to reinforce public confidence in the judiciary (Principles 1.6, 2.2, and 3.2); (ii) perform duties without favour, bias or prejudice (Principles 2.1 and 5.2); (iii) ensure that their conduct is above reproach in the view of a reasonable observer and accept personal restrictions that might be viewed as burdensome by an ordinary citizen (Principles 3.1 and 4.2); and (iv) carry out duties with appropriate consideration for all persons and without differentiation on any irrelevant ground (Principles 5.3-5.5).⁸¹ In short, judges have a very broad obligation to conduct themselves in an ethical manner. On the one hand, the breadth of that obligation encompasses virtually any conduct that might be perceived as inappropriate. On the other hand, it may not provide sufficiently precise guidance as to what is deemed inappropriate.

As the case examples and #MeToo movement have highlighted, there is a pressing need for greater awareness about gender-related integrity issues.⁸² Yet, until now, this aspect of judicial integrity has not received extensive discussion or consideration in drafting codes of judicial conduct.

Gender issues – sextortion, sexual harassment and gender bias or discrimination – implicate, in some measure, each of the values set forth in the *Bangalore Principles of Judicial Conduct*, yet discussion of gender-related integrity issues is largely confined to the principle of equality.

Equality. The principle of equality is framed in terms of fairness and due process for those who come before the court: “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.”⁸³ It does not explicitly address equal treatment of those who work within the court or judicial conduct outside of the courtroom.

⁸⁰ For example, GRECO, *Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors – Evaluation Report Italy* at 37 (19 January 2017), https://www.unodc.org/ji/resdb/data/ita/2017/italy_greco_fourth_evaluation_round_corruption_prevention_in_respect_of_members_of_parliament_judges_and_prosecutors.html.

⁸¹ Commentary on the Bangalore Principles of Judicial Conduct (2007), https://www.unodc.org/ji/resdb/data/2007/220/commentary_on_the_bangalore_principles_of_judicial_conduct.html.

⁸² For more information, please visit: <https://metoomvmt.org/>

⁸³ *Bangalore Principles of Judicial Conduct, Value 5: Equality*.

The Commentary elaborates on three aspects of the equality principle:

- ***International standards.*** The Commentary references the international and regional instruments that prohibit discrimination against vulnerable groups, including discrimination based on sex, and underscores “the duty of a judge to discharge his or her judicial functions with due respect for the principle of equal treatment of parties by avoiding any bias or discrimination”.⁸⁴ Again, this focuses on those who come before the court – specifically “parties” – rather than witnesses, counsel or other courtroom professionals, and the obligation of the judge to avoid bias or discrimination in discharging judicial functions. The comment does not address inappropriate judicial conduct outside the courtroom or conduct that might not be characterized as bias or discrimination.
- ***Judges must avoid stereotyping.*** The Commentary recognizes the links between equality, fairness and judicial impartiality, and how judicial stereotyping can undermine impartiality, even if the result is legally correct. The comment states: “A judge should not be influenced by attitudes based on stereotype, myth or prejudice.”⁸⁵ The comment does not specifically reference gender stereotyping, but instead encompasses any stereotype that influences judicial performance. Notwithstanding the broad injunction to “avoid stereotyping,” the comment seems to focus on stereotyping that affects a judge’s decision-making rather than the judge’s interactions with others, which could also present gender-related integrity issues.
- ***Gender discrimination.*** The Commentary addresses gender discrimination, gender bias and sexual harassment as aspects of the equality principle:

“The judge has a role to play in ensuring that the court offers equal access to men and women. This obligation applies to a judge’s own relationships with parties, lawyers and court staff, as well as to the relationship of court staff and lawyers with others. Although overt instances of gender bias by judges towards lawyers may not occur frequently in court today, speech, gestures or other conduct – for example, using terms of condescension in addressing female lawyers (such as ‘sweetie’, ‘honey’, ‘little girl’, ‘little sister’) or commenting on their physical appearance or dress – that would not be ventured in relation to a male counterpart may be perceived as sexual harassment. Patronizing conduct by a judge (‘this pleading must have been prepared by a woman’) undermines the effectiveness of women as lawyers by sometimes diminishing self-esteem or decreasing the level of confidence in their skills. The insensitive treatment of female litigants (‘that stupid woman’) may also directly affect their legal rights both in actuality and

⁸⁴ *Commentary on the Bangalore Principles of Judicial Conduct* (2007), para. 183.

⁸⁵ *Id.* at para. 184.

appearance. Sexual harassment of court staff, advocates, litigants or colleagues is often illegal as well as unethical.”⁸⁶

This comment contains the most detailed discussion of the many gender-related integrity issues that can arise not only in the course of the judge’s interactions with others, but also in interactions within the courthouse to which the judge is not a party. Moreover, it recognizes that the judge has a role to play in ensuring “equal access to men and women,” but does not expand upon that role or the meaning of “equal access.” The description is not intended to be exhaustive and does not reference all forms of gender-related misconduct or define gender discrimination, gender bias or sexual harassment.

The Commentary also includes five applications that focus on how biased, prejudiced, derogatory or insensitive language or conduct by judges, court personnel, lawyers or others deprives people of their right to equal treatment before the court. Where such language or conduct reflects gender bias, it raises a gender-related integrity issue. The Commentary does not address gender-related integrity issues that take other forms.

- **“A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (‘irrelevant grounds’).”** Judges have a duty “to be free of bias or prejudice on any irrelevant grounds.”⁸⁷ This application of the principle clarifies that differences based on sex are an irrelevant ground for judicial bias or prejudice. [Application 5.1]
- **“A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.”** This application focuses on how a judge communicates with others, imposing a duty to refrain from making derogatory comments and to temper judicial remarks with caution and courtesy. Examples include: “irrelevant or derogatory comments based on racial, cultural, sexual or other stereotypes” and “improper and insulting remarks about litigants, advocates, parties and witnesses”.⁸⁸ [Application 5.2]
- **“A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.”** This application imposes a duty on judges to ensure that all those who appear in court are treated “in a way that respects their human dignity and fundamental human rights” and “are protected from any display of prejudice based on

⁸⁶ *Id.* at para. 185.

⁸⁷ *Id.* at para. 186.

⁸⁸ *Id.* at paras. 187-188.

... gender ...”⁸⁹ The focus is on conduct in the courtroom and the judge’s obligation to set the proper tone and create the environment for a fair trial. [Application 5.3]

- **“A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned in a matter before the judge on any irrelevant ground.”** This application imposes a duty on judges to ensure that court personnel conform to prescribed standards. In particular, it enjoins court staff to “refrain from gender insensitive language, as well as behaviour that could be regarded as abusive, offensive, menacing, overly familiar or otherwise inappropriate.”⁹⁰ [Application 5.4]
- **“A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.”** This application imposes a duty on judges to prevent lawyers from engaging in racist, sexist or other inappropriate conduct.⁹¹ [Application 5.5]

The *Bangalore Principles* recognize that the equality principle implicates certain gender-related integrity issues, in particular those that involve gender-based discrimination and gender bias, and that affect the judge’s role in administering fair and impartial justice. Gender-related integrity issues that take a different form or arise in different contexts do not receive the same attention.

Independence and Impartiality. As the Commentary notes, the principles of independence and impartiality are linked. Judicial integrity issues implicate both principles. A judge who offers a defendant leniency in exchange for a sexual favour is not exercising his or her judicial function independently of any extraneous influences or inducements (Principle 1.1), nor in a manner that is independent in relation to a party to the dispute (Principle 1.2), nor exhibiting a high standard of judicial conduct (Principle 1.6). To the extent, however, that the principal focus is on institutional independence, impartiality may be a more appropriate lens through which to examine whether, objectively and subjectively, a judge is performing judicial duties without favour or bias (Principle 2.1). A judge who bases his or her decision on receipt of a sexual favour is, by definition, not adjudicating impartially but rather on the basis of a personal interest and relationship with a party. The Commentary does not specifically address this type of gender-related integrity issue. It identifies stereotypes related to gender as an example of bias, but does not otherwise address gender in elaborating on a judge’s obligation to be, and to be perceived as being, impartial.⁹²

Integrity. By definition, gender-related integrity issues implicate the principle of integrity. A judge who offers to render a favourable decision in exchange for a sexual favour is not ensuring

⁸⁹ *Id.* at para. 189.

⁹⁰ *Id.* at para. 190.

⁹¹ *Id.* at para. 191.

⁹² *Id.* at para. 58.

that his or her conduct is above reproach (Principle 3.1) nor maintaining the scrupulous respect for the law required of judges.⁹³ Nor is a judge who engages in sexual harassment maintaining the high standards required in both private and public life.⁹⁴ While the integrity principle would apply to these and other gender-related integrity issues, the section of the *Commentary* on this principle makes no mention of gender or integrity issues specifically related to gender – sextortion, sexual harassment, sex discrimination and gender bias.

Propriety. Judges are expected to avoid impropriety and the appearance of impropriety in all their activities. (Principle 4.1) A judge who offers to transfer a case to a more favourable venue in exchange for a sexual favour compromises his or her ability to carry out his or her judicial responsibilities with integrity, impartiality and independence and is not adhering to the standard of propriety required of judges. A judge who uses his or her office in this manner to pursue his or her private interests abuses power and violates the public’s trust in the judiciary (Principles 4.8 and 4.9). In addition, a judge may not ask for, nor accept, any favour in relation to anything to be done in connection with the performance of judicial duties (Principle 4.14). Similarly, a judge who engages in sexual harassment is not conducting himself or herself in a way that is consistent with the dignity of the judicial office (Principle 4.2). There is little question that these and other gender-related integrity issues violate the propriety principle. However, the *Commentary* does not reference gender or any specific gender-related integrity issues.

Competence and Diligence. Competence relates to a person’s suitability to perform judicial duties and is, therefore, linked to all of the other values embodied in the *Bangalore Principles*. People who are unsuitable by virtue of their lack of propriety, integrity, impartiality, fairness or independence also lack the competence required of judges. Diligence includes “striving for the impartial and even-handed application of the law”.⁹⁵ A judge who is willing to alter his or her decision in exchange for an affair is not applying the law even-handedly. A judge who shows pornography to a law clerk is not acting with courtesy and respecting the dignity of others. A judge who makes offensive, sexist comments is not maintaining order and decorum in the court.⁹⁶ A judge who demands a daily kiss from a court employee is misusing court staff.⁹⁷ The section of the *Commentary* on competence and diligence does not use any gender-related integrity examples to illustrate application of the principle, but sextortion, sexual harassment, sex discrimination and gender bias are incompatible with competent and diligent performance of judicial duties.

2.2 GENDER EQUALITY PROTOCOLS, BENCH BOOKS AND SEXUAL HARASSMENT POLICIES

In addition to adopting codes of judicial conduct, some jurisdictions have developed practical tools and policies to clarify how the broad principles articulated in those codes apply to the

⁹³ *Id.* at para. 108.

⁹⁴ *Id.* at para. 103.

⁹⁵ *Id.* at para. 193.

⁹⁶ *Id.* at para. 215.

⁹⁷ *Id.* at para. 219.

gender issues judges commonly confront in their courtrooms and courts. This additional guidance takes a variety of forms, including protocols, guidelines, pocket guides, bench books and sexual harassment policies. While codes of conduct endeavour to be comprehensive, these other forms of guidance can focus on a single aspect of gender-related integrity or on multiple aspects. This allows judiciaries to address particular gender issues in a detailed and practical way. In addition to reinforcing the broad standards and obligations set forth in codes of judicial conduct, such guidance may include examples, identify good practices, establish procedures and set forth specific steps required to fulfil those obligations.

2.2.1 GENDER EQUALITY PROTOCOLS

Some jurisdictions have developed protocols to help judges adjudicate cases with greater sensitivity to gender issues. These gender protocols are not substitutes for codes of judicial conduct, but are valuable tools for raising awareness and educating judges about the ways in which gender stereotypes inform the interpretation and application of laws. They are particularly helpful in addressing unconscious biases and gender-related integrity issues that reflect lack of knowledge and understanding rather than misconduct. Their detailed, practical guidance complements the broader standards articulated in the codes of judicial conduct. They implicitly recognize that the gendered attitudes and beliefs that shape judicial decision-making may also shape judicial conduct. In the same way that a gender perspective requires a judge to examine how gendered attitudes and beliefs might affect the disposition of a case, applying a gender perspective to standards of judicial conduct requires examining how those attitudes and beliefs might affect other aspects of judicial conduct.

Mexico. The National Supreme Court of Mexico developed a *Protocol for Judicial Decision-Making with a Gender Perspective* to address certain problems identified by the Inter-American Court of Human Rights in three cases involving the Government’s failure to protect women from violence.^{98, 99} The Inter-American Court made clear that Mexican courts must apply, as binding law, the international human rights treaties to which Mexico is a party. The Protocol responds to that exhortation and to the findings from gender knowledge assessments carried out within the Mexican Supreme Court and 15 state supreme courts.¹⁰⁰

The Protocol focuses exclusively on judicial decision-making, not other gender-related judicial conduct. It “aims to help those who administer justice comply with their obligations, under the Constitution and international treaty law, to enforce, respect, protect, and guarantee – in keeping with the principles of universality, interdependence, indivisibility, and progressivity –

⁹⁸ National Supreme Court of Mexico, *Judicial Decision-Making with a Gender Perspective: A Protocol MAKING EQUAL RIGHTS REAL* (2013), https://www.unodc.org/ji/resdb/data/2013/80_20/judicial_decision-making_with_a_gender_perspective_a_protocol.html

⁹⁹ *Gonzalez et al. v. Mexico* (“Campo Algodonero” or “Cotton Field” case), see paras. 502, 541, 542 (I.A.Ct.H.R. 16 November 2009); *Fernandez Ortega et al. v. Mexico*, see paras. 236 and 260 (I.A.Ct.H.R. 30 August 2010); *Rosendo Cantú et al. v. Mexico*, see paras. 219, 246 (I.A.Ct.H.R. 31 August 2010).

¹⁰⁰ *Id.* at 8.

the right to equality and to non-discrimination.”¹⁰¹ Towards that end, the Protocol explains how to implement international human rights treaties as binding law, reviews the legal and conceptual framework for the right to equality and provides analytical tools, including a checklist, that judges can use to employ a gender perspective when deciding cases.

The Protocol’s justification for adopting a gender perspective underscores the critical role of the justice system in protecting the right to equality and the way in which gender bias and stereotypes can undermine this right and the perceived integrity of judicial decision-making:

“The persistence of laws and jurisprudential practices that diminish women's sexual and reproductive autonomy, that devalue -- when compared to men -- the work that women do and the roles to which they have traditionally been assigned; the behavior expected of women within society, the family and at work; the negation of the myriad possible configurations of families, and domestic violence are all based on a social ideology rooted in stereotypes, which, when not detected and questioned by those who administer and impart justice, are instead reproduced.

[...]

Judicial decisions play an especially important role in the characterization of women. Judges and adjudicators have the ability to bring the right to equality into reality. For that reason, they must make sure that in the process of interpreting and applying the law, they do not rely on prejudicial notions regarding how persons of a given sex, gender, or sexual orientation ‘are,’ or how such persons should behave.”¹⁰²

The Protocol seeks to ensure that judicial decisions do not rely on or accept notions or presumptions that violate the principle of equality. It stresses that the gender perspective methodology is applicable to a broad range of cases and subject matter:

“A gender perspective is not only useful in cases involving women. A gender perspective accounts for the ways that certain norms impose disparate impacts on certain people, and helps the jurist respond to those impacts. Thus, a gender perspective should always be used in any case in which there are asymmetrical power relationships or structural inequalities that have to do with sex, gender, or sexual preference/orientation.”¹⁰³

Trinidad and Tobago. In addition to its national code of judicial conduct, the Judiciary in Trinidad and Tobago has adopted a *Gender Equality Protocol for Judicial Officers* to assist Judicial Officers in adjudicating cases with greater gender sensitivity.^{104, 105} The Protocol,

¹⁰¹ *Id.* at 23.

¹⁰² *Id.* at 13-14.

¹⁰³ *Id.* at 77.

¹⁰⁴ Statements of Principle and Guidelines for Judicial Conduct (2017),

https://www.unodc.org/res/ji/import/codes_of_conduct/statements_of_principle/statements_of_principle.pdf.

¹⁰⁵ (2018) Justice Through a Gender Lens – Gender Equality Protocol for Judicial Officers,

https://www.unodc.org/res/ji/import/codes_of_conduct/gptt_final_draft/gptt_final_draft.pdf.

which is based on the Mexican one, is part of a regional project to develop national protocols.¹⁰⁶ Like the Mexican protocol, it presents gender-sensitive adjudication as an approach that is broadly applicable to anyone in a vulnerable position and not limited to cases involving women. More specifically, the Protocol seeks to:

- “Equip the Judicial Officer to render decisions that are the product of a fair, transparent, and unbiased process;
- Increase the awareness in Judicial Officers of Trinidad and Tobago’s international responsibilities toward the promotion of gender equality;
- Assist Judicial Officers in recognizing and eliminating individual biases which foster gender discrimination and provide signposts or markers for use by Judicial Officers to assist in identifying and treating with those issues which trigger individual gender biases; and
- Provide the Judicial Officer with the tools to identify, treat with and provide redress for power imbalances which hinder equality of treatment before the courts, structural inequalities in society and equal access by the litigant to the remedies and redresses available from the court.”¹⁰⁷

Gender bias in the courtroom raises integrity issues central to the judge’s role as a fair and impartial adjudicator. The Protocol directly addresses this role and provides practical guidance for judges about how to handle domestic violence, sexual offence, child custody and maintenance and human trafficking cases in an unbiased, gender-sensitive manner. As the Protocol’s focus is on adjudication, it is not designed to provide guidance on how gender bias might affect the judge’s other roles as colleague, supervisor, administrator or community member.

2.2.2 BENCH BOOKS

Like gender protocols, bench books are designed to provide judges with practical guidance about handling specific issues and situations they may confront in their courtrooms. Unlike gender protocols, their primary focus is not on gender. However, as the gender protocols recognize, no legal process is immune from the possibility that gender stereotypes or biases might taint its outcome and undermine public confidence in the judiciary. To address this concern, some jurisdictions have adopted equal treatment bench books that provide guidance about how judges can fulfil their obligation to ensure fair treatment for all who come before them. That obligation necessarily includes awareness of the way gender disadvantages and

¹⁰⁶ See, e.g., the Gender Equality Protocol for Judicial Officers in Belize adopted by the Belize Judiciary, which is also modeled on the Mexican Protocol,

https://www.unodc.org/ji/resdb/data/blz/2018/justice_through_a_gender_lens_gender_equality_protocol_for_judicial_officers_belize.html.

¹⁰⁷ https://www.unodc.org/res/ji/import/codes_of_conduct/gptt_final_draft/gptt_final_draft.pdf p. 13

stereotypes may lead to unequal and unfair treatment. Indeed, the *Equal Treatment Bench Book* adopted in England and Wales includes an entire chapter on gender.¹⁰⁸ Too frequently, bench books treat gender in more cursory fashion and miss an opportunity to mainstream gender considerations not only into equal treatment bench books, but also into bench books that address the handling of specific legal matters. As gender issues may arise in any legal proceeding, they should be included in many types of bench books, but, in particular, those that address matters where gender issues are common, such as sexual offences, domestic violence, marriage and divorce, child custody and maintenance, employment discrimination and trafficking in persons.

2.2.3 SEXUAL HARASSMENT POLICIES

Gender protocols and bench books focus on gender issues that arise in adjudication but not on issues, such as sexual harassment, that may arise outside the courtroom. Some jurisdictions have adopted guidelines, protocols or policies that specifically address these workplace gender issues and establish complaint mechanisms for reporting and addressing improper conduct.

Bosnia and Herzegovina. In 2015, the High Judicial Council of Bosnia and Herzegovina adopted *Guidelines for the Prevention of Sexual and Gender-based Harassment within the Judicial Institutions of Bosnia and Herzegovina*.¹⁰⁹ The *Guidelines* apply to judges, prosecutors, and court personnel, and are designed to:

“...ensure uniformity and consistency for the entire judicial system in its approach to prevent sexual and gender-based harassment. To that end, the Guidelines send a clear message to all judges and prosecutors and official staff working within the judiciary of BiH that sexual and gender-based harassment will not be tolerated under any circumstance whether in the office, on duty outside the office, or any other official context or activity organized by a judicial institution. This is meant to demonstrate a clear commitment to ensuring a workplace environment that is free from sexual and gender-based harassment, illicit conduct and unwanted behaviour.”¹¹⁰

The *Guidelines* define harassment, sexual harassment and gender-based harassment, provide examples of each and identify the individuals to whom the *Guidelines* apply. They also establish a process for internal resolution of unwanted behaviour, including sexual and gender-based harassment. This internal preventive response procedure is designed “to enable individuals to resolve situations in the workplace before they reach the level of criminal

¹⁰⁸ Equal Treatment Bench Book (Judicial College, February 2018), https://www.unodc.org/ji/resdb/data/gbr/2018/equal_treatment_bench_book_england_and_wales.html

¹⁰⁹ *Guidelines for the Prevention of Sexual and Gender-based Harassment within the Judicial Institutions of Bosnia and Herzegovina* (February 2015). https://www.unodc.org/ji/resdb/data/bih/2015/guidelines_for_the_prevention_of_sexual_and_gender-based_harassment_within_the_judicial_institutions_of_bosnia_and_herzegovina.html

¹¹⁰ *Id.* at 4.

misconduct or a violation of the ethical codes or rules of conduct of judicial institutions in which they work.”¹¹¹ The *Guidelines* also address the obligation of judicial institutions to raise awareness about the *Guidelines*, monitor their application and provide training on the prevention of sexual and gender-based harassment.

Spain. The General Council of the Judiciary in Spain approved in 2015 a *Protocol of Action against Sexual Harassment, Gender-Based Harassment, Discriminatory Harassment and Combating All Forms of Harassment and Violence in the Judiciary* designed to implement preventive measures, establish formal and informal complaint procedures and ensure that members of the judicial profession who experience harassment receive support and protection.¹¹² The *Protocol* defines each form of harassment and provides examples of impermissible behaviours. It provides that each court shall appoint a Confidential Advisor to manage an informal complaint resolution process. The *Protocol* explains how the process operates, when the formal disciplinary procedures should be invoked, what support should be provided to complainants and how ongoing monitoring will be conducted.

2.3 INTERNATIONAL AND REGIONAL INSTRUMENTS

Cultural and religious traditions affect how people perceive gender issues and may hamper efforts to address judicial integrity issues that implicate gender. While it is important to understand different traditions, judicial integrity should reflect universal standards grounded in fundamental values of human rights, justice and gender equality. Those values transcend cultural and religious differences and are enshrined in international and regional instruments that enjoy broad support.

International norms play an important role in shaping national norms and promoting gender equality and gender justice. Whether a country treats international instruments as binding or only persuasive, they provide a gender equality and anti-corruption framework for establishing universally accepted standards of judicial conduct. The Global Judicial Integrity Network anchors its work in that international framework and the Sustainable Development Goals (SDGs) promoting gender equality (SDG 5), peace, justice and strong institutions (SDG 16) and partnerships to achieve the goals (SDG 17).¹¹³ These SDGs are interconnected. Gender equality cannot be achieved as long as judiciaries fail to represent all members of society and as long as justice is not dispensed in a fair, impartial and gender sensitive manner. By the same token, a strong justice system cannot be achieved as long as judiciaries ignore the gender-

¹¹¹ *Id.* at 9.

¹¹² General Council of the Judiciary, *Protocol of Action against Sexual Harassment, Gender-Based Harassment, Discriminatory Harassment and Combating All Forms of Harassment and Violence in the Judiciary* (17 February 2015) https://www.unodc.org/ji/resdb/data/esp/protocolo_de_actuacion_frente_al_acoso_sexual_al_acoso_por_razon_de_sexo_al_acoso_discriminatorio_y_frente_a_todas_las_formas_de_acoso_y_violencia_en_la_carrera_judicial.html.

¹¹³ <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

related integrity issues that deprive people of access to justice and undermine public trust and confidence in the courts.

The *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* is the central and most comprehensive international instrument to address gender issues and promote gender equality.¹¹⁴ As of 30 September 2019, CEDAW has 189 States parties.¹¹⁵ The Convention recognizes the role of culture and tradition in creating and sustaining discrimination based on sex, but grounds the obligation of States parties to combat discrimination in the universal principles of equality and respect for human rights. This framing of gender issues is useful in addressing judicial integrity, as equality is one of the six *Bangalore Principles of Judicial Conduct*, and respect for human rights is central to the administration of justice.

The *United Nations Convention against Corruption (UNCAC)* is the only legally binding universal anti-corruption instrument.¹¹⁶ Like CEDAW, the Convention has broad support, as of November 2019 from 186 States parties.¹¹⁷ Article 11 of the Convention explicitly calls on States parties to “take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.”¹¹⁸ This obligation encompasses implementation measures to address the full panoply of integrity challenges confronting judges, including those relating to gender.

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)* includes an article on Access to Justice and Equal Protection before the Law that obliges States parties to take all appropriate measures to ensure, among other things:

- “that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
- that women are represented equally in the judiciary and law enforcement organs;

¹¹⁴ Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, https://www.unodc.org/ji/resdb/data/1979/convention_on_the_elimination_of_all_forms_of_discrimination_aga_inst_women.html.

¹¹⁵ See <http://indicators.ohchr.org/>.

¹¹⁶ United Nations Convention against Corruption, https://www.unodc.org/ji/resdb/data/2004/220/united_nations_convention_against_corruption.html?lng=en.

¹¹⁷ See <https://www.unodc.org/unodc/en/corruption/ratification-status.html>.

¹¹⁸ Article 11, United Nations Convention against Corruption. Available at: https://www.unodc.org/res/ji/import/international_standards/united_nations_convention_against_corruption/unit_ed_nations_convention_against_corruption.pdf

- reform of existing discriminatory laws and practices in order to promote and protect the rights of women.”¹¹⁹

The *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)* condemns all forms of discrimination against women and obliges States parties to take steps to change traditions that perpetuate gender inequality:

“Article 12 – General obligations

1 Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

[...]

5 Parties shall ensure that culture, custom, religion, tradition or so-called ‘honour’ shall not be considered as justification for any acts of violence covered by the scope of this Convention.”¹²⁰

2.4 RECOMMENDATIONS

There is considerable evidence that gender bias, discrimination, harassment and other conduct affect courts and the administration of justice in much the same way as they affect the rest of society, yet codes of judicial conduct do not address these issues with specificity, judiciaries do not systematically monitor them and there are few gender-related misconduct complaints and disciplinary proceedings. As the #MeToo movement and some of the cases illustrate, complainants are often reluctant to come forward, and even when there is reason to suspect or be aware of a gender-related issue, it may take many years before it is investigated or addressed.¹²¹ Clearer guidance on gender-related judicial integrity issues is needed to address this accountability gap. That guidance might be provided at the national or the international level. It might address the full range of gender-related integrity issues or focus on specific issues. It might seek to clarify general standards of conduct or provide tools to assist judges in administering justice without gender bias. These different approaches are not mutually exclusive and may be complementary.

The following recommendations are offered to help judiciaries address gaps in the available guidance regarding gender-related integrity issues:

¹¹⁹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 8, [https://www.unodc.org/ji/resdb/data/2003/protocol to the african charter on human and peoples rights on the rights of women in africa.html](https://www.unodc.org/ji/resdb/data/2003/protocol%20to%20the%20african%20charter%20on%20human%20and%20peoples%20rights%20on%20the%20rights%20of%20women%20in%20africa.html)

¹²⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, <https://www.coe.int/en/web/istanbul-convention/home>.

¹²¹ For more information, please visit: <https://metoomvmt.org/>

Incorporate gender-specific provisions in ethical codes. Given the prevalence and broad range of gender-related integrity issues, it is important to incorporate gender-specific provisions in ethical codes. Codes of judicial conduct establish standards that are higher than mere compliance with national laws. This may create uncertainty about what is or is not appropriate conduct for a judge, especially with respect to situations the judge may regard as social interactions. Specific and precise guidelines are needed to address this problem and provide judges with a framework for understanding which types of conduct are acceptable and which are not.

Strengthen the *Bangalore Principles of Judicial Conduct* to provide clearer guidance about gender-related judicial integrity issues. Since the *Bangalore Principles of Judicial Conduct* were first developed, there has been increased awareness of the many ways in which gender issues implicate judicial integrity. The *Bangalore Principles* could be strengthened to address the full range of gender-related integrity issues and provide clearer guidance and more examples. In particular:

- “Equality” (value 5) could be enhanced by referencing and including examples of a broader range of gender-related integrity issues.
- “Integrity” (value 3) could be enriched by specific references to and examples of gender-related integrity issues. In addition, a new principle could be added to this value: “A judge shall uphold at all times the highest standards of interpersonal conduct with all stakeholders.” The commentary to this Principle could expand on sextortion, sexual harassment and other sexual misconduct.
- Incorporate the issue of sextortion at the international level to underscore that abuse of power in any form within the judiciary is unacceptable, whether or not it is a crime under national laws.
- Judicial integrity encompasses inappropriate behaviour with colleagues and subordinates as well as inappropriate behaviour towards the public and external stakeholders, including counsel, parties and witnesses. The *Bangalore Principles* should address workplace issues of sextortion, sexual harassment, sex discrimination and gender bias.
- Judicial integrity encompasses all levels of the justice system. The *Bangalore Principles* should address the role of judges in supervising other court personnel and in ensuring that they do not engage in gender-related misconduct that would undermine the integrity of the justice system.
- It is important to address how gender bias, whether conscious or unconscious, affects judicial integrity and, in particular, judicial decisions.

Adopt codes of judicial conduct that are consistent with the *Bangalore Principles of Judicial Conduct*. Where such standards already exist, judiciaries should be encouraged to update them to provide clearer and more specific guidance regarding gender-related integrity issues.

Consider adopting and implementing gender-sensitive policies and other guidance. Gender protocols, bench books, sexual harassment policies and other guidance can be effective tools for raising awareness about gender issues and providing practical advice about good practices in addressing those issues in the courtroom and the courthouse.

Anchor judicial integrity in the international gender equality and anti-corruption framework. It is important to create linkages with various existing international and regional standards, such as the Sustainable Development Goals, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Corruption, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

3. JUDICIAL ACCOUNTABILITY FOR GENDER-RELATED MISCONDUCT

Effective judicial accountability mechanisms rely in the first instance on clear and readily available guidance about the standards of conduct to which judges are expected to adhere. Absent that guidance, judges may be left with hazy or conflicting understandings of what is appropriate in a given situation. Those who might seek to hold them accountable may be uncertain as to when an ethical line has been crossed and refrain from complaining. And those responsible for disciplining transgressions will lack clear standards to curb their discretion and promote greater consistency in decisions. Clear guidance is especially important with respect to gender-related integrity issues, which typically do not receive as much attention as financial integrity issues.

Accountability also requires procedures for identifying and correcting misconduct. Judiciaries need to be involved in ensuring that standards are not only clear, but also enforceable. There are many models for how disciplinary bodies might be structured and operate. For all of them, a threshold issue is how alleged misconduct comes to their attention. Uncovering misconduct is the critical first step: no one can be held accountable for conduct that remains hidden. In some common law countries, citizens have the right to initiate a complaint and participate in disciplinary proceedings, while in civil law countries their role is typically more limited.¹²² However, in all countries there are barriers that keep those who observe or experience judicial misconduct from doing anything about it.

3.1 BARRIERS TO UNCOVERING MISCONDUCT

Many factors contribute to the reluctance to report gender-related misconduct. A key to enhancing the effectiveness of judicial accountability mechanisms is to take steps to lower barriers to reporting:

Lack of information and clear guidance. Uncertainty about what constitutes inappropriate conduct may make people reluctant to say anything when they are troubled by something they experience or observe. Especially when gender is involved, perceptions vary about the language and conduct appropriate in professional interactions.

¹²² See UNODC Resource Guide on Strengthening Judicial Integrity and Capacity at 133-134 (2011), https://www.unodc.org/res/ji/import/guide/resource_guide/resource_guide.pdf.

This perception problem is exacerbated when there is insufficient guidance about the full range of gender-related integrity issues and when social norms may excuse or condone certain conduct. Just as many women accepted domestic violence as a fact of life and did not recognize it as an abuse, people need to be trained to recognize the difference between appropriate and inappropriate gender-related conduct.

Lack of information about or access to effective complaint mechanisms. People who experience or witness gender-related misconduct may not know how and with whom to share that information. This is a particular issue if the person who engaged in the misconduct is also the individual responsible for receiving, investigating or deciding misconduct complaints. In that case, the misconduct may only be revealed if there is an alternative reporting channel.

Gender-related integrity issues take many forms and involve conduct of varying seriousness. Identifying and correcting conduct before it becomes egregious can be an important element in prevention strategies. However, people may be reluctant to invoke formal complaint processes for what they perceive as minor infractions. A person's access to other means of addressing inappropriate conduct may depend on the person's position and relationship to the wrongdoer. A court employee may not have the same avenues available for raising concerns as a judicial colleague may have. In general, the availability of multiple channels for raising and addressing concerns encourages more people to come forward.

Shame and fear of negative repercussions. Speaking up about gender-related integrity issues carries the risk of social or professional retaliation. For the person who experiences the misconduct, there may also be feelings of shame and fear of being blamed. The U.S. Equal Employment Opportunity Commission found that these fears are well-founded, as reporting sexual harassment is “often followed by organizational indifference or trivialization of the harassment complaint as well as hostility and reprisals against the victim.”¹²³ The power imbalance between superior and subordinate exacerbates these concerns. Focusing on the degree of confidentiality accorded to complainants and the protections and supports available to address retaliation concerns may help to overcome these barriers.

Lack of support services. Lack of access to legal assistance and medical and psychological services may also be a barrier to reporting gender-related misconduct within the courts. Lawyers may be reluctant to handle cases involving the judiciary for fear it will adversely affect their legal practice. Those who experience gender-related misconduct may suffer physical and psychological damage that, absent proper treatment, prevents them from making a complaint.

Lack of confidence that it will do any good to initiate a complaint. People who experience gender-related misconduct at the hands of a judge may fear that, if they say something, they will not be believed, and no corrective action will be taken. This fear is exacerbated by the lack of transparency in disciplinary proceedings. Complaints are not necessarily made public, and,

¹²³ U.S. Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic at 16-17 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

in some countries, complainants are not entitled to know the outcome of their complaint.¹²⁴ Disciplinary bodies vary in composition, but may be composed exclusively of judges, which risks being perceived as “a kind of undue ‘guild favouritism’ through inappropriate sympathy with the judge’s point of view or de-emphasis of the misconduct problem.”¹²⁵ If a judge chooses to resign, the disciplinary proceeding may be terminated. This may mean that the alleged misconduct is never fully investigated or made public. In other cases, it may fuel a public perception that the punishment was not proportionate to the alleged misconduct and that the system is not effective in holding judges accountable.

Confusion about the scope of confidentiality provisions. The high degree of confidentiality required of judges, law clerks and court employees may create confusion about whether reporting misconduct breaches this confidentiality.

3.2 EFFECTIVE JUDICIAL ACCOUNTABILITY MECHANISMS TO ADDRESS MISCONDUCT

3.2.1 CLEAR COMMUNICATION ABOUT STANDARDS OF APPROPRIATE CONDUCT

The first step in implementing accountability mechanisms is to ensure that everyone understands what conduct is and is not appropriate. Policies and standards need to provide clear and simple explanations (including examples) of what constitutes gender-related misconduct. This information needs to be readily accessible, disseminated broadly within the courts, and communicated frequently in a variety of forms and methods, including orientation and other training sessions. Creating an accessible database of ethics advisory opinions and disciplinary cases and decisions can provide valuable guidance about where the line between permissible and impermissible conduct lies.

3.2.2 CLEAR COMMUNICATION ABOUT THE COMPLAINT PROCESS AND MULTIPLE, ACCESSIBLE AVENUES OF COMPLAINT

Disciplinary bodies can only act on the complaints that come before them. For accountability mechanisms to be effective, people need to understand the options available for reporting and addressing gender-related misconduct and the procedures for invoking those options. This information needs to be readily accessible, stated in clear and simple language, disseminated broadly and communicated frequently and in a variety of ways.

¹²⁴ See UNODC Resource Guide on Strengthening Judicial Integrity and Capacity at 132-134 (2011), https://www.unodc.org/res/ji/import/guide/resource_guide/resource_guide.pdf.

¹²⁵ *Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice* at 1 (September 2006), https://www.unodc.org/ji/en/resdb/data/usa/2006/implementation_of_the_judicial_conduct_and_disability_act_of_1980.html

A single complaint process may be ill-suited to accommodate the range of possible gender-related misconduct, degrees of seriousness, appropriate responses and relationships between the person who experienced or observed the conduct and the person who engaged in it. Providing a choice of procedures for addressing the situation, including multiple points-of contact, complaint handlers, and methods for resolving the issue, may enhance the efficacy of the accountability mechanism in uncovering and responding to misconduct.

There is also the need for complaint mechanisms to respond to issues at different levels of the judiciary, including cases in which a judge complains about the conduct of another judge.

Accessible reporting mechanisms. Countries have taken various steps to make it easier and more ‘user friendly’ to lodge a complaint, including increasing the number of locations where complaints may be filed, providing information in multiple languages, accommodating disabilities, using technology to facilitate reporting and creating informal and confidential mechanisms for resolving issues.

In Spain, each tribunal has pamphlets about sexual harassment and reporting channels, a red post box for complaints and a Confidential Advisor who is specially trained to deal with cases in an informal and confidential manner. Complainants have the option of putting a written complaint in the post box or presenting a complaint orally to the Confidential Advisor. The informal complaint resolution process, which resembles a private mediation, is confidential, and the Confidential Advisor cannot be called as a witness in a later proceeding. The Confidential Advisor plays a valuable role in advising judges who may be unaware their behaviour is inappropriate and helping them to change their behaviour.¹²⁶

The judiciary in Bosnia and Herzegovina established an internal preventive response procedure to address and resolve sexual harassment and other unwanted behaviour in a confidential and non-contentious manner. The head of each judicial institution appoints an Advisor who is specially trained in preventing sexual and gender-based harassment. Individuals may request assistance from the Advisor in person, in writing or anonymously. The Advisor seeks to resolve the matter informally by talking with the complainant and the person responsible for the unwanted behaviour. The informal resolution procedure is confidential and without prejudice to the individual’s right to pursue a formal complaint. Records of the matter remain confidential, unless the individual wishes to use them in the formal complaint process or unless disclosure is sought by an authorized person in accordance with applicable laws. If a complaint is received anonymously, the Advisor may take steps to raise awareness within the institution about sexual and gender-based harassment and the rights and avenues of redress available for those who experience it. For monitoring purposes, the Advisor is required to submit regular,

¹²⁶ *Protocol of Action against Sexual Harassment, Gender-Based Harassment, Discriminatory Harassment and Combating All Forms of Harassment and Violence in the Judiciary* (17 February 2015) https://www.unodc.org/ji/resdb/data/esp/protocolo_de_actuacion_frente_al_acoso_sexual_al_acoso_por_razon_de_sexo_al_acoso_discriminatorio_y_frente_a_todas_las_formas_de_acoso_y_violencia_en_la_carrera_judicial.html.

confidential reports to the head of the judicial institution that summarize the actions taken but do not reveal the identity of the persons involved. The Advisor is also responsible for collecting and maintaining statistical data that are disaggregated by sex.¹²⁷

Providing ‘hotlines’ to report misconduct can help lower barriers to reporting. The President of the Tribunal of Justice in São Paulo in Brazil created in 2012 a direct channel of communication through which employees could report harassment to his office. The Secretary of the Court’s Presidency was charged with receiving the complaints, promptly investigating them and reporting directly to the President. In two years, more than 2,000 complaints were received, demonstrating the difference that such a reporting channel can make.

The New Zealand Law Society created a LawCare hotline and put posters in lifts and corridors of law firms to raise awareness about its availability.¹²⁸

Technology offers the opportunity for anyone with internet access to report misconduct. As such, the creation of online complaint filing systems should be explored. For example, China has created a website through which people can report misconduct. In addition to increasing accessibility, technology may offer additional protection to complainants. Online filing can allow people to submit complaints anonymously, which may make it easier to bring misconduct to light, although harder to resolve the specific complaint. There are technologies that will hold complaints in escrow until other complaints have been received about the same individual. This removes some of the risk of complaining and increases the complainant’s credibility.

‘Zero tolerance’ policies. While all gender-related misconduct is inappropriate, some misconduct is more serious than other misconduct. Offences that are perceived as ‘minor’ present particular challenges, as people may be reluctant to report such offences if they believe others will dismiss them as not sufficiently serious, and nothing will happen. To ensure that all misconduct is addressed, some experts have encouraged a ‘zero tolerance’ policy. However, some experts noted that such a policy may have the opposite effect and deter reporting of misconduct.¹²⁹ If people understand ‘zero tolerance’ as requiring ultimate sanctions even for minor offences, they may be reluctant to take a step that could cause someone to lose a job or career for something the complainant perceives as less serious.

Mandatory reporting obligations. It is important to consider both the potential benefits and drawbacks of making it obligatory to report misconduct. This approach is controversial and may not produce more complaints in the absence of other awareness-raising measures. Notwithstanding a mandatory reporting obligation, the New Zealand Law Society received no

¹²⁷ *Guidelines for the Prevention of Sexual and Gender-based Harassment within the Judicial Institutions of Bosnia and Herzegovina* (February 2015), https://www.unodc.org/ji/resdb/data/bih/2015/guidelines_for_the_prevention_of_sexual_and_gender-based_harassment_within_the_judicial_institutions_of_bosnia_and_herzegovina.html.

¹²⁸ See <https://www.lawsociety.org.nz/for-lawyers/confidential-report>.

¹²⁹ Inputs received during the Global Judicial Integrity Network Expert Group Meeting: Gender-Related Judicial Integrity Issues, held on 6-7 December 2018 in Seoul, Republic of South Korea (<https://www.unodc.org/ji/restricted/gender-egm.html>), and the online consultation conducted on the Network’s website.

complaints of bullying or sexual harassment prior to serious revelations about the extent of such conduct within the legal community.

Some judges may fear that reporting misconduct could diminish public confidence in the judicial system. The challenge is to change this attitude and allay judges' concerns about reporting inappropriate behaviour. Bystander education can be important in helping judges realize that reporting bad behaviour does not diminish public confidence. Rather, reporting is an opportunity to address wrong or unprofessional behaviour and promote confidence in the judiciary's ability to correct it. Judges have a collective responsibility to maintain and rebuild public confidence in the judicial system.¹³⁰

3.2.3 SUPPORT FOR COMPLAINANTS AND PROTECTION AGAINST RETALIATION

A complaint process is only effective in uncovering misconduct if people are willing to use it. People need to feel safe to express their views without retribution. This is a big concern and may be difficult to achieve in some situations, for example, when a lawyer in a small town is harassed by the only judge in town. In implementing accountability mechanisms, particular attention should be paid to the protections and supports available to address fears of retaliation. Information about available protections and support should be clear and readily accessible. People need to understand the extent to which it may or may not be possible to protect their confidentiality during the complaint process and what steps will be taken to protect them from retaliation. Such protection measures should include alternative work arrangements or reassignment, so the complainant does not have to continue working closely with the person alleged to have engaged in misconduct.

Complainants only come forward if they feel supported. It is not about courage, but about creating a good environment. Lack of victim services is a problem in many countries. The judiciary in the Philippines is addressing this problem by establishing Multisectoral Rapid Assessment Working Groups to conduct workshops with other agencies, with the goal of providing comprehensive victim services. Close cooperation among different agencies is important in providing those services. In New Zealand, the Law Society encouraged peer support groups and provided access to relevant resources on its website.

3.2.4 INDEPENDENT DISCIPLINARY BODY

Disciplinary bodies are constituted in many ways, making it difficult to generalize about effective structures for ensuring judicial accountability. In considering the experience of different countries, the following issues have been identified: The composition of the

¹³⁰ The discomfort many judges have with handling allegations of sexual misconduct and the need for judicial education on reporting responsibilities is underscored by the experience of a supervisor who tried to get her chief judge to take action with respect to a complaint of sexual misconduct involving one of her clerks. She alleged that he responded, "What do you want me to do about it? What exactly do you want me to do about this?" Joan Biskupic, "CNN Investigation: Sexual misconduct by judges kept under wraps," *CNN Politics* (26 January 2018), <https://www.cnn.com/2018/01/25/politics/courts-judges-sexual-harassment/index.html>.

disciplinary body affects both its ability to act independently in addressing judicial misconduct and the public's perception of its independence and effectiveness.¹³¹ The manner in which members of the disciplinary body are appointed also affects its perceived and actual independence. Politicization of the disciplinary process is a concern. Disciplinary bodies with limited jurisdiction, limited investigative resources or authority and limited authority to impose a range of sanctions are not able to address the full range of judicial misconduct. This, in turn, diminishes public perception of their independence and effectiveness. Separating the investigation and adjudication of disciplinary matters helps to ensure impartial decision-making. Providing a separate level of appeal enhances the fundamental fairness of the disciplinary process.

In whatever manner the judicial disciplinary body may be constituted, the rules and regulations governing disciplinary proceedings should be clear and readily available so that judges and the public can know what to expect and have confidence in the fundamental fairness with which those proceedings are conducted. A statutory foundation for the disciplinary body and its procedures may also be considered as a way to strengthen judicial accountability mechanisms.

In some jurisdictions, separate procedures exist for adjudicating different types of offenses or imposing different penalties, creating accountability gaps for conduct that does not fit squarely within any of the procedures. In other jurisdictions, the availability of different accountability mechanisms can make it harder for a judge to evade responsibility for misconduct. In the case of U.S. District Court Judge Samuel B. Kent, the original complaint of judicial misconduct was investigated by a judicially-appointed Special Investigative Committee. During that investigation, Judge Kent made false statements about the extent of his unwanted sexual contact with two court employees. The Department of Justice launched a separate criminal investigation and indicted Judge Kent on multiple counts of sexual abuse, as well as obstruction of justice for his false statements to the Committee. Judge Kent pleaded guilty to obstruction of justice and admitted having forced himself on the two women, in exchange for which, the prosecutors dismissed the more serious sex crimes. After his conviction, Judge Kent sought to retire early, instead of resigning, so he could continue to collect his judicial salary. His refusal to resign led the U.S. House of Representatives to invoke yet another accountability mechanism and initiate impeachment proceedings. Following his impeachment, Judge Kent finally resigned from office, and the articles of impeachment were eventually dismissed.¹³² This legal saga illustrates the value of a multi-faceted approach to ensuring accountability.

¹³¹ Article 7 of the Universal Charter of the Judge, updated by the International Association of Judges on 14 November 2017, provides that “Disciplinary proceedings should be carried out by independent bodies, that include a majority of judges, or by an equivalent body.” As the majority requirement recognizes, there is a balance to be struck between the broader accountability and credibility that a more diverse body provides and protecting judicial independence by keeping disciplinary proceedings within the narrow confines of the judiciary. Different jurisdictions strike this balance in different ways. https://www.unodc.org/res/ji/import/international_standards/the_universal_charter_of_the_judge/universal_charter_2017_english.pdf.

¹³²“Judge Samuel B Kent Avoided Impeachment by Resigning,” Constitutional Law Reporter, <https://constitutionallawreporter.com/2017/06/28/samuel-b-kent-impeachment/>.

3.2.5 ABILITY TO INITIATE INVESTIGATIONS

Practices vary as to who may initiate an investigation into a gender-related integrity issue. However, this is a key aspect of ensuring accountability. There are countries where bystanders and witnesses cannot initiate an investigation, and there are no or only limited mechanisms for addressing the misconduct and ensuring accountability. It is important to have multiple ways of initiating an investigation. In cases where the victim may be reluctant to come forward, others may have witnessed the misconduct, heard about it, or brought it to the attention of a supervisor. There is no incentive, however, for bystanders and supervisors to report misconduct if they know it will not be investigated. This, in turn, creates an enabling environment and culture of impunity for those who engage in misconduct. To correct misconduct and hold judges accountable, disciplinary bodies need to be able to investigate credible information received from any source, including bystanders, supervisors or anonymous complainants. The reporting mechanisms should afford the flexibility to pursue credible allegations of misconduct in cases where the victim may be too fearful or ashamed to come forward.

3.2.6 CONFIDENTIALITY

Confidentiality is often key in encouraging people to report misconduct, and, insofar as possible, the wishes of the complainant should be respected. Confidentiality is also important to protect the accused, as false accusations could destroy a judge's reputation. However, concern for confidentiality needs to be balanced against the need for accountability. Revealing misconduct and providing greater transparency serve important accountability and deterrence goals. People who engage in gender-related misconduct are often serial offenders, and strict secrecy may keep other complainants from coming forward. The opportunity to confront an accuser may be seen as a critical element of procedural fairness, especially in common law countries. The efficacy of accountability mechanisms is enhanced when they not only function impartially but are also perceived to do so. Communicating final determinations and providing written reports may provide reassurance that complaints are processed fairly and without favouritism, offer guidance that may deter others from engaging in similar misconduct and encourage those who experience or observe misconduct to report it.

Steps should be taken to protect the privacy of the complainant and the accused to the greatest extent possible, consistent with legal obligations and conducting a thorough, effective investigation. There is, however, a tension between protecting legitimate privacy interests and providing appropriate transparency. It is a question of striking the appropriate balance, and different jurisdictions strike this balance in different ways.

3.2.7 PROMPT, THOROUGH AND IMPARTIAL INVESTIGATION

The formal procedures for investigating disciplinary complaints vary around the world. To be effective, those procedures need to take complaints seriously, investigate and document them thoroughly and resolve them in a timely and impartial manner. Proceedings should be conducted in accordance with established rules that ensure due process protections for the judge, including all the guarantees of a fair trial and the right to appeal the decision and sanction.

To investigate gender-related integrity issues that involve text messages, social media, adult websites or email, disciplinary bodies also need the information technology skills and technical resources to perform online investigations or forensic examination of devices. In countries that do not have a culture of investigation, the ability of disciplinary bodies to conduct effective investigations may be hampered.

3.2.8 PROMPT AND PROPORTIONATE CORRECTIVE ACTION

Discipline should be prompt, consistent and proportionate to the behaviour at issue and its severity. To deter misconduct, it is important that people understand what the consequences will be. In some jurisdictions, judges are able to evade those consequences by resigning.¹³³ This is a problem that undermines accountability, transparency and public confidence in the judiciary's ability to discipline itself.¹³⁴ Continuing to prosecute a judicial ethics complaint even after a resignation may still serve important goals. First, concluding the investigation promotes transparency and confidence in the judiciary's ability to address misconduct. It allows the public and other judges to know about the misconduct and to learn from it. Second, it allows victims to be heard and instils greater confidence that allegations of misconduct will be taken seriously. Finally, a finding of misconduct constrains a judge's ability to re-emerge in another position of public trust and responsibility.

Gender-related integrity issues encompass conduct that ranges from unconscious bias to predatory behaviour. If the only corrective action available is dismissal, people may be reluctant to report less serious misconduct, and disciplinary bodies may be reluctant to impose sanctions that seem disproportionate to the offence. The result is that the conduct is not corrected and is allowed to continue with impunity.

Accountability is enhanced by having a range of sanctions and remedial measures available. They might include: admonishment; reprimand; censure; or other levels of rebuke; suspension; fines; compulsory retirement; removal; disbarment; payment of costs; compensation for the complainant; education; monitoring; mentoring; counselling; or other corrective action.

3.2.9 ADEQUATE RESOURCES

Resources are inevitably a constraint, but devoting sufficient resources to addressing gender-related integrity issues signals the seriousness of leadership's commitment to fostering a culture that promotes respect and civility and does not tolerate gender-related misconduct. The availability of sufficient resources makes it possible to undertake more effective prevention

¹³³In a case involving charges that a retired Justice of the Supreme Court of India had sexually harassed a legal intern, the judicial investigating committee found prima facie evidence of unwelcome behaviour. However, when the Full Court considered the report, it declined to take further action because "representations made against former judges of this court are not entertainable by the administration of the Supreme Court." J. Venkatesan, "Judges' panel finds evidence against Ganguly," *The Hindu* (5 December 2013, updated 26 May 2016), <https://www.thehindu.com/news/national/judges-panel-finds-evidence-against-ganguly/article5425993.ece>.

¹³⁴ See Aeberle, "Escape Hatch Remains For Judges Accused Of Misconduct," *Law360* (17 April 2019), <https://www.law360.com/articles/1151097>.

efforts and, where prevention fails, to deal with misconduct in a prompt, objective and thorough manner. Major investigations can be costly, and disciplinary bodies cannot fulfil their responsibilities without adequate funding.

3.3 MONITORING GENDER-RELATED MISCONDUCT

3.3.1 MAINSTREAMING GENDER SENSITIVITY IN THE JUSTICE SYSTEM

There are many ways in which gender issues affect the integrity of the courts and the public's perception of the justice system. Addressing those issues begins with acknowledging them, recognizing the role that a gender-sensitive approach plays in ensuring access to justice and making an effort to mainstream gender into all aspects of the justice system. Judicial leadership is critical in this regard. Strong Gender Equality Commissions can also play an important role in addressing gender issues at the national level, and the SDGs, CEDAW and the Human Rights Council can provide additional support at the international level.

At the national level. The Philippines adopted the Women in Nation Building Act, which calls upon the Government to review and revise all pertinent regulations, circulars, issuances and procedures to remove gender bias.¹³⁵ In response, the Supreme Court created a Committee on Gender Responsiveness in the Judiciary.¹³⁶ The Committee prepared a comprehensive gender and development plan for mainstreaming gender within the judiciary's policies, programmes and structures.¹³⁷ Training is an important component of that plan. The Philippine Judicial Academy conducts gender sensitivity training for judges, lawyers and court personnel, evaluates the effectiveness of the training and develops new training content and approaches as needed. The Supreme Court has adopted rules that provide additional guidance on handling sexual harassment cases and the use of gender-fair language.^{138, 139}

To monitor the effectiveness of its mainstreaming efforts, the Supreme Court is undertaking a Gender Audit of the Philippine Judiciary Project. The first phase of the project is examining decisions promulgated by the Court of Appeals from 2007-2016 to ascertain whether the courts were sufficiently sensitive and responsive in dealing with gender issues.¹⁴⁰ Thereafter, the

¹³⁵ Republic Act No. 7192.

¹³⁶ Administrative Circular No. 22-2003 (2003).

¹³⁷ On 9 December 2003, the Supreme Court approved the five-year Gender and Development (GAD) Mainstreaming Plan for the Philippine Judicial system known as the "Davide Watch."

¹³⁸ Administrative Procedure in Sexual Harassment Cases and Guidelines in Proper Work Decorum, supplemented by Civil Service Commission Res. 01-0940, Administrative Disciplinary Rules on Sexual Harassment Cases (21 May 2001).

¹³⁹ A.M. No. 06-8-21-SC Re: Use of Rule of Gender-Fair Language (5 Sept. 2008).

¹⁴⁰ For these purposes, gender sensitivity and responsiveness means the Court: (i) is aware of gender-responsive laws and uses them in accordance with their intent, and, if existing laws are inadequate, is able to provide gender-sensitive remedies; (ii) recognizes gender biases, inequalities, and discriminations in decisions and pronounces corrective statements or measures to overcome them; and (iii) pronounces opinions aligned with gender-related principles under the 1987 Constitution and domestic laws, as well as internationally accepted principles and treaties.

gender audit tool will be used on decisions by both appellate and trial courts. The results will instruct the Supreme Court's gender mainstreaming efforts. To ensure expeditious handling of gender-related cases, the Court spearheaded an effort to hold multi-sectoral workshops that brought together governmental and non-governmental experts to address speedy resolution of gender-related cases.

The General Council of the Judiciary in Spain has created a Gender Equality Commission “to guide the actions of the Council in accordance with the criteria of equal treatment and opportunities for men and women established in internal, European and international instruments duly ratified by the Spanish State [...]”¹⁴¹ It has also approved an Equality Plan that sets forth objectives for achieving equal treatment and opportunities within the judiciary and charges the Gender Equality Commission with taking specific actions to achieve them.¹⁴² The Equality Plan focuses on the ways in which unequal representation, gender bias, discrimination, sexual harassment, and gender insensitivity may affect women in the judiciary, and outlines steps to promote equality of treatment and opportunity, including:

- Guaranteeing equal opportunity for women and men to access judicial careers;
- Ensuring adequate judicial training in equality, combating gender-based violence and prosecution with a gender perspective;
- Providing professional promotion opportunities for women and ensuring the presence of women in positions of greater responsibility within the judiciary;
- Promoting the equal participation of women and men in training courses, both as speakers and participants;
- Promoting gender-mainstreaming throughout judicial training;
- Promoting co-responsibility and reconciliation of family, work and personal life within the judicial career;
- Development of a protocol of action against all forms of harassment, including sexual harassment;
- Protecting the occupational health of judges before and after the birth of a child, as well as judges who have experienced gender-based violence or harassment at work;
- Promoting the use of non-sexist language; and
- Addressing any gender wage gap in the judiciary.

At the international level. Anchoring gender-related integrity issues within a strong gender equality framework helps to ensure they will be taken seriously and that efforts to address them will be sustained. These issues implicate the Sustainable Development Goals (SDGs) relating both to gender and to integrity, in particular:

- SDG 5: “Achieve gender equality and empower all women and girls”;

¹⁴¹ General Council of the Judiciary, Commission for Equality, https://www.unodc.org/ji/resdb/data/esp/equality_plan_for_careers_within_the_judiciary.html

¹⁴² Equality plan for careers within the judiciary https://www.unodc.org/ji/resdb/data/esp/equality_plan_for_careers_within_the_judiciary.html

- SDG 16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, which includes three pertinent targets:
 - SDG 16.5.: “Substantially reduce corruption and bribery in all their forms”;
 - SDG 16.6.: “Develop effective, accountable and transparent institutions at all levels”;
 - SDG 16.7.: “Ensure responsive, inclusive, participatory and representative decision-making at all levels.”

Integrating gender-related integrity issues into the international monitoring, reporting and discussion framework of the SDGs and CEDAW would give them greater visibility and provide an additional accountability mechanism. The issue of gender representation in the courts is addressed by Indicator 16.7.1, but work remains to be done to ensure that reporting criteria capture other issues.¹⁴³

3.3.2 ASSESSING AND ADDRESSING RISKS

Effective accountability mechanisms include procedures for monitoring their adequacy in exposing and addressing gender-related integrity issues. These procedures include proactive measures to assess risks, detect gender-related misconduct and take preventive action, as well as efforts to gather, assess and disseminate information about the functioning of the complaint process.

Recent studies of sexual harassment have found significant underreporting of the problem. Accordingly, it is not sufficient to monitor only the complaints that are received. It is also important to seek information about conduct that may not have been reported, identify risk factors, determine what conditions allowed the misconduct to occur or prevented its discovery and explore ways to prevent its recurrence.

Judicial appointment and fitness. The process by which judges are appointed is critical in preventing gender-related judicial integrity issues. The process should consider whether the judge has demonstrated appropriate gender sensitivity in conduct on and off the bench. Different jurisdictions have different methods of assessing a judge’s fitness, and those methods may vary for different levels of the judiciary. In Brazil, judicial applicants undergo psychological testing. In the Philippines, a judge has to undergo fourteen tests before being appointed Chief Justice. In the United States, the Senate conducts hearings and makes the final judgment as to the judicial fitness of federal judges. In addition to these procedural differences, there are differences in the degree of consultation and the information considered relevant. In some countries, the bar association is consulted about judicial appointments, but may be asked to offer only a limited assessment of the person’s qualifications.

¹⁴³ **Indicator 16.7.1:** Proportions of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service, and judiciary) compared to national distributions.

Once a judge has been appointed, it is important to continue monitoring and assessing judicial fitness. The ongoing evaluation may take different forms. One expert group participant mentioned that in the Republic of Korea, the Korean bar regularly surveys members about judges' behaviour.¹⁴⁴ Because the survey is anonymous and conducted on a regular basis, people respond candidly. The bar has a publicly available list of 'best' and 'worst' judges. In Guyana, an NGO conducts a court monitoring project to observe and assess how judges deal with domestic violence and sexual assault cases. The NGO provides a report to the judicial leadership, which can then intervene and take corrective action. The Gender Audit of the Philippine Judiciary Project is yet another way of monitoring and evaluating how judges deal with gender issues.

With any judicial evaluation, care needs to be taken to protect the independence of the judiciary and, in particular, the independence of judicial decision-making.¹⁴⁵ However, it is difficult to develop policies, educational materials and strategies to correct shortcomings that remain hidden. Efforts to identify areas in which judges may not be acting with appropriate gender sensitivity are a necessary predicate for corrective action, but that action need not have disciplinary consequences and may take other forms, including changes in policy, procedure, education or training.

Whatever method is used, judicial evaluation needs to be properly designed and conducted by the appropriate entity. When properly designed, an evaluation provides a channel for voices to be heard, but when it is not done properly, there can be negative repercussions that undermine judicial independence.

For judges who may experience burn-outs or be struggling for various reasons, there is also a need to be proactive in providing support, such as the provision of mental health services and advice.

Gathering information. Obtaining information is key, and empirically informed research can be valuable in identifying the problems to target, raising awareness about those problems, and getting people to acknowledge and address them. Periodic systemic reviews are needed to assess the effectiveness of existing policies and procedures and make recommendations for strengthening them. In the United States, the recent work of the Federal Judiciary Workplace Conduct Working Group, the Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace (EEOC Study), and the Ninth Circuit Workplace

¹⁴⁴ Global Judicial Integrity Network Expert Group Meeting: Gender-Related Judicial Integrity Issues, held on 6-7 December 2018 in Seoul, Republic of South Korea. <https://www.unodc.org/ji/restricted/gender-egm.html>.

¹⁴⁵ The Universal Charter of the Judge adopted by the International Association of Judges reflects concern for protecting the independence of judicial decision-making. Article 2-5 cautions that "Any criticism against judgments, which may compromise the independence of the judiciary or jeopardise the public's confidence in the judicial institution should be avoided." Article 7-1 provides that "Save in case of malice or gross negligence, ascertained in a definitive judgement, no disciplinary action can be instituted against a judge as the consequence of an interpretation of the law or assessment of facts or weighing of evidence, carried out by him/her to determine cases."

https://www.unodc.org/res/ji/import/international_standards/the_universal_charter_of_the_judge/universal_charter_2017_english.pdf.

Environment Committee highlighted key considerations in implementing accountability mechanisms and monitoring their effectiveness.¹⁴⁶ In the wake of widespread allegations of sexual harassment in the legal profession, the New Zealand Law Society established a “Working Group to enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession.”¹⁴⁷

A variety of information gathering approaches is needed to identify the full range of gender-related integrity issues and develop effective strategies for addressing them. These approaches might include:

- Periodic systemic reviews to detect risks and take steps to mitigate them;
- Large and anonymous climate surveys to assess the extent to which gender-related integrity issues are a problem;
- Mechanisms for obtaining regular input about conditions within the court from those who work there;
- Metrics and performance reviews to hold judges and managers within the courts accountable for preventing and/or responding to gender-related integrity issues;
- Exit interviews or anonymous exit questionnaires for departing employees; and
- Regular collection of data regarding gender representation in the judiciary.¹⁴⁸

Assessing how well the complaint process works. Effective monitoring includes examining and evaluating how well the complaint process handles any allegations of gender-related misconduct. To undertake this examination, there need to be procedures for: compiling information about complaints of gender-related misconduct and the actions taken; making that information accessible, for example, by using a searchable format and disaggregating different types of misconduct; and bringing it to the attention of those responsible for ensuring effective accountability. Based on all the information available, the examination should evaluate:

- Whether the existing policies, processes and accountability framework:
 - Enable adequate reporting of gender-related misconduct;
 - Enable prompt, thorough and impartial investigation of complaints;

¹⁴⁶ News Release, “Ninth Circuit Judicial Council Acts on Workplace Environment Recommendations” (21 May 2018),

https://www.unodc.org/ji/resdb/data/usa/2018/ninth_circuit_judicial_council_acts_on_workplace_environment_recommendations.html.

¹⁴⁷ New Zealand Law Society Terms of Reference for the Working Group,

https://www.unodc.org/ji/resdb/data/nzl/2018/terms_of_reference_new_zealand_law_society_working_group.html.

¹⁴⁸ The Workplace Environment Study conducted for the New Zealand Law Society in 2018 is an example of this kind of information gathering.

https://www.unodc.org/ji/resdb/data/nzl/2018/workplace_environment_survey.html.

- Enable timely and proportionate corrective action to be taken in response to gender-related misconduct; and
- Provide adequate protection and support for persons who experience gender-related misconduct.
- What changes, if any, might enable better reporting, investigation, corrective action or support in cases of gender-related misconduct.

3.4 RECOMMENDATIONS

The Global Judicial Integrity Network can play an important role in collecting and disseminating information about steps judiciaries might take to improve performance of their judicial disciplinary and accountability mechanisms in preventing, detecting, reporting, investigating and sanctioning gender-related misconduct. Good practices include:

Adopt clear standards of judicial conduct and make that information readily available through a variety of channels. It is important not only to have clear standards of appropriate conduct, but also to communicate that information broadly – to law students, judges, court personnel and the general public. As there are grey areas in any standards of conduct, it is helpful to have an advisory body to which judges can turn for an advisory opinion about the ethics of engaging in a particular type of conduct. Maintaining an accessible database of ethics advisory opinions becomes an important resource for others who may have similar questions about allowable conduct. Creating an accessible database of disciplinary cases and decisions provides valuable guidance about how broad ethical standards apply to concrete situations. Compiling frequently asked ethical questions and answers and making them readily available online or in another accessible format can help everyone understand what is expected of judges in different situations.

Take steps to lower or remove barriers to reporting misconduct within the courts. The complaint system should be as accessible as possible. Accessibility requires both that people have a clear understanding of the available complaint mechanisms and that they have access to multiple channels for reporting misconduct so they can select the one with which they are most comfortable. Strategies for improving accessibility include:

- Disseminating posters and pamphlets in courts and legal communities to inform people about the complaint process;
- Providing information in the language used by the target audience;
- Providing training on how to report misconduct;
- Providing alternative channels for people to raise misconduct issues formally or informally and anonymously or on the record;
- Providing a ‘hotline’ to report misconduct;
- Providing an online complaint filing system;
- Designating court personnel with whom complainants can talk about misconduct issues and seek assistance in addressing them;
- Ensuring that complainants receive appropriate support services and are protected against retaliation and re-victimization; and

- Making an effort to be out in the community and available to respond to concerns about the judiciary.

Establish an independent disciplinary body to hear cases of judicial misconduct. Several factors may enhance the actual and perceived independence of a disciplinary body, including: a diverse membership, so that different interests are represented; an objective and impartial selection process; and internal rules for disciplinary procedures, preferably with a statutory foundation.

Establish clear disciplinary procedures. The rules and regulations governing judicial disciplinary proceedings should be clear and readily available so that judges and the public can know what to expect and have confidence in the fundamental fairness with which they are conducted.

Allow those who witness or learn of misconduct to initiate investigations. There are many reasons why someone who experiences gender-related misconduct may be reluctant to file a complaint. Although others may have witnessed the misconduct or become aware of it, the misconduct may continue and remain an open secret as long as the victims are reluctant to pursue a complaint. It damages the integrity of the judiciary to allow those who engage in misconduct to avoid accountability. To ensure that known misconduct is addressed, people other than the victim should be allowed to initiate an investigation. Judges should receive guidance and training about their responsibility to prevent, intervene to stop, or report gender-related misconduct by another judge or by court personnel.

Protect the confidentiality of the investigation, but provide transparency with respect to the disposition of the case. To maintain public confidence, the work and decisions of the disciplinary body should be fair and transparent. At the same time, there are legitimate privacy interests to protect. During the investigation, the balance between confidentiality and transparency should be struck in favour of granting the complainant and the accused protections that are at least comparable to those available in a civil or criminal proceeding. That balance shifts once the case has been decided, and the disposition should be made public, even if certain confidential information needs to be withheld. It not only promotes public confidence in the judiciary to know that allegations of misconduct have been dealt with appropriately, but it also helps judges and the public know what is expected, clarifies grey areas, encourages reporting and deters others from engaging in similar misconduct.

Ensure that the complaint process is prompt, thorough and impartial. Disciplinary bodies should have the necessary authority, as well as the technical and other resources, to conduct full and timely investigations of alleged misconduct. Proceedings should be conducted expeditiously and in accordance with established rules that ensure due process protections for the judge.

Provide a sufficiently broad range of corrective action to deal proportionately with the seriousness of the conduct in each case. It is important to have a range of meaningful disciplinary remedies that are appropriate and proportionate to the range of gender-related misconduct. If the only remedies are dismissal or removal, people may be afraid to report misconduct. The disciplinary body needs to have middle ground alternatives, such as

suspension, to address less serious forms of gender-related misconduct. It should also have authority to continue investigations, so judges cannot evade responsibility for misconduct by retiring or resigning.

Provide adequate resources to prevent, monitor, and address gender-related misconduct. Resources are inevitably a constraint, but devoting sufficient resources to addressing gender-related integrity issues signals the seriousness of leadership’s commitment to fostering a culture that promotes respect and civility and does not tolerate gender-related misconduct. The availability of sufficient resources makes it possible to undertake more effective prevention efforts and, where prevention fails, to deal with misconduct in a prompt and thorough manner. Major investigations can be costly, and disciplinary bodies cannot fulfil their responsibilities without adequate funding.

Mainstream gender sensitivity into all aspects of the justice system. Judicial leadership is needed to ensure that gender-related integrity issues are addressed within the courts. Gender Equality Commissions can play an important role in addressing gender issues at the national level. At the international level, gender-related integrity issues should be integrated into the monitoring, reporting and discussion framework of the SDGs and CEDAW.

Take gender issues into consideration in appointing judges and in monitoring and evaluating their performance. The assessment of a person’s fitness to serve as a judge should include whether the person has demonstrated the gender sensitivity required of a judge. Attention should be paid to the gender representation in courts and proactive steps taken to ensure that the courts are reflective of the larger society. Ongoing monitoring and evaluation should examine whether there are any gender-related issues in the way judges manage the courtroom, render decisions or fulfil administrative and supervisory responsibilities.

Gather information and conduct empirically informed research to identify gender-related issues and develop effective strategies for correcting inappropriate conduct. It is difficult to address a problem effectively until its scope and dimensions are known. Gender-related integrity issues have existed in the judiciary but remained largely unaddressed until the recent efforts to give them greater visibility. Regular and ongoing assessments are needed to identify gender-related issues and develop effective strategies for correcting inappropriate conduct.

Undertake a regular examination and evaluation of how well the complaint process works. Procedures should be established for collecting and maintaining the data needed to evaluate the performance of the complaint process on a regular basis.

4. EFFECTIVE JUDICIAL EDUCATION AND TRAINING

Effective education and training are essential components of the judiciary’s efforts to address gender-related integrity issues. Training serves multiple purposes, including: providing guidance about what is and is not appropriate conduct; educating people about their rights and responsibilities; informing people about available channels to report misconduct and seek assistance; helping people to recognize and understand gender bias; enhancing sensitivity to gender issues; promoting a culture of respect and civility within the courts; encouraging people to speak up when they experience or observe gender-related misconduct; and enhancing the efficacy of leadership within the judiciary at all levels. To achieve these purposes, it is important to consider not only the content of the training, but also the target audience and appropriate training methods and formats.

4.1 WHO SHOULD BE TRAINED?

The process of instilling judicial values begins long before judges assume the bench. Future judges are influenced by their communities, their legal education and the standards of the legal profession. There is a need for comprehensive and ongoing training:

- **Students in law schools and judicial training centres.** Gender-related judicial integrity issues should be part of the legal education future judges receive at the beginning of their careers. In civil law jurisdictions, these issues should be included in the judicial training centre curriculum. In common law jurisdictions, law schools should include a gender perspective in their courses on ethics. By the time students complete their legal training, they should have acquired the knowledge and awareness to be sensitive to gender issues and deal with them appropriately. Failure to instil this gender sensitivity at an early stage of the legal career risks producing lawyers and magistrates who are insufficiently sensitive to gender-related integrity issues after they assume the bench.
- **Lawyers.** The judiciary reflects the attitudes and norms of the legal profession, within which judges are educated and work. This link between the institutional cultures of the judiciary and bar is especially strong in common law countries, where judges are drawn from the ranks of practising lawyers. It is important to recognize the bar’s role in promoting gender sensitivity within the profession and awareness of the ethical standards to which judges are held. Continuing education for lawyers should include gender-related integrity issues. One expert group participant suggested that the International Bar Association might work with national bar associations to conduct this training and provide incentives for lawyers to take it.¹⁴⁹

¹⁴⁹ Global Judicial Integrity Network Expert Group Meeting: Gender-Related Judicial Integrity Issues, held on 6-7 December 2018 in Seoul, Republic of South Korea. <https://www.unodc.org/ji/restricted/gender-egm.html>.

- **Judges and court personnel.** Training needs to reach everyone within the courts who might experience, observe or engage in gender-related misconduct. This not only increases the effectiveness of the training, but also communicates the seriousness with which the judiciary takes such misconduct and its commitment to preventing it. Judicial leadership is key in addressing gender-related integrity issues. Senior judges and judges in supervisory roles should lead by example and participate in training.

Training on gender-related integrity issues should be incorporated into the orientation for all newly appointed judges and court employees, and continuing education should be provided at regular intervals thereafter. When judges are trained at the same time as their colleagues, the training should be carefully constructed to ensure everyone has a voice.

Judges who have a supervisory role should receive additional training on how to fulfil their managerial responsibility for preventing, detecting, and addressing gender-related misconduct.

- **The public.** Clear ethical standards and effective accountability mechanisms can strengthen public confidence in the integrity of the judiciary. To realize this benefit, the public needs to understand how the justice system works and the ethical standards to which judges are held. Public education may take many forms: civics training can be incorporated at different education levels; public campaigns can raise awareness and disseminate information in a variety of media and formats, including ‘frequently asked questions’; judges can engage with their communities.

4.2 APPROACHES AND METHODOLOGIES

Different jurisdictions have a range of judicial training models and systems, but whatever model is used, training is only valuable if people participate in it. Many training programmes are not compulsory, and judiciaries should consider treating training on gender-related integrity issues as mandatory wherever possible.

Whether training is voluntary or compulsory, it is most effective when participants actively engage with the subject matter. When that subject matter is gender, there is the possibility of resistance from male judges who may perceive gender issues as women’s issues that are of no particular interest or applicability to them. As the cases summarized in this paper demonstrate, this perception is inaccurate. Gender-related integrity issues affect both men and women, and everyone needs to understand the issues and be involved in addressing them. However, as long as the perception remains, efforts are needed to address it and to make gender training engaging and valuable for both men and women.

To increase its relevance for all judges, gender training in Guyana is not only tied to the *Bangalore Principles of Judicial Conduct*, but also to the sexual offences’ court. As judges have seen how gender training relates to their work, they have been more willing to participate in the training. When the Republic of Korea began providing gender sensitivity training, a male participant was overheard expressing discomfort with the training, which he felt treated him as

a potential offender. In response, the training was changed so that two senior judges – one male and one female – would lead it. The seniority of the trainers and the fact that one was male helped to communicate that gender issues are important and are not exclusively a women’s issue.

The following good practices for engaging participants and making gender training relevant have been identified:

- **Make training interactive.** Training on gender-related integrity issues is most effective when it is live and interactive, with opportunities to discuss ethical nuances. Qualified, interactive trainers can help to work through difficult questions about how to respond to particular situations in which gender-related misconduct is experienced, reported or observed. If it is not feasible to have live trainers, online or video-based trainings should include active engagement by participants.
- **Use realistic examples and scenarios.** Case studies and examples tailored to the courts are particularly valuable in helping participants understand how ethical standards, such as the *Bangalore Principles of Judicial Conduct*, apply to different situations a judge might confront. Real-life scenarios enhance the relevance of the training for participants. In this regard, expert group participant noted the positive feedback she received as a trainer when she provided examples of discriminatory remarks or other offensive behaviour she had experienced as a young judge during a training.¹⁵⁰
- **Vary the style, form and content of training.** Varying the methods used keeps participants engaged and avoids having training become a rote exercise. Judges tend to prefer a blended style of training that presents information about the subject matter of the training, followed by a role-playing activity or case studies to foster participant engagement and reflective learning. Employing a variety of teaching methods accommodates a range of learning styles and serves to reinforce the information communicated.
- **Incorporate gender issues in existing training.** Gender is a cross-cutting issue that should be addressed not only as a discrete topic, but also in the context of the different judicial responsibilities and legal matters in which gender issues might arise. Incorporating gender-related integrity issues in existing training may also increase the likelihood of acceptance. For example, the Judicial Conduct and Ethics Training Tools developed under the Global Judicial Integrity Network specifically address gender issues in one of the modules of the e-learning course.¹⁵¹
- **Tailor training to the target audience.** When training is conducted for different target audiences within the courts, it should be modified, as needed, to accommodate different

¹⁵⁰ Global Judicial Integrity Network Expert Group Meeting: Gender-Related Judicial Integrity Issues, held on 6-7 December 2018 in Seoul, Republic of South Korea. <https://www.unodc.org/ji/restricted/gender-egm.html>.

¹⁵¹ To access the Judicial Ethics Training Tools, please visit their dedicated webpage: https://www.unodc.org/ji/en/judicial_ethics.html

languages, levels of education, or levels of responsibility. It is also important to tailor training to the local cultural context. As gender-related biases and prejudices may also be culturally specific, training programmes should be developed with an understanding of how local attitudes and conduct may affect the way participants perceive gender issues.

Additional guidance on how to organize judicial conduct and ethics training activities, including tips on methodology, managing group dynamics, role of facilitators, etc., can be found in the Trainers’ Manual, which is one of the components of the Judicial Ethics Training Tools developed by the Global Judicial Integrity Network.¹⁵²

In some countries, the people responsible for overseeing judicial conduct and implementing accountability measures are involved in judicial training. This may have the advantage of allowing judges to hear from the people who are going to be looking over their shoulder and determining whether ethical violations have occurred.

4.3 TRAINING CONTENT AND MODELS

4.3.1 GENDER-RELATED JUDICIAL INTEGRITY ISSUES

As a threshold matter, educational and training programmes should address the full range of gender-related integrity issues. Existing training programmes generally focus on a particular issue, subset of issues or techniques and do not attempt to address all of the inappropriate conduct encompassed by the phrase ‘gender-related integrity issues.’ Sexual harassment and gender sensitivity training have been a primary focus of training on gender-related issues. As valuable as that training may be, it is not comprehensive, and it is important to understand all the different ways gender-related integrity issues manifest themselves. Naming misconduct can play a powerful role in addressing it.

Sextortion prevention training. While there is overlap in the employment context between quid pro quo sexual harassment and sextortion, it is important not to conflate them, as there are significant differences between the two. Training should address sextortion as a separate gender-related integrity issue, so that people can properly understand the dynamics that allow sextortion to occur and the most effective ways to raise awareness, monitor and assess risks, develop prevention strategies, detect and address misconduct and support victims.

Sextortion is a comparatively new term for an age-old, gender-related integrity issue. The term was first introduced in educational seminars and judicial training in late 2009 and early 2010 by the Tanzania Women Judges Association, the Philippine Women Judges Association, and the Association of Women Judges of Bosnia and Herzegovina. Lessons learned from their experiences include:

¹⁵² To access the Judicial Ethics Training Tools, please visit their dedicated webpage: https://www.unodc.org/ji/en/judicial_ethics.html

- Training on sextortion should focus not only on the laws applicable to prosecute it, but also on the ethical standards it violates. The Tanzanian women judges were the first to include their code of judicial conduct in trainings on sextortion.
- People are accustomed to thinking of corruption in financial terms and may fail to recognize gender-related misconduct, such as sextortion, as raising the same integrity issues. Frequently, participants find the training eye-opening and indicate they simply never thought of sextortion in corruption terms before. This underscores the importance of training that specifically addresses sextortion.
- Training participants readily grasp the concept of sextortion, but often struggle to distinguish it from sexual harassment and to understand how it fits within existing legal frameworks. Case scenarios and interactive exercises are effective in helping participants work through these issues.
- The benefits of follow-up training to explore the subject more deeply and continuing education to reinforce learning are especially valuable for gender-related misconduct, such as sextortion, that has not received previous attention.

These lessons reinforce some of the good training practices identified.

4.3.2 TRAINING MODELS

Identifying the range of gender-related integrity issues to be addressed is only the first step in developing an effective education and training programme. Preventing gender-related misconduct and bias in the first instance and, if it does occur, ensuring that it is addressed and corrected, is a multi-faceted endeavour. Information is the cornerstone of that endeavour, but it is also important to address the attitudes, behaviours and institutional culture that allow gender-related misconduct to occur. Four complementary training models for achieving these objectives can be considered: compliance training to convey information about what constitutes gender-based misconduct and legal rights and responsibilities; gender sensitivity training to help people recognize – and avoid – gender bias; workplace civility training to promote respect and civility in the workplace and bystander intervention training to encourage an institutional culture of speaking out against gender-based misconduct. In addition, there is the need for continuous education for judges about the risk of burn-out or other disabling conditions and the support available to identify and address these issues.

Compliance training. Compliance training about gender-related integrity issues focuses on educating and informing people about:

- What does and what does not constitute inappropriate, gender-related conduct;
- Their rights and responsibilities if they experience or observe gender-related misconduct;

- The channels available for reporting gender-related misconduct and seeking assistance;
- How the formal complaint process works, including how allegations of gender-related misconduct will be investigated and what confidentiality and protections will be provided to the complainant and the accused; and
- The consequences of engaging in gender-related misconduct, including that corrective action will be proportionate to the severity of the conduct.

While compliance training should be offered in a universal manner, it needs to be tailored to the needs and responsibilities of different cohorts within the courts. For example, training for people with supervisory responsibilities might include: methods and techniques for responding to different levels and types of gender-related misconduct; how to deal with complaints and report misconduct to higher authorities and affirmative duties to address misconduct they observe or of which they have knowledge, even in the absence of a complaint.

As gender-related misconduct is not limited to conduct that is legally actionable, training should focus on the unacceptable behaviours themselves rather than on the legal standards that make sextortion, sexual harassment, sex discrimination or other gender-related conduct unlawful. A narrow compliance mindset ignores the role that organizational culture plays in gender-related misconduct.

Gender sensitivity training. Gender-related integrity issues encompass a broad range of conduct, some of which involves a knowing and intentional violation of standards of judicial conduct, and some of which simply reflects a lack of knowledge or awareness. To the extent that gender-related integrity issues are rooted in social attitudes and norms that reflect gender bias, people may be unaware of that bias and be firmly convinced they are acting in an equitable and appropriate manner. Compliance training may help people to recognize gender-related misconduct, but may not be sufficient to help them recognize their unconscious biases and the impact they have on gender equality. Gender sensitivity training can help people to recognize and understand gender bias, whether conscious or unconscious, and enhance their awareness of gender issues.

Workplace civility training. Researchers have found correlations between incivility and gender harassment, as uncivil behaviours can often spiral into harassing behaviours.¹⁵³ Workplace civility training focuses on proactive measures to promote respect and civility in the workplace and to defuse potential problems. The training may include an exploration of workplace norms, including what constitutes appropriate and inappropriate behaviour, plus a skills-based component, including training on interpersonal skills, conflict resolution and effective supervisory techniques.¹⁵⁴ Integrating this training into existing programmes on

¹⁵³ See S. Lim & Lilia M. Cortina, *Interpersonal Mistreatment in the Workplace: The Interface and Impact of General Incivility and Sexual Harassment*, 90 *J. Applied Psychol.* 483 (2005), https://lsa.umich.edu/psych/lilia-cortina-lab/Lim_Cortina.2005.pdf.

¹⁵⁴ See U.S. Equal Employment Opportunity Commission, *Select Task Force on the Study of Harassment in the Workplace*, Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic at 54-56 (2016),

judicial management, court administration and court practices underscores that promoting workplace civility is an integral element and part of each person’s duties.

Bystander intervention training. Bystander intervention training has been used as a violence prevention strategy and, most recently, by colleges and high schools as a sexual assault prevention strategy. It has been shown to change social norms and empower students to intervene with peers by employing strategies to:

- Create awareness – enable bystanders to recognize potentially problematic behaviours.
- Create a sense of collective responsibility – motivate bystanders to step in and take action when they observe problematic behaviours.
- Create a sense of empowerment – conduct skills-building exercises to provide bystanders with the skills and confidence to intervene as appropriate.
- Provide resources – provide bystanders with resources they can call upon and that support their intervention.¹⁵⁵

Bystander training should be considered as a promising approach to changing institutional cultures that prevent people from speaking up and reporting gender-related misconduct.

4.4 EVALUATION

Evidence regarding the effectiveness of existing training programmes remains limited.

It is important to continuously evaluate training programmes to ensure their relevance and effectiveness, while paying close attention to new learning techniques and developments in the field. Different evaluation methods may be appropriate depending on the type of training and impact to be assessed. In conducting evaluations, care should be taken to gather information in a way that does not undermine judicial independence.

One measure of a training’s effectiveness is whether the participants found it valuable and learned something from it. Methods used to gather this information might include:

- Asking participants to complete evaluation forms;
- Obtaining immediate feedback from participants after a role-playing exercise;
- Evaluating the state of participants’ knowledge before the training and, again, after its conclusion;
- Conducting qualitative interviews of participants to ascertain what has been learned; and
- Using a reflective learning model.

https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

¹⁵⁵ *Id.* at 57.

Another measure of effectiveness is whether and how training may have changed behaviour. Methods for assessing whether training has helped to change the prevalence or nature of gender-related integrity issues might include:

- Ongoing evaluation of judicial conduct through peer review and observation;
- Employing a judicial training centre evaluation model to assess judicial decisions;
- Collecting and analysing complaints to detect the nature and extent of problems; and
- Conducting an independent, confidential survey of court users.

Such assessments serve to identify areas in which additional training on gender-related integrity issues may be needed.

Additional guidance on how to conduct course evaluation can be found in the Trainers' Manual, one of the components of the Judicial Ethics Training Tools of the Global Judicial Integrity Network.¹⁵⁶

4.5 RECOMMENDATIONS

The Global Judicial Integrity Network can play an important part in collecting and disseminating information about steps judiciaries might take to strengthen their education and training on gender-related integrity issues, including sextortion and sexual harassment. Good practices for implementing such training include:

Mainstream the consideration of gender issues into every stage of legal education. Understanding gender justice is key to addressing the gender bias, prejudice and stereotypes that are still prevalent and give rise to gender-related integrity issues. This understanding begins with the way law is taught in law schools and judicial training institutes. It continues with the way bar associations promote a culture of professional responsibility and ethical conduct within the legal profession, and the way judiciaries implement and oversee compliance with standards of conduct for judges and court personnel.

Education and training about gender-related integrity issues should target all those within the justice system, as well as the larger community. Within the courts, these gender issues should be part of the ongoing, workplace training for judges and court personnel. Media campaigns, civics education and other public communication efforts can help to educate the public about the role of judges and the ethical standards to which they are held.

Judicial leadership is key in addressing gender-related integrity issues. Senior judges and judges in supervisory roles should not only lead by example but also participate in training.

Judiciaries should treat training on gender-related integrity issues as mandatory wherever possible. Training only achieves its purpose if people participate. People may resist

¹⁵⁶ To access the Judicial Ethics Training Tools, please visit their dedicated webpage: https://www.unodc.org/ji/en/judicial_ethics.html

training on gender issues because they think they already understand these issues, do not see them as important or relevant to their work, perceive gender as a women's issue or for any number of other reasons. Making training on gender-related integrity issues mandatory would address these challenges and ensure broad participation.

Gender training should be engaging and valuable for both men and women. It is not enough for participants to attend a training if they do not engage with and learn from it. Efforts should be made to ensure that men derive as much value from gender training as women. Good practices for engaging participants include: making training as interactive as possible; using realistic case studies and examples; employing a variety of styles and approaches; mainstreaming gender into existing training; and tailoring training to meet the needs of different target audiences and the local cultural context.

Training should be comprehensive and address the full range of gender-related integrity issues. Gender-related judicial integrity issues take many forms, including sextortion, sexual harassment, sexual discrimination, gender bias, unequal gender representation, gender stereotyping or inappropriate sexual conduct. They may affect women and men, occur at all levels of the judiciary, affect all those in the justice system, and arise in any aspect of the judge's professional or personal life and at any stage of a judicial career. All these aspects should be reflected in the training.

Compliance training should be a key component of any training on gender-related integrity issues. Compliance training serves to educate and inform people about applicable standards of conduct, individual rights and responsibilities, avenues for lodging a complaint or seeking assistance, protection and support available for complainants and disciplinary procedures and corrective action.

Training should address the attitudes, behaviour and institutional culture that allow gender-related misconduct to occur. Gender sensitivity training can help people to recognize and understand gender bias, whether conscious or unconscious, and enhance their awareness of gender issues. Workplace civility training can help to foster an institutional culture of respect and civility that does not tolerate gender-related misconduct.

Bystander intervention training should be included in efforts to address gender-related integrity issues. Bystander intervention training can help to change the culture of silence that enables gender-related misconduct and encourage people to speak up when they experience or observe such misconduct.

Education and training programmes should be evaluated on a regular basis, using a variety of evaluation methods, to ensure their continued relevance and effectiveness. Evaluations should be conducted in a way that is mindful of the need to protect judicial independence.

Share good practices within judicial networks. The Global Judicial Integrity Network should collect, disseminate and share good practices, so judiciaries can benefit from the experience of others in addressing gender-related judicial integrity issues.



The Doha Declaration:
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GLOBAL
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