



AJC SUBMISSION TO THE CEDAW COMMITTEE ON THE GENERAL RECOMMENDATION 40 ON EQUAL AND INCLUSIVE REPRESENTATION OF WOMEN IN DECISION-MAKING SYSTEMS

The Asia Justice Coalition¹ (AJC) welcomes the CEDAW Committee's draft General Recommendation No. 40 on Equal and Inclusive Representation of Women in Decision-Making Systems², and welcomes the opportunity to provide input on this important and comprehensive draft.

AJC recognises that prioritising the building of women's professional leadership in the law opens possibilities for legal empowerment and further access to justice. This contributes to the aim of the Coalition to ensure justice and accountability for grave crimes in Asia, and to strengthen capacity and collective advocacy of Asian civil society actors, legal actors, and their allies in regard to international accountability for serious violations of international human rights and humanitarian law committed in Asia.

Developing a gender-sensitive legal system is a prerequisite for the full and non-discriminatory realization of human rights for all, and the achievement of gender equality on the ground. Despite important progress over the past few decades, globally women have yet to be considered as key actors in the administration of justice, and their equality before the law and the courts has yet to become a reality in many countries.³

The trust that societies and women themselves may have in the legal system is essential if courts and tribunals are to be responsive to women's needs and protect women's human rights. A crucial way to ensure women's perspectives in the administration of justice, including in judgments delivered by national tribunals, is through women's life experience and therefore through the appointment of women judges who represent the diversity of society and are able to tackle judicial issues with fitting sensitivity.⁴ The importance of ensuring adequate representation of women in public offices has been recognized at the international level, inter

¹ This submission shall be attributed to the Asia Justice Coalition secretariat; its contents may not necessarily reflect the position of a specific Member and/or all Members of this Coalition.

² United Nations Office of the High Commissioner for Human Rights, General Comment, Draft general recommendation No 40. on the equal and inclusive representation of women in decision-making systems, available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/draft-general-recommendation-no-40-equal-and>.

³ Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance, Report of the Human Rights Council Advisory Committee, A/HRC/47/51, 21 May 2021.

⁴ Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, International Association of Women Judges, Jubilee Biennial Conference, Seoul, 12 May 2010.

alia, in the Convention on the Elimination of All Forms of Discrimination Against Women⁵ and the Beijing Declaration and Platform for Action.⁶

Gaps in the Legal System for Women

Gender bias remains a persistent issue in the legal profession, with stereotypes often hindering women's advancement. This bias can affect various aspects, from hiring decisions to opportunities for promotion. Consequently, women may find themselves gravitating towards legal areas offering more flexibility, such as academia or public law, exacerbating the gap in private practice.

Additionally, women are significantly underrepresented in leadership roles within law firms, corporations, and the judiciary.⁷ This lack of representation limits their influence and opportunities for career advancement.

Pay inequality remains a significant challenge in the legal field, with women often earning less than their male counterparts for comparable work.⁸ This disparity perpetuates gender inequity within the profession.

Work-life balance presents another obstacle for women in law, especially for those with caregiving responsibilities. The demanding work hours and workload can make it challenging to balance professional and personal obligations.

Implicit bias in performance evaluations and promotion criteria further disadvantages women, as subjective assessments may be influenced by unconscious biases, hindering their career advancement opportunities.

Addressing these challenges requires more than just increasing the number of women in law school and the field. Research indicates that an overemphasis on representation may overlook broader societal factors contributing to professional inequalities. For true progress, there's a need to restructure not only the workplace but also the home, eliminating divisions between men and women's responsibilities. Without incentivizing men to engage in unpaid domestic work, achieving gender equality in the legal profession remains a formidable task.

⁵ For example, article 7 (b) of the Convention on the Elimination of All Forms of Discrimination against Women recognizes women's right "to perform all public functions at all levels."

⁶ Beijing Declaration and Platform for Action, Strategic objective G.1., para. 190 (a).

⁷ United Nations Special Rapporteur on the Independence of Judges and Lawyers, Applying a gender perspective to the work of the UN Special Rapporteur, <https://independence-judges-lawyers.org/gender-in-the-judiciary-and-the-legal-profession/>, accessed on 18 April 2024.

⁸ "Worldwide, women only make 77 cents for every dollar earned by men. As a result, there's a lifetime of income inequality between men and women and more women are retiring into poverty.", UN Women, Equal Pay for Work of Equal Value, <https://www.unwomen.org/en/news/in-focus/csw61/equal-pay>, accessed on 18 April 2024.

Increasing steps to ensure the equal representation of women and men in the legal system is essential for the promise of legal empowerment. Where challenges exist in identifying female legal professionals to be appointed as judges, prosecutors or included in the list of defence counsel, creative strategies, including broadening outreach and networking activities, should be implemented. This is crucial because the global increase in practices that undermine, limit, restrict and hinder the practice of law continue to persist. Lawyers are especially vulnerable when their activities are focused on the fight against corruption, the defence of human rights, women’s rights, the protection of ethnic, racial, religious, or national minorities, indigenous peoples, the LGBTQI+ community, the environment, or other issues of public relevance.

In international law, women continue to face barriers of entry relating to courts and international mechanisms addressing international justice and accountability. By facilitating such access, women leaders and survivors of international harms can exercise their power, agency, and leadership, proving their relevance to international legal mechanisms but also the relevance of the mechanisms themselves.

The gendered nature of international law is further made exclusionary by the influence and centrality of the Global North in its processes and its institutions. International legal institutions have largely developed in the Global North, speaking the institutional and professional ‘languages’ of the Global North, and often remain in the Global North— even when Global South matters necessitate litigation.⁹

It is therefore understood that given the difficulty faced by simply practicing law, the barriers are even greater for women wishing to practice in relation to international law—let alone lead in the profession. This difficulty is compounded where women legal practitioners are from minority ethnic or religious backgrounds or where women legal practitioners have experienced the kinds of harm addressed by international justice and accountability.

Recommendations

Given the importance of addressing the gaps in the legal system, our recommendations focus on additions to Sections 6 and 7 of the draft recommendations to include references to the legal profession, highlighting them as key and distinct stakeholders that warrant inclusion.

We first would like to make a general recommendation that is not specific to any particular article but would apply across the board to several parts of the General Recommendation. We

⁹ Scholar Rose Parfitt questions this in her concept of ‘international legal reproduction’ relating to how international law has evolved ‘the process through which new subjects of international law are brought into being and later disciplined by more “successful” members of the so-called international community’. Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (CUP 2019) p 12. See further the important critiques by Third World Approaches to International Law scholars, including foremost BS Chimni’s ‘Third World Approaches to International Law: A Manifesto’, *International Community Law Review* (2006) 8, pp 3–27, <https://www.jnu.ac.in/sites/default/files/Third%20World%20Manifesto%20BSChimni.pdf>.

believe that as robust as GR 40 already is, **there is a need for legal ecosystems to be better reflected within GR 40**. There currently is very limited reference to the legal profession in GR 40 and given the pervasive gender gaps that continue to exist in international and domestic legal systems, we believe that such a reflection in GR 40 would send an important message on closing the gap not just in public and political systems, but also within legal systems.

We also propose two specific additions into the text of the recommendations, and our proposed additions are inserted into the text in red, with a short explanatory note that follows:

50. The Committee recommends that States parties:

- Adopt temporary special measures to achieve parity between women and men in diplomatic and ambassadorial appointments, as well as in delegations to peace negotiations **and appointments to international legal institutions**;
- Establish objective criteria and transparent processes for nominating, appointing and promoting women to international positions and official delegations;
- Collect and monitor data on the percentage of women in the foreign service, as well as their levels of seniority, including in government delegations to international conferences;
- Provide equal family and spousal benefits to women and men in the foreign service, including the right to transfer nationality to children born abroad, maternity protection for women and the possibility of parental leave while posted abroad; and
- Implement a feminist foreign policy, making gender equality and women's empowerment a central focus of government policy abroad, for example by strengthening women's meaningful participation in preventing conflict and violent extremism, advancing women's economic rights and empowerment, and protecting women's rights to sexual and reproductive health.

Note: Article 50 reflects the importance of ensuring that states achieve parity between women and men in diplomatic and ambassadorial appointments, as well as in delegations to peace negotiations. We believe this article should also address appointments made to international legal institutions, including the United Nations, individual treaty bodies under the UN, and institutions for international criminal accountability including the International Court of Justice, the International Criminal Court, and other relevant domestic and international tribunals and mechanisms. This would be in line with Article 50's recommendation for implementing a feminist foreign policy as well.

52. The Committee recommends that States parties:

- Adopt temporary special measures to achieve parity between women and men in appointments to international organizations, **and international and domestic legal institutions**, including at senior levels, for example by adopting policies of alternating between women and men in leadership appointments;
- Increase transparency in nomination and selection processes for positions in international organizations, for example through public calls for applications, clear and comprehensive job descriptions, and merit-based selection procedures; and
- Collect and monitor disaggregated data on the percentage of women holding positions in international organizations, including their levels of seniority.

Note: Article 52 reflects the importance of achieving parity between woman and men in appointments to international organisations, especially at senior levels, where the gender gap remains greater than at more junior levels. We recommend the addition of appointments to international and domestic legal institutions, especially at senior levels, because appointments to international legal institutions are often dependent on national appointments first, with domestic appointments leading to opportunities for international appointments and secondments. Therefore, the suggestion to the text includes a reference to appointments made to both international and domestic legal systems.