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

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

Advance report on the global thematic study on human rights education and training of legal professionals*

Summary

The present is an advance report on the global thematic study on international human rights law capacity-building activities for judges, magistrates, prosecutors, public defenders and lawyers, which the Human Rights Council, in its resolution 15/3, requested the Special Rapporteur to submit to the Council at its twentieth session. It was prepared on the basis of the responses received from States, national human rights institutions and non-governmental organizations to a questionnaire sent by the Special Rapporteur.

In the report, the Special Rapporteur assesses the information received on the structural elements of current training initiatives on international human rights law. She considers that the knowledge of judges, magistrates, prosecutors, public defenders and lawyers and the application of international human rights law at the domestic level have a direct impact on combating impunity for human rights violations, enforcing the rule of law, strengthening democracy and ensuring human rights-based development.

In the first stage of the global thematic study, the Special Rapporteur assesses international human rights education and the ongoing training of the main judicial actors. She explores current training programmes, the way they are conducted, how often they are offered, how their effectiveness is assessed, and the main obstacles to adequate capacity-building activities.

* Late submission.

The Special Rapporteur analyses the importance of solid knowledge and understanding of international human rights law and legal education in the appointment, career and promotion of magistrates, judges, prosecutors and public defenders. She analyses the main challenges faced, particularly the lack of adequate resources, and gender sensitivity issues in the training of judges and lawyers.

The Special Rapporteur concludes the report with a series of initial recommendations in order to encourage the development and improve the quality of training activities, as well as their effectiveness. Capacity-building activities in the sphere of international human rights law are an important instrument to clear away prejudices against human rights, and to promote and protect them more effectively.

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I. Introduction

1. In its resolution 15/3, the Human Rights Council requested the Special Rapporteur on the independence of judges and lawyers to carry out a global thematic study to assess the human rights education and continuing training of judges, prosecutors, public defenders, and lawyers. The present advance report on that study is based on information gathered by means of a questionnaire focusing on the structural elements of existing human rights courses and training initiatives. Such courses and training should be aimed at affecting the way that legal professionals discharge their functions by encouraging them to apply international human rights principles and standards at the domestic level.

2. In her first thematic report submitted to the Human Rights Council (A/HRC/14/26), the Special Rapporteur focused on the need for continuing human rights capacity-building for judges, prosecutors, lawyers and public defenders. The report was based on the Special Rapporteur's assessment that an independent judiciary should be strengthened in order to promote and protect human rights as the quality of the administration of justice has a direct impact on democracy and the development of States.

3. In resolution 15/3, the Human Rights Council requested the Special Rapporteur to carry out the study from within existing resources and with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), specifying also that he study was to include recommendations for appropriate follow-up.

4. The present report is based on data collected by means of a questionnaire and information obtained from different actors within and outside the United Nations. The aim of the questionnaire was to investigate the current situation of existing training institutions and programmes, as well as the possible causes that may have created the gap noted by the Special Rapporteur in her thematic report in order to ensure that the justice system becomes more effective in guaranteeing fundamental rights and freedoms, and fighting human rights violations and combating impunity.

5. The report was also prepared on the basis of information contained in several thematic reports submitted by the Special Rapporteur to the Human Rights Council and the General Assembly during the first years of her mandate.¹

II. Analysis of replies to the questionnaire

6. The global thematic study project is based on the fundamental understanding that the effective, ongoing capacity-building of all the actors of the justice system plays a decisive role in the independence of judges, magistrates, prosecutors, lawyers and public defenders, guaranteeing respect for human rights in a democratic society. The main issues raised in the questionnaire sent to all Member States and other stakeholders, including civil society organizations, concerned, *inter alia*, existing training programmes; how are they conducted; how often are they offered (both initial and ongoing training); how their effectiveness is assessed; and the main obstacles to capacity-building courses.

7. The primary responsibility for ensuring human rights lies with the State, including the judicial branch. The main actors in the justice system - judges, magistrates, prosecutors,

¹ On the need for continuous capacity-building for judges, prosecutors, lawyers and public defenders (A/HRC/14/2); combating impunity (A/65/274); the integration of a gender perspective in the administration of justice (A/HRC/17/30); and the integration of a gender perspective in the criminal justice system (A/66/289).

lawyers and public defenders - should therefore be provided with human rights training and capacity-building.

8. It may be difficult to accept that the main actors of the justice system may lack the knowledge related to international human rights law and the State obligations entailed therein. It must be said that most of these actors, especially senior ones, have not had the opportunity to study international human rights law at university, since human rights-related matters have only recently and gradually been introduced into the curricula of university faculties and law schools. This situation must be recognized in order to urgently move forward and work to remedy it.

9. The independence of the judiciary is based on the competence, professionalism, impartiality and integrity of its actors, as well as on the upholding of its responsibility as an institution that is one of the three branches of the State and which is entrusted with promoting and ensuring respect for rule of law at the national level.

10. The global thematic study aims at filling the gaps observed in the existing capacity-building mechanisms which, it seems, have limited results,² by identifying the internal and structural elements of human rights training programmes and justice systems and of their worldwide functioning, the content of current capacity-building courses in the area of international human rights law (from those provided by universities to those promoted by courts and/or judicial academies), and the real and potential obstacles to capacity-building.

11. The first part of the preparation for the study included the addressing of a questionnaire to, inter alia, Member States, courts of justice, associations of magistrates, bar associations, national human rights institutions and non-governmental organizations to gather information on the issue. In the present report, the Special Rapporteur evaluates the results of the first stage.

12. The present report is to be followed by regional consultations, which will allow a more detailed and in-depth assessment of existing capacity-building programmes, such as by identifying good practices, and their effective integration and application of international and regional human rights instruments and standards, including by collecting national judicial decisions reflecting the application of human rights norms in concrete domestic cases.

13. Regional consultations, the second part in the project, should comprise meetings to be held in different regions in order to allow the Special Rapporteur to gather, examine and share information and trends on human rights capacity-building for judicial actors, to compare successes and difficulties, and to discuss possible courses of action regarding qualification or capacity-building programmes for justice system actors and institutions, judicial schools, training centres and non-governmental organizations.

14. The Special Rapporteur wishes to use the regional consultations as a mechanism to promote the development and use of human rights manuals in the field of administration of justice such as, inter alia, those prepared by OHCHR and the International Bar Association, as well as the *Human Rights Manual for Prosecutors* prepared by the International Association of Prosecutors. It is expected that persons benefiting from such training, in particular judges, magistrates, prosecutors, lawyers and public defenders, would gain comprehensive knowledge and understanding of the functioning of the international and regional human rights protection systems.

² A/HRC/14/26, paras. 24 and 27.

15. The outcome of the regional consultations would enable the Special Rapporteur to commence drafting guidelines on effective and continuous human rights capacity-building for magistrates, judges, prosecutors, lawyers and public defenders.

16. The third stage of the global thematic study will be an international global conference,³ during which those guidelines could be finalized and approved.

17. It is expected that the guidelines will be a useful tool for Member States as well as institutions that offer ongoing human rights education programmes and others that monitor their results, and help them to promote the improvement of the effectiveness of capacity-building programmes. The guidelines will therefore have the ultimate goal of strengthening rule of law, good governance, the principle of the separation of powers, and democracy by affirming the basic principles for the independence of the judiciary, the role of lawyers and the role of prosecutors.

18. The active participation of all actors involved in the project will be extremely valuable in all its phases, from the responses to the questionnaire to direct participation in the regional consultations leading up to the global international conference.

19. The questionnaire elaborated for the present report was intended to cover the highest number of themes possible with a view to gather comprehensive information on the present state of capacity-building programmes in different judicial systems, and information on their availability, functioning, effectiveness and implementation. The study aims at identifying the elements that could clarify the functioning of existing capacity-building programmes, bearing in mind that it is crucial that the actors of the justice system receive the necessary training to guarantee the quality of their decisions in ensuring the protection and promotion of human rights. Independent judicial systems therefore need to demonstrate integrity, competence, diligence and impartiality.

20. The questionnaire included questions on several aspects of capacity-building. It was intended to collect data and analyse it to obtain a comprehensive understanding of the situation, and divided into the categories of general information; legislation framework; education in human rights and capacity-building for judges and prosecutors; and education in human rights and capacity-building for lawyers and public defenders. The Special Rapporteur wishes to thank the State Court of Mato Grosso, Brazil, and in particular its information technology department for the extensive support provided for the global study.

21. The section below provides preliminary information on the challenges relating to the capacity-building programmes for the main actors of the justice system, as requested by the Human Rights Council in its resolution 15/3.

22. The Special Rapporteur wishes to thank the 70 States and entities, as well as the several institutions and non-governmental organizations, that replied to the questionnaire. In several cases, more than one institution from the same State replied to the questionnaire, bringing the total number of replies to 82.

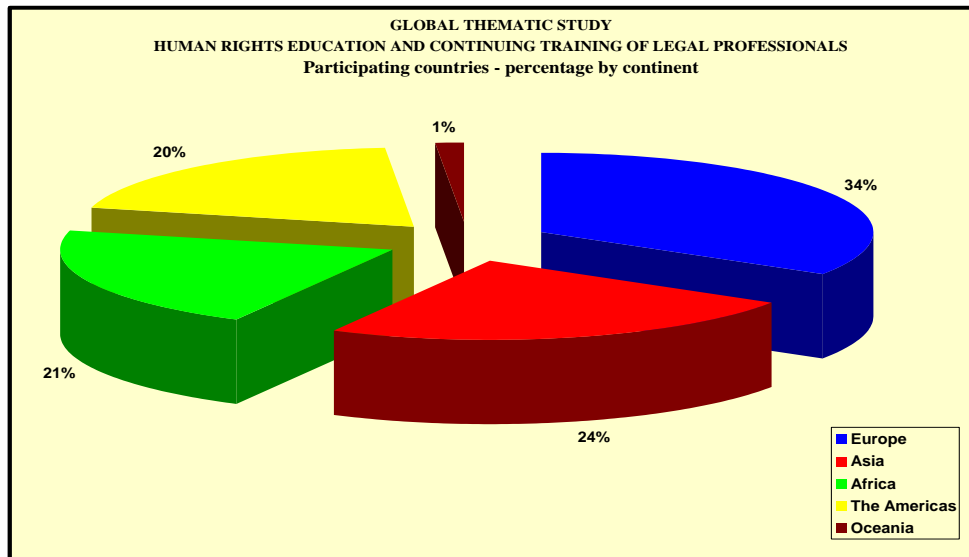
23. The Special Rapporteur would also like to thank the States and institutions that sent additional information for the questionnaire, thereby demonstrating their great interest in the necessity of providing judges, magistrates, prosecutors, lawyers and public defenders with ongoing human rights training and capacity-building. She hopes to receive the same support for the next two stages of the global study, which will be concluded in June 2015.

³ See A/HRC/14/26, paras. 78, 80 and 101.

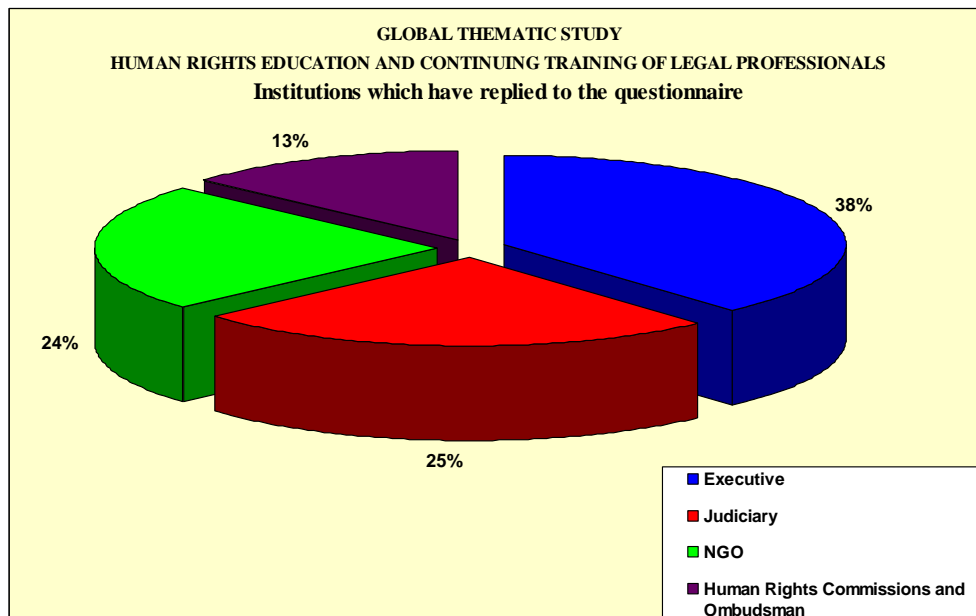
A. General information

24. Replies to the questionnaire were received from 70 States and entities: Afghanistan, Andorra, Argentina, Australia, Austria, Azerbaijan, Belarus, Benin, Bhutan, Brazil, Cameroon, Canada, China, Colombia, Côte d'Ivoire, Croatia, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Egypt, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Honduras, Hungary, Iraq, Jordan, Kenya, Kosovo, Kyrgyzstan, the Lao People's Democratic Republic, Lebanon, Luxembourg, Malaysia, Maldives, Mexico, Morocco, Nepal, Nicaragua, Nigeria, Paraguay, Peru, the Philippines, Poland, Qatar, the Republic of Moldova, Romania, Rwanda, Slovakia, Slovenia, Spain, the Sudan, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Zimbabwe.

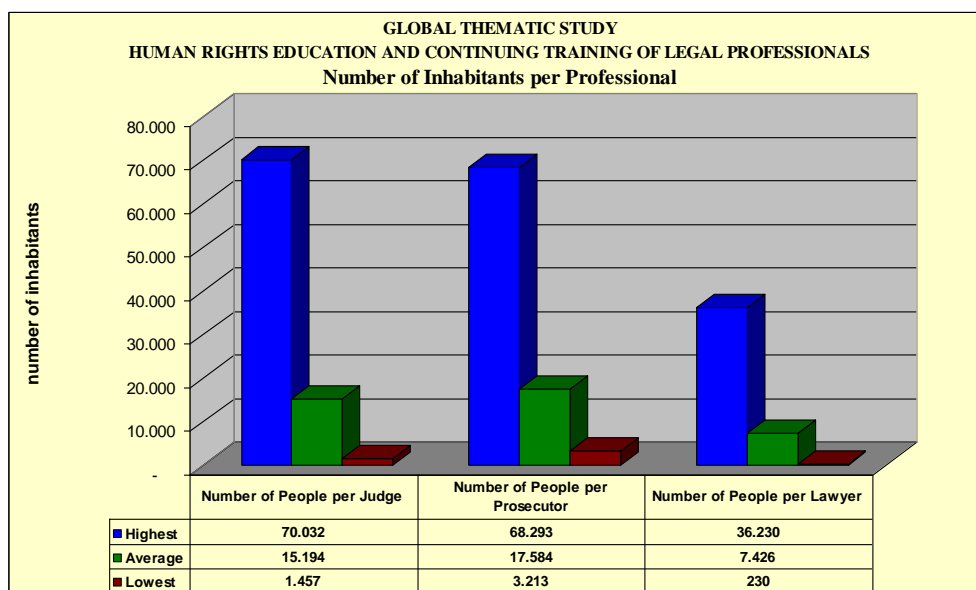
25. The replies to the questionnaire were relatively homogeneously divided among continents, since 34 per cent of the States that replied are located in Europe, 24 per cent in Asia, 21 per cent in Africa, 20 per cent in the Americas and one per cent in Oceania.



26. The same homogeneity can be observed in relation to the institutions and organizations that submitted replies: 38 per cent came from the executive organ of the State, 25 per cent from the judiciary, 24 per cent from non-governmental organizations and 13 per cent from national human rights institutions and ombudspersons (see chart below).



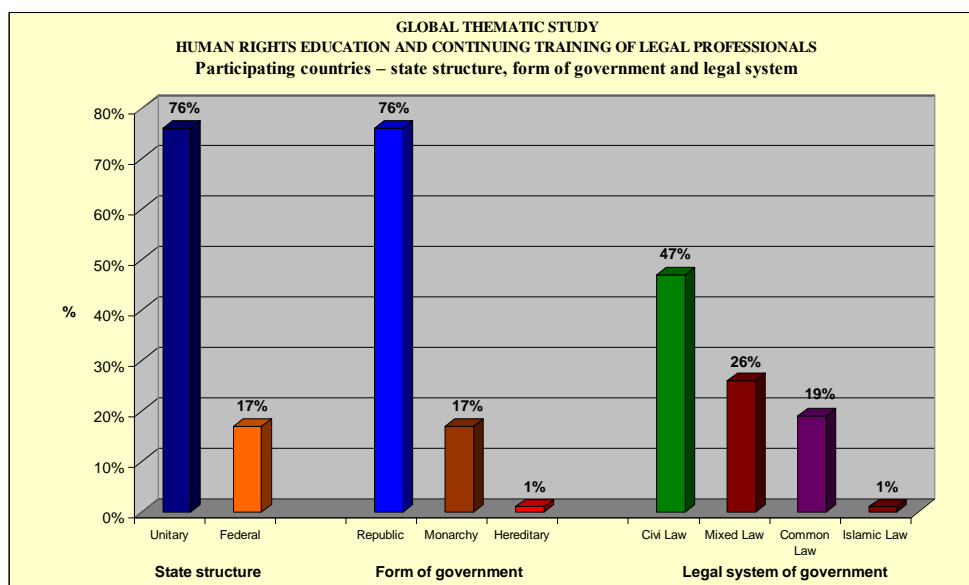
27. The data obtained relating to the questions on the population and the number of magistrates, prosecutors and lawyers indicate the averages shown in the table below.



28. The Special Rapporteur considered that it was more appropriate not to present an average of public defenders per inhabitant given that 85 per cent of the participating States do not have a public defender’s office and that legal aid is provided by lawyers directly. In many States, legal assistance is provided free of charge by appointed lawyers (through legal aid programmes), who are paid by the Government to promote defence at trial or to protect people’s rights.

29. The option to present the highest, lowest and average number of people per judge, prosecutor and lawyer was preferred in order to avoid giving a false impression that the average found in the present study was adequate to ensure good administration of justice.

30. It should be noted that most participating States have a unitary State structure, are deemed to have a republican Government and have, predominantly, civil or continental law as the basis of their legal system.



31. On the basis of the information gathered during her missions and activities, the Special Rapporteur observed that capacity-building for judges, prosecutors, lawyers and public defenders is more complex in federal States owing to the diversity of their legislations and the specific justice system in each State and at the federal level. It is very challenging to administer justice in a context of coexistence of State and federal courts owing to the diversity of rules of competence (an obstacle to effective justice), the difference in the functioning of systems and the rules of procedures in each State, also at the federal level, the difficulty of communication between the two levels of jurisdiction (State and federal), the differences in court infrastructure, and the difference in access to them. Considering the complexity of the functioning of the justice system and the fact that the population also perceives it as being complex, more efforts are needed to ensure access to justice.

32. With regard to the justice system, according to the replies received, an estimated average⁴ of 47 per cent of States had a civil law-based legal system, 26 per cent a mixed law system, 19 per cent a common law-based system, and 1 per cent a system based on Islamic law. In most replies, mixed law legal system comprised common law and Islamic law. The Superior Court Judges Association of Canada reported that Canada is a federal State in which the common law system applies in most provinces and territories, except in the province of Quebec, where a civil law-based system applies (except for matters of criminal law).

33. It should also be noted that, to a certain extent, there has been a worldwide trend to migrate from one legal system to the other, from civil law to common law, in such States as Chile, Colombia, Georgia and Mexico in, inter alia, procedural matters. The Special Rapporteur believes that oral proceedings existing under common law, together with the plea bargaining system, have been regarded as important tools to speed legal proceedings

⁴ Estimated average denotes the average obtained from the replies received for a specific question, also taking into consideration the fact that some States did not reply to all questions.

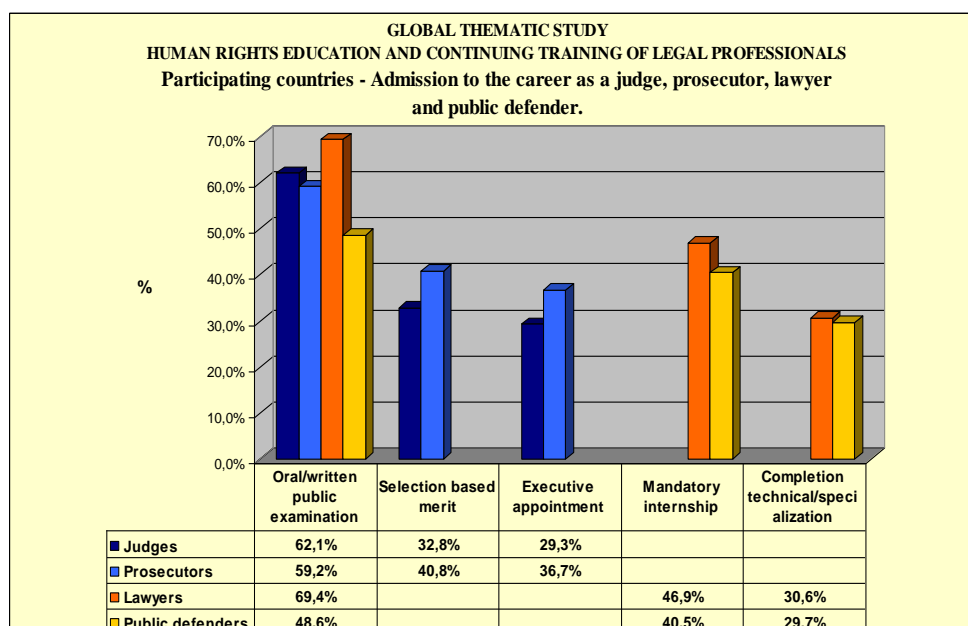
and criminal trials, and this has been taken into consideration by those promoting changes in their respective judicial system.

34. Such change is related to each country's political and sovereign decision to modify (or not) its own legal system. The Special Rapporteur wishes to point out the importance of such a political decision in the sense that, when it is made, it should be strong in order to give support and implement all the indispensable actions to ensure the effectiveness of that change. It means that, besides adapting buildings or establishing infrastructure, capacity-building and training on the new legal system should be provided to all legal professionals and judicial actors. Such training lies far beyond the mere study of the text of the new law; it implies a profound cultural change.

35. Changes in the legal system also require the adaptation of the curricula of legal and judicial courses and trainings, starting with the initial education of those who study law at university. The assessment of the effectiveness of judicial activities during a transition from one judicial system to another is crucial, especially in order to identify what further measures should be taken. During the Special Rapporteur's official mission to Colombia, the State had recently decided to migrate from a civil law-based system of criminal procedure to a common law-based one by establishing a public oral accusatory system. The Special Rapporteur was informed of the existence of capacity-building programmes for judges under the new system; she was also told, however, that a group of judges had just received a training course based on civil law through a partnership that had been established with a foreign institution. During her official mission to Mexico, the Special Rapporteur observed that the State had also decided to change its criminal procedural system and that the changes still needed to be promoted and implemented.

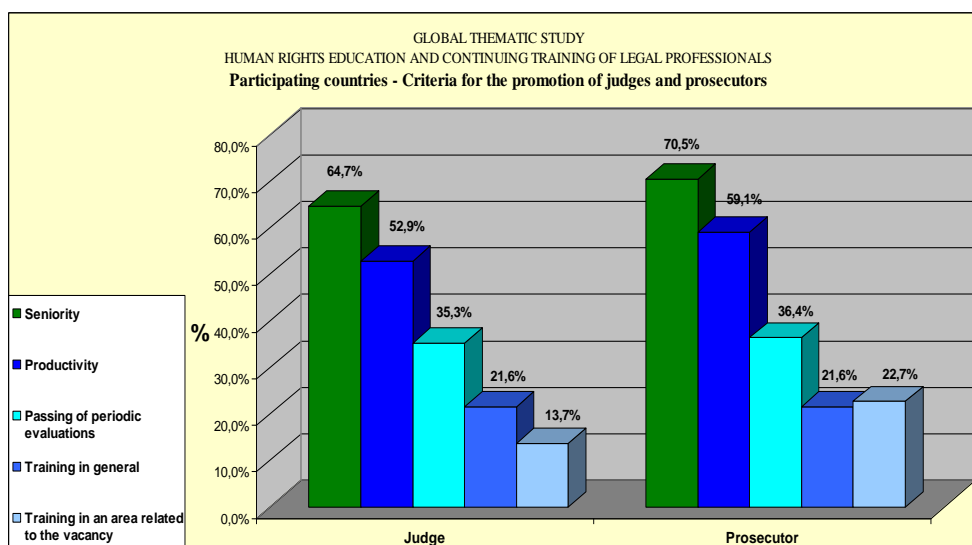
1. Career and promotion of judges, prosecutors and public defenders

36. The career of judicial actors usually begins with oral and written public examinations: 62.1 per cent in the case of judges, 59.2 per cent in the case of prosecutors, 69.4 per cent in the case of lawyers, and 48.6 per cent in the case of public defenders. According to the information contained in the replies received, the second most common way to start a legal career is by election, appointment or nomination by the executive organ (36.7 per cent in the case of prosecutors and 29.3 per cent for judges). It was pointed out that practical experience is required prior to admission to judicial and prosecutorial careers (in 68.9 per cent and 37.7 per cent respectively).



37. Judicial academies are usually responsible for the initial capacity-building of judges and prosecutors. In some States, training precedes admission to the function (pre-service courses). In others, academies also offer ongoing training.⁵

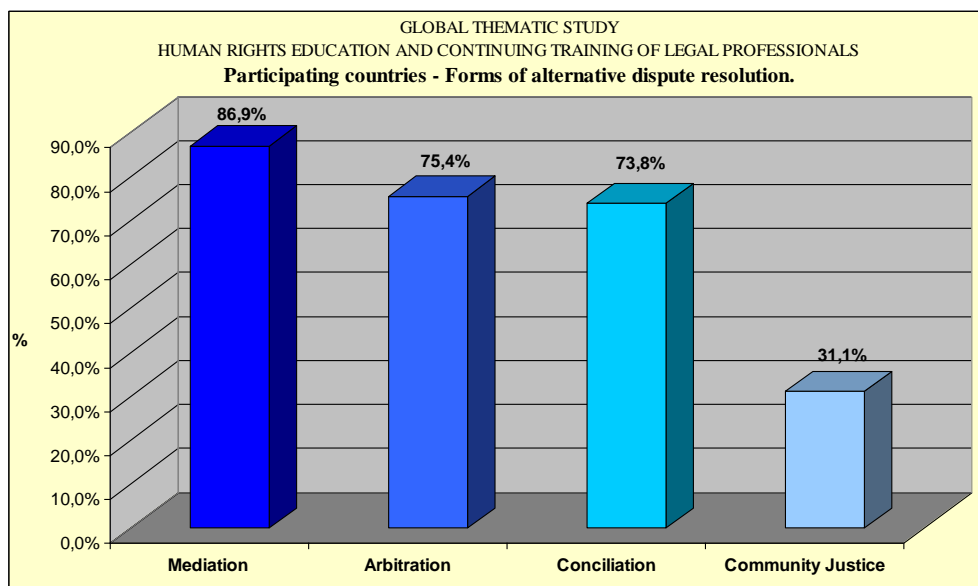
38. Criteria for the promotion of magistrates, judges and prosecutors in their careers are usually based on seniority; it was noted as a criterion in 6.7 per cent of the responses in the case of judges, and 70.5 per cent of the responses in the case of prosecutors. Productivity was the second criterion for the promotion of judges (52.9 per cent) and prosecutors (59.1 per cent). Productivity was the second criterion for the promotion of judges (52.9 per cent) and prosecutors (59.1 per cent). Passing periodic evaluations/examinations was also noted as a criterion for the promotion of judges (35.3 per cent) and prosecutors (36.4 per cent).



⁵ In, inter alia, Bulgaria, Romania and Turkey.

39. Educational curricula (such as training and specialization courses and post-graduate degrees) should be taken into consideration in the promotion of magistrates, judges and prosecutors. The areas of interest and/or further studies undertaken by judicial actors are too rarely taken into account in the criteria for their career development plans (promotion, transfer and other circumstances of mobility) or the procedures for filling vacant posts.

40. The Special Rapporteur observed that the main challenges for delivering justice were case backlog and workload, its costs and length of time. She believes that the various forms of alternative dispute-resolution constitute important mechanisms for solving conflicts; justice system actors should thus strengthen their use. The replies to the questionnaire showed that such alternative dispute-resolution mechanisms are being widely used; justice system actors should therefore be trained on how to use them properly.



41. The United States of America noted that several other forms of alternative dispute-resolution mechanisms are being developed, including case evaluation, early neutral evaluations, facilitations, family group conferences, mini-trials, ombudspersons, private judging and settlement conferences.

2. Institutions

42. The Special Rapporteur highlights the role played by several institutions that contribute to the promotion and protection of human rights. According to the information provided in the replies received, human rights national institutions exist in about two thirds of the States surveyed. In addition, universities have the responsibility to provide, in law and social and political sciences courses, general basic education on the legal system to the future actors of the legal professions. The questionnaire also revealed the existence of a similarity in the organization of the functional structure of courts of justice, which is an important instrument ensuring a two-tier level of jurisdiction (judicial authority). Most States have judicial academies or schools for magistrates; they also have associations of judges and prosecutors, as well as bar associations.

3. Financial resources

43. In 46 per cent of participating States, the Supreme Court has the responsibility of managing its own budget; in 45 per cent, national or high judiciary councils manage their own budget; in 32.9 per cent, the executive organ manages the budget of the judiciary.

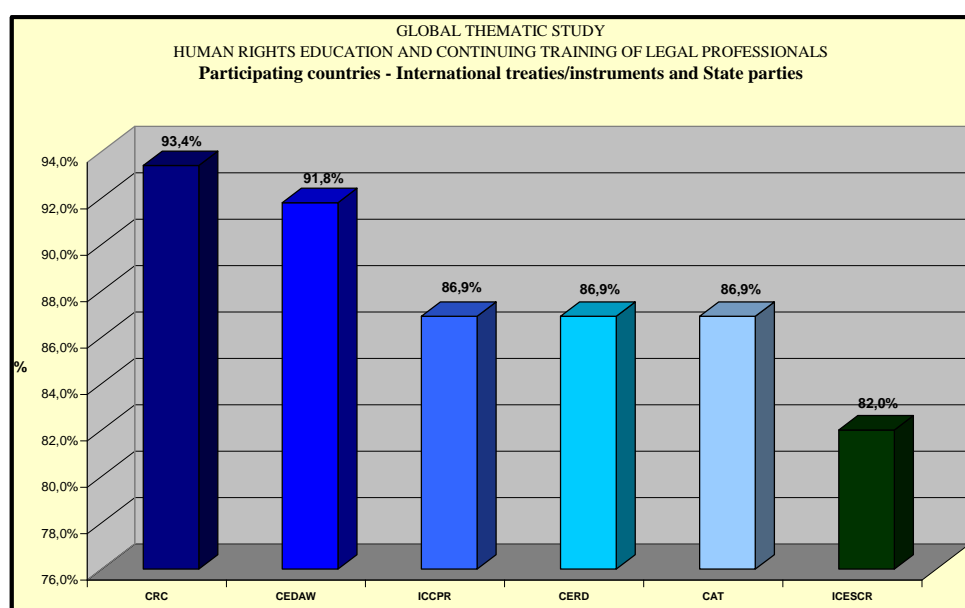
Approval of budgets is the responsibility of Parliament, except in the Sudan, where the national judicial service commission formulates, approves and manages its own budget and that of the judiciary.

44. Some 67.5 per cent of the replies indicated that training centres had their own budget, allowing them to be independent of tribunals, supreme courts and national or high judiciary councils. Costs for the training of judges, prosecutors and public defenders are mostly covered by the same training centres (40 per cent) and/or the judiciary (25 per cent) and/or the executive organ/Ministry of Justice (24 per cent) in courses tailored for their respective functions and offered on the premises of the training centres. The costs of post-graduate courses, however, are paid for by the individuals themselves in almost 90 per cent of cases.

45. The Special Rapporteur observed that, despite the existing financial resources available for training, lack of resources allocated by means of a specific budget is still an impediment to necessary capacity-building programmes. This was a common concern expressed in the replies to the questionnaire.

B. Legal framework

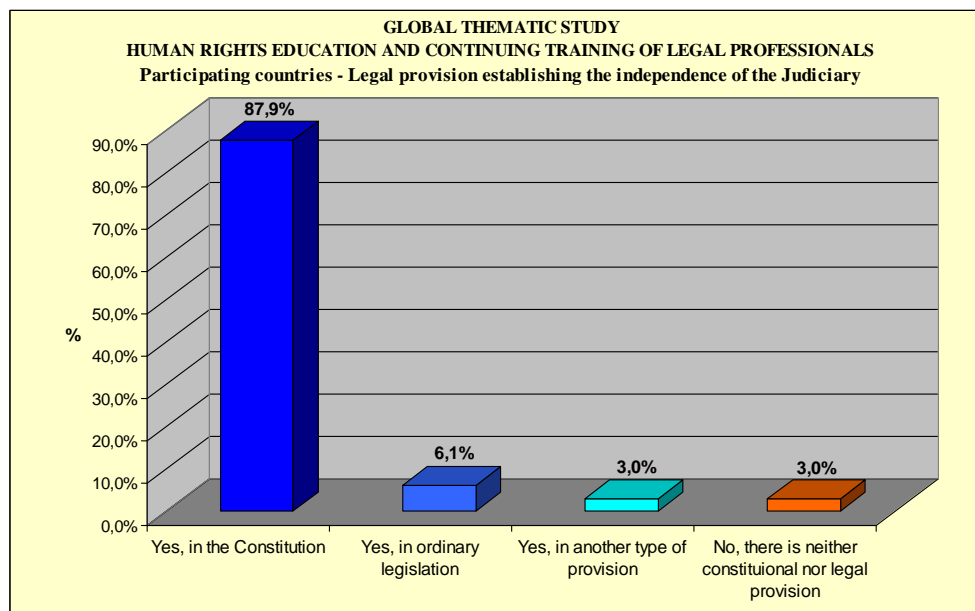
46. The United Nations human rights treaties with the highest number of ratifications among the States surveyed were the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.



47. Depending on the constitutional system of each State, international human rights treaties, when ratified, enjoy either the same binding force as the Constitution or infra-constitutional or legal force. The replies obtained indicated that, in 41.9 per cent of participating States, human rights treaties are given infra-constitutional or legally binding force; in 32.3 per cent, constitutional binding force; and in 30.6 per cent, they are given supra-legal status.

48. The Special Rapporteur highlights the fact that, when international treaties are given constitutional status, allegations that international provisions are in conflict with the Constitution are less likely. The protection of human rights tends, therefore, to be more effective, reducing the margin of judicial discretion in the interpretation of legal provisions.⁶

49. The independence of the judiciary is laid down by the Constitution in the majority of participating States, followed by its further clarification in organic or ordinary laws.



50. The replies also indicated that, in 56.7 per cent of cases, there was no specific legal provision regarding the implementation of decisions or recommendations of international human rights bodies and/or regional human rights courts.

51. With regard to the qualifications and training of judges, magistrates, prosecutors, lawyers and public defenders, most States had the requirements for qualification as regulated by law; 79.2 per cent for the profession of judge; 73.3 per cent for public prosecutors; 71.8 per cent for lawyers; and 57.7 per cent for public defenders. Training is required by law only in half of the States, and when training is on human rights, the number of States with such a law is halved again.

C. Human rights education and ongoing training of legal professionals

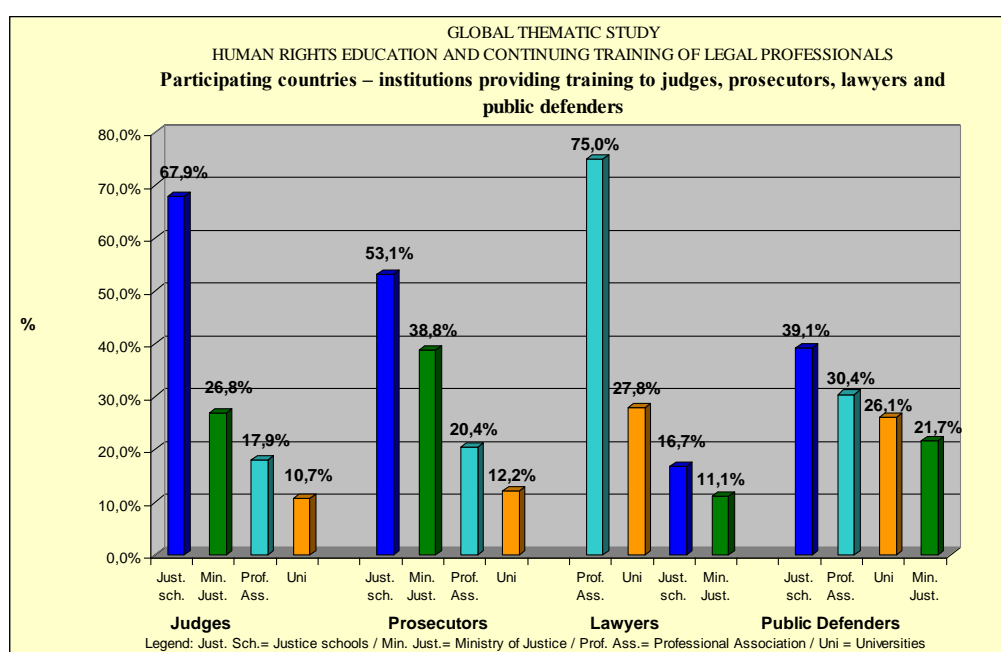
52. In general, legal professionals start their careers after completing their law education in law faculties or schools at universities. According to the responses concerning the curricula of law schools, in 64.5 per cent of participating States, courses on human rights and fundamental freedoms were mandatory; however, in only 42.1 per cent of those States were courses on international human rights law actually compulsory. Issues of human rights and fundamental freedoms are studied in courses on, inter alia, international and constitutional law, political sciences, social sciences and civic education.

⁶ A/HRC/14/26, paras. 21-22.

53. For all legal professions, initial training is usually provided by law faculties, judicial academies, universities and bar associations. Judges and prosecutors usually undergo the same legal education and are specialized after its completion, or after admission to a particular judicial or prosecutorial school or academy. There is usually a joint programme for both judges and prosecutors. Lawyers, however, do not have to undergo specific post-law school training as a requirement of the legal system. They are required to spend a period of time in a professional internship. The focus of advanced education of lawyers is left to them. Their ongoing training is done on a voluntary basis, for which reason they are not required to attend training programmes on a regular basis.

54. By way of example, in Tunisia, judges and prosecutors attend continuing training sessions twice a year; training is compulsory for judges having served for less than six years. In Australia, training is usually tailored to specific specializations, such as family law. In Austria, seminars are open for certain targeted groups.

55. The table below reflects the important role that judicial schools have played in the capacity-building and training of judges and magistrates, prosecutors and public defenders, and that of bar Associations in the training of lawyers.



56. As shown in the table, public defenders have the lowest number of institutions responsible for their training. This fact highlights the need for investments in the creation of legal schools or institutions and for greater promotion of capacity-building courses. The Special Rapporteur emphasizes her concern that, as a result, access to justice may be jeopardized.

57. Universities and Law Schools also play a vital role in international human rights law training and capacity-building for lawyers and public defenders, to a far greater extent than in the case of capacity-building for judges and prosecutors. With regard to magistrates, judges and prosecutors, universities are responsible for specialization courses and post-graduate degrees. Judicial academies usually offer specialized training for judges and magistrates designed for and tailored to the needs of their functions.

58. In this context, the Special Rapporteur highlights the important role played by non-governmental organizations in capacity-building programmes in several States, particularly

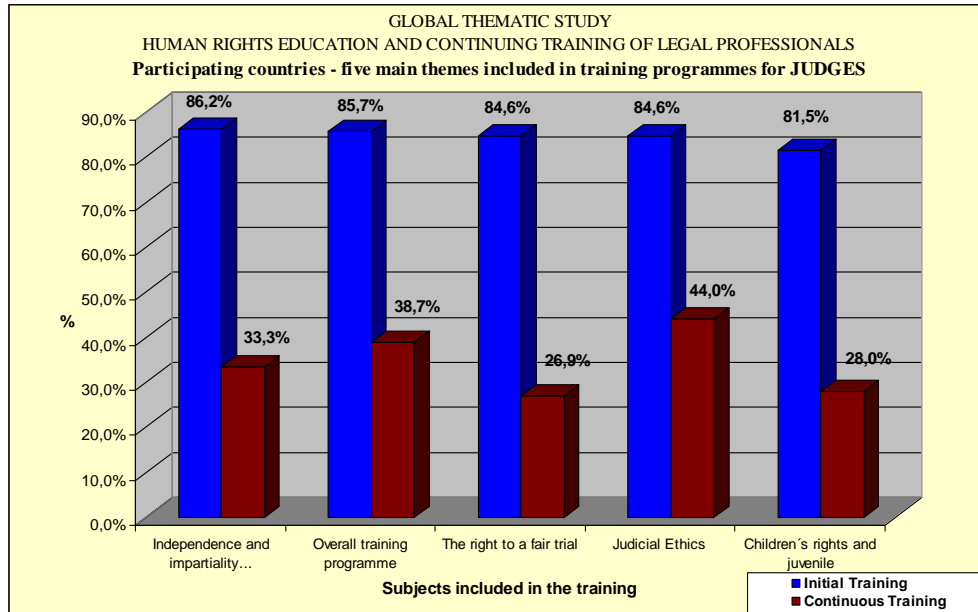
where financial budgetary resources and qualified professionals to provide legal training are few. Some good examples were given in the response submitted by Afghanistan, where the majority of the legal training offered is organized with the help of international non-governmental organizations in cooperation with the Government. In Angola, the International Bar Association's Human Rights Institute organized training courses for judges, magistrates, prosecutors and lawyers in Luanda. The project was conducted over a period of two weeks (one week of training for each group) and was organized in conjunction with the Ministry of Justice and the Secretariat for Human Rights of Angola. The training programme comprised a general introduction to international and regional human rights law for judges, magistrates, prosecutors and lawyers, with a focus on human rights in the administration of justice, including fair trial standards and standards related to detention.

59. It is also interesting to observe that, in some cases, national or high councils of the judiciary provide specific training for magistrates, judges and prosecutors. Given that, as a rule, national councils of the judiciary have a prerogative to monitor the activities (or exercise the control) of magistrates, judges and prosecutors, as well as conduct disciplinary proceedings against them, the Special Rapporteur believes that, in the event of judicial error, the first measure to be taken by a national councils should be to identify training shortfalls in these professionals and take the measures to address them.

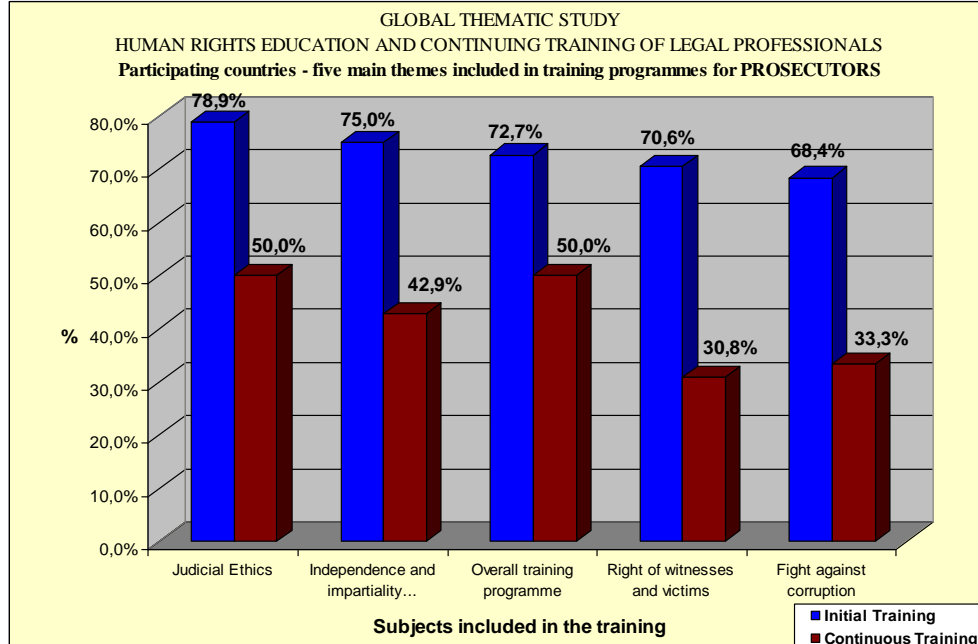
60. Ongoing capacity-building is also available for judges (86.7 per cent) and prosecutors (84 per cent). Training programmes are usually offered on a non-regular basis for judges, in 58.8 per cent of States surveyed; and for prosecutors, in 65.9 per cent, with an annual average ranging from 20 to 60 hours of training. Seminars are the most frequent form of training (91.1 per cent).

61. The five themes most frequently included in initial and ongoing training for judges, magistrates, prosecutors, lawyers and public defenders are reflected in the tables below.

62. For judges, the "independence and impartiality of judges, prosecutors and lawyers", "overall training programme", "the right to a fair trial", "judicial ethics" and "children's rights and juvenile justice" are the five main themes most frequently included in initial training. With regard to ongoing learning, the main topics are "judicial ethics", "overall training programme", "overall human rights component (including fundamental rights recognized by the Constitution)", "independence and impartiality of judges, prosecutors and lawyers" and "women's rights and the administration of justice".

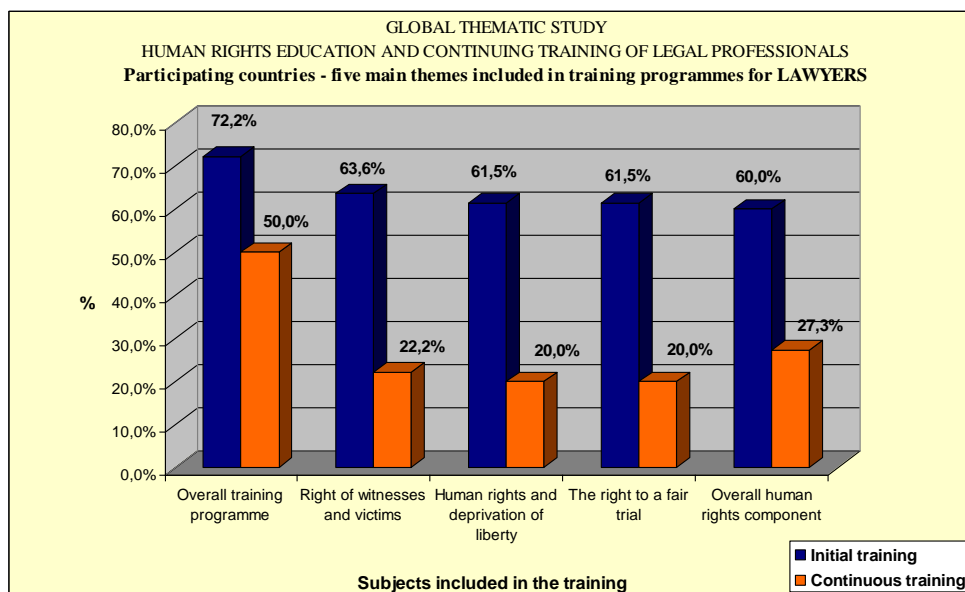


63. For public prosecutors, the themes most frequently included in initial training are “judicial ethics”, “independence and impartiality of judges, prosecutors and lawyers”, “overall training programme”, “rights of witnesses and victims” and “the fight against corruption”. With regard to ongoing capacity-building, courses most frequently focus on “overall training programme”, “judicial ethics”, “the international human rights system”, “independence and impartiality of judges, prosecutors and lawyers” and “overall human rights component (including fundamental rights recognized by the Constitution)”.

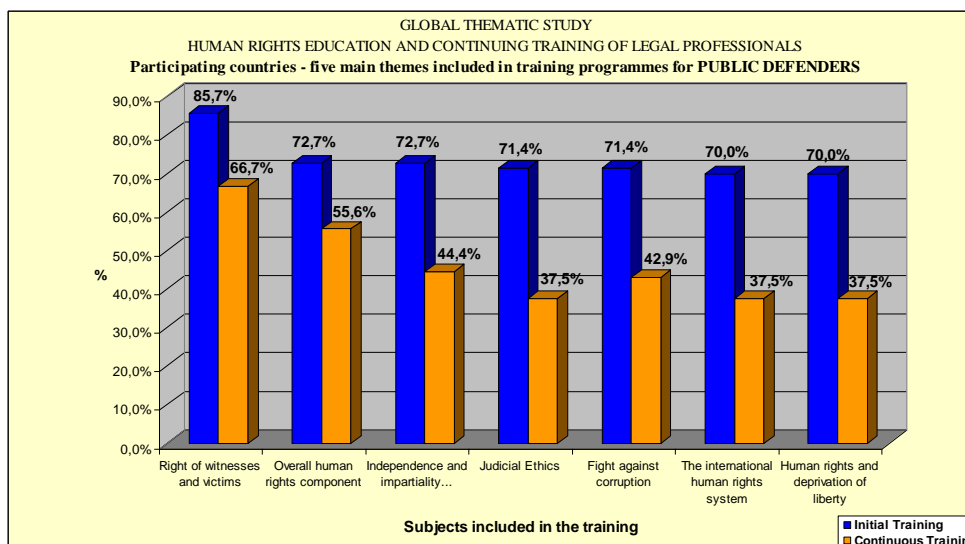


64. For lawyers, the responses showed that the themes most often included in initial training courses are “overall training programme”, “rights of witnesses and victims”, “human rights and deprivation of liberty”, “the right to a fair trial”, “overall human rights component (including fundamental rights recognized by the Constitution)” and “the

international human rights system”. With regard to ongoing learning, the most frequent themes are “overall training programme”, “judicial ethics”, “the fight against corruption”, “overall human rights component (including fundamental rights recognized by the Constitution)” and “the international human rights system”.



65. Initial training for public defenders mainly focuses on the themes “rights of witnesses and victims”, “overall human rights component (including fundamental rights recognized by the Constitution)”, “independence and impartiality of judges, prosecutors and lawyers”, “judicial ethics” and “the fight against corruption”. Ongoing capacity-building covers “rights of witnesses and victims”, “the fight against corruption”, “international humanitarian law and human rights in armed conflicts”, “judicial ethics” and “overall training”.



66. At the domestic level, ratification of international and regional human rights treaties appears to have a positive impact on the development of capacity-building programmes for judicial system actors, since the highest percentages for capacity-building are related to the main themes addressed by international treaties.

67. In participating States and entities, initial training for judges, prosecutors and public defenders is, as a rule, compulsory (85 per cent), while ongoing learning is voluntary (35 per cent). For lawyers, on the other hand, ongoing capacity-building accounts for 55 per cent of learning activities, and initial training for 28 per cent. They are not imposed by express instructions, but by the requirements of their professional practice.

68. The above-mentioned tables show the need to improve ongoing capacity-building in international human rights law for judges, magistrates, prosecutors and public defenders, as well as that to encourage or provide resources for such training. The development of mechanisms that recognize and take full advantage of ongoing capacity-building for the careers of judges, prosecutors and public defender is also necessary.

69. The main challenges encountered while providing human rights education and training seem to be directly linked to financial resources.⁷ Some States have to face high levels of poverty, illiteracy and corruption, while others lack experts in international human rights law.

70. Only a quarter of the participating States and entities monitor the effectiveness of capacity-building programmes and, when they do, monitoring is done by institutions that offer the programmes as a means of obtaining feedback on specific courses.

71. Most States do not have mechanisms that measure the effectiveness of training courses. The Czech Republic only has a mechanism to monitor satisfaction with the selection of topics offered in courses. Canada has no specific mechanism to evaluate the conduct of actors after training, but has audit departments, such as the Law Society of Upper Canada in Ontario, which are responsible reviewing the effectiveness of ongoing human rights education programmes.

72. It was observed, however, that there are few systems that monitor the effectiveness of the contents of capacity-building programmes, such as judicial decisions, legal opinions, judicial requests and defence. Colombia has a programme that monitors the effectiveness of training courses provided by judicial schools, comprising external and internal assessment of the application of course contents. Monitoring judicial management in a given jurisdiction after a training course allows them to determine the degree of application of the content taught. In Colombia, the programme is regarded as a modern, flexible and objective way of evaluating the effectiveness of courses and tutors thereof, and of providing information on the quality of the programmes offered in education plans. In the Sudan, the effectiveness of training for judges and prosecutors is monitored by means of examinations and performance evaluations.

73. With regard to mechanisms monitoring the effectiveness of training, Peru, for instance, explained that public defenders working on criminal procedures are constantly monitored through follow-up of the judicial files and cases they have handled.

74. The fact that 55 per cent of participating States chose not to answer the question about the existence of a mechanism to monitor impunity may be interpreted as indicating that there is no such mechanism or that the institutions that replied to the questionnaire may not have had access to such information.

D. Gender integration

75. The Special Rapporteur also inquired about the integration of a gender perspective into human rights capacity-building of actors in the justice system. Some States interpreted

⁷ In, inter alia, Bhutan, Canada and the Sudan.

the question as being limited to an inquiry about gender balance in the capacity-building of judges. The intention was to learn about gender balance and to understand how the content of capacity-building courses integrated a gender perspective. It was, however, possible to identify some examples, whether the question was interpreted as limited or more broadly.

1. Gender balance

76. In Austria, special attention is paid to gender balance in the judiciary; furthermore, seminars and special support for women magistrates after maternal leave are provided. In Nigeria, the participation of women in the judiciary is mandatory. Courses on women's human rights and courses on international and regional women rights conventions are offered. In the Philippines, gender sensitivity is mainstreamed through the gender sensitivity committee of the Supreme Court. In France, gender is considered throughout the entire education process; indeed, it was reported that, in France, there are more women magistrates than men.

2. Gender sensitivity training for judges and lawyers

77. The flagship publication in 2011 of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) entitled "Progress of the World's Women: In Pursuit of Justice", underscored that while there had been a transformation in women's legal rights, laws that exist on paper did not always translate into equality and justice for most of the world's women. In the report, 10 recommendations were made to make justice systems work for women, including a recommendation to train judges and monitor their decisions. It was concluded that balanced, well-informed and unbiased judicial decision-making was "an essential part of ensuring that women who go to court get justice".

78. In 2012, UN-Women conducted a mapping exercise on specialized training for judges and lawyers on women's human rights and gender equality issues, in order to identify the extent and types of training programmes. Interviews were carried out with staff members, and a range of documents was reviewed. The mapping illustrated the types of initiatives that have been supported and evaluated by United Nations bodies since 2007, and the recommendations emerging from evaluation reports and assessments. The information below is based on the mapping results.

79. Training initiatives for judges, prosecutors and lawyers on women's human rights and gender equality issues are carried out and supported by a number of United Nations bodies, including OHCHR, UN-Women, the United Nations Trust Fund to End Violence against Women, the Department of Peacekeeping Operations, the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Office on Drugs and Crime (UNODC), the United Nations Interregional Crime and Justice Research Institute and the Joint United Nations Programme on HIV/AIDS (UNAIDS). Many of these initiatives are carried out jointly by various United Nations agencies; however, not all training programmes are evaluated systematically. The Special Rapporteur recommends that assessments be carried out in order to determine the effectiveness of capacity-building programmes and that they be adjusted if necessary.

80. UN-Women has supported various capacity-building projects for judges, magistrates, prosecutors, lawyers, paralegals and other legal actors in the formal and informal justice sectors in many States in Africa, Asia, Central and South-eastern Europe, Latin America and the Caribbean. Its training initiatives have focused in particular on sexual and gender-based violence, including when committed during armed conflicts. They have also covered other areas, such as gender equality in the workplace, women's rights within the family and women's access to justice, including through transitional justice mechanisms. The content has included the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights treaties, international

criminal law and relevant national laws, such as laws on gender equality and violence against women.

81. The United Nations Trust Fund to End Violence against Women has supported a number of grantees, including the International Association of Women Judges and national associations of judges, which have implemented training programmes for judges, prosecutors, lawyers and other legal professionals in numerous States, including post-conflict States. Training has focused on international human rights standards in relation to violence against women, access to justice for female survivors of gender-based violence, domestic and sexual violence, and relevant national laws.

82. United Nations peacekeeping missions, including the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, the United Nations Operation in Côte d'Ivoire, the United Nations Mission in the Central African Republic and Chad, the United Nations Mission in Liberia, the United Nations Stabilization Mission in Haiti and the United Nations Integrated Mission in Timor-Leste, have provided human rights training to members of the judiciary, magistrates, prosecutors and lawyers on gender equality, sexual and gender-based violence, and criminal investigations. UNDP has dedicated resources to capacity-building for judicial and other legal professionals in many States in the context of democratic governance, rule of law, access to justice and other programmes. Training has focused on, inter alia, women's human rights, including in the context of HIV and AIDS, the Convention on the Elimination of All Forms of Discrimination against Women, gender equality issues, and sexual and gender-based violence. UNFPA has supported capacity-building initiatives for members of the judiciary, prosecutors and lawyers in a number of States, including in Latin America, Asia and North Africa, with a focus on gender-based violence, including domestic violence, sexual and reproductive rights, and gender-biased sex selection and implementation of national legislation.

83. OHCHR, through its headquarters, regional, subregional and country offices, as well as at its Headquarters, has supported and implemented international human rights law capacity-building programmes for judges, magistrates and prosecutors, with a specific focus on women's rights. Training has covered gender-based violence, including femicide, sexual violence in conflict and non-conflict settings, and women and the administration of justice. UNODC has implemented a global training programme aimed at building the capacity of criminal justice practitioners, including judicial officers and prosecutors, to ensure effective responses to trafficking in persons. The United Nations Interregional Crime and Justice Research Institute designs and implements specialized training courses for judicial personnel upon the request of Member States, including on human rights and trafficking in persons for the purposes of sexual and economic exploitation. UNAIDS has launched an initiative to provide support for judicial leadership on HIV-related legal and human rights issues.

3. Good practices for training in gender issues

84. The Special Rapporteur highlights the practices described below as good training examples.

85. Frequent and regular engagement with the target group is important in order to better understand their day-to-day reality and respond effectively and adequately to their needs. Holding gender sensitivity discussions with the targeted group prior to developing a training programme helps to ensure that the audience will be receptive to the issues

covered.⁸ United Nations entities have, in many instances, developed the content of training programmes in collaboration with recipients, such as in the case of Albania.⁹ The needs of different groups of women should also be taken into account in developing training initiatives. Some United Nations entities have focused their initiatives on particular groups of women, for example, certain programmes have focused on the needs and situation of rural and indigenous women in Bolivia (Plurinational State of), Ecuador, Guatemala, Honduras, Panama and Peru. With regard to persons living with or affected by HIV, UNAIDS has emphasized that training members of the judiciary on HIV and human rights is critical, noting that protective judicial application of the law is essential in that it protects people living with or vulnerable to HIV against violations of their rights, addresses fears, misconceptions and prejudices against people living with and vulnerable to HIV, generates a sense of dignity and justice among people living with or vulnerable to HIV, and supports access to prevention, treatment, care and support services for all.

86. Partnerships with international and national organizations, such as national judicial institutions and civil society organizations, have a key importance. Partnering with judicial institutions helps to establish contact with judges who may be resistant to or not usually engaged in women's rights and gender equality issues. In India, for example, active support was provided by the State Judicial Academy in the development of a training methodology on access to justice for judges and lawyers; the active participation of civil society representatives brought "real life" experience into the judicial training programme.¹⁰ In Zambia, the Zambia Association of Women Judges was a key partner, as was the Ministry of Justice in Morocco. In Jamaica, there was a partnership involving the Jamaica Bureau of Women's Affairs to support the development and implementation of capacity-building in procedures to respond to sexual assault and approaches for prosecutors and the police. Successful training programmes have also been conducted in partnership with higher learning institutions; for instance, training programmes for lawyers on women's human rights and mainstreaming gender into the transitional justice process are carried out in partnership with the Human Rights Centre at the University of Chile and the External University of Colombia in Bogotá.

87. Training initiatives should be institutionalized and set out within a standardized curriculum in order to ensure sustainability of results and delivery of justice for women.¹¹ A number of initiatives have institutionalized training programmes, which include, for instance, educational modules on women's socio-economic rights, gender-based discrimination and gender equality in the workplace as an integral part of mandatory judicial academy curriculum in Serbia; the integration of issues surrounding gender-biased sex selection and the relevant national legislation into the induction and refresher programmes of the Maharashtra State Judicial Academy in India; the inclusion of the issue of domestic violence in the training curriculum of the Academy for Judges and Public Prosecutors in the former Yugoslav Republic of Macedonia; or the development of a

⁸ See for example Sheila Reed, Evaluation of United Nations Development Fund for Women (UNIFEM) and CIDA-funded Project (2007-2009) "Strengthening Women's Legal Rights in Aceh, Indonesia", UNIFEM Regional Office, Bangkok, and UNIFEM Project Office, Aceh, Indonesia, , September 2009.

⁹ See the Mid-term Evaluation of the United Nations Joint Programme on Gender Equality in Albania (July 2008-June 2011), November/December 2009, commissioned by UNIFEM Albania.

¹⁰ See UNDP, Outcome Evaluation of UNPD India's Democratic Governance Programmes (2008-2011). Available from www.in.undp.org/content/india/en/home/knowledge-and-solutions/evaluation-reports/.

¹¹ Kerstin Eppert, Mid-term Evaluation of the Project "Women Building Peace and Human Security in the Western Balkans: Implementing United Nations Security Council Resolution 1325", UNIFEM, 2010.

protocol on the prevention, protection and promotion of women victims of sexual violence in armed conflict in Colombia, which was made obligatory in all Government institutions and will be used for training legal personnel, including prosecutors. All law students should be required to take courses on gender equality and women's rights, and continuing judicial education on these issues should be mandatory for judges at all levels.

88. A holistic approach aimed at supporting capacity-building for judges, prosecutors, police and other players within the justice system should be adopted. Such an approach would help to ensure broad dissemination of good practices and effective responses to gender-based discrimination, including violence against women. For example, in Venezuela (Bolivarian Republic of), various public officials, including in the justice system, have received training on substantive and procedural aspects of violence against women and its consequences.

89. It was observed that judges are more open to being trained by their peers, seen as an effective strategy for developing a constructive dialogue. Training strategies should ensure the training is focused on skill-building and sensitization, and trainers should have both theoretical and practical experience as judges. Peer-to-peer-based approaches, case studies, problem-solving exercises and other adult learning techniques have proven successful, including opportunities for judges to deepen their understanding of international law as applied to domestic contexts and to provide a forum for judges to discuss legal means to address vulnerabilities. Focus should be centred on the practical aspects of the implementation of the law and less on theoretical discussions of gender equality and human rights. In Albania, for example, a training programme was based on the concluding observations of the Committee on the Elimination of Discrimination against Women on its report.¹² In Serbia, a pool of experts was created consisting of judges and gender advocates from academia and Government institutions who are responsible for training judges on the basis of modules. The importance of documenting and disseminating success stories demonstrating how women have used the law and engaged the justice system was also highlighted. Delivering messages addressing potential biases and prejudices that members of the judiciary may have, using experts in professional fields, such as doctors, medical professionals and lawyers to counter any bias with data and scientific "fact", has also been successful. The Special Rapporteur recommends that case studies be used to deliver key messages during training, and that legal manuals and handbooks be elaborated with and endorsed by judges.

90. It is important that training be provided for members of the judiciary at all levels, including provincial and district levels. In India, for instance, training programmes on gender-biased sex selection and implementation of national legislation were carried out at the district level. In the former Yugoslav Republic of Macedonia, regional capacity-building on implementing the domestic violence legislation involved civil and criminal judges and prosecutors from all appellate divisions.

91. Follow-up meetings or consultations to assess implementation and progress should be convened. Similarly, developing feedback loops between members of the judiciary and other law enforcement personnel for information and knowledge sharing is important; in Zambia, for example, mechanisms of this type focusing on the kind of evidence required for conviction in cases of gender-based violence and the measures required for the protection of child witnesses in cases of sexual assault were developed. It was noticed that arrangements for feedback and the exchange of information often determine the outcome of cases of gender-based violence. In the former Yugoslav Republic of Macedonia, a national

¹² CEDAW/C/ALB/CO/3. See also the Mid-term Evaluation of the United Nations Joint Programme on Gender Equality in Albania (see footnote 9).

conference was organized at which trained judges and prosecutors exchanged their experiences and standardized judicial practices for dealing with individual cases of domestic violence.

92. In addition to formal justice systems, customary and religious institutions, which make many decisions regarding women's rights, local mediators should be involved. In Aceh, Indonesia, an exercise highlighting the synergies and points of convergence between the Convention on the Elimination of All Forms of Discrimination against Women and principles of Islam and customary law proved useful.¹³

93. As good practices, the Special Rapporteur highlights:

(a) The Jurisprudence of Equality Programme of the International Association of Women Judges, which provides judges and other legal professionals with capacity-building on the application of international and regional human rights conventions to cases of discrimination against women in domestic courts.¹⁴

(b) Sakshi, a non-governmental organization based in India that uses innovative ways to inform judges on the realities and biases women face in courts adjudicating gender-based violence cases.

III. Conclusions

94. **In the present report, the Special Rapporteur demonstrates the need to revise some aspects of the approach to ongoing human rights capacity-building for the actors of the justice system, namely, judges, magistrates, prosecutors, public defenders and lawyers. It is necessary to avoid the biased or flawed premise that these judicial actors have already obtained the necessary knowledge that will enable them to perform their duties in an impartial manner. At times, this premise obstructed the understanding of the need for ongoing human rights education and professional development. In the light of the changes in legal systems and provisions, and evolving social dynamics, such education and professional development has proven essential.**

95. **Capacity-building is an important instrument to counter prejudice against human rights and to strengthen knowledge and adequate application at the domestic level of regional and international human rights law.**

96. **A key finding in the replies received to the survey conducted by the Special Rapporteur was that judges and prosecutors often receive more training possibilities at the beginning of their careers, and fewer in the form of ongoing training while discharging their functions.**

97. **In order for judges and magistrates to improve the quality of justice delivered, any specialized training courses already taken by them should be taken into consideration as a criterion for their promotion or transfer to higher or different courts. Ongoing training should be implemented as an institutional measure.**

98. **The data collected allowed the Special Rapporteur to conclude that judicial academies play an important role in the capacity-building of judges, magistrates,**

¹³ Sheila Reed for UNIFEM Regional Office, Bangkok, Thailand and UNIFEM Project Office, Aceh, Indonesia, "Evaluation of United Nations Development Fund for Women (UNIFEM) and CIDA-funded Project (2007-2009): Strengthening Women's Legal Rights in Aceh, Indonesia", 2009.

¹⁴ See "Judicial training programmes: the Jurisprudence of Equality Programs" on the website of the International Association of Women Judges (www.iawj.org/JEP.html).

prosecutors and public defenders, where appointed. Capacity-building courses are usually monitored by judicial academies; evaluation is made by those who have received the training and the feedback aids in improving training courses. Capacity-building has the aim of broadening the knowledge of these actors while they discharge their functions in the judiciary, public prosecution or public defence offices. Monitoring of the knowledge effectively acquired through training courses should be improved and strengthened, and be performed by the respective institutions (judiciary, national councils, public prosecutors office and public defenders offices).

99. The replies to the questionnaire revealed the need for further assessment and dialogue between judicial academies and the institutions mentioned (judiciary, public prosecutors offices, public defenders offices, national councils, universities and bar associations) so as to allow compliance of decisions on international human rights training with the different professional needs. The knowledge acquired during training must fill existing knowledge gaps. This discussion should be encouraged among the institutions in order to obtain not only effective international human rights law training, but also effective monitoring of the training carried out, mainly in cases in which there is a plurality of interlocutors.

100. It is also important to coordinate the efforts of the sectors of the State that work on international human rights law capacity-building for actors of the judicial system, such as judicial academies, the judiciary, the Ministry of Justice, professional associations and non-governmental organizations, with a view to develop training and capacity-building programmes that will make for the proper and effective administration of justice. For this purpose, there is an urgent need to establish better communication links between these institutions, to identify the areas in the judicial system in need of capacity-building, and to develop adequate capacity-building programmes that will provide for those needs.

101. The Special Rapporteur notes that it is of utmost importance that mechanisms capable of measuring the results or effectiveness of international human rights law capacity-building programmes be developed. A judge specialized in family law should be able to discharge her or his functions in a court that corresponds to her or his competence. In addition, monitoring the use of knowledge acquired in examining domestic judicial decisions, resolutions, legal opinions or petitions is also a good tool to ensure that this knowledge is employed to the benefit of those who seek justice and resort to the justice system. The offer of capacity-building programmes implies a cost for the State, a cost that increases when knowledge is not used and applied in the way it was intended. In other words, the outcomes of capacity-building courses and activities should improve the promotion and protection of human rights at the domestic level.

102. The effectiveness of capacity-building programmes must be monitored in each one of these areas, both from an academic and practical perspective, so that knowledge may be applied to the judicial and legal services provided to society.

103. The questionnaire also revealed that international human rights law capacity-building for lawyers should be encouraged as part of States' human rights policy in order to engage their professional (bar) associations, universities and, also, judicial academies to offer such training for lawyers.

104. The role of non-governmental organizations is particularly important in cases where the State or professional institutions dispose of few financial, human or technical resources (for instance, in cases where judicial academies are still in process of being created or developed). It has been observed that non-governmental organizations greatly contribute to the implementation of human rights capacity-

building projects, including by bringing professionals and institutions together, thereby further disseminating human rights knowledge.

IV. Recommendations

105. International human rights law capacity-building activities should be promoted and enhanced at all levels.

106. States should be encouraged to continue to support the capacity-building activities of magistrates and judges, as well as those addressing prosecution bodies and public prosecutors. Bar association efforts and the contribution of civil society institutions should also be encouraged and promoted.

107. Efforts by the United Nations to promote the application, at the domestic level, of international human rights law should be strengthened, as should efforts to promote women's human rights and fight all forms of discrimination.

108. A needs assessment should be carried out prior to developing training programmes, including gathering data and information on attitudes and perceptions of the judiciary and a review of the international human rights treaties to which the State is a party.

109. The content of training courses should be developed in collaboration with their recipients.

110. The needs of different judicial actors – judges, magistrates, prosecutors, public legal defenders and lawyers – should be taken into account when developing training programmes.

111. Given that coordination and collaboration among international, regional and national judicial institutions and civil society organizations is essential, such collaboration among higher learning institution, such as universities or specialized institutes and centres, should be clearly defined and established.

112. Magistrates, judges, prosecutors, public defenders and lawyers should be requested to take courses on international human rights law. Ongoing legal education should be mandatory for judges, magistrates, prosecutors, public legal defenders and lawyers at all levels. Law and political and social sciences students could also be encouraged to follow such courses during their education.

113. A comprehensive approach aimed at supporting international human rights law capacity-building for judges, magistrates, prosecutors, public legal defenders and lawyers should be adopted.

114. Trainers and professors should have proven academic experience or practical experience in the field of human rights.

115. Case studies, problem-solving exercises and other adult learning techniques have proven successful, offering opportunities for judges to deepen their understanding of international human rights law as applied to domestic contexts. Focus should therefore be put on the implementation of international human rights law in practice and less on theoretical discussions.

116. Documenting and disseminating positive examples and good practices illustrating how judges and magistrates have used international human rights law and engaged the justice system are very important and should be encouraged.

117. Training should be provided to members of the judiciary and the prosecution services at all levels, including at the national, regional, provincial and district levels.

118. Follow-up meetings or consultations to assess implementation and progress achieved should be convened.

119. Synergies and points of convergence between international human rights law and domestic law should be highlighted.

120. The Special Rapporteur requests that the Human Rights Council recommend that all States continue to contribute to the global thematic study conducted by the Special Rapporteur, taking into consideration the present initial analysis, thus allowing the Special Rapporteur to submit a final version of the study to the Council in 2015, after the organization of regional consultations and a global conference on international human rights law capacity-building for magistrates, judges, prosecutors, legal defenders and lawyers.
