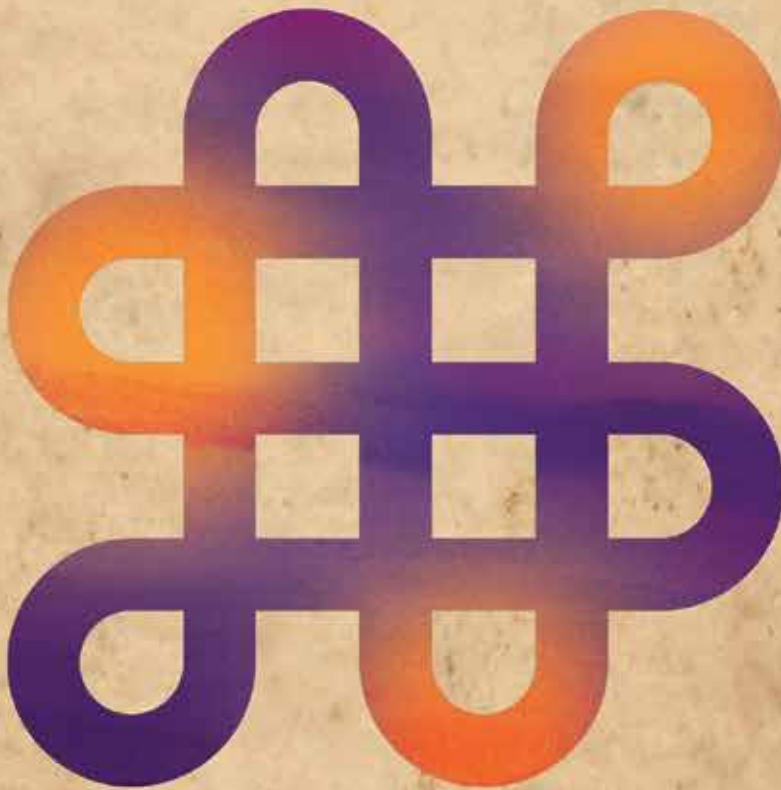


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Women in the Judiciary in Guatemala: Living between Professionalization and Political Capture

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1. INTRODUCTION

Studies of female judges have tended to focus on the Global North, analyzing the factors that explain the presence or absence of women in the courts, the impact of informal institutional cultures on their professional opportunities, and whether they adjudicate cases differently from their male counterparts. Most of these studies assume that “glass ceilings” or patriarchal relationships are the main obstacles to women’s career advancement in the judiciary. “Glass ceilings” refer to invisible barriers created by unwritten rules that prevent women from advancing to decision-making positions in their professional careers. However, there is less analysis focused on the experiences of women judges in fragile states where, despite reforms to increase judicial independence, external pressures and informal politics within the judiciary continue to limit judges’ independence. What can the study of women judges in fragile or regressive authoritarian states tell us about the procedures and prospects for institutional transformation?

Our analysis of the situation of women judges in Guatemala reveals that they experience pressures to limit their independence in gender-specific ways. Focusing on women’s experiences as they enter a judicial career and work as judges enriches our understanding of the limits to judicial independence and the process of political capture in fragile states, as well as the ways in which gender differences manifest themselves in patriarchal social and institutional cultures.

With the support of numerous international development cooperation agencies, the professionalization of the judiciary in Guatemala was promoted after the end of the armed conflict in 1996. Subsequently, specialized courts were created to address key human rights issues such as corruption, serious human rights violations during the internal armed conflict, and femicide. Both the establishment of a professionalized judicial career structure and the creation of these courts opened opportunities for women judges. Compared to other countries in Latin America and the Caribbean, Guatemala has a relatively high percentage of women judges (43% in 2018). However, the increasing capture of state institutions by alliances between corrupt ruling and business elites and organized crime underscores the judiciary’s growing lack of “societal autonomy” (Bowen 2017). As we suggest in this working paper, ultimately political capture has trumped judicial professionalization and modernization. While the political capture of the judiciary by criminal structures does not necessarily prevent the participation of women judges per se, it does deter human rights and anti-corruption-oriented female judges from pursuing their careers.

This study presents a qualitative analysis based on a sample of 25 female judges (see Annex 1). To obtain a representative sample from the universe of cases, selection was random but included women judges at all levels, from Justice of the Peace courts up to the Supreme Court of Justice. We interviewed judges in Guatemala City and in municipalities of the departments of Quetzaltenango, Sololá, and Chimaltenango. Although not an exhaustive sample in terms of quantitative validity, it allows us to observe similarities and variations. In 2019, we conducted semi-structured interviews and recreated life histories of the female judges in the sample. We complemented the interview material with a review of judicial archives (through access to public information from the Judicial Career Council), *Guate Compras* (to trace patterns of contracting in public institutions), and articles from the main newspapers.

We develop our analysis focusing on four elements that, according to our interviewees, help guarantee judicial independence: **(1) professionalization; (2) security conditions; (3) working conditions; and (4) institutional design.** First, professionalization (through training and postgraduate studies) increases judges’ skills of legal argumentation and therefore strengthens their criteria to issue more robust judgements. Without professionalization, we would expect to find greater ambivalence in the legal criteria brought to bear in adjudication. Second, optimal security conditions afford protection from internal and external pressures and threats, allowing rulings to be handed down with greater autonomy. Without such conditions, judges are arguably less protected, and therefore more inclined to yield to pressures and threats. Third, with better working conditions, including decent salaries, adequate retirement pensions, safe facilities, and reasonable workloads, judges are less exposed

to economic and political pressures, threats, or simply physical and mental exhaustion that hinders their optimal professional performance. Fourth, the greater the transparency in the institutional architecture (including opportunities that open or close with the establishment of specialized courts, nomination procedures, and the actions of professional associations and judges’ associations), the greater the clarity in the rules for a professionalized judicial career. Otherwise, networks of influence and informal relationships may come to privilege certain judges over others.

We found that each of these four elements relevant for judicial independence had specific gendered dimensions.

The working paper is divided into **seven chapters**. In this **Introduction**, we review the literature that considers the relationship between a greater presence of women judges and changes to the judiciary. In contrast to most of the research on women judges which focuses on stable democracies, our approach seeks to understand the challenges of institutional transformation in cases of fragile states with compromised judicial independence.

In the **second chapter**, we contextualize the situation of women judges in Guatemala from the 1980s through to the present. Despite the differences between a judicial system under dictatorship and a more democratized system, we find enduring continuities that point to the limits of judicial change in transitions to democracy.

In the **third chapter**, we describe prevailing career paths and the appointment system in the judiciary as described by our interviewees. Although career paths are varied, entry-level appointments are strongly influenced by gender-based power relationships.

In the **fourth chapter**, we focus on judges’ professionalization. Judicial reforms since democratization have contributed to the specialized training and education of female judges. However, the system of performance evaluation suffers from certain flaws, which in turn have a negative effect on female judges.

In the **fifth chapter**, we describe security and employment conditions, addressing structural aspects of the judiciary and the insecurity stemming from matters that female judges hear in their courts, and the location and physical conditions of the courts themselves. We also briefly addressed issues of salaries, retirement, and workloads. These affect both male and female judges, but gender inequalities tend to make it even more difficult for women to perform optimally as professionals.

The **sixth chapter** analyzes the experiences of women judges in the courts dealing with Femicide and Other Forms of Violence against Women. These institutional spaces have been key to advancing gender perspectives within the judiciary and opening possibilities for greater gender justice for Guatemalan women. However, we suggest that absent a commitment on the part of the Supreme Court of Justice to promote gender training throughout the judiciary, and under conditions of political capture, gains made to date may suffer reversals.

In the **seventh and final chapter**, we analyze the current political situation in the judiciary with special emphasis on the implications for women judges. We conclude that, in contexts of political capture of the judiciary in fragile states such as Guatemala, “glass ceilings” could be replaced by “impunity ceilings”. These impunity ceilings generally prevent women judges committed to human rights from progressing in their judicial careers, in contrast to women judges who favor the status quo.



Institute of Public Defense, next to the Justice of the Peace Court of Nebaj, Quiché, 2017. Credit: Simone Dalmasso / Plaza Pública

1.1. Women Judges: Perspectives on Institutional Change

An extensive literature has focused on women in different branches of government, although there is less research on women's presence and experience in the judiciary compared to the legislature (Basabe-Serrano 2017, 2019, 2020; Jarpa Dawuni 2021; Schultz and Shaw 2013). Most research focuses on the Global North and politically stable judicial systems, which are nonetheless characterized by exclusionary, elitist, and patriarchal policies and institutional cultures (Mackay, Kenny, and Chappell 2010). These studies have contributed to our understanding of the impact of formal rules and informal norms and networks on women judges' experiences and decision-making, while enhancing our understanding of their role in transforming the judiciary. The study of women judges is thus part of a broader field of research on institutions, focusing specifically on the importance of gender parity in institutional change (or lack thereof), a perspective that has been termed "*feminist institutionalism*" (Mackay, Kenny, and Chappell 2010). Such studies have tended to emphasize the impact of women judges on judicial politics in terms of "*democratic legitimacy, increased public confidence, and trust in the judiciary.*" (Feenan 2008, 491).

Four main approaches have been developed to analyze why gender matters in judicial politics, focusing on experiences in the Global North, particularly in Anglo-Saxon societies: **(1) the "differential" approach; (2) the "equal opportunity" approach; (3) the "diversity" approach; and (4) the "feminist" approach.**

The differential approach asserts that simply being a woman judge contributes to "enhancing women's legal status" (Feenan 2008), but also claims that "*women bring an ethic of care to justice issues in contrast to men's perspectives*" (Feenan 2008). This perspective has been criticized for standardizing female judges and assuming a stereotypical female ethic of "*sensitivity and empathy*" (Hunter 2013, 210), while ignoring the intersectionality of complex identities and interests that different female judges may embody.

In contrast, the "equal opportunity" approach stresses the need for "equal opportunities" for women through judicial appointments based on meritocracy, i.e., their qualifications (Feenan 2008). Such an approach argues that equal opportunity will break traditional male dominance within the judiciary, challenging the patriarchal view that only male judges have the legal knowledge necessary to dispense justice. It also argues that the inclusion of qualified women in the courts is critical to building judicial legitimacy.

The "diversity" approach argues that greater representation of diversity within the courts is fundamental to democracy, as the judiciary must reflect the pluralism of society in terms of class, gender, ethnicity, and race (Ifill 2000; Feenan 2008; Rackley 2013). Developed mainly in the United Kingdom, the United States, and Canada, this perspective promotes women's entry to the judiciary and law schools to transform these more elitist and traditionally male-dominated spaces.

Finally, the fourth "feminist" approach asserts that feminist judges are more likely to include women's subjectivities and even intersectional analyses in their judicial decisions (Hunter 2008; 2013). These critical socio-legal studies argue that the supposed "universalism" of the law really reflects male subjectivities. To have feminist judgments, however, the presence of women judges alone is insufficient; there need to be laws to combat gender discrimination and violence, and feminist judges exercising gender perspectives within the courts.

These four analytical approaches have improved our understanding of how women affect the judiciary and the different viewpoints that may be expressed through their decisions. After significant efforts to achieve more equitable gender representation in judicial institutions, we would expect greater opportunities for women in the courts to advance their careers and for more judicial change to occur. As Dressel, Sánchez-Urribari, and Stroh (2018) note, however, assumptions about judicial behavior and legal-institutional change derived from the Global North do not always fully correspond to the realities of courts in other contexts.

1.2. Judicial change in fragile states

To date, comparatively less attention has been paid to women judges in fragile states where armed conflicts and political settlements have shaped both judicial institutions and the possibilities for judicial independence. Constitutional and institutional reform to strengthen the rule of law has been a central focus of peacebuilding and transitions to democracies (Domingo and Sieder 2001; Gloppen, Gargarella, and Skaar 2005; Brinks and Blass 2018). In such contexts, the importance of intergovernmental organizations and international development and cooperation agencies in peace processes has meant that certain institutional prescriptions for promoting the rule of law became universalized in the 1990s and 2000s (Domingo and Sieder 2001).

Judicial independence is linked to the ways in which judges are appointed or elected, the stability of their positions, their career prospects, personal security, and the guarantees that they can exercise their roles without undue interference from other branches of government, their superiors, or other social actors. *External judicial independence* refers to selection and appointment procedures that protect judges from undue interference from other branches of government. Reforms in the Global South supported by international institutions have focused specifically on promoting greater external judicial independence by reforming selection and appointment procedures and establishing merit-based judicial career systems.

Yet, as Bowen observes in her study on the limits of judicial autonomy in Central America, threats to judicial independence emanate not only from politicians maneuvering for more compliant courts, but also from a wide range of powerful social actors (Bowen 2017). Bowen explores the relationship between external judicial independence and what she calls "*societal autonomy*": safeguards against pressure from social actors, particularly corrupt businessmen, perpetrators of gross human rights violations, and organized crime groups. Judiciaries characterized by low societal autonomy may no longer be formally controlled by the executive, but "*hidden powers*" exercise "*more diffuse and clandestine control*" through corruption and different forms of coercion, ultimately undermining formal rules intended to guarantee judicial independence (Bowen 2017, 175-6).

In fragile states, "*relational dynamics between judges and other judges, politicians, political groups, legal actors, and other individuals and collective entities matter*" (Dressel, Sanchez-Urribari and Stroh 2018: 574), often a great deal and in markedly different ways than how they matter in the Global North. In this regard, the internal workings of the judiciary and the degree of *internal judicial independence* are particularly important.

Internal judicial independence implies de jure and de facto guarantees that judges' decisions will not be influenced or determined by their superiors through mechanisms such as administrative sanctions, arbitrary transfers, or obstructing promotions. Low internal judicial independence facilitates co-optation, where judges at higher levels exert undue influence over the lower ranks of the judiciary. If high-level judges can exert this type of pressure on their subordinates to secure specific outcomes, then internal independence is compromised. Internationally supported reforms in fragile states to strengthen internal judicial independence include internal evaluation systems, incentives for judges, and accountability procedures.¹ However, to date there is little empirical research on how these systems work in practice, and specifically for women judges.

Theories of judicial politics, which focus on the relational and informal political networks that shape the context in which judges operate, can better explain the dynamics and outcomes of the judiciary in contexts of low societal autonomy. Judges function as part of their own courts, but also as part of networks within the judicial apparatus that may at the same time have links to broader political and social networks (Dressel, Sanchez-Urribari, and Stroh 2018; Bowen 2017). A focus on the experiences of women judges in fragile states allows us to analyze the dynamics that exist between gendered social norms, formal institutional arrangements, and informal politics within the judiciary. Institutional prescriptions for greater judicial independence have tended to ignore the

¹ See Helmke and Ríos Figueroa (2011) for an overview of the constraints, incentives, and opportunities for judges in Latin America.

weight of informal mechanisms, including underlying gender inequalities and political dynamics that constrain or promote women judges.

In this working paper we explore the gendered dynamics of judicial politics in Guatemala, where reforms in the 1990s promoted formal judicial independence through professionalization, opening significant opportunities for women judges, but where ultimately low societal autonomy is decisive for their experiences of entering and practicing as judges.



Courthouse Tower and Supreme Court of Justice in Guatemala City, 2022. Credit: Simone Dalmasso / Plaza Pública

2. WOMEN IN THE JUDICIARY IN GUATEMALA

Studies of women judges in Guatemala and Latin America have pointed to both the achievements and limitations that they have experienced in the judiciary over time and under different political regimes. Many of these achievements and limitations persist, although the experience of women judges today also signals significant changes. In this section, we first review some background on women judges in Guatemala prior to the justice reforms implemented in the 1990s, and secondly, present an overview of the gender balance in the judiciary up to 2019.

2.1. Background: Changes and Continuities

A few years after the political transitions towards democratization in Central America, the Costa Rican author Tirza Rivera Bustamante in her book “Las juezas en Centroamérica y Panamá” [Women Judges in Central America and Panama] pointed to the prevalence of “glass ceilings” for women pursuing a judicial career in the midst of a male-dominated environment, as well as the practice of corruption and clientelism within the judiciaries of the region (1991). She also noted the increasing “feminization of the legal profession” that contributed to greater participation of women in the practice of law across the region, including within national judiciaries. In addition, judicial reforms promoted by international institutions led to greater gender equity by seeking to democratize the legal profession. (Rivera Bustamante 1991: 65). However, this valuable publication, unique for its study of women judges in the region, was published before the reforms to the Guatemalan justice system that were spelled out in the 1996 Peace Accords.

In her description of the situation of women in the judiciary in Guatemala in the 1980s, Judge Olga Esperanza Choc reveals a panorama that diverges in some respects from the current situation outlined in this paper but is also surprising for its many similarities.

Three aspects are different: the percentage of women judges in the judiciary; the existence of an association of women judges; and the participation of women judges in high-impact positions. Judge Choc wrote in 1991: “Gradually, women have been incorporated into the judiciary, holding different positions; from janitor, clerk, secretary, judge, to magistrate” (1991: 184). According to her data for 1989, one of the nine sitting magistrates at the Supreme Court of Justice was a woman, while 7% of the appellate courts, and 11% of judges of first instance were women (Choc 1991, 184–85). Current figures show a greater participation of women in the judiciary (see Table 1). In almost thirty years, the number of women judges has increased fourfold. This increase is due to several factors, as we will see in the next section.

Table 1: Evolution in the percentages of women judges and magistrates

%	1989	2018
Supreme Court of Justice	11	50
Appellate Courts	7	38
First Instance Courts	11	44

Sources: Prepared by the authors, comparing 1989 data presented by Olga Esperanza Choc (1991) with our data collected in 2018 from the Court Management System.

Second, in addition to this increase in female judges, we find a greater number in high-impact positions, and no longer just in family, children’s, or criminal courts² (because they are less lucrative, as Rivera Bustamante explains (1991: 69)). For example, in 1991 in Guatemala, just one of the eight

2 Rivera Bustamante (1991) explains that criminal law is a financially less lucrative field than civil and administrative law. Consequently, the latter are generally occupied by male judges, leaving the criminal courts to women.

magistrates of the Supreme Court of Justice was a woman; by 2019, when the data for this paper was collected, the Supreme Court of Justice had gender parity. The same can be said of the more recently created jurisdictional bodies, such as the High-Risk or Femicide courts (see chapter six), which are mostly occupied by women judges.

Third, Choc wrote in 1991 that “*in Guatemala there has never been, nor is there, an organized grouping of women judges. There is a great deal of individualism and professional competition is very high*” (1991: 187). This is no longer the case since the Association of Women Judges of Guatemala was created in 2018. As we detail in chapter seven, this association aims to improve the working conditions of female judges and magistrates.

In contrast, five aspects of similarity or continuity stand out: the profiles of women judges; the underrepresentation of Indigenous, Xinca, or Garifuna amongst women judges; the motivations for becoming judges; patriarchal beliefs; and the practice of corruption and clientelism.

First, the profile of female judges remains very similar to the one described by Choc. “*The average age of female judges is 35 years old, most of them are single (I am referring to women who have never married, are divorced, or are single mothers). As for men, the average age is 40 and 95% are married*” (1991: 186). Currently, according to the female judges we interviewed, the majority are single mothers. This data is relevant for the analysis of working conditions, insofar as female judges encounter various difficulties in balancing their judicial careers with family life (discussed in more detail in the next section). Judge Choc identified a gap in the 1990s: “*Indigenous women and men do not have any level of participation and decision-making in the policies and actions of the current ‘national state’*” (1991: 183). This underrepresentation of Indigenous women amongst judges continues to date. It was not possible to obtain an overview of the judiciary in terms of ethnicity and race since no statistics are collected on these criteria within the institution. There is only a breakdown by gender, as we will show below.

Second, the women who pursue a career as judges maintain the same motivations: “*the desire to impart justice, to improve their working conditions and their economic and social status, to be able to attend conferences and training courses, even to be selected for scholarships granted by international organizations,*” recalls Judge Choc (1991: 186). These motivations, as we show in this paper, are still valid.

Third, for Judge Choc there is a glass ceiling in the Guatemalan judiciary preventing women from occupying decision-making positions due to “*cultural, economic, ideological and political beliefs*”.... (1991: 187). To date, the prototypical role of women is centered on care of the home and family. There is a generalized idea that women in the judiciary will work in different positions, but focused on “*fields traditionally classified as suitable for the female sex (family, minors) or in administrative support positions*” (1991: 185). While women’s entry into the judiciary is now determined by their professional training in accordance with current regulations, their promotion to appellate courts and the Supreme Court is still determined by other elements, particularly the “*political reasons*” identified by Judge Choc over two decades ago. (1991: 184). Today, the “political reasons” refer to the capture of the justice system by criminal networks through the nomination and performance evaluation systems (as discussed in the last chapter of this paper on the “impunity ceiling”).

Since the 1990s, then, observers have noted that in the region “*in practice the judiciaries lack independence. Some observers have called them ‘the Cinderella of the central government... Corruption, political interference and lack of financial independence and trained personnel, have characterized the region’s judicial branches [...]*” (Rivera Bustamante 1991: 72–73). To address this lack of judicial independence and democratize Guatemala’s justice system, reforms to the judiciary were carried out after the Peace Accords by means of the Commission for the Strengthening of Justice and its report “Una nueva justicia para la paz” [A New Justice for Peace] (1998). The measures included a Judicial Career Law and the creation of the School of Judicial Studies and the Judicial Career Council.³ However, as Bowen observes, the introduction of novel forms of institutional design “*provided multiple entry points*

³ The Judicial Career Council is the entity in charge of administering the judicial profession in Guatemala, i.e., procedures that regulate the entry, permanence, promotion, advancement, training, discipline, and other activities of judges and magistrates, regardless of their category or grade. The first Judicial Career Council in Guatemala was convened in 2000.

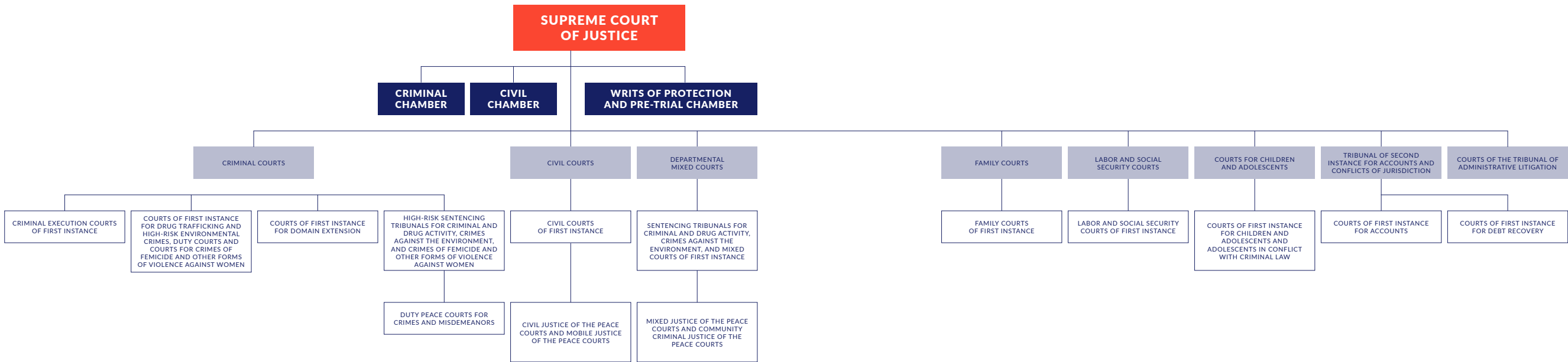
for corruption and allowed social actors to use the law selectively in a kind of perverse formalism” (2017: 144), undermining judicial independence. The creation in 2007 of the International Commission Against Impunity in Guatemala (CICIG in Spanish), a United Nations entity whose central objective was to coordinate and strengthen the national penal system institutions, was another chapter in the long process of attempts to strengthen judicial independence and fight impunity (Bowen 2022). In 2017, the Judicial Career Law was revised (by decree 32-2016) during discussions about reforms to the justice sector led by civil society sectors, the Public Prosecutor’s Office, CICIG, and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Guatemala. This reform sought to change the system for electing members of the Judicial Career Council, ensuring a greater degree of separation of administrative and jurisdictional functions within the Supreme Court of Justice. The professional training offered at the School of Judicial Studies sought to give greater weight to academic training and merit as a means of advancing in a judicial career. One of its objectives was to guarantee judicial independence, given that judges should be chosen for their academic and professional profiles, hopefully excluding the corruption that may result from the positioning of individuals beholden to certain interest groups.

In sum, challenges to guaranteeing judicial independence persist and, as we discuss in the last chapter of this paper, have been heightened by the political capture of the state by criminal structures, and the increasing criminalization of independent judges and prosecutors.

2.2. An in-depth look at statistics

With the negotiations to end the internal armed conflict and the signing of the Peace Accords in 1996, international donors and Guatemalan professionals supported judicial modernization and professionalization. Key commitments were approved to improve accountability and respect for human rights. As a result, the number of courts increased, as did specialization within the judiciary. The current structure of the judiciary is shown in Organizational Chart 1:

Organizational Chart 1: Structure of the Judicial Branch

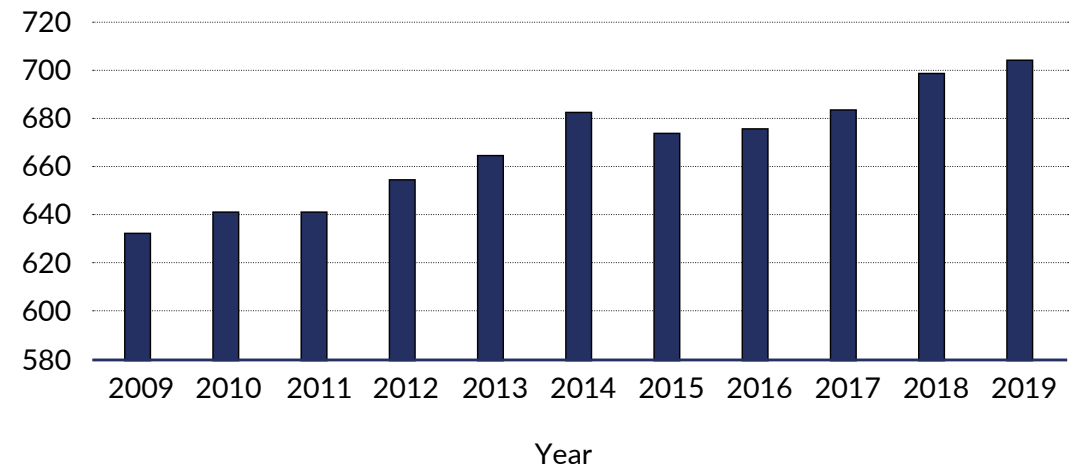


Source: Judicial Organism

At the top is the Supreme Court of Justice. The Supreme Court is made up of thirteen magistrates, including the presidency, which is rotated annually and elected by the thirteen magistrates. The Supreme Court is organized into three *chambers*: the criminal, civil, and *amparo* [writ of protection] and pre-trial chambers (the latter is responsible for granting writs of protection and evaluating whether state actors should maintain immunity from prosecution). Below the Supreme Court are the appellate courts. Numbering thirty in all, they are divided into criminal, civil, family, labor, children and adolescents, administrative, and fiscal law. This number includes the *departmental mixed chambers* of appeal that hear all branches of law in the country’s departments [sub-national territorial divisions].

As a result of the modernization and professionalization process, the number of courts increased, in part driven by the creation of specialized courts to address violence against women (created in 2012), drug trafficking, and high-level corruption (the High-Risk Courts). Table 2 depicts the creation of courts and tribunals in the country from 2009 to 2019.

Table 2: Number of tribunals and courts from 2009 to 2019.



Source: CIDEJ, Court Decisions published in the Official Gazette.

The creation of the professionalized judicial career through competitive exams to enter the School of Judicial Studies opened new opportunities for women to train as judges (see chapter three of this report). Professionalization boosted the presence of women in the judiciary such that, currently, about 43% of judges in Guatemala are women (Impunity Watch 2017: 14, and authors’ data from the Court Management System collected in 2019).⁴

Judges at the lower levels of the judiciary, i.e., justice of the peace courts, courts of first instance, and sentencing courts, now enter exclusively through the professionalized judicial career path established by the School of Judicial Studies. The courts of first instance and sentencing courts include ordinary criminal courts and new specialized criminal courts created in recent years: Femicide and Other Forms of Violence against Women, and High-Risk (the latter focused on drug trafficking, transitional justice cases related to serious human rights violations, and complex corruption cases). The judges of these specialized courts are recruited directly through competitive calls for first instance judges and justices of the peace, who entered the judiciary through professional competitions. The other first instance courts hear civil, family, labor, child and adolescent, administrative and tax cases, with a total of 218 of these courts throughout the country. At the bottom of the judicial hierarchy are the 370 justice of the peace courts, one in every municipality, that deal with civil and criminal cases.

Appointments to the appellate courts and the Supreme Court of Justice, according to Article 215 of the Political Constitution of 1985 (amended in 1993), are made every five years by the national Congress from lists of candidates proposed by nomination commissions, one for the appellate courts and another for the Supreme Court. This selection system entails two stages. In the first, the commissions consist of the rector of one of the country’s universities (who presides), the deans of the law schools at each of these universities, representatives elected by the College of Lawyers and Notaries of Guatemala (CANG), and representatives elected by the magistrates of either the appellate courts or the Supreme Court of Justice, depending on the court in question. In the second stage, the plenary of the Congress elects the magistrates based on the lists sent by the Nominating Commission. Until 2022, eligible candidates included judges who had advanced in their judicial careers

⁴ This figure is higher than the Latin American average and is a significant increase compared to less than 10% for Guatemala in 1991 as described by Judge Olga Esperanza Choc.

and lawyers who are not professional judges, although in practice lawyers have been increasingly favored over career judges.⁵

Basabé-Serrano (2017) suggests that, although the prevailing patriarchal political culture means that courts are not spaces that women can always easily access, or where they can advance their careers, they are not necessarily excluded from the highest levels of the judiciary. In Guatemala, women have been appointed to become magistrates of the highest courts. During the first two decades of the 21st century, three female justices presided over the Supreme Court (Ofelia de León, 2005-2006; Thelma Aldana, 2011-2012; and Silvia Patricia Valdés, 2016-2017). In 2019, the Supreme Court had gender parity for the first time, with six male and six female justices.⁶ In addition, the last three heads of the Public Prosecutor’s Office were women and two female candidates competed for the presidency of the country in the 2019 elections. Although there is no legislation in Guatemala that promotes gender quotas in positions of power, the courts and tribunals have undoubtedly been a space for women’s participation in public office, as identified in table 4.⁷

Table 4: Percentages of women and men in the judiciary and Magistracy (in 2018).

	Women	Men	Total
Total Judges	410	539	949
First Instance	221	283	504
Justice of the Peace	189	256	444
Total Magistrates	61	95	156
Supreme Court	6	6	12
Appellate Courts	55	89	144
Total	471	634	1105
Percentage	42.6	57.4	100

Source: Prepared by the authors based on data from the Court Management System.

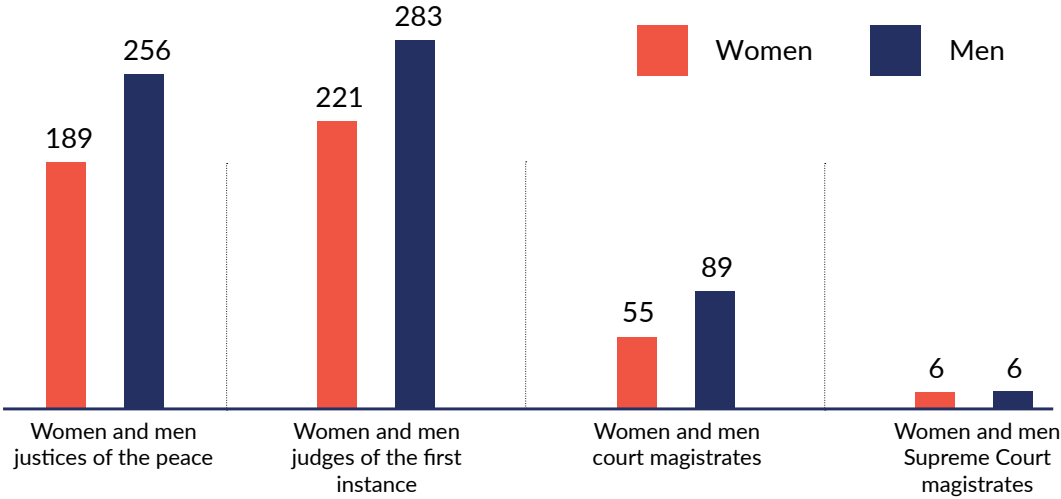
5 The election process for the high courts in Guatemala has been mired in controversy since 2019, due to the manipulation of the nomination commissions. At the time of writing, the national Congress had still not carried out the election, meaning that the current Supreme Court of Justice and appellate courts have prolonged their duties for more than two years. See chapter seven of this report.

6 The Supreme Court of Justice normally has 13 magistrates. At the time our data was collected (and at the time of writing), the thirteenth seat was vacant, due to the arrest of magistrate Blanca Stalling for alleged influence peddling offenses. For more information, refer to “Caso exmagistrada Blanca Stalling”, May 2018. <https://www.cicig.org/casos/caso-exmagistrada-blanca-stalling/>

7 According to the United Nations Gender Inequality Index (2021), a composite score that includes measures of employment, education, political representation, and reproductive rights, Guatemala ranked 127th in gender equality among 189 countries. Only Nicaragua, Honduras, and Haiti ranked lower in the Latin America and Caribbean region. <http://hdr.undp.org/en/content/gender-inequality-index-gii>

Viewed another way:

Table 5: Bar depiction of staffing of women and men in the judiciary and Magistracy (in 2018).



Source: Prepared by the authors based on data from the Court Management System.

Women have undoubtedly made significant advances within the judiciary over the past three decades. However, as we posit in the next section of this paper, the prevailing patriarchal political culture means that the courts are not spaces women can always easily access, or where they can advance their careers beyond particular “glass ceilings” and “broken rungs.” The growing trend toward state capture by criminal structures, particularly at the highest levels of the judiciary, has reduced opportunities for independent, human-rights-oriented judges, many of them women, to ascend to the high courts. Even so, a good number of women choose to enter the judiciary, advance in their judicial careers, and pursue specialized training. According to data collected from our sample of interviewees, their experiences are very varied. Despite this variety, there are common gender-related difficulties, since inequalities for women continue to exist.

3. CAREER PATHS AND APPOINTMENTS: BECOMING A FEMALE JUDGE

The experiences of female judges indicate that the judiciary has been an institution providing opportunities for professional women. Their backgrounds prior to entering the judiciary varied, and sometimes they brought specialized prior knowledge in specific subjects. In addition, the School of Judicial Studies has strengthened their academic training. However, the appointment system continues to be marred by discrimination based on gender, by sexism and sexual harassment.

3.1. Career Paths and the School of Judicial Studies

Although our sample is not representative of the entire universe of women judges, our findings suggest that most female judges graduated as lawyers or notaries from the Universidad San Carlos de Guatemala, at its Guatemala City and Quetzaltenango campuses. Many entered the School of Judicial Studies directly after graduation to undertake training as judges. Others indicated that they followed different career paths prior to becoming judges. In several cases, they were teachers, or worked in national and international non-governmental organizations as project managers, in foreign institutions, in government positions, or as lawyers.

The interviewees saw the judiciary as an institution that provides job stability and opportunities for career advancement. Despite being trained and qualified to work in the judiciary, some female judges indicated that they chose to put their training and professional careers on hold to take care of their children and families.

“You ask how I entered the judiciary. I stopped working because I had my second child, and my work situation became more difficult to reconcile with my personal life. In other words, how do you juggle both aspects? I decided to resign because my children were a higher priority. My income changed substantially. It damaged me as a person, limited me as a professional. That’s what made me think about having to separate [from my husband] because it wasn’t the life that I thought it would be.”

Professional experience prior to entering the judiciary can contribute to developing interpretations focused on specific issues. For example, according to a female judge of the first instance in a Criminal Sentencing Court for Crimes of Femicide and Other Forms of Violence against Women:

[In her previous job], “there was a third program, which was for youth animators, who were also colleagues who trained young people in how to prevent unwanted pregnancies, and these young people had to reproduce this knowledge, on the basketball courts, in the high schools. For me it was a very good experience because it gave me a more scientific knowledge of sexuality and a gender perspective. In other words, I was already working on the issue of equality in the exercise of sexuality. And it also helped me to reject the myths of gender roles, the myths of virginity [...]”

These prior work experiences complement the courses and training within the judiciary. One of aims of the reforms made to the Judicial Career Law was to increase professionalization through continuing education within the School of Judicial Studies. The idea was that initial and core university studies be complemented with postgraduate courses and specializations.

The reformed School of Judicial Studies has made it easier for women professionals to begin a career in the judiciary. With the signing of the Peace Accords in 1996, specifically the Agreements on Strengthening Civilian Power and the Role of the Army in a Democratic Society, the need for a law regulating the judicial career was made explicit. In 1999 Congress approved the Judicial Career Law (Decree # 41-99 and Agreement 6-2000). This mandate was crucial for the democratization of the justice system since it sought to promote a transparent system for the election and promotion of judges and magistrates. With this law, the School of Judicial Studies of the judicial branch (formally



The courtroom of the Justice of the Peace Court of Nebaj, Quiché, 2016.

Credit: Simone Dalmasso / Plaza Pública

created in 1986) was reformed and is currently the institution in charge of “*planning, executing, and facilitating the technical and professional training and education of judges, magistrates, officials, and employees of the judicial branch, in order to ensure excellence and ongoing professional training for the efficient performance of their positions*” (Judicial Career Law, 1999).

There are two main types of admission to the judiciary for candidates aspiring to judgeships:

1. by election, through the School of Judicial Studies, where candidates from outside or within the judiciary study for two years at the school and compete for a position; and
2. by appointment.

Prior to the approval of the Judicial Career Law in 1999, it was common for judicial clerks to be promoted to the position of judge through a series of internal exams. Several of the female judges interviewed who studied at the School of Judicial Studies previously worked as clerks, and in some cases underscored that they were encouraged to apply for the career by the judges with whom they worked. Typically, they started from the lowest positions on the ladder, but over the years the field opened so that they could eventually aspire to become judges.

“...the 20 years that I worked as a clerk most of us were women and I had female judges as bosses, so that motivates you to continue your career, to say, well, I also want to be a judge, that’s what motivates you; they were excellent judges.”

Since 1999, candidates for judgeships apply to external calls (to which trial lawyers can apply) and/or internal calls (for candidates who are already within the judiciary). They can then enter to become judges through career-path professionalization at the School of Judicial Studies. Several of the

interviewees commented that the selection of candidates to enter the school was equitable in terms of gender. The first director of the School of Judicial Studies was María Eugenia Morales, a renowned feminist and jurist, who later became a Supreme Court justice. Her commitment to a selection policy that respected gender equity was undoubtedly instrumental in expanding the presence of women within the judicial career.

3.2. A flawed appointment system

The second option is to become a judge by appointment. According to Guatemala’s Constitution, lawyers who have practiced for at least five years prior to their appointment may be named as judges and magistrates. After completing courses at the School of Judicial Studies, the final grades of each class are published in ascending order. Pursuant to the judiciary civil service law and the career law, the Supreme Court must appoint the best qualified group as justices of the peace or judges of first instance (depending on the terms of the original call). Likewise, after having completed their professional studies, selected candidates must accept their appointment and go where they are assigned. A female judge from the first graduating class of the Judicial School in 1998 noted:

“They signed contracts to participate in all the training. They received a stipend and committed to accepting the judgeships they were assigned. So, given that commitment, they can’t say I want to be sent to such-and-such a place or choose the posting they want.”

It is particularly difficult for women with small children when they are assigned to a municipality far away from the cities of Guatemala or Quetzaltenango, where most professionals in the country live, study, and work. This is because in the justice of the peace courts judges are required to be available every day of the year, which supposedly means living in the municipality. However, in practice many tend to return to see their families on weekends, but this is only feasible if they work within commuting distance of their homes. One female judge commented:

“My first assignment as interim judge was in Canillá, a municipality in Quiché, which apparently is close [to where I lived], but it actually very far away. That was my first posting, and I took it up when I was about 4 months pregnant. And I left my daughter in Guatemala; she was about a year and three months old, my oldest daughter. So, I went when I was pregnant. The roads were impassable, terrible conditions. I couldn’t leave; the justice of the peace works 24 hours a day, 365 days a year without the right to rest. Far from home.”

This judge was not the only interviewee who pointed out that postings fail to take female judges’ family situations into account. Often, female judges enter the judiciary with young children and elderly parents. In these situations, postings often disrupt family ties, duplicating the judges’ work and family burdens. The current system of allocating judgeships makes it particularly difficult for women to pursue a judicial career, in effect constituting a facet of the “glass ceiling”.

The lack of an appointments system appropriate to women’s family situations is compounded by clientelism. Even if women have performed well in the School of Judicial Studies appointment as a judge has not been automatic. While discretionary selectivity negatively affects both men and women, appointments combine both gender discrimination and factors of affiliation or loyalties, i.e., forms of clientelism. In the school’s first graduating class, female candidates generally received high marks, some earning the highest grades. However, these achievements did not always guarantee that they would be appointed promptly or easily. Appointments have sometimes been quite slow. Several female judges told us that, rather than gender being the main factor behind discrimination, political factors were involved, or “*connections... for one to be appointed.*”

Another judge commented that, in her graduating class, although three women qualified in first, second, and fifth place, none of the three was appointed:

“When we sat down to analyze, we saw that out of the top five places the three of us who had not been appointed were women, and we saw that there were people who had even failed courses who were men and who [nonetheless] were appointed [as judges].”

This judge, who ranked first in her class, sued the Supreme Court of Justice through an injunction filed at the Constitutional Court, which she won a year later. The Constitutional Court gave the Supreme Court five days to issue her appointment as a judge. In response, the Court assigned her to one of the most remote and least supported courts in the country. She served there for three years before being transferred to another region. She interpreted her transfers as a kind of reprisal by the judiciary, specifically because of interests linked to organized crime.

Another female judge who had scored very high in the first graduating class of the School of Judicial Studies (1998) commented that the results were never published because most applicants did not qualify. However, several men who had not passed the tests were appointed as judges. When she complained to a magistrate about this discrimination, he told her “*You’re too young.*” This female judge petitioned the judiciary, “*I filed a complaint saying that there was corruption by criteria of friendship; I made him see that I was going to make it public.*”

Finally, other types of gender discrimination, specifically the expectation of sexual favors in some cases, also exist within the appointment system. A female Supreme Court magistrate, who has fought against sexual harassment in the judiciary, said that rumors circulated that in order to begin a career or to decide where to assign judges, the president of the Judicial Career Council received favors or asked female judges to have intimate relations in exchange. In this regard, a woman judge said:

“They sent me to Zacapa, to the mountainous area. They appointed another male judge [to a less remote posting] and they sent me further away..... maybe because I didn’t arrive in a skirt.... later when they gave me my posting, I saw that the previous one had been revoked to give that position to a male colleague. There’s a lot of sexism [in the mountainous region]; to reach the villages you must travel in a police patrol car and it’s very hard for people to respect a woman’s authority because they prefer to see an older man [as a judge].”

The same Supreme Court magistrate confided that filing a case of sexual harassment within the judiciary continues to be a challenge. The difficulty lies in building a judicial authority for an internal-affairs jurisdiction able to judge powerful people, such as a president of the Judicial Career Council. At the time of the interview, the creation of mechanisms to tackle sexual harassment was still under discussion.⁸

Even with professional qualifications, the lack of “connections” in judicial appointments exposes women to sexual harassment. According to one female judge:

“To be appointed you must...know people. In my case, I didn’t have any acquaintances.... I talked to a friend who was a woman justice of the peace and she told me ‘Look, the magistrate who works in this area can help you; he’s very accessible’. I went to the magistrate, it used to be by area, by region, but he didn’t have any vacancies available for me to be assigned as a justice of the peace. Then he told me ‘This other magistrate, he does have vacancies available to assign you. I started to ask around about what he was like, and they told me ‘Look, if you show up in a skirt, he’ll treat you well and will put you wherever you want’ so... It was a little sad for me to see that situation... obviously I said I’m not going to go in a skirt; if he wants to appoint me, I’ll go in pants and if not, it’s not for me. That was an unpleasant moment.”

Gender discrimination also occurs in the higher echelons of the judiciary. For example, a female Supreme Court justice shared the following:

⁸ Although there is a crime of sexual assault in the Penal Code (art.173 Bis), it is not prosecuted.

“The Council [of the Judicial Career] put out a call for judges for the High-Risk courts. Two people applied, a man and a woman. The man had been working here for 15 years, but had two or three disciplinary sanctions; he’d been suspended from work and had been sanctioned three times in those 15 years for misdemeanors. She worked seven years without a single administrative offense. She had a higher qualification than he did and scored better in an evaluation. Who do you think the Council appointed? The man. He was the one who had administrative faults and sanctions and was poorly evaluated, but because he was the most senior of the two, the Council appointed him. Then we said that we wouldn’t endorse that appointment because according to meritocracy it was her turn. The Council didn’t change the decision; it left the [male] judge in post.... It’s difficult; you can see how opportunities are closed to women.

Several female judges told us that in certain regions of the country (rural areas, but in general throughout the eastern region), it was difficult for users of the judicial system to accept a woman as a judge, and more so if she was relatively young:

“My first posting was as justice of the peace in San Francisco El Alto and when I arrived, people would come in [to the courthouse] and say to me ‘Excuse me, is the judge here?’ I am the judge, come in, I would say to them. ‘Ah no’, they would say, ‘we want to talk to a man’. No, I told them, I am the judge and it’s the same thing. ‘No, it’s not the same’, they would say, and then they would leave... There was another man who arrived... It made me laugh because he would say ‘What are you doing here? What are you doing sitting there? You should be at home.’”

This distrust of female judges is particularly acute in cases of domestic violence or disputes:

“There are times when they even insult you, ‘Yeah, of course a woman won’t rule in favor of men’, something like that almost always happens. Or they say, ‘Since she’s a woman, she’s protecting other women, so we’re discriminated against; that’s unconstitutional.’ I’ve heard that more than once.”

To conclude, for women entering the judiciary involves a decision to build a judicial career, guarantee one’s job security, and continue training with the support of the School of Judicial Studies. The system of appointments is flawed by gender discrimination and sexual harassment as well as by forms of clientelism, informal relationships, and social and political connections. The current appointment system negatively affects the performance of female judges by not considering their family situations (they are often the heads of household), and by influence peddling and clientelistic relationships that generally favor men, who, as our interviews reveal, are assigned to the most coveted jurisdictions. The weight of clientelistic relationships in assignments can lead to sexual harassment against women.

For female judges, the difficulties are not limited to the appointment system. The opportunities provided by professional training and points-based evaluation are also limited both procedurally (the rules for training and evaluation) and by everyday practices. Training and evaluation are thus double-edged swords for female judges.

4. TRAINING AND EVALUATION: DOUBLE-EDGED SWORDS FOR WOMEN

Through their initial training, continuing education and specialization, such as diploma courses, master’s degrees, or doctorates, female judges have found ways to develop specializations. Academic and professional training encompasses multiple topics and approaches. Training programs have also played a positive role in improving women’s performance evaluations for their career advancement. Ongoing professionalization, however, has also negatively affected female judges’ careers. While it has opened doors for them, because of its weight in evaluations, professional training has turned into a race to accumulate titles and diplomas.

The School of Judicial Studies has developed training and education programs and signed academic training agreements with universities and NGOs in Guatemala. Other training programs have been promoted by organizations, such as the Association of Judges and Magistrates, the Association of Women Judges, and the Association of Lawyers and Notaries of Guatemala.

In addition, in 2012 the judiciary created two more regional branches of the School of Judicial Studies, one in Quetzaltenango and the other in Chiquimula. This geographic decentralization benefited female judges by bringing training opportunities closer to them. A female judge who attended the school acknowledged:

“I went [to the School of Judicial Studies], yes, I remember, six months [training for] justice of the peace. The school was only in Guatemala City, but now it’s better because it’s in Xela [Quetzaltenango]. Then I always worked a few days and then [travelled to go to] the School.”



Training with Women Magistrates, Panajachel, 2018. Credit: Carlos Flores

Postgraduate programs in agreement with national universities provide another training option. According to data obtained through public information requests, from 2015 to 2019, five agreements were signed to develop different academic programs. For some interviewees, these programs have been very helpful in advancing their training, professionalization, and specialization. For example, since 2017 an “Academic Updating Program” has been carried out with the Rural University of Guatemala. This plan offers an opportunity to graduate to judges who have completed master’s level classes, but who never completed their degree. As explained in the academic cooperation agreement, the Rural University offers a specific curriculum so that employees of the judiciary can graduate and obtain a university degree. In this way, judges and other justice practitioners can continue with postgraduate studies. A female judge noted:

“About two years ago, the judicial branch began encouraging judges who hadn’t finished their studies, or who had undertaken maybe one semester of a master’s program. The magistrates motivate us and make inter-institutional agreements between the judicial branch and the Mariano Gálvez University or the San Carlos [University]. They say, ‘look, if you haven’t finished a master’s degree, take advantage of this opportunity and work on it’. Or if you haven’t studied a master’s degree, ‘look, we encourage you to get a master’s degree.’”

Agreements have been signed with San Pablo University (2019) and Mariano Gálvez University (2016) for specializations in labor law. The former coordinates master’s and doctoral programs in labor law. The latter has offered postgraduate programs in labor law, social security, and business administration. Finally, the master’s degree in Gender and Justice, in agreement with Mariano Gálvez University, has existed since 2015 and was widely mentioned by our interviewees.

Thus, the School of Judicial Studies has generally expanded the possibilities for male and female judges to specialize. We are particularly interested here in training in gender and legal pluralism. Training in gender has opened opportunities for female judges to practice within the special criminal jurisdiction of Femicide and Other Forms of Violence Against Women (although, as discussed in chapter six of this report, there are also threats to their safety in these courts). In addition, training in legal pluralism and the rights of Indigenous Peoples also favors female judges, providing them with aspects to improve their deliberation in the communities where they work, while improving their scores in the points-based performance evaluations.

4.1. Gender training

Specializations in gender issues and access to justice were developed following the creation and expansion of laws aimed to address violence against women. The trainings are currently defined within the Institutional Policy of the Judiciary on Gender Equality and Promotion of Women’s Human Rights (Women’s Commission, 2016).

Funding from international cooperation agencies has been crucial to these efforts. The Women’s Commission of the Supreme Court of Justice has conducted workshops for the promotion of women’s human rights. Similarly, the Secretariat of Indigenous Peoples of the Supreme Court of Justice has provided training on access to justice for Indigenous women, developing intercultural approaches and exchanging experiences in conflict resolution combining the state’s justice system and Indigenous community justice. The Women’s Secretariat of the Executive Branch has also provided training on these same topics. International organizations (USAID, OXFAM, UN Women, OHCHR, Impunity Watch, among others) have also provided training covering intersections such as youth and gender, peacebuilding, security and justice, sexual violence, and post-conflict humanitarian planning.

In addition, according to reports released by the Supreme Court of Justice, the judiciary has signed agreements to promote these issues with the Asociación Movimiento por la Equidad de Guatemala (Association of the Movement for Equity in Guatemala, AME), the Instituto de Estudios Comparados en Ciencias Penales de Guatemala (Institute of Comparative Studies in Criminal

Sciences of Guatemala, ICCPG), Mujeres Transformando al Mundo (Women Transforming the World, MTM), and the Myrna Mack Foundation. For example, together with the School of Judicial Studies, the Myrna Mack Foundation has run an academic program for judges and judicial personnel to facilitate access to specialized justice for women victims of violence. Programs have also been carried out in the different regions of the country to decentralize training.

Gender specialization was established by judicial policy. The master’s degree in Gender and Justice includes jurisprudential analysis at the national and international levels, differences in the study of rulings with and without a gender perspective, and analysis of public policies from a gender perspective. In this way, female judges are prepared to deal with these specialized cases and draw on sophisticated legal argumentation.

Several interviewees indicated that this has been especially helpful for women judges who sit on the criminal courts for Femicide and Other Forms of Violence Against Women. One judge stated:

“it’s been a very good experience because we have got to know each other... The project began with three of the specialized courts: Quetzaltenango, Guatemala, and Chiquimula. We were mostly women, although of course being a woman doesn’t mean you’re automatically committed to [a gender perspective]. However, those of us who started knew what the project was, that we had to apply the law and a gender perspective. Not all of us [were acquainted with gender perspectives] because the subject had not really been taught, only this training at the university. As a result, several schools were opened with master’s degrees in gender [...] We all went through that process of preparation and induction prior to starting here in the Femicide courts.”

As an incentive for specialization, scholarships have been offered. The same judge quoted previously commented that the master’s degree has influenced legal interpretation and the way justice is dispensed:

“As for the master’s degree in gender, I saw it in the newspaper, and it caught my attention. I said ‘women’s rights’, that’s great. I even invited several of my colleagues at the time. I was in the last year of my doctorate in criminological sciences. They said, ‘you’re crazy, that’s a horrible subject, what’s wrong with you?’ Well, I went and participated in the selection process because the scholarship was also granted through competition. [...] I loved it.”

During this interview, this judge emphasized her exceptional interest in academic training to achieve excellence. Her curriculum lists four master’s degrees, a doctorate in criminological sciences, and another ongoing doctorate in public administration.

4.2. Training in Legal Pluralism and the Rights of Indigenous Peoples

With the creation of the judiciary’s Secretariat for Indigenous Peoples (formerly the Indigenous Affairs Unit), abundant training in Indigenous Peoples’ law, Indigenous law, and legal pluralism has been developed.

“We have had trainings, workshops, and courses in Indigenous rights. In that sense the judiciary does care... there are many alliances with numerous international organizations that join forces, and we are in constant training about Indigenous rights.”

Learning a Mayan language is also encouraged, and knowledge of a Mayan language is considered within the points-based evaluation system. One female judge interviewed expressed an interest in learning a Mayan language to “*break that language barrier*”:

“The Secretariat of Indigenous Peoples offered a course, but unfortunately, it’s in the mornings.... I can be a very qualified judge, but if people don’t have access to justice [...] it won’t do me any good

to speak the language if I'm delaying my cases, right? That's why I didn't start the course this time, but one of my challenges is to speak the language if I stay in Chimaltenango. Another challenge is to form a referral network⁹ in Chimaltenango where I can work in coordination with Indigenous authorities, where they can get acquainted with the state justice system, and we can get to know each other and work together, be on the same page; we both share the goal of justice. We started to find out who the authorities are, where they are located, we're undertaking that process right now."

Just as the School of Judicial Studies encourages the education and training of justice practitioners, the performance evaluation system also recognizes the amount of training received through a points system. According to the information we gathered, the evaluation system considers postgraduate university studies and training. As some female judges pointed out during our interviews, the Judicial Career Council has not yet drafted regulations to indicate the precise items to be evaluated and their weight.

According to information obtained through public information requests, the percentage distribution in the evaluations is difficult to understand. "Extracurricular merits" are measured in the performance evaluation (such as publications, university teaching, participation in the School of Judicial Studies, among other activities). Although these measures are intended to strengthen academic and professional training, female judges say they are impossible to achieve due to the work and family burdens explained above.

Judges are evaluated every five years by the judiciary. They need to demonstrate that they have undergone various kinds of training. As in most professional evaluations, no consideration is given to women's family circumstances. For several of the female judges interviewed, this situation was far from ideal:

"You know what, another issue I would like to address is the issue of training. The appointments are for five years and every five years you must be evaluated and then analyzed, and there I feel a disadvantage because we are measured by the same yardstick as a male judge [...] They ask us for the same amount of training, the same knowledge, so that you score the same when you apply for positions. When you apply for positions, they don't say 'oh, because you are a woman, you have children', they don't say that. They repeat what your curriculum says. And if you are a mother, what time do you have for further education? Either you stop being one thing or you stop being the other. So, when they measure us like that, maybe it's not the method, but the instrument they use to measure us; it automatically leaves you out because they are measuring us in the same manner."

Another female judge commented:

"I believe that the gender issue has an impact because of your personal situation. For example, I'm sure that I got as far as I have because I don't have a husband. Because I invest my time in my own training and no one is questioning me. For example, my children's father: If I went to training and I wore a dress like this, he would ask, 'Are you going to model or to study?' So, what is he telling me? You know what the traffic is like in [Guatemala City]. So, you can't say, 'I'm going to be home at seven o'clock' because that's just not going to happen. So [then the suspicion is] 'did she go to study or why did she take so long?' All that weighs on you. I do see that many of my female colleagues stay home to avoid the risk of being late. Maybe they have other aspirations, but they put them aside to avoid problems."

⁹ The referral network is "the set of multidisciplinary organizations, governmental, non-governmental, and individuals or legal entities that coordinate support and specialized care to people who have been victims of a crime. [...] links extend from the public sector to civil society; to implement timely actions that cover spaces of prevention and investigation to determine responsibilities of those who commit crimes." (Public Prosecutor's Office, 10/Dec/2015, <https://www.mp.gob.gt/noticia/ministerio-publico-coordina-viii-encuentro-nacional-de-red-de-derivacion/>)

Some interviewees emphasized that women's responsibilities prevented them from furthering their education. In any case, some aspect of life ends up being sacrificed to fulfill other responsibilities. The grades for university studies, training received, and extracurricular merits are evaluated equally for men and women. However, interviewees often pointed out that access to education and professionalization through training lacks equal conditions due to family and marital social norms reinforced by dominant gender ideologies.

Gender has an influence on access to training. However, the female judges we interviewed also pointed to other elements that restrict their access to education and training. For example, geographical factors make it difficult to access courses and other issues related to one's position in the judiciary, as do high costs and limited enrollment openings on courses. In addition, a perverse effect of evaluation by points-scoring is that the search for education and training has become a race to accumulate points to move up the ladder. According to the interviewees, these difficulties transcend gender.

In the initial years, the School of Judicial Studies was located only in Guatemala City. According to a woman judge from Quetzaltenango who heard cases in Sololá, access to the School was differentiated not because of gender discrimination but because of geography:

"I don't think there's a gender bias. I really don't see it. I feel that the opportunity cost is more to do with whether we're based in the capital or other regions of the country, regardless of whether we are women or men. Obviously not all of us women can leave our home to go to the capital to train, so our opportunity cost is higher than that of women in the capital. For example, we used to leave [Quetzaltenango] at three in the morning to be at the School at 7:30 am, sometimes we couldn't even have breakfast. We studied from 8 to 5 in the afternoon, then we had to face all the traffic in [Guatemala City], we would get home at midnight, and then go to work [the next day]. It is not the same as being in the capital, having breakfast, going to school, getting out in the afternoon, and arriving home. In other words, the opportunity cost is totally different."

The same judge went further:

"They assign a score to your academic training inside and outside the judicial branch. For that reason, many from the capital have better curricula than those from the regional departments because they have access to training, and we don't."

The geographic location of the court therefore influences access (or lack thereof) to training. The Judicial Career Council must approve a judge's request to enroll in training or postgraduate courses. Several interviewees say that these approvals are often difficult to obtain, especially because their court must not be left unattended:

"[...] we have to send a request to the Council and, on many occasions, they tell us that permission is denied and we can't attend. I'll be honest with you, sometimes I try in my free time, for example, four or five in the afternoon to attend a diploma course, but I'm on the alert because if I'm called by the court, I must go back. They demand academic credits and restrict our permissions, so it's really complicated. Most of the time, most judges, well, we escape for a little while to be able to attend courses and fulfill the hours of training they require of us."

According to our interviewees, as a justice of the peace, it is difficult to enroll in postgraduate courses or training because these courts must be permanently staffed. For example, one interviewee emphasized:

"In terms of training, the judiciary does not facilitate conditions, regardless of whether you're a man or a woman, especially if you're a justice of the peace. When you're a justice of the peace, as originally [stipulated] you must remain in your court, it must be continuously staffed, then it's quite difficult to study. In [a court of first or second] instance, it becomes a little easier."

In addition, court officers don't have access to many the trainings offered by the School of Judicial Studies. As another female judge pointed out:

“Court officers are not required to have [gender training]. In other words, someone applies for a position, and if they meet the technical requirements, they are given the post, but looking at the handling of daily work, they don't seem to have a gender focus... they don't seem to have taken ownership of that methodology.”

Another difficulty mentioned in the interviews is the limited number of enrollments available for courses. One woman judge acknowledged the efforts of the judiciary, stressing that:

“[Enrollment notices go out] throughout the region. That's why when you go to enroll, there aren't any places left. How many are there if we're talking about the whole region, Retalhuleu, Huehuetenango, San Marcos, Quetzaltenango? They all come here. They can open a lot of places for you to receive training, but there isn't enough space. But courses are being held, the effort is being made. The [Supreme Court] has worked hard.”

Tuition fees for graduate programs are high in relation to a judge's salary. A female judge in the doctoral program observed:

“I am pursuing a doctorate in Labor Law at the Mariano Gálvez University. There's an agreement with the judiciary regarding courses. I thought about one at San Carlos University, but due to family and time issues, I didn't apply. I'm happy with the doctorate, but it's hard, exhausting, there are exams every week. [...] It's expensive to continue studying; you pay Q.2,000 per month for the doctorate, Q. 1,300 for registration, Q.3,000 for the thesis, Q.15,000 for the graduation ceremony.”

That same judge emphasized an aspect that came up numerous times in interviews. The search for training is closely linked to the performance evaluation requirements. Obtaining points has been an incentive for judges to pursue postgraduate studies or training. Thus, she said, “All this also is calculated in points: Two points for a master's degree, three for a doctorate, out of a total of 100 established by the Regulations of the Judicial Career.”

As explained above, the performance evaluation takes into consideration academic, professional, and extracurricular merits through a points system. Several female judges emphasized that training is an area in which they can increase their score to hasten their promotion in their judicial careers. However, participating in postgraduate courses or training seems to have turned into a race to accumulate titles and diplomas. She explained:

“[the evaluators] come and say: ‘Show me records of this,’ they interview us, they tell us ‘Well, your academic record is worth so many credits or points. How many courses did you attend during the year? How many diplomas do you have? Do you have a master's degree? So many points; if you don't have a master's degree that lowers your points [...] Last year I was getting a doctorate, which is three years, but they told me ‘It doesn't matter if you prove [that you're studying], we'll approve it [for points] when you graduate.’ Something else they ask you, ‘Diplomas, doctorates, are you a teacher?’ Yes, I'm a university professor, I tell them, because I also teach at night either at the Mariano Gálvez University or at the Rafael Landívar University here in Guatemala; I prove that I give classes because that gives you points; they regularly include it. Often, our workload as judges means there's no time left for training, so you must study at the weekends. And what do you do about your family? Being a judge is a bit complicated, but ultimately you can manage everything.”

In summary, even though the School of Judicial Studies is a gateway for women that encourages the academic training and professionalization of female judges and other justice practitioners, experiences

of entry into the judiciary continue to be characterized by asymmetrical relations between men and women. These asymmetries are not limited to gender discrimination alone, since our interviews reveal that women continue to face difficulties in obtaining jobs, even if they are the most-qualified students at the School of Judicial Studies.



High-Risk Court D, 14th Floor of the Courthouse Tower, 2018. Credit: Simone Dalmasso / Plaza Pública.

5. SECURITY AND EMPLOYMENT CONDITIONS: BETWEEN A LACK OF PROTECTION AND DISCRIMINATION

Widespread insecurity in Guatemala means that women judges face specific challenges in their professional practice because of their gender. The experiences of women judges reveal the challenges they face in ensuring their safety; these are related to the different matters they hear in their courts, along with the location and physical conditions of the latter. Regarding job security, while issues of salaries, retirement, and workloads affect both male and female judges, social gender inequalities tend to add to women’s greater responsibilities and burdens of care.

5.1. Safety Conditions

Practicing as a judge in Guatemala can involve great security risks that have specific implications for women. Generally, there is no security detail assigned to justices of the peace, who depend on the National Civil Police or local civil authorities should problems arise. Security is reserved for courts of instance and specialized courts, although there is not always adequate coverage. Security officers are generally assigned when there are threats or attacks, which are common.

Judges in the High-Risk courts—who deal with issues such as corruption, gangs, drug trafficking, transitional justice, and organized crime— have security assigned to them by the judiciary. Usually, this consists of two agents and a vehicle, although at times the budget is insufficient to maintain the vehicles and judges end up using their own cars to move about.

Security agents are usually men, and several of the female judges commented that they felt their private lives were severely restricted by their presence. Judges told us that at times security agents reported their movements to organized crime, informing them when they were alone, for example, so that lawyers or private individuals could threaten them if they did not rule in their favor:

“I have received threats in a covert way... For example, a lawyer comes and threatens the judge that they will file complaints against them, [or intimates] that something could happen to them.”

Insecurity partly depends on the conditions of many courts. Security conditions in the Courthouse Tower in Guatemala City, where the country’s most important High-Risk courts are located, are quite deficient. For example, despite having four separate elevators to be used by pre-trial detainees, the general public, and judges, the elevators do not always work due to deficient maintenance and so staff must sometimes share the cramped elevator space with several handcuffed inmates.

The entrances to some High-Risk courts lack restricted access and there are not always enough security agents present at hearings. Some female judges told us that they often had to pass detainees or their relatives in the corridors in order to go to the restroom because not all of them have such facilities inside their offices. One judge from the femicide court at the Public Prosecutor’s headquarters in Guatemala City (which is in a very unsafe area) said that she often had to stay in her office at night when she felt it was too dangerous to go to the bathroom because it was far away, and the building was quite desolate at night. “There are areas where there aren’t even cameras and if you scream or call for help, no one will ever hear you.” When it comes to gang cases, intimidation of men and women judges alike can be very direct. One female judge told us:

“I had security assigned to me because I was part of the (High-Risk) court in Villa Nueva, persecution there was very severe. Gang members would do awful things in front of the courthouse. They even killed a person there when we had just arrived, we knew that they were messages... They would come to relieve themselves in front of the courthouse, to throw dead rats, dead animals at us. It was a way to intimidate us. I was appointed state security by the National Civil Police, not from the judiciary, because we had an attack... They shot up the court with high-caliber weapons. It was a horrible scare...

There were wounded policemen... I was pregnant with my last baby at that time... I consequently suffered gestational diabetes.”

The degree of risk and threat experienced by judges varied widely: in the same High-Risk court, one judge indicated to us that she felt very insecure. During the entire interview we were aware of the presence of her security detail in the waiting room between her office and the corridor. Yet another judge sitting on the same court told us that she had no problem with being out on the street, at least during daylight hours.

Female labor judges do not usually have security from the judiciary, and the labor court facilities in Zone 10 of Guatemala City are much better equipped than the criminal courts. However, women labor judges may also face security risks because of the situation of widespread violence and impunity in the country. One female judge who had ruled that security companies had to pay outstanding benefits to their employees experienced a sense of insecurity because of the type of interests that are often behind these companies. Another female judge was given a security detail because she had ruled against a powerful trade unionist with connections to the government.

Remoteness from the main urban centers also entails risks, depending on the location of the court and the type of cases handled. One female judge who accepted a promotion to go to a court in the department of Petén, where there is a strong drug trafficking presence, commented:

“La Libertad Petén is a court where we know there is a lot of corruption and there had been many substitute judges because of the Cocos massacre¹⁰ ... It was a shock for me, it was a mixed court; it heard criminal and drug-trafficking cases, crimes against the environment, family, civil, labor cases. It was very difficult there.”

Although this court (La Libertad Petén) does have security provided by the judiciary due to drug trafficking in the area, the judge commented that she in fact received threats from her own court staff.

5.2. Working conditions: wages and retirement

The workload of all judges is considerable, and almost all female judges we interviewed described being overloaded. Sometimes they lack sufficient staff to help handle administrative details. And given the file reviews, hearings, internal and external meetings, and trainings, all work many more hours than the time spent in their chambers or in court dealing with the public.

Moreover, because of gender inequalities, female judges tend to face even greater burdens:

“As a woman, not only do you have to do your work, but you also must take care of your home, your children, take your children to school, come back, worry about housework. Then you’re, like, ‘I have to draft a sentence, I have to draft a sentence’ [in a rushed tone]. But when I want to write the sentence, I’m tired, so sometimes I work in the early hours of the morning to keep my work up to date.”

Judges often work on days off at the weekends. Almost all female judges interviewed took work home with them, and some at times fell ill due to work overloads. This combines with the emotional burden of some of the matters they hear, for example, femicide and violence against women (see next chapter).

10 On May 14, 2011, 27 peasants were killed during the massacre at the Los Cocos farm, Santa Ana, Petén. A protected witness from the Public Prosecutor’s Office described the way the Zetas cartel operated in the country and confirmed that the massacre was due to a dispute over territory. On February 21, 2014, the High-Risk Court B sentenced nine people responsible for the death of these 27 persons and the kidnapping of 13 others to 106 and 114 years in prison. In addition, the court ordered the sentenced individuals to pay Q. 75,000 each to the Judiciary, and that the Mexican nationals be expelled from the country. <https://www.mp.gob.gt/noticia/justicia-para-victimas-de-la-masacre-de-los-cocos/>

Due to the requirement that they remain open 365 days a year, in the justice of the peace courts it is common for women justices to work practically all week and at any time. They are not entitled to overtime or days off. The law states that they can take a day off on their birthdays and on Mother’s Day, and they can request five days a year for health or other emergencies. But to take those days off they must send a request so that someone can be left in charge of their court. If authorization is not forthcoming, they cannot be absent. Often there are no personnel to cover their shift, i.e., judges who live nearby or substitutes sent from Guatemala City (the latter implies additional expenses for the judiciary), so leaves of absence are denied. Furthermore, often court facilities themselves are limited, and judges lack adequate space to rest or prepare food. Services are minimal for many justices of the peace courts far from urban centers; some judges commented that at times there is no electricity, telephone, or water.

The contrast between different courts is striking. For example, the labor courts in the capital are in much better condition, mainly because in 2011 USAID helped them to relocate to a specialized, albeit rented, building. The same is true of the main court for Femicide and Other Forms of Violence Against Women in Guatemala City; USAID paid for facilities, which have three courtrooms with sound equipment and two videoconferencing rooms, along with specially designed spaces for victims.

Although being in the judiciary offers some job stability and a pension, salary conditions are not competitive compared to the private sector. Retirement pay is scarce. One female judge who had almost 20 years of service said:

“Retirement pay doesn’t amount to much, some 5,000 quetzales, which is barely enough for [my life’s] project as a mother, as the one responsible for my daughters, it’s still not enough. So, it’s going to be many years [before I can retire], even though I’m eligible to retire at 20 [years] because I’m practically a woman [of retirement age], [but the pay] isn’t enough for me.”

In terms of health, judges are entitled to coverage from the Guatemalan Social Security Institute (IGSS), but several commented they wanted the judiciary to guarantee them private health insurance, because access to the IGSS could not be guaranteed when they needed it. According to agreement 26-2019 of the Supreme Court of Justice, private insurance exists for trial judges and for Supreme Court magistrates, but the entire judicial branch is not included.¹¹

11 Although it is not enforced for all judges, Article 85 of the Collective Agreement on Working Conditions signed between the judicial branch and the Union of Judicial Workers stipulates that the judicial branch will carry out complete medical check-ups periodically and organize vaccination days for officials and workers; it will also ensure adequate fumigation in workplaces where high-risk activities are carried out or where facilities are in insalubrious surroundings.

6. FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN COURTS: FEMINIST ENCLAVES WITHIN THE JUDICIARY?

Efforts to combat gender-based violence through legislative and institutional reforms have opened opportunities for women judges, and for the use of gender perspectives in the exercise of state justice. Guatemala has one of the highest rates of femicide and violence against women in the world: According to official figures, 119 women were murdered in 2020, a femicide rate of 1.3 per 100,000 women, although in previous years the figures have been much higher.¹² Human rights NGOs documented an average of between 600 and 700 women murdered per year between 2005 and 2020.¹³ Femicide and Other Forms of Violence Against Women Courts exercise jurisdiction to impart justice in these cases.

These courts have been the institutional venues for implementing specialized gender justice, although they are also part of an institution that produces high levels of impunity.¹⁴ This chapter discusses the opportunities and obstacles that women judges have experienced within these courts. Women judges who choose to serve on these courts and are committed to gender justice are often exposed to sexism in their working lives. In addition, the growing political capture of the judiciary and the Public Prosecutor’s Office by interests opposed to the fight for human rights and against impunity means that in recent years efforts to expand training in gender and women’s rights have been stymied; training continues, but the perception of several female judges interviewed is that the Supreme Court of Justice lacks commitment to fighting gender discrimination.



International Day for the Elimination of Violence against Women, Guatemala City, 2021. Credit: Simone Dalmasso / Plaza Pública

12 UN-ECLAC, Gender Equality Observatory for Latin America and the Caribbean <https://oig.cepal.org/es/indicadores/femicidio>

13 Guatemalan Women’s Group (GMM) Violencia contra la Mujer Muertes Violentas de Mujeres-MVM FEMICIDIOS República de Guatemala, updated (January 1 to July 31, 2021). <https://ggm.org.gt/wp-content/uploads/2021/10/Datos-estadisticos-MVM-ACTUALIZADO-1-de-enero-al-31-de-julio-2021.pdf> Accessed February 26, 2022.

14 The Guatemalan Women’s Group and Women Transforming the World agree that impunity in these courts is high due to judicial delays, dismissals, and transfers to other courts. They estimate that 97% of the cases filed remain unpunished. See press release “Femicidios en Guatemala: procesos pueden alcanzar hasta cinco años en alcanzar una sentencia”, by Mariajosé España, Prensa Libre, September 17, 2021.

6.1 Femicide and Other Forms of Violence Against Women Courts

Following the approval in 2008 of the *Law Against Femicide and Other Forms of Violence Against Women*, a specialized justice system was developed to address this serious problem. The law defined femicide, i.e., the homicide of women attributable to misogyny and power inequalities between men and women, as a specific crime, with a mandatory minimum sentence of 25 years, higher than that of homicide. As of 2010, in accordance with the stipulations of the 2008 law, the Supreme Court began to establish specialized criminal courts to hear cases classified as femicide or physical, psychological, or economic violence against women, called Courts of First Instance and Criminal Sentencing of Crimes of Femicide and Other Forms of Violence Against Women (popularly known as “femicide courts”). These courts exist in Guatemala City and in the departments of Alta Verapaz, Baja Verapaz, Chiquimula, Escuintla, Huehuetenango, Izabal, Petén, San Marcos, Sololá, Suchitepéquez, Quetzaltenango, and Quiché. Each court has four judges, most of whom are women.

The Courts for Femicide and Other Forms of Violence Against Women are empowered to prosecute aggressors and order pre-trial detentions. Even if victims and/or witnesses later retract their complaints, the law stipulates that the Public Prosecutor’s Office has the duty to pursue criminal prosecution in cases of gender violence. Criminal trials are oral, supervised by a judge or a panel of three judges in cases of femicide or attempted femicide, who issue their verdict after hearing the parties. In addition to being composed of female and male judges and trained administrative auxiliary personnel with greater awareness obtained through gender-sensitive preparation, these jurisdictional bodies also have a Comprehensive Victim Care System (SAI), with personnel specialized in the care of survivors of gender-based violence, including forensic doctors, psychologists, and social workers.¹⁵

As part of this new policy, the Public Prosecutor’s Office has also developed specialized institutions and procedures to address gender violence: it now has dedicated offices to deal with women and child victims of violence, where psychological and medical services can be coordinated. They implement protocols (developed during the term of Attorney General Claudia Paz y Paz, between 2010 and 2014) that seek to avoid the revictimization of victims of violence during the investigation and to guarantee women’s human rights.

Of all reported crimes, the Public Prosecutor’s Office receives the highest number of criminal complaints in response to violence against women, an amount that far exceeds the ability of the system to respond. In 2016, specialized courts assumed responsibility for prosecuting cases of sexual violence against minors, further increasing their workload.¹⁶ Despite the increase in the number of complaints, access to these specialized courts and institutions by rural Indigenous women remains limited, both because of language barriers (courts lack sufficient qualified interpreters, let alone the Public Prosecutor’s Office or police stations), and because of the physical distance between the institutions and women’s home communities.

The specialized courts and the SAI received significant financial and logistical support from international development agencies, given that violence against women is a priority for the major donors supporting Guatemala’s justice system reforms. The physical facilities of the femicide courts, at least in the capital and Quetzaltenango, are in much better condition than those of other criminal courts (although the facilities of the duty femicide court at the central offices of the Public Prosecutor’s Office in Guatemala City were not). Because they are specialized courts, they have facilities that other courts do not have, for example, rooms with childcare staff where victims can stay with their children during hearings, such as those that exist in courts that deal with children’s issues, and Gesell

15 The System of Integral Attention to the Victim is based on a series of laws and norms, including the Law against Femicide and Other Forms of Violence against Women (2008); the Law against Sexual Violence, Exploitation, and Trafficking in Persons (2009); the Law for the Dignification and Comprehensive Promotion of Women (1999); and the Law to Prevent, Punish, and Eradicate Domestic Violence (1996).

16 Based on an analysis of different statistical sources, Beck and Stephen note that in 2018 there were 34,422 complaints of violence against women in the 13 departments with specialized courts. That same year only 9,851 opened initial hearings, and only 3,045 went to trial (2021: 755).

chambers, where children can give their testimonies without having to see or share space with their aggressors. In general, conditions are due in large part to international cooperation. As a female judge in one of the courts commented:

“The femicide court was born with very good standing because USAID provided it with all the inputs. This femicide court has three courtrooms with sound equipment and two videoconference rooms. We have the tools not because the state has given them to us, not because the judicial branch has given them to us. We have the tools because institutions like USAID have strengthened specialized justice.”

However, most of the operating funds for the system to address violence against women and girls come from the Guatemalan government: US\$15 million was spent between 2010 and 2013 to establish the femicide courts in the different regional departments, of which only US\$2 million was from international donors.¹⁷ This meant that the specialized courts and the SIA were soon weakened by rampant government corruption and lack of official commitment to efforts to address gender-based violence.

All judges and personnel entering the specialized courts receive mandatory training with a gender perspective, according to the specifications of the 2008 law. A female judge told us that before the courts began to operate, there was a good deal of training on gender issues. Numerous international experts came to give courses at the judicial school, and once selected, all judges underwent full-time training for several weeks. However, although training with a gender perspective is very much emphasized in the femicide courts, it does not extend to trial judges or Supreme Court magistrates, which is undoubtedly a systemic weakness. Several female judges interviewed believe that it should be mandatory for all judges in the country to receive specific training on how to guarantee women’s rights and the use of gender perspectives in legal deliberation, not just judges in the specialized criminal courts.

Some of the female femicide court judges interviewed had also completed the master’s degree in Gender and Justice established through an agreement between the judicial branch and Mariano Gálvez University, and which has already had three graduating classes. They commented that this master’s degree gave them training in different national and international instruments that could reinforce their sentences.

“I loved [the master’s degree]; I was able to recognize lots of mistakes I made in the past. Even victim-blaming, re-victimizing the victim, and I made that public. I was also able to recognize that a lot of my rulings were naturally focused in favor of the victim.”

For several years it has been official judicial policy to train all employees and thus mainstream gender, from auxiliary maintenance personnel through to judges. International cooperation has played a fundamental role in this effort. Several female judges told us that they had received training in gender issues from development agencies. For example, several female judges in Quetzaltenango told us that USAID staff had provided training in victim-focused criminal procedures, specifically for crimes of trafficking and rape. Other female judges in labor courts said they had received training on gender issues from the International Labor Organization (ILO). However, as we explained in chapter four, since most of the courses are offered in Guatemala City or Quetzaltenango, there is not always enough space for all the female judges who would like to enroll. In addition, as we have emphasized, for female justices of the peace, the requirement to be at their post 365 days a year and the remoteness of many of these courts from the main urban centers make it difficult for them to participate.

The promotion of training in gender perspectives by certain female justices at the Supreme Court also been important. Sometimes these perspectives are related to their life experiences. For

17 International Commission of Jurists (ICJ), Good Practices and Outcomes of Specialized Justice in Femicide and High-Risk (Geneva: ICJ, 2016), p. 50, cited in Beck and Stephen 2021: 749.

example, Thelma Aldana's sister was a victim of gender-based violence and her case was heard in the Quetzaltenango femicide court. During her time at the Court, Aldana (magistrate between 2009 and 2014 and president of the Court between 2011 and 2012) worked with the National Coordinator for the Prevention of Domestic Violence and Violence against Women (CONAPREVI) to develop protocols for femicide courts,¹⁸ while promoting training to strengthen gender perspectives in political and administrative decision-making at the judiciary. Many of the female judges interviewed recognized Supreme Court Justice Delia Dávila as a person who has fought for women's rights and to promote better training with a gender perspective within the judiciary. Dávila is president of the Women's Commission of the judiciary. When we interviewed her, she was promoting a campaign against sexual and labor harassment within the judiciary.

“[Male] judges take advantage of their position of seniority, and magistrates too, to harass young women and promote them through favors [while] taking advantage of them. That happens; they make offers to them when they have that position of power. That's why we're working on this campaign; UN Women is supporting us. We have insisted that this practice must be eradicated and that [women] should denounce it and it will be punished. This can also lead to a recommendation of criminal investigation for violence against women... Although harassment as such is not typified as a crime, it's a misdemeanor, but it takes a heavy toll.

Judge María Eugenia Morales is also recognized as a pioneer jurist in the struggle to guarantee women's rights. She was head of the Women's Ombudsman Office in the Human Rights Ombudsman's Office, where she was Deputy Ombudswoman. Furthermore, as mentioned above, at the end of the 1990s she was director of the Judicial School when it began, from where she played a very important role in promoting gender policy and women's access to the judiciary. In addition, she has supported the fight against gender violence in society in general. For example, in 2016 from the bench she promoted a bill to establish a genetic data bank of sexual aggressors. However, as she indicated to us in the interview, this same bill was later challenged by other magistrates of the court, including female magistrates. Similarly, her promotion of a law to protect vulnerable groups that would remove parental rights from parents who have abused their children also failed to receive the support of the full Supreme Court.

Undoubtedly, having had feminist women magistrates in the Supreme Court of Justice, such as Delia Dávila, Thelma Aldana, and María Eugenia Morales, and women committed to human rights and gender perspectives, such as Claudia Paz y Paz and Thelma Aldana as Attorneys General, has been fundamental to promoting gender policies within the judiciary. As one female judge commented:

“Delia Dávila has been such a fighter and has always looked out for our welfare and ensured that we can participate. When Magistrate Aldana was [at the Supreme Court], she held many courses on gender mainstreaming; it wasn't a matter of just going to a [single] course; no, it meant up to eight months in gender mainstreaming. She accompanied us, just like Judge Dávila. Thank God women have become Supreme Court magistrates because we have felt their support.”

6.2. Violence against women and the experience of women judges

The analytical perspectives on women in the judiciary that we discussed in the introduction suggest that having women judges makes a difference to the accessibility and quality of justice delivered.

¹⁸ CONAPREVI (created by Agreement 831-2000) is an institutional coordination and advisory mechanism that promotes public policies for the prevention, punishment, and eradication of domestic violence and violence against women. It has provided support in the development of protocols for attention and action to the justice, health, and education sectors in addressing domestic violence and violence against women.

Several women judges told us that women victims of violence, whether physical, psychological, or financial, feel more confident if they can bring their cases before a woman judge. This was a consistent observation from female judges across the country.

“I think women have more confidence because they open up and say this happened to me, sometimes they say ‘I'm ashamed to tell you, but I will tell you’, and they even say, ‘Can I close the door?’ Go ahead, close it. ‘It's just that, judge, he did this and that to me.’ So I think that in one's role as a woman, it's not that I have something against men, but you must encourage them so that they aren't afraid of [filing] a complaint, of a [legal] process. I speak to them, more than as a judge, I speak to them as a woman: You have the right to dignity, to a life free of violence; you are not the town's punching bag to be beaten; I feel that it gives them more confidence.”

However, in terms of deliberation, several female judges thought that what was essential was gender awareness, not so much the fact of being a woman.

“More than being a woman, the fact of having gender awareness should weigh more heavily, because being a woman does not guarantee [anything in and of itself], unfortunately. In the femicide court, women see the process differently and talking to a female judge does have an influence, because there are issues that one as a woman understands more, for example from victims' stories. It depends a lot on the woman judge, what level of empathy or gender awareness she has but, logically, for any person, victim of, for example, sexual assault or rape, I think it's much more comfortable to talk to a woman than a man.”

In their analysis of the Femicide and Other Forms of Violence Against Women Courts, Beck and Stephen (2021) conclude that, although female judges and other personnel have internalized the feminist understandings of gender-based violence in which they have been trained, daily court practice tends to treat violence as an interpersonal phenomenon. Courts issue sentences and measures that prioritize prison time for perpetrators and/or economic reparations (which are rarely paid), but fall short in terms of non-repetition measures by failing to consider the structural conditions that make gender-based violence possible. This trend documented in the rulings is related to the lack of other state programs and services, for example, in the fields of health and education, that could combat gender discrimination and violence in a more structural way. But the trend is also due to the workloads of the courts themselves: female judges issue an average of 50 to 60 verdicts per year, a result of overwhelming demand and internal bureaucratic pressure to demonstrate “effectiveness” through a high number of sentences.

“Here my workday [means that] when the amount of work was overwhelming, I had to take work home. Since I had security and agents were driving the vehicle, I'd work on the laptop on the way... I've done up to two hours on the road and in the two hours I'd finish another sentence while I was on the way home [so long as] the laptop battery held up. I worked so much that I ended up in the hospital... So, after that period of overwork, I've kept up the pace, but I try not to take work home.”

In general, female judges in these specialized courts are highly committed and motivated to address gender-based violence, although cases have been documented in which some of them have prevented prosecution of gender-based violence.¹⁹ At the same time, the pressures and demands of the type of cases they adjudicate involve an additional burden for the judges, who reported feeling affected by hearing details of extreme violence against women and girls day after day.

¹⁹ In their analysis of the 2018 femicide case of Alejandra Icó Chub, Beck and Mohamed (2021) documented Judge Catalina Cortez's hostility toward Mujeres Transformando el Mundo, the NGO that was a co-plaintiff in the case, and the judge's numerous actions to obstruct attempts to seek justice in this and other cases of gender-based violence.

“It’s a tiring court in the sense that many emotions are handled; it’s not like in other courts... here we work with battered women, women who have been raped... It’s a court that is emotionally exhausting. I don’t know if anyone else shares this with me, but I know someone who says she doesn’t want to be in femicide anymore, not because it’s bad but because it’s very hard emotionally.”

Women judges are frequently targets of disqualifications by both lawyers and other legal professionals, as well as from the parties involved in cases:

“We’ve been called the holy inquisition, witches, and the last [epithet] I was called was feminazi. A private lawyer said it. He was coming out of a hearing where his client was convicted and he said, ‘this is a feminazi court’. We’ve been told that we suffer from misandry. Misandry is hatred of women towards men. That’s how they have singled me out and I tell them no, I love men, I have a husband, I have two sons, I have brothers.”

Dealing with issues of discrimination and gender violence in social contexts of profound sexism and patriarchal power also poses great challenges, especially for female judges. Sexism is expressed very aggressively in many regions of the country (female judges frequently mentioned the east and the coast).

“I’ve often come up against ‘Who is the judge? A woman!’. Then sometimes men [say] ‘Why should a woman order me around?’ There’s a lot of sexism in the interior [outside Guatemala City]; I saw a lot of it in Zacapa when I was a family judge. Why? Because the women would come and ask for an increase in alimony, the father was summoned and he would say ‘No, you can’t force me because I paid alimony to her.’ [In those regions] men still have the ingrained idea that they are in charge, not women.”

Although sexism obviously also exists in more Indigenous regions of the country, the dominant hierarchies of class and race make it more difficult for an Indigenous man to challenge a non-Indigenous female judge.

In conclusion, the approval of the Law against Femicide and Other Forms of Violence against Women in 2008 and the subsequent creation of specialized courts to prosecute these crimes undoubtedly opened an important space for women judges in Guatemala. Although the workload in these courts is quite onerous in many ways, most women judges are highly committed to combatting gender-based violence. The specialized training they receive has increased the possibilities of judging with a gender perspective, at least in this part of the judiciary, which is expected to have multiplier effects throughout the entire system. The support of women Supreme Court magistrates and Attorneys General was also key at different times. However, the lack of strong support from most Supreme Court justices for a robust policy to address gender-based violence and discrimination throughout the judiciary may undermine the prospects for these specialized courts in the future.

7. THE POLITICAL CAPTURE OF THE COURTS IN GUATEMALA: IMPLICATIONS FOR WOMEN JUDGES

The move towards greater representation of women in the higher courts in Guatemala has not necessarily brought about a more legitimate judiciary or greater public confidence in the institution, as some authors have suggested for established democracies (Feenan 2008: 491).²⁰ Nor has it meant a firm commitment at the highest levels of the judiciary to combat gender discrimination and violence.

As we noted above, despite progress made in professionalization of the judiciary, Guatemala’s judicial appointment system is effectively bifurcated. While professionalization and merit criteria prevail at the lower levels (at the first instance), appointments to the Supreme Court and the Appellate Court Chambers are highly politicized. Members of Congress have little interest in appointing independent magistrates who can authorize investigations into the multiple allegations of corruption against them, and there was widespread influence peddling within the nominating commissions in 2014 and again in 2019. In the criminal investigation carried out by the Special Prosecutor’s Office Against Impunity (FECI) and CICIG of the case known as “Parallel Commissions 2020”, charges were filed regarding a criminal intent to influence the magistrate selection process for the Supreme Court of Justice, the Chambers of the Appellate Courts, and other courts. Gustavo Alejos Cámbara, a powerful political operator and businessman, was accused of having drawn up a plan to influence the selection process.²¹ At least seven of the thirteen magistrates of the current Supreme Court were caught up in this form of influence peddling.

In February 2020, the Public Prosecutor’s Office requested an injunction against the high-court election process, alleging that the lists of candidates presented by the nomination commissions had been manipulated by individuals facing criminal charges who sought to influence the process. In response, the Constitutional Court (CC) provisionally suspended the elections for the third time since the end of 2019.²² In May 2020, the CC issued its final resolution, which included clear parameters for Congress to select capable, suitable, honest, and honorable judges to form the courts, in accordance with requirements set down in the Constitution. The CC ordered the Public Prosecutor’s Office to submit a detailed report to Congress regarding the investigation, explaining any possible conflicts of interest of applicants to the country’s high courts. The CC also ordered Congress to take the report into account and exclude those applicants who did not meet the requirements of suitability and honorability. The Public Prosecutor’s Office report submitted to Congress the same month contained information on 22 candidates involved in the “2020 Parallel Commissions” case, i.e., five candidates to the Supreme Court and 17 to the Appellate Courts. The report also described how 109 other candidates are involved in additional criminal investigations by the Public Prosecutor’s Office.²³

Indeed, since 2015 powerful sectors have redoubled their efforts to ensure a judiciary that does not challenge their political and economic interests (Braconnier 2021) and organized crime, hand in hand with the country’s political elite, has captured justice institutions to ensure corruption and impunity. The most concerted attempts to secure “clandestine control” over the judicial nomination procedure

20 According to the latest LAMPP survey, less than half of Guatemalans (44%) believed that the courts would guarantee them a fair trial (cited in Azpuru et al. 2018: 115).

21 Alejos Cámbara made his fortune by using his political connections to obtain government contracts. He has financed several political parties, and in 2008, served as private secretary to former President Álvaro Colom (2008–2012). He was in pre-trial detention on corruption charges, but due to alleged health problems, obtained permission to continue serving pre-trial detention in a private clinic where many meetings were held with potential court candidates, officials, and congressmen. Cell phone records seized by FECI revealed that Alejos had contact with at least 41 people involved in the high-court selection process, including 10 congressional deputies, two of whom are part of Congress’s ruling council. Adriana Beltrán, “Detrás de la lucha por secuestrar el sistema de justicia de Guatemala”, WOLA - Washington Office on Latin America, July 20, 2020, <https://www.wola.org/es/analisis/secuestrar-justicia-guatemala/>

22 In a communiqué dated December 2, 2019, the Constitutional Court mandated the Judicial Career Council to carry out performance evaluations of judges and magistrates and submit them to the nomination commissions as a criterion for nomination.

23 Ibid.



Courthouse Tower, 2017. Credit: Simone Dalmasso / Plaza Pública

were a reaction against attempts by CICIG and the Public Prosecutor's Office (under the leadership of Thelma Aldana) to investigate and bring charges against high-ranking politicians, including former President Otto Pérez Molina (imprisoned in 2015 for illicit association and corruption) and several ministers and congresspersons. By the time its mandate ended in 2019, CICIG had participated in the investigation of more than 60 criminal networks, leading to the criminal prosecution of more than 300 government officials (Bowen 2022).

The political capture of judicial nomination processes does not necessarily imply a disadvantage for women judges, but it does mean that successful candidates (male and female) are, at best, subject to many pressures and are, at worst, already beholden to certain political and economic interests. According to a high-ranking female judge:

“These are undoubtedly political deals; they are under-the-table agreements. They are now in many meetings, making lists, you scratch my back, I'll scratch yours. That's a different dynamic; it's not so much about [sexual] harassment to reach those positions... rather it involves politicians controlling the [high court] elections to elect their representatives.”

Organized crime has found numerous ways to subvert the nominating commissions; for example, several universities were created, and law school professors hired for the sole purpose of influencing the nomination process. Some of these universities did not even have enrolled students or law school courses (Escobar 2019: 250). Similarly, as we discuss below, the bar association and judges' associations have become key political battlegrounds for influencing the commissions' selection of judges.

7.1. Judges associations: a battlefield

The literature on informal networks stresses that:

“[...] formal and informal practices are interwoven, and personal interactions are central to the day-to-day performance of the judiciary. Judicial behavior can thus be seen as a function of how judges relate to each other and to individuals and groups in the sociocultural context that surrounds them” (Dressel, Sanchez-Urribarri, and Stroh 2017: 7.6).

Many manifestations of “informal networks” are at play in the judiciary, for example, people's university studies, labor affiliations, seniority (Dressel and Inoue 2018, 617), and, of course, gender. One area that encompasses labor affiliations and informal networks is membership in judges' associations. After the initial period of judicial reform in the 1990s, Central American jurists predicted that the development of bar associations would strengthen judicial independence in the region, as they would advocate for better working conditions and create epistemic communities (ICCPG 2001). Two decades later, evidence suggests that judges' associations do not always work for greater judicial independence: they can also be used as sites for corporate politics and patronage where court appointments become eminently political. In Guatemala, these associations play a crucial role in advancing judges' careers, but they also increasingly act as conduits for “informal networks” and “clandestine control.”

There are currently four national jurists' associations: the Association of Judges and Magistrates of the judiciary (AJMOJ), established in 1992; the Association of Women Judges of Guatemala, created in 2016; the Guatemalan Association of Judges for Integrity (AGJI) formed in 2018; and the Institute of Magistrates of the Appellate Courts (IMCAOJ). Of the four, the Association of Women Judges has to date focused its efforts most clearly on the training and ongoing professionalization of women judges.

Created by Magistrate Delia Dávila (of the Criminal Chamber of the Supreme Court of Justice), the association has organized talks and trainings on different topics, for example, on human trafficking and the 2017 reforms to the Judicial Career Law. The association also seeks to defend the rights of women judges (e.g., by denouncing sexual harassment within the judicial branch) and mobilizes support for improved working conditions, a decent pension, and greater opportunities for women in the courts. With more than 200 members, the association will arguably continue to grow. It has encouraged women judges to apply to the appellate courts and the Supreme Court. Interviewees agreed that the association's primary focus is professionalization and, to a lesser extent, the promotion of women judges to the higher courts.

The Association of Judges and Magistrates of the judiciary (AJMOJ) was created in 1992 and has almost 1,000 judges from throughout the country. The Guatemalan Association of Judges for Integrity (AGJI) was created in 2018 and its members preside over High-Risk specialized courts that have decided high-profile transitional justice and corruption cases. At key moments, these two judges' associations have assumed a central role in judicial and national politics and there are considerable tensions between them. The Guatemalan Association of Judges for Integrity has focused primarily on denouncing the political capture of the state, involving attacks on judicial independence and the autonomy of judges.

In May 2019, AGJI participated in a special session at the Inter-American Commission on Human Rights to denounce threats to judicial independence in Guatemala. In particular, they highlighted the gendered political attacks against women judges working on key transitional justice and corruption cases in the High-Risk courts and, in general, the malicious use of internal monitoring and evaluation



Association of Women Judges of Guatemala. Credit: Courtesy of the Judicial Branch

mechanisms against independent judges, demonstrating the limits of domestic judicial independence.²⁴ For example, up to when the Inter-American Commission convened its hearing,²⁵ Erika Aifán, a judge at High-Risk court D, had faced six attempts to remove her criminal immunity [similar to a preliminary hearing for probable cause], seven disciplinary complaints within the judiciary's internal control mechanisms, ten complaints before the Ombudsman's Office, six complaints lodged at the Office against Torture, and three complaints at the Honor Tribunal of the Guatemalan Bar Association. Most of these charges were subsequently dismissed. The judicial persecution against Judge Aifán, however, coordinated by AJMOJ and IMCAOJ, led to her resignation from the judiciary and subsequent exile (see below).

AJMOJ has been questioned for its politicization and alliances with central actors behind state capture (International Commission of Jurists -ICJ- 2016). AJMOJ's proximity to the highest echelons of the judicial apparatus means that the association is used to decide judicial quotas and candidates for appellate courts and the Supreme Court.

It is also a conduit for behind-the-scenes pressure to secure judicial decisions in key cases that ensure impunity for powerful actors. Influential groups linked to illicit activities and corruption have effectively taken control of the AJMOJ. They promoted their candidates for the board of directors and for committees that privilege the appointment of magistrates with no experience in the administration of justice. In some cases, they backed lawyers linked to criminal groups (Escobar 2019, 249). For example, in 2019, the more than 100 magistrates of the appellate courts elected a

24 The 2021 report of the Judicial Observatory of the Institute for Comparative Studies in Criminal Sciences (ICCPG) indicated that the justice system is hardly effective in cases of crimes against justice practitioners. In 2018, just 5.5% of the complaints filed with the recently created Prosecutor's Office for Crimes against Justice Practitioners and Trade Unionists (established in 2019 to investigate matters affecting the integrity of justice practitioners) were resolved; in 2019, just 0.15% of cases presented were resolved; and in 2020, 7.18% (<https://iccp.org.gt/indicadores/indicador-25/>).

25 This Inter-American Commission hearing was made public and is available at: https://www.youtube.com/watch?v=NMPzfRDb-ps&list=PL5QlapyOGhXvvyKD3Y0-GblPrDQ1xE_Ht&index=6&ct=0s

non-career and inexperienced magistrate as their representative. He was a protégé of lawyer Roberto Villatoro López, known as the “King of Tennis,” currently in jail and accused by the CICIG and the Public Prosecutor's Office of orchestrating the bribery of magistrates.²⁶

Judge Mynor Moto, former president of AJMOJ, played a key role in the association for many years and was repeatedly linked to so-called “illicit political-economic networks” (Myrna Mack Foundation 2019). The CICIG and the Public Prosecutor's Office formally challenged his irregular conduct in the “Law Firm of Impunity” case, in which former Supreme Court magistrate Blanca Stalling was found guilty of influence peddling within the judiciary.²⁷ At the end of 2020, despite pending challenges and injunctions against him, Mynor Moto was nominated by the College of Lawyers and Notaries of Guatemala (CANG) to occupy a vacant position on the Constitutional Court (CC) to conclude the 2016-2021 term, following the death of one of the sitting magistrates. At the end of January 2021, a majority in congress swore him in as a full magistrate of the CC. He was never able to take office. The Special Prosecutor's Office Against Impunity (FEI) filed charges against him in the case known as “Parallel Commissions 2020”, and for another case of alleged bribery.

The Institute of Magistrates of the Courts of Appeals (IMCAOJ) has also been associated with influence peddling. In the controversy over appointments to the appellate courts in 2020, the IMCAOJ openly denounced FEI's investigations, which had pointed to links between seven magistrates, all of whom were members of the IMCAOJ, and the former secretary of the presidency, who allegedly conspired to secure the appointment of specific magistrates to the high courts.²⁸ FEI requested the removal of the immunity of 13 judges allegedly involved in this case, among them four female judges.

7.2. “Regressions” and their effects on women judges

The efforts of CICIG, FEI, and the judges of the Guatemalan Association of Judges for Integrity to combat corruption and influence peddling within the justice sector unleashed a counter-reaction that has been called “authoritarian regression”, leading to the massive departure, even exile, of numerous justice practitioners.

CICIG head Iván Velásquez was expelled from Guatemala by President Jimmy Morales in January 2019.²⁹ In August 2021, FEI head Juan Francisco Sandoval was dismissed by Attorney General Consuelo Porras, a move widely interpreted as a political move to limit future investigations into high-level corruption.³⁰ He went into exile, as did other FEI prosecutors who have been criminally prosecuted. Judge Erika Aifán of the High-Risk Court D embodies one of the clearest cases of persecution of female judges committed to the fight against impunity. In March 2022, she

26 Roberto Lopez Villatoro made a fortune in contraband. He was married to congresswoman and presidential hopeful Zury Rios, daughter of former dictator General Ríos Montt. In October 2009, the then head of the CICIG, Carlos Castresana, accused López Villatoro of manipulating the election of Supreme Court magistrates and of being part of clandestine structures in the country. Castresana indicated that investigations confirmed that at least 26 of the 47 members of the commissions for the appointment of magistrates to the appellate courts and the Supreme Court of Justice were granted scholarships by López Villatoro. Castresana revealed that Lopez Villatoro was behind 26 nominations: four Supreme Court justices, six appellate judges, seven law school deans, and nine representatives of the Bar Association. “For several years he has been co-opting magistrates from various jurisdictional orders and hierarchies, with the purpose of directly or indirectly controlling the appellate courts and the Supreme Court.” Castresana also disclosed that López Villatoro had links to, and support of, political parties and law firms processing clandestine adoption procedures, law firms defending drug traffickers, as well as military officials involved in human rights abuses and corruption cases. He was arrested in 2018. *Prensa Libre*, February 23, 2018.

27 For more details on the case, see “Solicitud de antejuicio al juez Mynor Moto Morataya”, by CICIG (<https://www.cicig.org/casos/solicitud-de-antejuicio-contra-juez-mynor-moto-morataya/>)

28 “Magistrados que se relacionaron con Alejos arremeten contra el informe del MP”, *La Hora*, June 2020 (<https://lahora.gt/magistrados-que-se-relacionaron-con-alejos-arremeten-contra-el-informe-del-mp/>).

29 According to Bowen's analysis, the fact that the powerful private sector organization CACIF withdrew its support for President Pérez Molina was a key element in his resignation and subsequent arrest. However, when the CICIG turned its attention to CACIF's role in political corruption, the latter began a campaign against the former (Bowen 2022).

30 Sandoval immediately went into exile, as did former attorneys general Thelma Aldana and Claudia Paz y Paz.



Judge Erika Aifán, during the hearing of the “Illicit Financing of the [political party] FCN Nación” case, 2018. Credit: Simone Dalmasso / Plaza Pública.

resigned from her judicial career and announced her exile in the U.S., alleging a plot hatched in the Supreme Court to imprison her; she also claimed to fear for her life. Her court was handling numerous complex cases initiated by CICIG and FECI. Aifán had prosecuted dozens of the country’s most powerful businessmen, politicians, and criminal bosses for corruption, money laundering, illicit election financing, and drug trafficking. She also prosecuted corrupt lawyers and judges. As a result, she received constant threats and harassment inside and outside the judicial system. Her own office staff secretly taped her, removed physical and electronic files from the office, and hid notifications of proceedings she was supposed to resolve.³¹ When she was hearing high-impact cases, she faced an increase in complaints against her and supervisory visits from the judiciary.

In 2020, the president of the IMCAOJ accused Aifán of having ordered criminal investigations against judges or magistrates who enjoy the right of pre-trial, although no evidence was ever presented to support this claim. This accusation against Judge Aifán was made in relation to the “Parallel Commissions” case. In April 2018, she sent Roberto López Villatoro and two other people to trial.³² In interviews she gave in the days after her resignation and exile, Judge Aifán pointed to the political and economic relationships that exist between the Supreme Court and the IMCAOJ.³³

In theory, the culmination of a professionalized judicial career means aspiring to positions in the highest courts of justice. However, as we have noted, Guatemala has a two-tier structure for

31 *El Faro*, “La jueza Aifán describe la “criminalización y vigilancia” a las que está sometida”, November 21, 2021. <https://elfaro.net/es/202111/centroamerica/25827/La-jueza-Aif%C3%A1n-describe-la-%E2%80%9Ccriminalizaci%C3%B3n-y-vigilancia%E2%80%9D-a-las-que-est%C3%A1-sometida.htm>

32 Ibid.

33 *El Faro* “Aifán, desde el exilio: ‘En Guatemala estaba en riesgo mi vida’” March 22, 2022. <https://lahora.gt/aifan-a-el-faro-en-guatemala-estaba-en-riesgo-mi-vida-e-integridad/>

the appointment of its judges: first instance justices (of the peace, first instance, and sentencing) have been professionalized through the School of Judicial Studies. But appointments to the higher echelons (appellate courts and the Supreme Court) depend on nominating commissions, which are ultimately controlled formally by Congress and informally by organized crime networks in alliance with corrupt political elites.

Despite reforms to the Judicial Career Law in 2017 that sought, among other measures, to promote judges to second and third instance positions, the nominating commissions still grant trial lawyers higher scores and it is estimated that the ratio of career judges to non-career appointments has decreased in recent years.³⁴ One female judge who served on previous nominating commissions commented:

“All of us judges started off with a 15% disadvantage because we’re not trial lawyers, but rather went straight into judicial training....Would you believe that the commissions decided to lower the evaluation average? No doubt so that those who had not made the grade could be appointed.”

While the selection system formally considers the academic and professional training of candidates, clientelism, political capture, and exchanges of favor have come to play an increasingly key role. As exiled former magistrate Claudia Escobar observes, the nominating commissions were constitutionally established to ensure that the best candidates for magistrates were chosen. Ultimately, however, they were politicized and co-opted by organized crime (Escobar 2019, 249). First instance judges know that without political alliances and support, their candidacies are unlikely to succeed. When asked about their future job projection, one female judge said:

“I would have liked to be a magistrate. I already have a master’s degree in gender and justice, another in criminal law, but to be a magistrate you need to have contacts within the nominating commissions and with congressional deputies, and if you don’t, you can’t advance. I’m not going to lend myself to these things because you ask for a favor to be appointed as a magistrate, to be put on the list, you can be appointed as a magistrate, but then, afterwards, all those magistrates who accepted must pay for previous favors, and that is neither correct nor legal; it goes against all my principles. If the system isn’t changed, it won’t motivate you to participate, because you know you must be in that environment to get to that position. It doesn’t matter what training or experience you have, and that’s why many magistrates get where they are, who have never been on the bench, know nothing about gender, know nothing about criminal law, don’t even know how to draft a sentence, and that’s why... those who pay the costs are the [people seeking justice]. Five years from now maybe I’ll still be here, God willing.”

Another female judge with even more academic credentials commented:

“I discovered many things. One is that written processes are very different to practical ones. If you don’t participate in a group where [promises are made], you can’t hope to reach these posts... With the radical changes that took place in our country and the reforms that were announced, I hoped that we were going to have a different process, but that hasn’t happened. The law says the Council of the Judicial Career must promote colleagues... I found out directly from the Council and the evaluation process that my average is one of the highest. I think only one female Supreme Court justice has an average like mine; everyone else is below us. In theory, I shouldn’t have to worry, just submit my paperwork, and the Council should tell me ‘You’re qualified’, and then [I’d be able to] advance in a judicial career. But I know it’s not going to be like that because it’s more than obvious.

34 This conclusion is based on press reports and anecdotal evidence. Repeated attempts to obtain figures through public information requests have been unsuccessful to date.

Many women judges committed to the fight against impunity do not compete for appointment to the high courts because they know they have no chance of being elected:

“From the moment [I know] that to participate [in the elections] I must go to the doors of the congress; from that moment I’m corrupt because I’m asking someone to appoint me; I don’t believe in that procedure. If they change the way of electing magistrates for appellate courts then I will gladly [put myself forward], if I’m still the right age and have the time, but not otherwise.”

Our findings suggest that, under prevailing conditions, most judges committed to human rights and greater accountability choose to remain in the lower levels of the judiciary rather than attempt to reach higher positions, the rationale being that they can have more impact and independence in their current positions. The alternative is, as in Erika Aifán’s case, to be forced into exile because of their commitment to combating corruption.

Despite prevailing trends within the judiciary undermining judicial independence, the relative autonomy of women judges within their courts remains a fundamental part of legal culture and training, and of their self-identity (Jaramillo Sierra and Buchely Ibarra 2019, 31). Examples of this are high-profile women judges, including Yassmin Barrios, Patricia Bustamante, Érika Aifán, and Dinora Martínez, who have played a key role sitting on specialized High-Risk courts. They have made landmark rulings that challenge systematic impunity. These rulings include cases related to transitional justice (including crimes of genocide and sexual slavery committed by the armed forces during the armed conflict), and corruption cases, all aimed at dismantling the mechanisms of “clandestine control”. As a result, they have been subject to public criticism, threats, and violence, in addition to harassment, surveillance, and pressure from the judiciary’s internal evaluation system (Impunity Watch 2019).

As clandestine groups consolidate their control over Guatemala’s judiciary, mechanisms originally designed to ensure the professionalization of the courts are increasingly used as weapons to coerce and silence non-compliant judges. As one female judge observed in an interview:

“In highly paradigmatic cases, supervision is used as a mechanism to harass the judge. It happened in the genocide case and in the Sepur Zarco case.³⁵ They come and ask for reports and reports. Supervision should not be allowed to become a mechanism to oppress judges.”

Yassmin Barrios, one of the female judges on the court that tried former General Ríos Montt and his former director of military intelligence, Mauricio Rodríguez Sánchez, for the crimes of genocide and crimes against humanity in 2012, has been the victim of a sustained hate campaign in the press and social networks, many of which have gender-specific overtones (Impunity Watch 2019). The attacks against her are longstanding; in 2001, the night before the opening of the hearing regarding Monsignor Juan Gerardi’s assassination, grenades were thrown at her home and in an interview with us she claimed to have suffered at least four attempts on her life. At the time this report was published, however, she was still a member of High-Risk Court A, where she has worked since 2009. Despite the constant attacks against her, she vindicates the genocide sentence:

“With the sentence we demonstrated to the world that in a small country we could judge within our borders a crime so heinous that it threatens all of humanity. We applied domestic law; fortunately, our penal code in article 365 includes [the crime of genocide]. In addition, with few human and material resources we were able to carry out the deliberation [notwithstanding] we did not have more personnel, nor did I ask for more personnel, just who we had and as this room was not big enough, I borrowed one over there [in the Supreme Court]. Another aspect was giving dignity back to the

³⁵ The Genocide case (2013) and the Sepur Zarco case (2016) were successfully prosecuted; the courts sentenced military elites who committed crimes of genocide, crimes against humanity, sexual violence, sexual slavery, and other serious human rights violations.



Judge Patricia Bustamante, Judge Yassmin Barrios, and Judge Pablo Xitumul during a hearing of the Ixil Genocide case, Guatemala City, 2013. Credit: Simone Dalmaso / Plaza Pública

people, allowing them to be heard; at a psychological level they also experienced a catharsis, to narrate everything they had suffered. I remember that some people told me ‘I don’t feel alone [now] that you have listened to me’ and I said my God, we are human beings just like them, but they felt good that we listened to them. Can you imagine the responsibility of my colleagues and I when we were in the deliberations? We did our best. If the sentence was annulled that is another story, but it gave Guatemala, the people of Guatemala, credibility in the justice system; we let them know that there are honest people who still believe in justice, we respect the human rights of people and we’re aware that each one is our responsibility.”

Our findings suggest that female judges also tend to “remain” in other, less politicized branches of the judiciary. For example, women labor court judges have become increasingly professionalized and specialized in recent years, in large part due to USAID’s support for the modernization of Guatemala’s labor courts. Clearly, these courts have been an avenue for female judges to further their careers, and the level of experience and training demonstrated by the labor judges we interviewed confirms their professionalism. When asked, however, about their future career aspirations, most expressed similar sentiments to the female judges in the High-Risk and femicide courts: they preferred to exercise their professional expertise in the court where they presided, rather than enter into the political negotiations and tradeoffs necessary to climb the career ladder.³⁶ Notably, for female judges in Guatemala committed to seeking accountability and resisting state capture, the separation between the lower and higher levels of the judiciary has become increasingly stark, with female career judges increasingly distrustful of non-career judges entering the appellate courts. As one female career judge commented, “It is a freedom and a strength to know that we got here because of our abilities and not because of any kind of privilege.”

36 We lack data on the administrative and civil courts, but our initial findings suggest that women judges in these courts are a minority compared to other courts. Unlike courts with oral trial procedures, the administrative and civil tribunals are still governed by written procedures, which are less transparent. These courts, which hear cases of economic interest (payment of bank debts, for example) and misconduct in public administration (opaque contracts, for example) are the least reformed (i.e., where we see more continuity with the pre-existing “legal culture”). Therefore, we would expect that, on the one hand, these courts are administered rather more by patriarchal networks and, on the other, that they are more permeable to clandestine mechanisms of control whose aim is political capture.

CONCLUSIONS AND RECOMMENDATIONS

In this paper we analyze the situation of female judges in Guatemala, a fragile state in authoritarian regression. We suggest that many of the theories and assumptions of existing studies on women in the judiciary are insufficient to understand gender dynamics in fragile states where the judiciary is marked by political capture and high levels of corruption.

The reforms to the judicial system after the political transition and the Peace Accords, especially the professionalization of female lawyers and the creation of specialized courts, opened important opportunities for women in the judiciary, making Guatemala one of the countries in Latin America with the highest percentage of women judges. Currently, there is almost parity on the bench.

Even so, in this working paper we document multiple forms of gender discrimination affecting women judges due to patriarchal dynamics and structures. We argue, however, that in situations of political capture, “glass ceilings” (invisible barriers created by unwritten patriarchal norms that prevent women from advancing in their careers) may be replaced by what we call “impunity ceilings”, i.e., invisible barriers set in place by the political and economic co-optation of the judicial apparatus. These impunity ceilings generally prevent women judges committed to human rights and judicial independence from advancing in their judicial careers. On the one hand, according to our interviewees (mostly first-instance judges), it is unlikely that they will decide to pursue advancement in a politicized selection to the high courts. On the other hand, given the current political capture of the selection mechanisms, it is unlikely that women judges committed to human rights will be nominated for those positions.

We suggest that the analysis of women’s experiences in the judiciary can shed new light on how the justice system works. We developed our analysis by focusing on four elements that, according to our interviewees, contribute to guaranteeing judicial independence: (1) professionalization; (2) security conditions; (3) working conditions; and (4) institutional design. We argue that while many situations affect both male and female judges in their professional practice, gender discrimination and patriarchal power are ongoing challenges and barriers for female judges.

At the same time, we document the perspectives, sensitivities, and experiences that women judges can bring to their courts and suggest that these elements can broaden access to justice, especially for women and girls who suffer discrimination and gender-based violence. Our study confirms hypotheses about the importance of having judiciaries that are more representative of society, although better ethnic-racial and class representation is needed. We also found that to address gender discrimination in the courts, it is not enough to have women judges, but rather female – and male – judges need training to render verdicts from a gender perspective (hopefully intersectional) in judicial systems that prioritize the fight against these forms of discrimination. Our study also confirms the importance of having feminists in decision-making positions, especially during periods of institutional reform. Changes driven by feminist judges and magistrates, such as María Eugenia Morales, Thelma Aldana, and Delia Dávila, or by Attorneys General Claudia Paz y Paz and Thelma Aldana, will potentially have positive long-term consequences on how Guatemala’s judicial system deals with gender discrimination and violence.

In this paper, we show the varied trajectories of women judges in Guatemala. For some, their occupations prior to entering the judiciary have allowed them to contribute specialized points of view to their jurisdictions. The School of Judicial Studies has created a system of public calls that has allowed justice practitioners and students of the School, as well as those from the “street”, i.e., from other branches of the legal profession, to join the judiciary. The professionalization undertaken at the School has undoubtedly favored the entry and training of female judges, such that they can choose which field to specialize in during their judicial career.

We found, however, that the appointment system suffers from certain distortions. On the one hand, sexist relationships in appointments came to light, leading to cases of sexual harassment. There is a clear need to strengthen internal mechanisms to combat sexual harassment and aggression, and all forms of violence against women within the judiciary. In addition, a high level of clientelism

persists, generally favoring men with lower qualifications and merits. In addition, the fact that women's first appointments as justices of the peace generally coincide with their reproductive age implies multiple challenges for women with young children when they are assigned to courts located far from the main cities.

In terms of opportunities for continuing training, specialization, and professional development, the School of Judicial Studies, in partnership with universities and social organizations, has generally performed its prerogatives in full. However, we found that the system of points-based performance evaluation has evolved into a double-edged sword for two reasons. First, because training has become a virtual race to accumulate points and thus obtain a high score in performance evaluations, with no control or checks exercised over the quality of learning. To strengthen judicial independence, it is vital that internal regulations for evaluations precisely indicate the items to be assessed and their weighting, and that not only the amount of training be evaluated, but also its quality and impact on sentences. Second, female judges face multiple obstacles as they attempt to combine their professional lives with family life. Therefore, the evaluation system disadvantages female judges because, by design, it scores men and women equally without considering that socially women have other family burdens that make it difficult for them to compete on equal terms. In short, there is no consideration given to structural gender inequalities, either for appointments or evaluations.

As we show in this paper, the creation of specialized criminal courts for Femicide and Other Forms of Violence Against Women, derived from legislative reforms to combat these crimes, has opened new opportunities for women within the judiciary. The implementation of reforms has been an important step in strengthening training in gender perspectives, thus opening the way to new forms of judging that take gender inequalities into account, or at least to efforts to combat systematic violence against women and girls via the courts. The role of international cooperation agencies has been key in this effort, as has the support of feminist Supreme Court justices.

We found a high degree of commitment to the objectives of this specialized justice among our interviewees. The workload, however, is considerable, which includes the emotional impact of hearing so many cases of violence against women and girls. The prevalence of sexist and patriarchal attitudes in society means that being a female judge in these specialized courts involves swimming against the current. Given the lack of training in gender perspectives for all jurisdictions and courts, there is a risk that the specialized femicide system may remain a feminist enclave within the judiciary. Training with a gender perspective should be mandatory for all judges in the country, so that they have the knowledge and awareness to guarantee women's rights and employ gender perspectives in their legal deliberations. We also hope that this training with a gender perspective could contribute to reducing cases of sexual harassment within the judiciary.

We found that female judges face specific challenges in guaranteeing their own security in their professional practice. The challenges are greater for female judges in the High-Risk courts, but affect women judges in all jurisdictions, due to the generalized sexism and insecurity in the country, the physical conditions of many courts, and the high levels of impunity. Insufficient female security agents means that female judges with assigned security personnel must share their privacy and family life with armed men. In addition, given ongoing political capture, threats to female judges often come from within the judiciary.

As we emphasize in this paper, the fact that there are more women in high court positions has not necessarily implied a more legitimate judiciary or greater public confidence in the institution, as some authors suggest for established democracies. This is due to several interrelated factors: widespread impunity, which is reinforced by delaying tactics in high-impact cases, messages targeted at the citizenry that reinforce a "culture of non-denunciation", and the current context of authoritarian capture and regression, which we analyzed in the last chapter. The political capture of judicial nomination procedures demonstrates how associations of judges and magistrates have weakened, rather than strengthened, judicial independence. These procedures do not necessarily imply a disadvantage for women judges but do mean that successful candidates (men and women) are subject, at best, to strong pressures and, at worst, are already beholden to certain political and economic interests. Logically,

in this scenario the prospects for the judicial system guaranteeing human rights, including women's human rights, are greatly reduced. As our analysis of the experiences of women judges in Guatemala demonstrates, great strides have been made over the past thirty years to strengthen the justice system, improve the presence of women, combat human rights abuses, and develop gender perspectives. At present, many of these achievements are under serious threat. Although this is a particularly adverse outlook, the professionalization of the judicial career and the commitment of many judges to their professional practice and judicial independence indicate that there are still possibilities for a better justice system in Guatemala's future.

ANNEX 1: TABLE OF INTERVIEWS CONDUCTED

Fieldwork for the “Women in the Judiciary” project was conducted in April and May 2019. We covered the departments of Guatemala, Quetzaltenango, Sololá, and Totonicapán. Twenty-three interviews were conducted with female judges and three for context with judges and personnel from international organizations.

List of interviewees, by court and sector

	Penal	Civil	Labor	Multidisciplinary
Justice of the Peace	1	2		1
Femicide and All Forms of Violence against Women	6			
Highest Risk	4			
Civil Court of First Instance		1		
Criminal Court of First Instance	1			
Labor and Social Security Court			3	
Sentencing Court	1			
Appellate Court	1			
Supreme Court of Justice	2			

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