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A need for change: Why do women in the judiciary matter?

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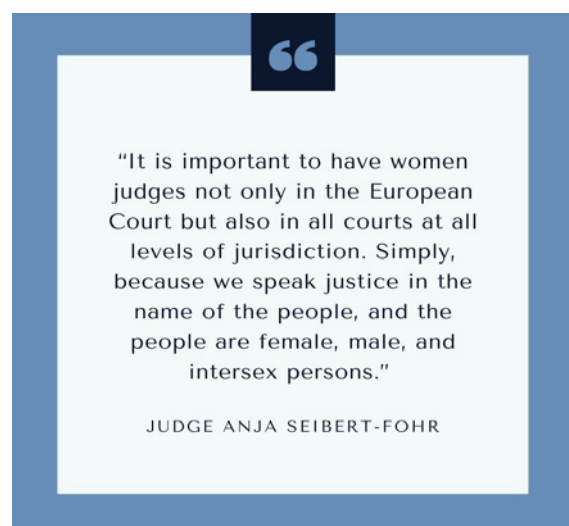
In March 2021, the United Nations held the 65th session of the Commission on the Status of Women (CSW65). Since 1947, the Commission is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. The Commission prepares recommendations to the Economic and Social Council on promoting women's rights in political, economic, social, and educational fields.

A need for change: Why do women in the judiciary matter?

"When I'm sometimes asked, 'When will there be enough [women on the Supreme Court]?' and I say, 'When there are nine,' people are shocked. But there had been nine men, and nobody's ever raised a question about that."

Ruth Bader Ginsburg, Justice of the Supreme Court of the United States

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In 1996, the Council expanded the Commission's mandate to take a leading role in monitoring and reviewing progress and problems in the implementation of the Beijing Declaration and Platform for Action². The Beijing Declaration underlines, among other principles, the importance of empowerment and advancement of women, including the right to freedom of thought, conscience, religion, and belief,

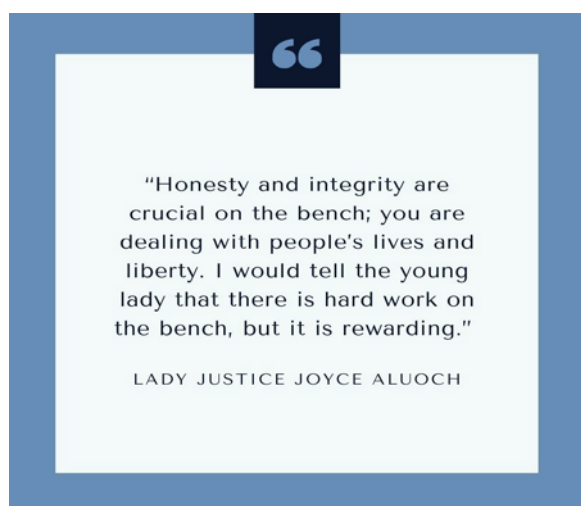
¹ ECOSOC, Resolution 11(II) of 21 June 1946.

² ECOSOC, Resolution 1996/6.

thus contributing to the moral, ethical, spiritual, and intellectual needs of women and men, individually or in community with others and thereby guaranteeing them the possibility of realizing their full potential in society and shaping their lives in accordance with their own aspirations³. The Beijing Declaration not only underscores women's rights as a human right, but it particularly recognizes the significance of women's empowerment and their full participation based on equality in all spheres of society, including participation in the decision-making process and access to power, as foundation for the achievement of equality, development, and peace around the world.

Within that framework, the 65th session of the Commission evaluated broader questions regarding women's full and effective participation and decision-making in public life, by promoting gender equality and the empowerment of women, and launched the flagship Generation Equality campaign, which calls for women's right to participate in decision-making in all areas of public life. The 25-year review and appraisal of the implementation of the Beijing Declaration and Platform for Action revealed that, despite important steps to reduce gender gaps and inequalities, progress has not matched the commitments that Member States made in 1995 and that, in some areas, the situation does not look as promising now than before.

Access of women in the political arena



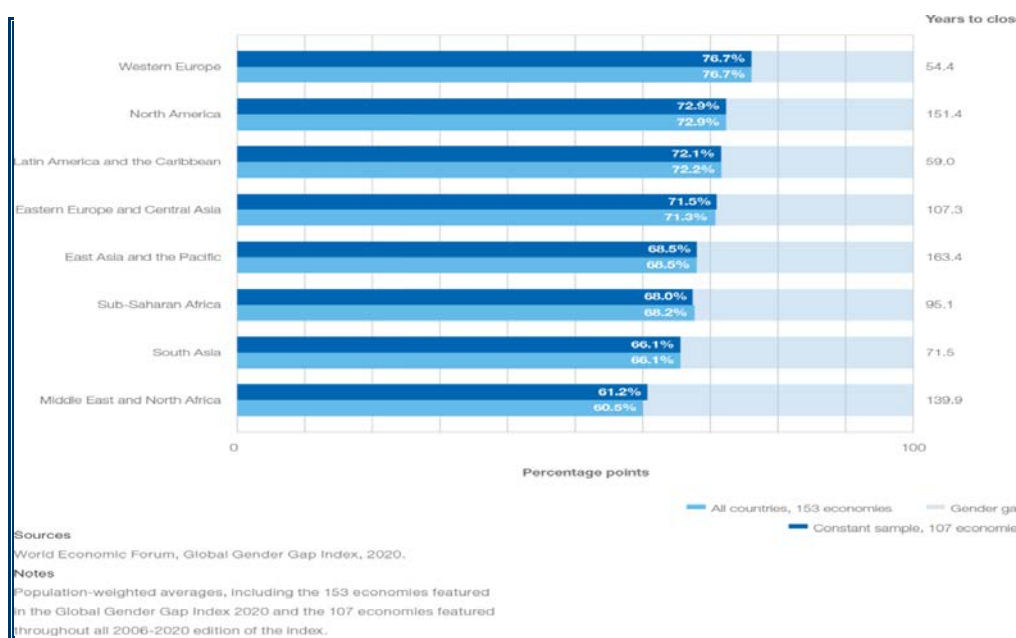
The discussion of the status of women remains relevant, especially given the latest forecast provided by the World Economic Forum's Annual Global Gender Gap Report (2020). The report analyzed 153 countries in their progress toward gender parity, focusing on four main themes: economic participation, educational attainment, health and survival, and political empowerment, and called for

urgent action. "At the present rate of change, it will take nearly a century to achieve parity, a timeline we simply cannot accept in today's globalized world, especially among younger

³ Beijing Declaration and Platform for Action, adopted at the 16th Plenary Meeting, on 15 September 1995; for the discussion, see chapter V.

generations who hold increasingly progressive views of gender equality," the report states. "Projecting current trends into the future, the overall global gender gap will close in 99.5 years, on average, across the 107 countries covered continuously since the first edition of the report." (World Economic Forum, 2020)

Gender gap closed to date by region, 2020.



Source: World Economic Forum, 2020

Such findings confirm that states are far from where they need to be to attain actual gender parity in their societies, but it also reinforces the responsibility of states to take them as a warning sign and to act accordingly.

Women in the legal profession

The rapid entry of women into legal professions beginning in the 1970s has been well documented. Women make up increasing proportions of the global legal profession, but their progress differs dramatically by culture and nation. A 2013 study of an 86 country sample accounted for 80 percent of the global population in 2010 and included places in which information on legal professions is limited, including eight countries in Sub-Saharan Africa, East Asia, South Asia, the Middle East, and North Africa, as well as Latin America and the Caribbean. This study presented a descriptive pattern with respect to what the author calls

“lawyer feminization” and elaborates how women began to flow into the legal profession worldwide in the 2000s. (Michelson, 2013)

Despite the growing participation of women in the legal profession, the gender gap remains prominent. For instance, in a recent article published by Ganguli, Hausmann and Viarengo (2020), the authors note that “around the world in the legal profession: women get in, but not up.” The authors provide insights on how the legal sector has some of the largest gender gaps in leadership positions when compared to other professions. Entry levels are the only job position where gender parity has been almost achieved. For example, the authors observed that “in some countries with large initial gender gaps, such as France, more females were hired in entry level positions over the years. However, no new female lawyers at the entry-level position were hired in some countries, such as Japan and Sweden [...]” The share of women among associates has increased for most countries from 2004 to 2011. Even though in countries like Poland, Belgium, the UK, Sweden, and Hong Kong the share has reached 50% or above, a significant gender gap exists at senior positions. In 2011, only Sweden had at most 50% of female partners in law firms, while several other countries do not have female partners at all. (Ganguli, Hausmann, & Viarengo, 2020)



Source: The Gave Gap, Statistics from the United States

Women in the Judiciary

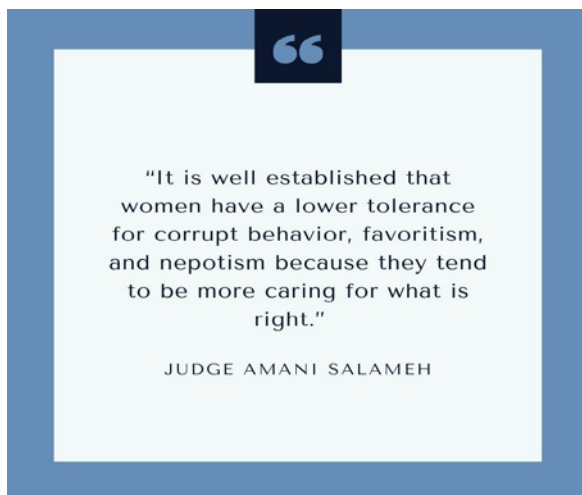
Judiciaries have the responsibility to ensure not only that order is maintained in their countries, but also that the struggles the citizens are engaged in over the law, ideas, politics,

or social values are resolved peacefully, sensibly, and fairly. And while the system of checks and balances plays an essential function in guaranteeing stability in the legal system, it is the courts that have the ultimate responsibility for maintaining and preserving the Rule of Law (Wohl, 2021). When a system of laws maintains accountability and works to protect all citizens, especially the most vulnerable groups of society, a nation will prosper and will progress.

Enshrined in the Beijing Declaration, women's right to participate in all aspects of public life, including the judiciary, has been internationally recognized as a fundamental human right⁴. The United Nations has offered a large body of evidence on the relevant role women play in the administration of justice around the world (E/ESCWA/ECW/2019/2). Women's presence in the judiciary serves as a catalyst for the development of strong, independent, accessible and gender-sensitive judicial institutions and, more broadly, the achievement of gender justice within society (E/ESCWA/ECW/2019/2). Female judges have also made groundbreaking decisions that have transformed the criminal justice systems, especially in cases involving rape, sexual violence, and forced marriage. Women's participation in the judiciary has also become an essential objective to make the decision-making process more responsive, inclusive, and participatory at all levels worldwide.

A growing body of empirical research also indicates that women judges contribute to improve access to justice for women, by supporting women's specific justice needs across a range of issues. Female judicial appointments, particularly at senior levels, can help shift gender stereotypes and provides a welcoming space for women's motivation to enforce their rights (OECD, 2017). Also, citizens tend to relate a gender diverse judiciary with more representative governance. As Edroma notes, gender parity in the judiciary ensures a "balanced approach to enforcing the law and implementing equality, which in turn builds public trust and confidence in the state." (Edroma, 2019)

⁴ Women's right of equal participation is also provided in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Vienna Declaration and Program of Action as well as in United Nations General Assembly resolutions such as resolution 66/130 on women and political participation. It also features in the 2030 Agenda and in regional instruments.



However, in addition to such specific roles, women judges serving in judiciaries are also a key matter of governance that relates to fairness, transparency, integrity, and contributes to the effectiveness of the rule of law. As the president of the International Association of Women Judges has noted, the presence of women is also essential to the legitimacy of the judiciary and helps to

build public's trust. (Ruiz, 2019). According to the United Nations' recent findings (2019), female judges are less susceptible to corruption and political pressure and contribute to increasing the independence and integrity of the judiciary as well as the quality of judgements. Diversity of viewpoints is not just an inquiry reserved for the politically correct, but a question of international and domestic institutional legitimacy (Grossman, 2011).

In addition to the Beijing Declaration, international instruments have also compelled states to adopt measures and address broader issues of gender imbalance as well as removing legal, structural, and institutional obstacles for women's equal access to the justice sector. For example, Article 7 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) provides that State parties "shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country [...]"⁵ The Convention requires the participation of women in the exercise of political power, including the legislative, judicial, and executive powers. This provision mandates states to ensure women access to legal institutions, especially in those in which equality remains an aspiration.

According to the Sustainable Development Goals (SDGs), to realize gender equality by 2030, states should take urgent actions to eliminate the roots that have caused discrimination and have impeded women's participation in private and public spheres, including the redesign of their legal framework and the adoption of laws which proactively advance equality among women and men⁶. The SDG 5 underscores the importance of achieving gender equality and

⁵ Article 7 of the Convention on the Elimination of all Forms of Discrimination against Women.

⁶ UN Economic and Social Council (2017). Progress towards the Sustainable Development Goals: Report of the Secretary-General (E/2017/66).

empowering women not only because it is a basic human right, but also because of its catalytic and subsequent effects across all other development areas (United Nations, 2021).



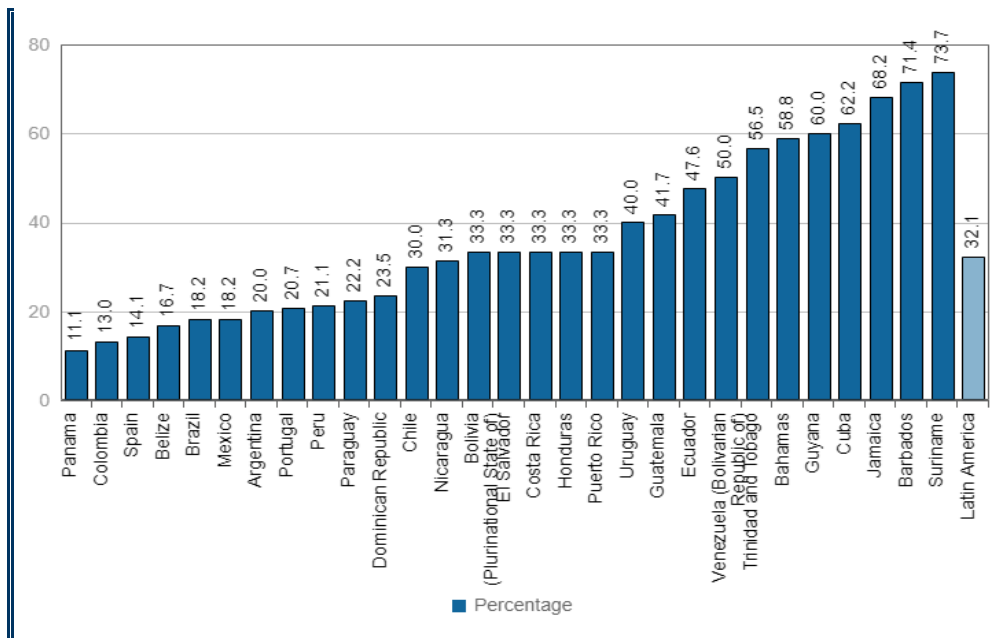
International organizations are constantly raising awareness about the need to ensure better access for women to judicial professions. The International Development Law Organization (IDLO), in its multiple reports, has called on national governments and the international community to invest more resources and efforts towards addressing the unique needs and challenges faced by

current and prospective women legal professionals (IDLO, 2018). "International laws require states to take concrete measures to address gender imbalances and deficits in all public institutions, both through the identification and removal of legal and practical barriers to women's equal participation, and through proactive steps to actively encourage and advance women's equal representation." (IDLO, 2018)

While the role of women in the judiciaries has increased, the differences between and within countries show that there are solid obstacles to female judges' appointment to and career progression in national and international tribunals. Those obstacles range from legal, political, institutional, normative to structural dimensions. This is a global gender imbalance. Such disparities reveal the unfinished business of creating access to women to the judiciary.

And even in countries where more women have been appointed as judges, they are still vastly underrepresented in top-ranking positions. Below there is a summary of the status of women representation in various regions around the world.

Percentages of women judges in the highest court or supreme courts in Latin America (39 countries)



Gender Observatory for Latin America and the Caribbean, 2018

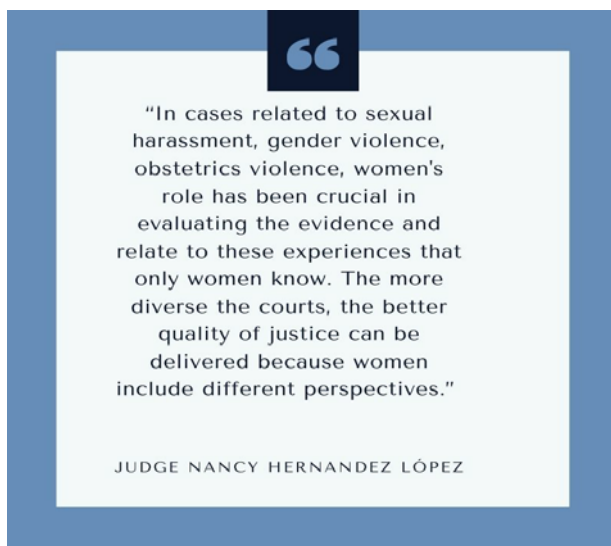
In its 2018 Report, the United Nations’ Gender Equality Observatory for Latin America, and the Caribbean observed that seven countries have recorded progress in terms of the presence of women in supreme courts, such as for example Jamaica, Barbados, Trinidad and Tobago and Suriname. Those countries now present the highest percentages in the region and make up their highest courts with most women. In addition, Cuba, Chile, and the Dominican Republic are the countries with the largest increases in female participation in their highest courts. Conversely, Belize and Guatemala are countries in the region where the number of women judges in supreme courts has decreased. In other Caribbean countries, such as Anguilla, Antigua and Barbuda, Dominica, Grenada, the British Virgin Islands, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, the percentage of women justices represents a 63.63%. (ECLAC, 2018)

Another relevant study produced by the UN Economic and Social Commission for Western Asia (ESCWA), (2019) indicates that, despite some progress, women’s presence in the justice sector remains highly unequal. In many Arab countries a few women serve in higher courts compared to lower ones. The study also reveals that women’s presence in judicial institutions has been viewed as a positive factor by the legal profession in the Arab region for various reasons, including a more gender-sensitive handling of cases, an increased understanding of

the judiciary's role in protecting women from violence. In addition, women judges are perceived as being less susceptible to corruption practices and external pressure.

The ESCWA also identified large disparities between Arab countries regarding the presence of women in judicial institutions. For example, it reports that "the number of female judges has significantly increased in countries such as Jordan, Lebanon, the State of Palestine, Morocco and Tunisia. In other states, particularly in the Gulf region, progress has been more limited, with Bahrain being a notable exception." (ESCWA, 2019). Women's presence remains marginal in other Arab States. (ESCWA, 2019)

The ESCWA identified as main obstacles that women encounter to access to the judiciary in Arab countries, including weak commitments to gender equality in national legislation and policy frameworks; conservative religious doctrine; poor level of transparency and fairness in judicial appointments; gender-blind rules on appointment and career progression within the judiciary; the uneven distribution of unpaid care work; gender stereotypes and patriarchal assumptions regarding women's role in society, and fragmented support from national women's associations and civil society organizations. (ESCWA, 2019)



In one of its latest conference reports on this area, the United Nations Development Program (UNDP) observed that gender equality could never be fully achieved if women are not empowered (UNDP, ILAC, & IAWJ, 2008). These organizations recognized that appointing women to key posts in government, such the judiciary and national assembly are practical steps toward

establishing an appropriate platform for the promotion of gender justice. Judicial actors, especially those in positions of authority, should take a lead role in encouraging women to join the judiciary; promoting equality within the judiciary; examining hiring and promotion policies; establishing rules on sexual harassment; and advocating for a gender-responsive budget.

Also, the United Nations has also reported that even though most countries in the Asia and the Pacific region are parties to the Convention on the Elimination of all forms of Discrimination Against Women, many of these countries uphold barriers that have restricted the enforcement and practice of the principles enshrined in the Convention. Although there has been progress in strengthening the promotion and protection of women's human rights, for many women across the region the justice sector remains out of reach. In the Asia and Pacific region, obstacles to women's participation in the justice sector operate at the individual, social and institutional levels (ESCAP & UN Women, 2020). The Economic and Social Commission for Asia and the Pacific and UN Women's Report (2020) note that "women in the justice sector strengthen the legitimacy of the judiciary and make courts more accessible to the communities they serve. And, despite relatively high numbers of women in the legal profession and equal numbers of male and female law school graduates, women judges and magistrates remain scarce in this region." For example, Papua New Guinea is home to half of all female lawyers in the Pacific countries, yet only has three women as judges or magistrates.

According to ESCAP data for 2018, women made up only 13 of the 34 judges in Timor-Leste's formal justice system, and only 17 per cent of public defenders. In Pakistan, the situation of women is not different from the reality presented in other countries. Pakistani women judges remain underrepresented despite a provision that mandates that at least one family court in each district be presided by a female judge. In 2016, only 5 per cent of Pakistan's high court judges were women. In Afghanistan, between 2013 and 2016, the representation of women in the judiciary rose from 8.4% to 11%, with women managing lower courts, adjudicating juvenile and family cases as well as cases of violence against women and girls. (ESCAP & UN Women, 2020)



At the international tribunal level, the situation of women judges does not look more promising. A review of the composition of international tribunals and bodies shows that women are underrepresented in almost all cases. Some of the most striking examples are the International Court of Justice, where three of the 15 judges are women; the Inter-American Court of Human Rights with one woman president on the current bench, and there have been only five women judges among its 35

judges; the International Criminal Court has 6 women judges out of the 18 members; and the European Court of Human Rights out of 47 judges, only 15 are women.

Testimonies from the Judiciary

On March 24, 2021, to reaffirm the support to women judges worldwide, the KAS Office to the UN in New York organized the panel discussion: *“Changing the Image: Why do women in the judiciary matter? As a side-event to the 65th Session of the Commission on the Status of Women the panel was composed by Lady Justice Joyce Aluoch, former Judge of the High Court of Kenya, and former Vice-President of the International Criminal Court; Justice Maria dos Prazeres Beleza from the Supreme Court of Justice of Portugal; Justice Nancy Hernández López from the Supreme Court of Costa Rica; Justice Daniela Salazar Marín from the Constitutional Court of Ecuador; Judge Amani Salameh, Investigative Judge and the President of the Judges Association in Lebanon, and Dr. Anja Seibert-Fohr, Judge of the European Court of Human Rights.*

The assessment provided and the experiences shared by the panelists did not differ much from the panorama described above.

In the case of the European Court of Human Rights, women are still underrepresented. Judge Seibert-Fohr referred to the importance of having gender parity in both international and national courts to its impact in the court’s credibility. She also considered that lowering the barriers for women would allow them to thrive in the legal profession, such as offering more

part-time positions, where women would be more flexible to combine and balance their personal and professional lifestyles. There is a need for change in society and its structure to enable women pursue their lifestyle and still go on with their careers, Judge Seibert said.

Lady Justice Aluoch underlined important initiatives championed in Kenya to promote gender balance in the judiciary. She shared with the audience a judiciary gender audit report which has recommended various actions to achieve gender parity in the country, such as adopting a comprehensive gender policy; increase the women representation in leadership roles, the analysis of gender disaggregated data, and the development and delivery of gender sensitive inclusive training for all judicial employees.

Judge Prazeres Beleza described the significant progress in women accessing the justice sector in Portugal since the times of the dictatorships of Salazar and Caetano when the regime did not allow women to become judges. With the Portuguese revolution and major changes in society, women reclaimed their rights and got access to major governmental positions, including the judiciary. Nowadays, most of the law students and judges are women. Nevertheless, women are still a minority in supreme courts. For example, in the Constitutional Court out of the 13 judges, there are only five women judges, and at the Supreme Court out of 64 judges only 19 are women.

Judge Amani Salameh alluded to the fact that women are not deemed to be at the same level as men in Lebanon. There are different factors that have contributed to such a situation, including a patriarchal culture, the misinterpretation of religion, and the poverty in some regions, which have prevented equal access for women. When talking about gender diversity in the judiciary, she also described that “it is well established that women have a lower tolerance for corrupt behavior, favoritism and nepotism, because they tend to be more caring for what is right.” Recent cases had shown that judges who have recently been prosecuted for corruption charges in Lebanon were men.

Judge Nancy Hernández reiterated that the situation in Costa Rica is not different of what had been described for other countries. In 1990, when she joined the Supreme Court, there was only one woman. Although the situation has improved for women, there are still only 8 women judges out of the 22 members of the Court. In the Constitutional Chamber, there have only been three women over a two hundred-year period. When describing the importance of gender diversity in the court system, she also mentioned that “in cases related to sexual harassment, gender violence, obstetrics violence, women judges’ role has been crucial in evaluating the evidence. Women can relate to experiences that only women know. For her,

the more diverse the courts, the better quality of justice will be delivered because women judges offer different perspectives.”

Finally, Judge Daniela Salazar highlighted “that diversity is one of the strengths of the Constitutional Court of Ecuador. There is gender diversity, ideological diversity, but also age diversity, and that has contributed and enriched the deliberation and plurality during the debates in the Court.” She also pointed out the different standards under which female and male legal professionals are assessed when aspiring to higher positions. However, she also underlined that such regular questioning made women to prepare better to face the challenges of daily life.

Final Comments

The statistics, figures and testimonies provided in this document reveal the urgency for State Members to take concrete actions to increase women’s presence in judicial institutions and dismantle structural barriers to their effective participation in the justice sector, such as social, economic, and institutional barriers that women face in their daily lives.

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