



Women in High Courts: A Delayed Right

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Introduction

A few weeks ago, the news reported that for the first time in the history of Panama, the Supreme Court of Justice has five women among its nine magistrates. What should be mere statistical data became "news" since it is not usual to have many women in high courts. In Panama or any other country. It is for this reason that in October I presented an annual report to the United Nations General Assembly on the conditions and barriers that impede the adequate access and promotion and permanence of women in the judiciary and the prosecution, seriously limiting - and globally - their access to high courts and high positions in public prosecutors or ministries. An invisible but, at the same time, solid and insurmountable "glass ceiling" hinders, *urbi et orbi*, women's access to positions in these institutional spaces.

Greater Presence

It must be recognized that, in general, there is an increase in the proportion of judges and prosecutors in the world. Europe is in the lead, with an average of 54%, followed by the Americas with 51%. These data contrast, however, with those of Oceania, Africa, and Asia, where women represent 31%, 30% and 29% of the total, respectively. In Latin America and the Caribbean, Saint Kitts and Nevis has an 83% proportion of female judges; the Bahamas and Saint Vincent and the Grenadines both have a proportion of 64%, while Argentina has 30% female judges and 26% female attorneys and prosecutors; Peru has 42% female judges and Colombia 43%. In Uruguay, 81% of prosecutors are women. In the United States of America, of the 20,270 judges who make up the judicial system in 2021, a total of 7,296 are women, representing 36%.

The path to equality in justice systems is, however, a pending agenda in most regions of the world. The proportions of high presence of women, in fact, do not occur in most countries despite the fact that they have incorporated norms on gender equality into their constitutions. However, not in all of them there is a guarantee that these will be applied and have a positive impact on women's access to the justice administration system. It is

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essential that effective measures are adopted that include review processes and public accountability.

Women: Disproportionally Low Participation

Despite the fact that different United Nations reports have highlighted the need to guarantee and promote an equal representation and presence of women at all levels of the administration of justice, this continues to be an objective that at times sounds unattainable. Indeed, women occupy a disproportionately low percentage in the high hierarchy of justice systems, and it is not proportional to the number of women who make up the two careers. In both cases, women tend to be the majority of the members in overall percentage, but their presence in higher positions is significantly lower than that of men.

The magistrates in the supreme courts of 18 Latin American countries represented, at the end of 2019, an average of 27.5% of the total. There were 8 countries below 30% (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Panama, Dominican Republic, and Peru), four countries between 30% and 40% (Chile, El Salvador, Honduras, and Mexico), two countries between 40% and 50% (Guatemala and Uruguay) and one above 50% (Ecuador). In the case of Guatemala, out of a total of 57 presidents (between 1839 and 2017), only two women (3.5%) have presided over this judicial body.

Discretionary and subjective criteria significantly affect the promotion and selection of women in leadership positions. Some examples. In India, of the 245 judges who have reached the highest court, less than 3.3% have been women. No woman has been president of the Supreme Court. In the Maldives, it was not until September 2019 that a female Supreme Court judge was appointed for the first time, and in September 2020 the first female judge was appointed to the Criminal Court. In Malaysia, the first female president of the Supreme Court was appointed in 2019. In Peru, it was not until 2021 that the first president of the Judiciary was elected in 196 years. In Israel, according to the Knesset Research and Information Center, with data from November 2020, of the 13 judges who make up the Supreme Court of Justice, only four are. In Italy, in senior management positions in the judicial sector, women represent 32% and men 68%. In the prosecutor's offices, women only represent 23% and men 77% 59.

Various Forms of Discrimination

Gender stereotypes influence the assignment of tasks to judges, who are often relegated to social, family or juvenile courts, excluding them from other offices that limit their access to leadership and decision-making positions. Patriarchal patterns and gender stereotypes are one of the great perpetuators of inequality and the uneven proportion of judges among the different courts and tribunals, with those of the social and family being

those with the greatest presence of women, compared to those of the criminal, economic affairs, or national security, mainly composed of men.

Likewise, the lack of transparency in certain selection and appointment processes blocks the entry of women into the judiciary. The imposition of disproportionate labor requirements or the lack of transparency in the qualification and selection criteria are examples of these barriers. These opaque processes are factors that alienate qualified candidates. Another of the main obstacles to the promotion of women is family responsibilities, since, in general, women are the ones who take care of children, family care and housework, and who ask for maternity leave. For women with family responsibilities, it is especially difficult to have the time necessary to meet certain academic requirements, especially for promotions and promotions.

In some countries, such as Peru, a postgraduate degree is required as a requirement to advance in the judicial or prosecutorial career, which is not necessarily synonymous with professional quality. In practice, this may exclude women who, in many cases, do not have the extra time after work or the resources to take these courses, which are expensive in many countries. This situation has been further accentuated with COVID-19, as women, in addition to carrying out their professional work, had to return to private life to face care and domestic work.

Gender Equality: A fundamental Component of Human Rights

An independent, impartial judicial system and prosecutor's office committed to gender equality are crucial for the upholding of human rights, the strengthening of democracy, the inclusion of all voices in matters of public interest, and the eradication of violence against women for gender reasons.

For this reason, the equitable presence of women and men in the justice administration system is both an objective and an essential condition for the equitable and effective protection of human rights and substantive equality. A diverse composition brings different voices and perspectives to the judiciary and reinforces the legitimacy of the judicial system and the prosecution. The effective application of tools and policies aimed at obtaining equal and proportional representation in the judiciary and the prosecution service is the exercise of a right and does not imply a concession to a specific group, but rather the search for a benefit for the general interest and society. as a whole.

The judicial system must contain at all levels a plural and diverse representation as a way to preserve and improve public trust and the credibility, legitimacy and independence of justice institutions. To this end, the selection and promotion processes in the judiciary

and prosecutor's office must be adapted to avoid that criterion, a priori objective, are barriers that contribute to marginalizing the equitable participation of women, particularly in management positions.

The gender approach in the judicial sphere implies much more than promoting equality policies aimed at achieving equal conditions in access and job performance, in general. That is good but insufficient.

Measures are required to ensure equal conditions in access to higher courts, so that equal progress is achieved in professional careers. Above all, it is necessary to guarantee a reconciliation of work and family life that makes assuming greater professional responsibilities compatible with family responsibilities, a deficiency that in many cases constitutes the structural factor causing a lower presence of women in the higher courts of justice.

Plural and Equal Representation

I have allowed myself to reach the international community with a set of recommendations that were very well received by the participating countries in the presentation that I made before the III Committee of the General Assembly in mid-October of this year. Among them, the following five stand out:

1. Public policies guided by the gender perspective, identifying the barriers that have prevented women's access to positions of greater responsibility and their permanence in them, based on the legal, institutional, and cultural context of each country.
2. Use the Sustainable Development Goals established in the United Nations to ensure that, by 2030, 50% of public positions, both in the judiciary and in the prosecution, are held by women. Political and institutional objective about which no country expressed disagreement when I presented my report in New York.
3. Design and implement a quota system, which is not merely symbolic, to ensure equal access to senior positions in the administration of justice and achieve greater equality from a geographic or regional perspective. It should be recognized that there may be other efficient mechanisms for this purpose, and it should also be noted that the use of quotas under no circumstances may detract from the quality and strict requirements in this regard in the selection and appointment process.
4. Eliminate stereotypes that pigeonhole women in specific areas of law or at certain levels in the judicial hierarchy, such as family law or at the lowest levels of the judiciary, such as the peace courts or provisional courts without guarantees work or permanence.

5. That the gender perspective be assumed as an unavoidable duty of the State, in such a way that the criteria with which the cases are studied and resolved are modified so that the possible differentiated impacts between women and men can be identified. To obtain this effect, the gender perspective must be assumed as a method of reasoning and objective and rigorous analysis that identifies, first-hand, the power relations and the differentiated consequences that women and men experience in almost any situation.