



The International Day of Women Judges

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The 10th of March 2022 marks the first International Day of Women Judges. It offers us a chance to celebrate the important role women judges play in upholding the rule of law and administering justice. It also gives us a much-needed opportunity to reflect on the work that still has to be done to improve gender equality, both in the judiciary and in the law more generally.

Women and men are not universally equal under the law. A report provided to the European Parliament in 2020 noted that over 50 countries have legislation limiting women's right to free movement and in 25 per cent of countries women are banned from travelling alone. In 34 countries, husbands can deny their wives the right to manage and dispose of marital property. Women must obey their husbands, by law, in 27 countries and in 16 women can face legal consequences for not doing so. In 11 nations, sexual violence offenders receive impunity if they marry their victims.

Even seemingly neutral laws and policies can discriminate against women or be applied in ways that favour the status quo in a world where privileged men disproportionately hold positions of power, including in the judiciary. And it is also a world where those women who do hold positions of power usually come from similar privileged backgrounds to their male colleagues.

One example of outwardly equal laws which can be unequal in effect are relationship property laws requiring a 50:50 split of property on divorce. Such a split does

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not recognise that many women act as the primary caregiver for children and other dependents. This affects their earning potential, enables male partners to spend more time and effort pursuing their careers and means women are often worse off financially after separation.

Women and other marginalised groups also often face difficulties when trying to access justice. They can face language barriers and feel culturally alienated from court processes. Those from low socio-economic backgrounds may lack the resources needed to pursue their rights in the legal system. Groups in society that are already socially and economically disenfranchised may not trust legal institutions to help them, which means they do not even try to access courts. Overall, according to the World Justice Project, in 2019 at least 5.1 billion people had some form of unmet justice need. The other side of the coin is that minorities tend to constitute disproportionately large numbers of both criminal offenders and victims and thus will be disproportionately brought before the courts involuntarily.

Of course women judges cannot solve all these problems. But they are an essential part of the wide-reaching, systemic change needed to tackle gender-based inequities. Under the UN Sustainable Development Goal 5 gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world. So the stakes are high.

Women judges play an important role in advocating for and advancing women's rights, both in the judiciary and beyond. The International Women Judges Association (IAWJ) enables women judges to unite in this mission across the globe. This allows judges to have a bigger impact and lead more effective change. The organisation was born in 1991 and has grown to become a respected international leader on gender and the judiciary. It now has over 6,000 members from more than 100 countries and territories around the world and from every level of court and tribunal.

The IAWJ has developed world leading educational programs designed to combat issues particularly affecting women, such as domestic violence, human trafficking, international

child abduction, property rights and sextortion. This involves exchanging information, conducting research, organising targeted initiatives and running public information campaigns. The IAWJ works with its affiliated national women judges associations to train judges on international human rights standards and how they can be drawn upon in judicial decision-making. By providing a global support network for women judges, the IAWJ helps develop women's leadership in the judiciary. It also presses for the appointment of women judges at all levels of the judiciary.

Women are guaranteed equal opportunity to participate in all aspects of public life under various international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Civil and Political Rights. Yet, in many countries, women remain critically underrepresented in the judiciary and indeed in the justice sector generally. This is especially evident in the higher courts. Women judges are often confined to roles in socially oriented courts, such as family and youth courts, which are seen as more traditionally feminine than commercial or criminal courts. Globally, there are also insufficient numbers of judges from disabled, ethnic and other minority backgrounds.

Much of the lack of diversity in the courts stems from the appointment and promotion processes for judges. There is no doubt that those selected to be judges should be highly qualified and capable. This is because the decisions that judges make have significant consequences for society, not to mention very personal consequences for the parties. Many would argue that merit should be the only touchstone when considering judicial appointments. Those espousing this view say that appointments based on merit may in time lead to gender equality as meritorious women candidates emerge, but striving for diversity should not be allowed to diminish the quality of the judiciary.

On the other hand, those advocating for diversity say that this is too narrow a view. Merit is vital but the judiciary also needs to be representative (and hence diverse) in order to serve the population. They therefore argue that diversity should be seen as an element of merit and effectively engrafted onto the merit requirements for the role of judge. On this view diversity is intrinsic to and not contradictory or secondary to merit.

I would go further. Like beauty, merit is in the eye of the beholder. It is not an objective standard. The criteria to assess merit are defined by the already dominant group and thus predominantly male. Rather than being a fair and transparent process, a merit-based system excludes women and other groups on the basis that they lack ‘merit’ but only as this is defined by the current holders of power.

These issues are exacerbated by the unique barriers that women and minority judges face in their career development. These include discrimination, bias, stereotyping and structural inequalities in society as a whole, including in the judiciary itself. Unequal responsibilities for family commitments and a lack of female role models also inhibit progress. In strongly traditional societies, women judges may encounter active opposition to their appointment on the basis of their gender. Pregnant judges in particular can experience both direct and indirect discrimination. This includes inadequate maternity leave, having colleagues question their ability to decide cases rationally and being told to leave the judiciary after becoming pregnant. Women who are disabled or from minority backgrounds experience intersecting forms of discrimination and barriers when pursuing a judicial career.

Women judges around the world face threats to their lives and safety. One extreme example is Afghanistan. In August 2021 the Taliban reclaimed power over the country. According to the Taliban view of the world, women have no place as judges and no right to judge men. Consequently, those women who were judges under the previous regime have not only lost their careers but are now in grave danger. To make matters worse, they are being actively hunted by the criminals and terrorists they sentenced and who have now been released from prison by the Taliban. Almost as dangerous are the disgruntled litigants dissatisfied with family law decisions made by the judge. The homes of the judges have been raided and they have received serious threats to their lives and those of their families. Many have had to flee the country. The others are in hiding. The IAWJ has been actively engaged in helping our Afghan sister judges. We could not be true to our values if we had turned our backs on them in their time of need.

It is worth pointing out that, even before the Taliban takeover, women judges in Afghanistan worked under an almost constant security threat from the Taliban and other insurgent groups. Two women judges were gunned down by unknown terrorists in January 2021 on their way to work. Their deaths were a major tragedy for their families, their loved ones and their colleagues both in Afghanistan and globally. The killings were part of a wider campaign of violence targeting public figures who supported a move towards a more inclusive and fair society in Afghanistan. Women public figures were especially targeted in an obvious attempt to intimidate not only women holding public office but women generally. It was an attack on the very heart of society, the rule of law and equality.

I am in awe of the courage and dedication shown by the Afghan women judges who worked under such conditions. I also pay tribute to and salute the courage of all those judges and public figures everywhere in the world who continue to perform their public service duties in the face of violence and danger and, in these times of COVID, the real risk of death by disease.

There are many reasons why it is important to increase diversity in the judiciary. Judges cannot effectively and fairly apply the law without understanding the communities in which they operate and the diverse lives of those who come before them. A diverse judiciary also helps ensure the legitimacy of the courts. The public will have greater confidence in a system that is seen to reflect society, rather than just a privileged minority. Symbolically, as the institution administering justice, the composition of judiciaries should embody equality and fairness. There are also important access to justice implications. Where people see themselves reflected in decision-makers, they are more likely to trust and seek the assistance of the courts.

Women and minorities bring different life experiences and perspectives to their roles on the bench. By approaching the law with their unique lens, they can contribute to a richer, more informed application and development of the law. Women judges can dispel stereotypes and combat ignorance, particularly in relation to sexual harassment, sexual violence and domestic violence matters.

But it is not just the appointment of women judges that is important. Full diversity that captures all sectors of society is needed. This includes those with disabilities and all ethnic and socio-economic groups in society. Ultimately, the research suggests that more diverse courts are better courts. They are likely to make better decisions, be more innovative and face less corruption.

While it is important to increase the number of women and minority judges, this, by itself, is not enough. Modern judiciaries require diverse thinking from *all* their members, including the “middle-aged men in pinstriped trousers.”

In order to demonstrate the effect diversity might have I point to the growing body of feminist judgment writing projects. There have been several such initiatives in recent years, including collections from academics in Australia, the United States, the United Kingdom and New Zealand. These projects involve academics rewriting judgments from a feminist perspective. They do so within the usual confines of judgment-writing; the statutes and precedent at the time, the facts of the particular case, the social science knowledge available and the judicial oath.

The feminist judgment projects recognise that judges cannot decide cases simply according to their personal preferences. They have an absolute responsibility to apply the law neutrally and impartially. Nevertheless, as human beings, judges’ backgrounds, life experiences and values will inevitably influence the way they understand legal arguments, evidence and the law. It is this element of judicial decision-making that these projects highlight and explore.

The academics pick judgments that have some particular significance to the lives of women, ranging from domestic violence and workplace discrimination to criminal sentencing and the environment. The New Zealand project includes several judgments that draw upon Māori indigenous values and understandings of the world, as well as recognising the particular lived experiences of Māori women. They demonstrate the importance of taking an intersectional approach to feminist judgment writing.

The rewritten judgments show that it is possible in many cases to reach different results by approaching the case with a different mindset even within the confines of the role of the judge and the legal rules applicable. Where a different result is not possible the rewritten judgments show the difference that a different perspective can bring in creating more sensitive, attuned and informed judgments.

Of particular interest is the way these judgments are written. Feminist judgments acknowledge the individual life experiences of those before the courts and refuse to divorce the person's actions from their context. They expose cultural and gender bias in the law, noting how seemingly neutral rules or reasoning can have distinct consequences for women and minorities. These contributions remain valuable, even if the ultimate outcome of the judgment does not differ from the original decision or the law only allows for one possible result.

It is significant that the importance of women judges for achieving gender equality has been recognised internationally by the United Nations. In 2020, the General Assembly adopted a resolution designating the 10th of March each year as an official day for recognising, celebrating and progressing the work of women judges around the world. The resolution received widespread support; it was co-sponsored by 72 states and adopted by consensus.

This momentous occasion has huge symbolic significance. The resolution represents clear support for the participation of women in the judiciary. It recognises the unique talents, perspectives and life experiences women bring to their roles on the bench. It unequivocally affirms that “active participation of women, on equal terms with men, at all levels of decision-making is essential to the achievement of equality, sustainable development, peace and democracy...”. Hopefully, this day will act to inspire the next generation of women judges and leaders in the law.

The day also provides an annual focus around which organisations, like the IAWJ, can measure progress in the appointment and promotion of women in the judiciary and for gender equality generally. Organisations can use this day as part of their public education

campaigns. It offers an opportunity to facilitate discussions about the challenges faced by women judges and for women generally. It provides a chance for women judges to come together to design solutions.

Perhaps most exciting of all, the International Day of Women Judges is a day of celebration – of the hard work, sacrifices and invaluable contributions made by women judges around the globe. We now have a day to show our appreciation for those women fearlessly upholding the rule of law, improving access to justice and forging the path towards greater equality.

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