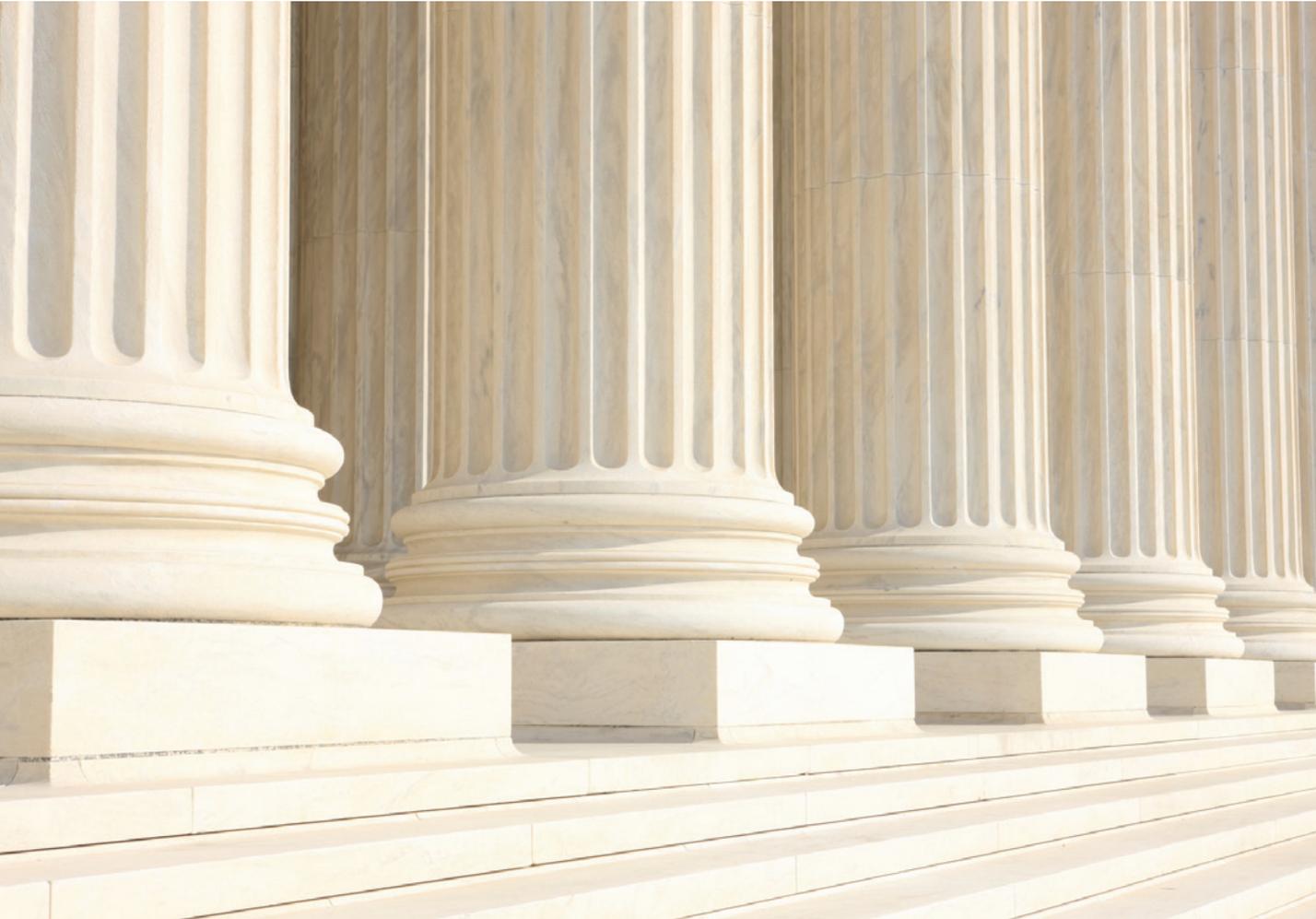


Women and the Judiciary in the Americas: LEADERSHIP AND OUTCOMES



Inter-American Dialogue

The Inter-American Dialogue is the leading US center for policy analysis, exchange, and communication on issues in Western Hemisphere affairs. The Dialogue brings together public and private leaders from across the Americas to address hemispheric problems and opportunities. Together they seek to build cooperation among Western Hemisphere nations and advance a regional agenda of democratic governance, social equity, and economic growth.

The Dialogue's select membership of 100 distinguished citizens from throughout the Americas includes political, business, academic, media, and other nongovernmental leaders. Fourteen Dialogue members served as presidents of their countries and more than two dozen have served at the cabinet level. Since 1982—through successive Republican and Democratic administrations and many changes of leadership elsewhere in the hemisphere—the Dialogue has helped shape the agenda of issues and choices in inter-American relations.

The League of Women Voters of the United States

Rooted in the movement that secured the right to vote for women, the League of Women Voters is a non-partisan organization that encourages informed and active participation in government by working to educate voters and to increase understanding of major public policy issues, including protecting and engaging voters, reforming money in politics, and defending the environment. Membership in the League is open to men and women of all ages. With more than 93 years of experience and nearly 800 local and state League affiliates, the League is one of America's most trusted grassroots organizations.

Since 1920, the League has worked to support women's leadership around the world through its Global Democracy programs. The League's Global Democracy programs encompass a range of activities, including partnering with civil society groups, training grassroots leaders, working for fair elections, stressing the importance of transparent and accountable governance, and promoting the rule of law.

International Association of Women Judges

The International Association of Women Judges (IAWJ) is a non-profit, non-governmental organization with approximately 4,000 members in 100 countries and areas worldwide. Formed in 1991, IAWJ members represent all levels of the judiciary and share a commitment to equal justice and the rule of law.

The IAWJ believes that women judges are in a unique position to advance the rights of women throughout the world. Through pioneering judicial education programs and worldwide collaboration, the IAWJ is working to advance human rights, uproot gender bias from judicial systems, promote women's access to the courts, foster judicial leadership and support judicial independence.

WOMEN AND THE JUDICIARY IN THE AMERICAS: LEADERSHIP AND OUTCOMES

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Foreword

We are pleased to present this report on women in judicial leadership in the Americas. In recent decades, women in Latin America and the Caribbean have made tremendous strides towards achieving leadership in every sphere and at the highest levels.

Today, Michelle Bachelet is in a strong position to be reelected as president of Chile, while Cristina Fernández and Portia Simpson Miller are serving their second terms as heads of state of Argentina and Jamaica, respectively. Dilma Rousseff of Brazil and Laura Chinchilla of Costa Rica now also serve as their countries' first elected female presidents. Across the hemisphere, the number of women legislators in the region has jumped 50 percent, from 16 to 24 percent, between 2000 and 2013.

In light of these achievements in the realm of elected politics, the Dialogue and the League of Women Voters wanted to build on the partnership they began in 2007 with the conference of women political leaders, and now take a look at how women are faring in the judicial branch. We turned to the International Association of Women Judges for their expertise in this arena and were delighted they agreed to join in co-sponsoring the initiative that led to this publication.

A central purpose of this conference was to draw on the collective experience of a group of accomplished women judges from across the Americas to develop recommendations on how to enhance the positive role of women in the judiciary.

The percentage of women in Latin America's high courts has risen dramatically over the past decade, increasing from zero positions in some countries in the year 2000 to a third of appointments in 2010. Latin America and the Caribbean ranks second in terms of women's representation in the judicial sector, topping the world average by 10 percent.

As judicial corruption threatens to undermine democratic institutions in many countries of our hemisphere, women leaders have played a critical role in reversing this trend, often spearheading transparency initiatives, bringing human rights abusers to justice, and devising new laws and special tribunals to address endemic patterns of violence against women.

Despite these advances, however, as in elected politics and the private sector, in no country of the Western Hemisphere does the number of women judges reach the proportion of women in the population at large, nor are women represented in equal numbers in the highest courts.

With impressive gains and outstanding challenges in mind, we organized this conference to showcase the progress that women have made in gaining access to judicial leadership positions across the Americas. Discussions focused on women's rights and strengthening judicial institutions and the rule of law; promoting diversity in the

judicial system; and the use of international law to promote women's rights and compel national governments to comply with their international obligations.

We provide the following analysis and recommendations for government officials, international institutions, and civil society activists. We stress that a strong and representative judicial sector requires that women judges be present in all courts at all levels and that there must be merit-based institutionalized processes in place that allow those women judges to rise through the ranks. We urge public and private leaders to increase judicial training to break down gender stereotypes and enhance sensitivity to women's rights. We urge government officials to implement international norms and decisions on women's rights issues, and non-governmental groups to continue holding those officials' feet to the fire.

This initiative would not have been possible without the financial support of the League of Women Voters' Global Democracy Fund. We are also grateful to the Organization of American States' Office of the Special Rapporteur for Freedom of Expression for providing simultaneous interpretation for the conference. And we owe a huge debt to the Dialogue's Rachel Schwartz for her intellectual contributions as author of a superb background paper and rapporteur's report.

Sincerely,



Zaida Arguedas
Deputy Executive
Director
League of Women Voters



Joan Caivano
Deputy to the President,
& Director of
Special Projects
Inter-American Dialogue



Joan D. Winship
Executive Director
International Association
of Women Judges



Participating judges:
Carmen Alanís (Mexico),
Vanessa Ruiz (United
States), Janet Tello (Peru),
María Eugenia Villaseñor
(Guatemala), Desiree
Bernard (Guyana),
María Francisca Zapata
(Chile), Catalina Botero
(Colombia)

WOMEN AND THE JUDICIARY IN THE AMERICAS: LEADERSHIP AND OUTCOMES

Rapporteur's Report

On February 27, 2013, the League of Women Voters, Inter-American Dialogue, and International Association of Women Judges co-sponsored the conference “Women and the Rule of Law: A View from the

Americas” at the SEIU Conference Center in Washington, DC. The event featured seven women judges from Latin America, the Caribbean, and the United States, as well as other legal, political, and development experts. Keynote remarks were given by Roberta Jacobson, assistant secretary of state for Western Hemisphere affairs.

The day-long conference showcased the progress that women have made in gaining access to judicial leadership positions across the Americas and sought to develop recommendations to advance the positive role of women in the judiciary. Well-prepared discussions focused on the following themes: women’s rights and strengthening judicial institutions and the rule of law; promoting diversity in the judicial system; and the use of international law to promote women’s rights and press national governments to comply with their international obligations.

In addition to the distinguished panelists, the conference was attended by roughly 80 participants, including US government

officials, Washington-area analysts and experts, journalists, private sector leaders, and members of the diplomatic corps from Latin American and Caribbean countries. It was preceded by a reception the evening before hosted by Ambassador Harold Forsyth of Peru, with featured speaker Kathleen Kennedy Townsend, former lieutenant governor of Maryland and assistant attorney general of the United States.

Women’s Representation in the Judiciary: What Does it Mean?

The conference served as a testament to the notable strides women have made in accessing positions of judicial leadership. The percentage of women judges in Latin America’s high courts has risen dramatically over the past decade, increasing from zero positions in some countries in the year 2000 to a third of appointments in 2010. The bench of the Eastern Caribbean Supreme Court, which includes nine countries, is filled with 60 percent women. Latin America and the

“When it comes to women’s representation ‘quantity is quality,’ as the increased number of women serves to break gender stereotypes.”

—JUDGE MARÍA FRANCISCA ZAPATA, CHILE

Caribbean ranks second in terms of women’s representation in the judicial system with over one-third of seats occupied by women, beating the world average by nearly 10 percent. This figure is also on par with Canada and the United States, which have seen slower increases but still have women occupying 32 percent and 30 percent of federal judicial posts respectively.

Despite these advances, panelists contended that progress has been sluggish and cited the need to look beyond the numbers and into the rank and types of judicial positions women most often hold. They noted that in no country of the Western Hemisphere does the number of women judges reach the proportion of women in the overall population. Supervisory judge from Chile María Francisca Zapata also commented that women continue to hit “a glass ceiling” when it comes to promotions, with male-dominated informal networks in the judicial branch often prevailing over meritocratic promotion procedures.

Others suggested that the concentration of women judges in specific types of courts is also a sign that women are not being fully and equitably integrated into the judiciary in many countries. According to panelist Macarena Sáez, fellow at American University’s Washington College of Law, the majority share of women judges can be found in courts dealing with family law and other civil matters. She warned about the dangers of creating “female-dominated spaces and male-dominated spaces” rather than ensuring that women are a part of judicial decision-making in all courts and at all levels.

Another obstacle to the ascendance of women within the judiciary is what several of the panelists termed “self-restriction”—that

is the self-imposed tendency not to pursue higher positions of judicial authority because of internalized stereotypes.

Overall, panelists agreed on the importance of not overstating the progress that has been made when it comes to enhancing women’s representation in the judicial sector.

One issue that prompted disagreement among panelists was the question of whether greater representation of women affects judicial decision-making. Do women judges naturally come to different conclusions than their male counterparts? Has the increasing presence of women judges made for a judicial environment that is more hospitable and accessible to women victims of violence and discrimination?

These questions have been the source of debate for some time, and the differing views were clearly reflected by the conference panelists. Carmen Alanís, magistrate on Mexico’s Federal Electoral Tribunal, contended that the difference in outcomes between cases argued before male versus female judges is slight or non-existent in most instances, but in some a distinction has been illustrated empirically. Specifically, Alanís cited a recent study that found women judges rule in favor of victims of discrimination in 11 percent more cases than men. This difference is attributed to their life experiences with prejudice in the workplace and outside of it. Desiree Bernard, magistrate on the Caribbean Court of Justice and the first female Supreme Court justice in Guyana, presented a contrasting perspective. She remarked that all judges, regardless of gender or other factors, bring their prejudices to the bench, and that it is their job to subdue them in order to make independent and impartial decisions.

More broadly, others noted the transformative effect the presence of women can have on the underlying culture of the judicial sector. Zapata contended that when it comes to women’s representation “quantity is quality,” as the increased number of women serves to break gender stereotypes. Although she downplayed the differences in decision-making between men and women,

Bernard did assert that the greater representation of women does enhance citizen's trust in the judiciary. When women see other women occupying the bench in their courts and hearing their cases, it removes the "psychological barrier" and sense of marginalization that may prevent them from filing complaints in the first place.

Though the debate on how women's representation affects judicial procedures and decisions remains unsettled, panelists agreed that integrating women more fully into leadership positions on the courts is a positive step for the overall health of judicial systems in the hemisphere.

Women's Rights Advancing through Domestic Courts

In recent years, domestic courts in Latin America, the Caribbean, and the United States have witnessed an increasing number of cases related to violence and discrimination against women. The judges and other experts at the conference agreed that there have been important changes in judicial systems across the hemisphere, which have improved the treatment of women's rights violations. For example, while in some places domestic violence was simply

considered "life," according Vanessa Ruiz, senior judge on the DC Court of Appeals, it is now codified as a crime in national law. Furthermore, the establishment of the crime of "femicide," referring to the gender-based nature of specific killings, has been another tool to bring greater judicial attention to the unique problems faced by women. María Eugenia Villaseñor, a judge on Guatemala's Court of Appeals, noted that her country has created special tribunals to address femicide and other forms of violence against women. In the United States, as in other countries of the Americas like Brazil, courts have established civil remedies to protect the victims of domestic violence by issuing preventive protective orders.

Other advances have been made in the treatment of rape cases. Peruvian Supreme Court justice Janet Tello explained how, in her country, the burden of proof no longer rests on victims of rape, whose claims now enjoy evidentiary sufficiency and are taken as fact. Changes such as these have shaped the consciousness of judges, and have helped overcome their tendency to not believe or to blame women victims of violence.

Improved judicial training is responsible for promoting and sustaining many of



Muni Figueres,
Roberta Jacobson



Janet Tello

these advances. All the judges cited training as critical to making the judicial sector more sensitive to women's rights violations.

Judicial decisions across the hemisphere, with the support of civil society advocacy, legislative measures, and better training, have helped establish women's rights as human rights. However, significant obstacles still remain. As Ruiz remarked, overt gender discrimination in the workplace has given way to more subtle prejudices and forms of harassment. For example, women are sometimes subject to repeated incidents of intimidation or innuendo from male colleagues or superiors, which turn more aggressive when the desired response is not forthcoming. Such situations can spill over into review and promotion processes, affecting a woman's chance of ascending based on merit. These challenges reflect the persistence of patriarchal attitudes that sanction violations of women's rights.

The judges also addressed possible adverse and unintended effects of creating specialized institutions and laws to address gender-based violence and discrimination. While these legal instruments are important to bringing high-level attention

to women's rights issues and to combating impunity in these cases, Sáez remarked that they also run the risk of separating violations against women from normal crimes committed against citizens on a daily basis. This phenomenon could have the effect of cordoning off women's issues instead of giving them the treatment and judicial access accorded to other abuses. Assistant Secretary of State Roberta Jacobson echoed this concern, remarking that, "if we only focus on women and girls who are victims, we will never get justice and prevent them from being future victims." Indeed, women must receive equal treatment before the law and be equal partners in finding solutions to violence and discrimination.

The Role of International Law

The advent of international law and its growing force within domestic legal systems has helped strengthen women's rights protections across the hemisphere. The establishment of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 was the first major international accord to define discrimination against women and obligate state members to enshrine gender equality into domestic law. According to Desiree Bernard, who was among the first 23 members of an international committee to monitor compliance with CEDAW, the convention takes a wide-ranging approach, covering issues such as employment, education, and family disputes.

CEDAW was followed by a series of regional norms established by the Inter-American System, including the Convention of Belem do Para in 1994, which charges state signatories to take all necessary measures to eliminate violence against women. That same year, the Inter-American Commission on Human Rights created the Rapporteurship on the Rights of Women, which systematically monitors and evaluates on a hemispheric level the different forms of violence and discrimination committed against women and issues recommendations for how states can better comply with their international obligations.

According to Catalina Botero, the Inter-American Commission's special rapporteur for freedom of expression and a former auxiliary magistrate on Colombia's Constitutional Court, international and regional law "emerged from the barbarity" of authoritarian abuses. The power of international law, Botero remarked, is that it is the collective result of "the best possible dialogue at the national level" and reproduces domestic best practices.

Despite the growing strength of international legal regimes, the impact of international judicial decisions in domestic contexts has been mixed. Most of the judges presenting at the conference described their frequent and natural reference to international law in handing down rulings—as the ratification of international conventions has automatically incorporated them into national legal frameworks. Botero referred to the case of Brazilian domestic abuse survivor Maria da Penha, whose favorable ruling in the Inter-American Commission led to sweeping changes in Brazilian legislation on violence against women. (Please see page 15 of background paper in this volume for a description of this case.)

However, in many countries and cases, the swift implementation of international and regional decisions has not been so successful. According to Maria Eugenia Hirmas, Chile's former director of socio-cultural affairs, the effectiveness of international decisions depends largely on the political will of national governments to implement court decisions and their ability to institutionalize recommendations. She cited the case of Chilean judge Karen Atala, a lesbian mother who was stripped of custody of her daughters by the country's Supreme Court. Despite the Inter-American Court's ruling that custody be restored to Atala, the Chilean government has yet to comply. Cases like these reveal the limitations of international legal instruments when faced with political intransigence at the national level.

Several of the panelists noted that the United States has stood outside of the advances brought on by reference to international law.

It remains one of seven countries globally, and the only one in the Western Hemisphere, not to have signed CEDAW. Ruiz mentioned that the United States has remained "constitutionally unable or resistant to joining international organizations," which is "a negative" in her view. Bernard, meanwhile, contended that the presumed justification for not signing on to international law, in the United States and other countries, has traditionally been that domestic laws already cover the issues addressed by international norms, and these are therefore an unnecessary addition. Still, most agreed that by adopting some of the international laws it has failed to sign, the United States could take a positive step in enhancing trust and cooperation with the other countries of the hemisphere.

Conclusions and Recommendations

- **Women must be fully integrated into judicial systems in all areas and at all levels.** While significant progress has been made in increasing women's representation in judicial posts, women judges are frequently concentrated in courts dealing with civil matters, and informal barriers to promotion remain. A strong and representative judicial sector requires that women judges be present in all courts and that there are institutionalized processes based on merit that allow them to rise through the ranks.
- **The impact of greater women's representation on judicial decision-making remains a subject of debate.** While some contend that there is a qualitative difference in the decision-making of men and women, others argue that there is not, or that all judges, regardless of gender or other factors, bring their own prejudices to the bench. Though empirical studies have shed some light on this question, it will remain a source of contention.
- **Judicial training is essential to breaking gender stereotypes and enhancing judicial sensitivity and awareness of women's rights abuses.** Institutionalized efforts to increase awareness among judges of women's issues and rights and relevant international conventions has

led to a shift in the judicial culture of some countries. However, this training must continue to ensure further progress.

- **Addressing women's rights violations should not be separated from overall efforts to combat violence and discrimination.** In treating women's rights violations as a distinct class of criminal offenses, countries run the risk of cementing the perception that they are, in fact, a distinct problem, rather than a standard crime. If these abuses are to be addressed effectively, the criminal justice system must view them as on par with similar crimes committed

- against men, and women must be equal partners in finding solutions.
- **The implementation of international norms and decisions on women's rights issues requires national political will and the reproduction of international decisions by domestic courts.** National governments sometimes lack the political commitment to adopt and implement international rulings. This pattern can only be reversed as decisions reinforce international protections and officials recognize their obligations to put international norms into practice.



María Eugenia Villaseñor,
María Francisca Zapata

WOMEN'S RIGHTS IN THE COURTS: PERSPECTIVES FROM THE AMERICAS

By Rachel Schwartz, February 2013

Introduction

Throughout the Americas, women's rights issues have risen to prominence as public and private sector actors have increasingly worked to promote gender equality and women's access to political power, education, justice, and basic services. Riding the tide of global and regional women's rights movements, changes have been spurred by civil society organizations at the grassroots level and political leaders in the local and national legislative arenas alike.

The judiciary has also played a significant role in protecting women's rights. From high court decisions that have drawn on international legal norms to reaffirm gender equality domestically to international tribunals, judicial institutions have often times been instrumental in ensuring that women's legal rights are safeguarded in practice. The judiciary has also served as a vehicle of empowerment that provides women a space to break their silence on gender-based violence and discrimination.

This background paper will review instances in which the courts have played a critical role in advancing women's rights in the Americas. It is divided into three sections: 1) emblematic cases in which the courts

have upheld domestic and international legal norms on gender equality and non-discrimination; 2) the role of the Inter-American Human Rights System in addressing women's rights violations; and 3) unique judicial mechanisms created specifically to deal with gender-based crimes. It will conclude with a brief discussion on the impact of women's representation in the judicial sector.

Gender Equality and the Judiciary: Emblematic Cases

PERU: CONSTITUTIONAL COURT RULES AGAINST WORKPLACE DISCRIMINATION

Over the past few decades and in line with a growing global consensus, the countries of the Americas have ratified a number of international conventions and adopted national laws promoting the eradication of gender discrimination in the workplace. By 1993, all the countries of the Western Hemisphere, except for the United States, had become party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which declares that "State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the



Michael Shifter,
Kathleen Kennedy
Townsend

same rights.”¹ The region recommitted itself to the promotion of full gender equality as an issue of human rights at the Fourth World Conference on Women in Beijing in 1995, when member states adopted the Platform for Action.² Furthermore, international obligations have been complemented by hemispheric agreements such as the American Convention on Human Rights (San José Pact) and its additional protocols that not only establish equal civil and political rights between men and women, but economic, social, and cultural rights as well.³

The effects of these international and regional instruments along with demographic shifts and economic growth

generated a significant jump in women’s incorporation into the labor force and economic advance almost region wide.⁴ From 1990 to 2000, the number of employed women grew at an average annual rate of 4.4 percent regionally, and at a rate of about 8 percent in countries like Ecuador, Argentina, and Mexico.⁵ Between 1994 and 2007, the number of women in 13 Latin American countries without their own source of income had dropped by 11 percent from 44 to 33 percent.⁶

Despite this progress, significant inequality remains. In many countries of the region, men’s pay exceeds more than 30 percent of the amount women receive for equal

¹ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 11, UN Women, Department of Economic and Social Affairs, December 18, 1979, accessed February 8, 2013, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>.

² Kristin Timothy and Marsha Freeman, “The CEDAW Convention and the Beijing Platform for Action: Reinforcing the Promise of the Rights Framework,” *International Women’s Rights Action Watch*, February 2000, available at <http://www1.umn.edu/humanrts/iwraw/Freeman-Timothy.html#intro>.

³ See, *American Convention on Human Rights “Pact of San Jose, Costa Rica,”* Organization of American States, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm; *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights “Protocol of San Salvador,”* Organization of American States, available at <http://www.oas.org/juridico/english/treaties/a-52.html>.

⁴ See, Laís Abramo, *Trabajo decente y equidad de género en América Latina*, Oficina Internacional de Trabajo, 2006, available at <http://www.oit Chile.cl/pdf/igu026.pdf>

⁵ *Ibid.*, p. 40.

⁶ UN Economic Commission for Latin America and the Caribbean (ECLAC), Division for Gender Affairs, *Review of the Implementation of the Beijing Declaration and Platform for Action and the Outcome of the Twenty-Third Special Session of the General Assembly in the Latin American and Caribbean Countries*, 2009, p. 12, available at <http://www.un.org/womenwatch/daw/beijing15/docs/ECLACBeijing15.pdf>.

work.⁷ Moreover, though many countries have passed guarantees of non-discrimination in the workplace based on the associated costs of maternity and childcare⁸, these issues still have had a negative impact on the equality of employment opportunities between men and women.⁹ In the face of employer and institutional discrimination because of pregnancy, the courts have been important vehicles for upholding these legal protections.

One such case occurred in November 2008 when Peru's Constitutional Tribunal ruled that Rosa Bethzabé Gambini Vidal had been separated unjustly from her job at the *Sociedad de Beneficencia de Lima Metropolitana* (SBLM) because she was pregnant. The court ordered her reinstatement within five days.¹⁰ Prior to the ruling, Peru's Ministry of Women and Social Development denied Gambini's claim to suffering discriminatory labor practices, arguing, along with SBLM, that she was let go when her contract had ended. After examining the nature of Gambini's relationship with SBLM, the Court found that she constituted an employee working on a permanent basis and that firing her without just cause was a violation of her right to equality and right to work.¹¹

The ruling is notable not only for compelling Gambini's employer to take swift action, but for drawing extensively on international law and for citing the state's obligations to eliminate indirect gender discrimination in the workplace, such as that resulting from pregnancy. In addition to the constitutional protections for working mothers, the Tribunal decision draws on Peru's commitments to uphold gender equality and non-discrimination under international and inter-American law, referring to the United Nations Charter, CEDAW, and the American Convention on

In the face of employer and institutional discrimination because of pregnancy, the courts have been important vehicles for upholding legal protections.

Human Rights and its additional protocols. It recognized that "discrimination based on sex constitutes a form of violence against women that violates the right to wellbeing, and that, without a doubt, the elimination of all forms of discrimination against women is an issue of social transcendence and an international obligation of the State."¹²

The Constitutional Tribunal, moreover, noted that the Peruvian state's duty to eliminate gender discrimination applies not only to cases in which women are excluded or treated unequally as a direct result of their sex, but also to cases in which "norms, policies, and acts of an employer that are apparently impartial or neutral have disproportionately prejudicial effects on a great number of the members of a given collectivity, without justification."¹³ Though not motivated directly by her gender, Gambini's firing was a result of a particular circumstance due to her gender, and thus constituted sex-based discrimination, according to the Tribunal. In this sense, the ruling addressed not just explicit policies of exclusion or bias but the range of sex-linked disadvantages women may suffer, including those that result from pregnancy.

The case demonstrates that by drawing on international legal norms that address unequal opportunities and unequal outcomes as a result of labor policies, the courts

⁷ *Ibid.*, p. 13

⁸ Abramo, *op. cit.*, p. 90.

⁹ *Ibid.*, p. 77.

¹⁰ Tribunal Constitucional del Perú, *Exp. No. 05652-2007-PA/TC Rosa Bethzabé Gambini Vidal*, accessed February 8, 2013, available at http://www.justiciaviva.org.pe/nuevos/2008/noviembre/13/sentencia_tc.pdf

¹¹ "Tribunal Constitucional prohíbe el despido laboral de mujeres embarazadas," *Andina*, November 7, 2007, available at <http://www.andina.com.pe/Ingles/Noticia.aspx?id=aUACzP1PC1A=>.

¹² Tribunal Constitucional del Perú, *op. cit.*, Artículo 9.

¹³ *Ibid.*, Article 45.

The Argentine Supreme Court's ruling to permit abortion ensured that women whose pregnancies result from rape receive the rights to which they are legally entitled.

can reaffirm the broad definition of gender-based discrimination and compel governments to oppose it in its many forms.

ARGENTINA: SUPREME COURT INTERVENTION TO UPHOLD CONDITIONS FOR LEGAL ABORTION

In the Americas, Argentina has long been at the forefront of promoting gender equality and women's rights. Following the breakdown of the country's military dictatorship and return to democracy in 1983, elected governments passed a series of measures to chip away at the unequal treatment enshrined in Argentine law and promote the role of women as full members of society—for example, through reforms to legalize divorce, guarantee equality between spouses, and establish a gender quota law to advance women's representation in politics.¹⁴ According to the 2012 Global Gender Gap Report published by the World Economic Forum, Argentina ranks 32nd out of 135 countries on overall gender equality. The country is 24th on women's political empowerment. It is tied for first in terms of equality in health and survival.¹⁵

Argentina, however, has remained a battleground on the issue of abortion and reproductive rights. The most recent legal clash occurred on October 11, 2012 when Argentina's Supreme Court overturned the ruling of a Buenos Aires civil court, thereby allowing a sex trafficking victim to receive an abortion. According to the allegations in her complaint, the woman was raped after being kidnapped by a human trafficking ring in southern Argentina. She then followed the protocol for legal abortions in the case of rape established by the Ministry of Health and sought to terminate the pregnancy within the first 12 weeks.¹⁶ While she was pursuing the procedures established by law, Buenos Aires mayor Mauricio Macri and hospital staff revealed information that allowed anti-abortion protestors to besiege the woman's home and the hospital where she sought the procedure.

After passing through several tribunals, the case reached a national civil court where judge Myriam Rustán de Estrada ruled in favor of the anti-abortion organization *Pro-Vida*, thereby blocking the abortion immediately. Days later, six of the seven Supreme Court justices reversed the civil court's decision and ruled that the woman must receive the abortion she had requested under Argentine law.¹⁷ The Court's majority also censured Buenos Aires officials for politicizing the case and violating the victim's right to privacy.

This particular case followed others that have tested the boundaries of the law

¹⁴ See, "Divorcio en Argentina," *Orientación Legal para Todos*, May 24, 2009, accessed February 7, 2013, available at <http://www.orientacionlegalparatodos.com/?p=6>; Equipo Latinoamericano de Justicia y Género (ELA), "Detrás del número: Un estudio sobre las trayectorias políticas de mujeres y varones en las legislaturas argentinas," accessed February 7, 2012, available at http://www.google.com/url?sa=t&rc=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CDUQFjAA&url=http%3A%2F%2Fwww.ela.org.ar%2Fa2%2Findex.cfm%3Ffuseaction%3DMUESTRA%26campo%3Dpdf0010%26ext%3Dpdf%26codcontenido%3D827%26aplicacion%3Dapp187%26cnl%3D77%26opc%3D36&ei=tCQUUa_LlqS30gGmwoD4DA&usq=AFQjCNGTbZNZw3LwBXBOhABcb7UotQ9g2Q&sig2=YIPrXPdMDHO_bYu9M-aZw&bvm=bv.42080656,d.dmQ

¹⁵ Ricardo Hausmann, Laura D. Tyson, and Saadia Zahidi, *The Global Gender Gap Report 2012*, World Economic Forum, 2012, p. 10, available at http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf.

¹⁶ Almudena Calatrava, "Corte Suprema argentina permite a violada abortar," *Terra*, October 12, 2012, available at <http://noticias.terra.com.ar/internacionales/corte-suprema-argentina-permite-a-violada-abortar,d6782ca16755a310VgnCLD2000000dc6eb0aRCRD.html>.

¹⁷ Corte Suprema de Justicia de la Nación, *Competencia No 783, XLVIII, Pro Familia Asociación Civil c/GBCA y otros s/impugnación de actos administrativos*, October 11, 2012, available at <http://www.csn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=695949>.

regarding abortion in Argentina. While the Argentine Constitution does not explicitly mention abortion, a 1994 reform incorporated the text of the American Convention on Human Rights, which states that the right to life exists “in general, from the moment of conception.”¹⁸ Argentina’s Penal Code, the latest version of which was drafted in 1984, generally proscribes abortion, then sets out exceptions under which the procedure is allowed. Article 86.1 establishes that abortion is not punishable when carried out to “avoid danger to the life and health of the mother and if this danger cannot be avoided by other means.”¹⁹ Article 86.2 states that the other exceptional condition under which abortion is permitted is when “the pregnancy results from rape or an indecent act with a mentally deficient or mad woman.”²⁰

In a case decided in March 2012, the Argentine Supreme Court unanimously ruled that a 15 year-old girl who had been repeatedly raped by her stepfather should be allowed an abortion. The Supreme Court decision overturned the ruling of the family court where the girl unsuccessfully had sought judicial authorization. After the provincial high court declared the abortion legal, the public defender took up the case in the name of the unborn fetus, arguing that the mother did not qualify as a mentally disabled individual and was thus not excluded from the abortion prohibition under Article 86.2. He further contended that the termination of the pregnancy violated the fetus’

right to life, drawing on the clause found in the American Convention.

The Supreme Court’s ruling to permit the abortion set two important precedents. First, it established that victims of rape seeking to terminate a resulting pregnancy do not require previous judicial authorization—a decision the city of Buenos Aires enshrined in law shortly thereafter.²¹ It is the job of public hospitals to establish protocols to handle such situations.²² Furthermore, the ruling clarified that all women who seek to terminate a pregnancy that resulted from rape are legally allowed to do so, not just those with mental disabilities, as the public defender argued. In this sense, the Court affirmed the meaning of Article 86.2, which separates the conditions of rape and mental capacity.

In the context of a society deeply unsettled on the question of abortion, the Supreme Court has played a key role in ensuring that women whose pregnancies result from rape receive the rights to which they are legally entitled.

MEXICO: THE ELECTORAL TRIBUNAL, QUOTA LAWS, AND GENDER EQUALITY

The passage of gender quota laws has been an important driver of the recent increases in women’s political representation throughout Latin America and the Caribbean. Thirteen countries²³ in the region have adopted quota laws requiring parties to allocate a certain percentage of legislative candidacies to women, with a

¹⁸ “Cómo es la situación en Argentina,” *Clarín*, October 18, 2012, available at http://www.clarin.com/mundo/situacion-Argentina_0_794320626.html.

¹⁹ See, Artículo 86, *Código Penal de la Nación de Argentina*, Ley 11.179, 1984, available at <http://www.infoleg.gov.ar/infoleginternet/anexos/15000-19999/16546/texact.htm#15>.

²⁰ *Ibid.*

²¹ “Corte Suprema argentina dispuso que se practique aborto no punible,” *Nación*, October 11, 2012, available at <http://www.lanacion.cl/corte-suprema-argentina-dispuso-que-se-practique-aborto-no-punible/noticias/2012-10-11/224432.html>.

²² “Argentina: la Corte Suprema autorizó el aborto en los casos de violación,” *Infobae América*, February 13, 2012, available at <http://america.infobae.com/notas/46218-Argentina-la-Corte-Suprema-autorizo-el-aborto-en-los-casos-de-violacion->

²³ The thirteen countries that have adopted gender quota laws are Argentina, Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Guyana, Honduras, Mexico, Panama, Paraguay, Peru, and Venezuela; see, Leslie A. Schwindt-Bayer, “Making Quotas Work: The Effect of Gender Quota Laws On the Election of Women,” *Legislative Studies Quarterly*, 34(1), February 2009, p. 8, available at http://web.missouri.edu/~schwindtbayerl/docs/schwindtbayer2009_LSQ.pdf.



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fourteenth, Uruguay, set to implement its own measure in 2014.²⁴

In 2002, Mexico adopted a gender quota law that stipulated women must represent at least 30 percent of candidates on party lists for elections to the Senate and Chamber of Deputies.²⁵ The law was not enforced in the Senate until 2006.²⁶ In 2008, the quota was increased to 40 percent. The Federal Code for Institutions and Electoral Procedures (COFIPE), moreover, states that each group of five candidates on a given party list must alternate between members of the opposite sex.²⁷ If found not in compliance, the Federal Electoral Tribunal (TEPJF) gives the party 48 hours to correct its list before issuing a public warning, then allows another 24 hours before rejecting it.²⁸

The gender quota law has had a substantial effect on women's representation

in the Mexican legislature. In the 2000 election, prior to the law taking effect, just over 15 percent of legislative seats were held by women, while in the first election after the quota law's passage, the number of women legislators jumped to roughly 23 percent.²⁹ After the most recent legislative elections in 2012, women now hold 36 percent of seats in Congress (37 percent in the Chamber of Deputies and 33 percent in the Senate).³⁰ Some observers, however, still lament that—as in most of the countries in the region with quotas³¹—the number of seats won by women still falls short of the share of candidacies stipulated by law, yet it is well above that in countries without effective quota laws.

Still, what progress women have made in ascending to positions in Mexico's national legislature is due in large part to the Federal Electoral Tribunal, which on numerous occasions has forced parties to amend their lists to comply with the law. This is in contrast to those countries with quota laws that do not have enforcement mechanisms (or placement mandates), thus rendering them ineffective in raising the number of women in political power.

In one notable case that took place in 2009, a candidate from the *Partido de la Revolución Democrática* (PRD), Mary Telma Guajardo Villareal, presented a claim against her party for failing to uphold the alternation of male and female candidates on its list in elections for the Chamber of Deputies. The list read “female—male—male—female—female,” leaving Guajardo

²⁴ Mala Htun and Jennifer M. Piscopo, “Presence Without Empowerment? Women in Politics in Latin America and the Caribbean,” Paper prepared for Conflict Prevention and Peace Forum, Social Science Research Council, December 2010, p. 5, available at http://web.archive.org/pdfs/Mala_Htun_and_Jennifer_M._Piscopo-Presence_without_Empowerment_CPPF_Briefing_Paper_Dec_2010_f.pdf.

²⁵ “Mexico,” *Quota Project*, accessed February 8, 2013, available at <http://www.quotaproject.org/uid/countryview.cfm?code=MX>.

²⁶ Leslie A. Schwindt-Bayer, *op. cit.*, p. 7.

²⁷ Congreso de los Estados Unidos Mexicanos, *Código Federal de Instituciones y Procedimientos Electorales*, Artículos 219, 220, 221, January 14, 2008, p. 73, available at http://www.diputados.gob.mx/LeyesBiblio/ref/cofipec/COFIPE_orig_14ene08.pdf.

²⁸ *Ibid.*, p. 73.

²⁹ Diego Reynoso and Natalia D'Angelo, *Las leyes de cuota y su impacto en la elección de mujeres en México*, 2004, p. 286, accessed February 2, 2013, available at http://www.parlamento.gub.uy/parlamentadescargas/BIBLIOGRAFIA/Cuotas/Reynoso_y_Angelo_2006%20%28M%C3%A9xico%29.pdf.

³⁰ “Mexico,” *op. cit.*

³¹ Mala Htun and Jennifer M. Piscopo, *op. cit.*, p. 7.

in fourth place, when she should have been listed third according to provisions within the federal electoral code. After the PRD's national oversight commission dismissed Guajardo's claim, the Federal Electoral Tribunal, on the basis of a grammatical and systematic study, ruled that the list violated the principle of alternation—a criterion established in the law to provide for equal opportunities between men and women and gender parity in national political life.³² The Tribunal ordered that the PRD amend the list, switching the order of Guajardo and the male candidate before her.

The ruling is significant because it firmly defines the meaning of “alternation” within the electoral code. In so doing, it has eliminated one of the methods parties might use to deny equal opportunities to male and female candidates while abiding by the 40 percent quota: stacking female candidates at the end of party lists.³³ The decision thus set an important precedent.

The Federal Electoral Tribunal also played a critical role in upholding gender equality in the most recent legislative elections in July 2012. Months before the election, the Tribunal voted unanimously that it would reject the candidate lists of five different parties and two coalitions competing for seats if they did not correct their registries to meet the 40 percent quota. Among the groups facing sanctions were Mexico's two largest parties, the *Partido Acción Nacional* (PAN) and the *Partido Revolucionario Institucional* (PRI).³⁴ The PAN readily amended its list to adhere to the ruling, while the PRI initially disputed the validity of the quota law before also complying.³⁵ Previously, the other major

The Federal Electoral Tribunal has played a critical role in enforcing Mexico's constitutional commitments to gender equality in political representation.

party, the PRD, voluntarily replaced 28 of the male candidates on its lists with women to bring it in line with the gender quota.³⁶

The corrections demonstrate both the Tribunal's strength and its firm commitment to upholding the principle of equal opportunity codified in the electoral law. While Mexico remains far from achieving gender parity in political office, the Federal Electoral Tribunal has played a critical role in enforcing Mexico's constitutional commitments to gender equality in political representation.

The Role of the Inter-American System

The Inter-American Human Rights System has been an important vehicle for pressuring national governments to comply with their legal obligations, agreed to under regional conventions, to promote gender equality and safeguard women's rights. Over the past decade, the Inter-American System has worked to strengthen its mechanisms for monitoring human rights violations committed against women and has issued a number of rulings that reaffirm the principles of gender equality and non-discrimination enshrined in its core charters and declarations.

The Inter-American Human Rights System is comprised of two bodies: the

³² Abramo, *op. cit.*, p. 17-8.

³³ See summary of the case at Observatorio de Género y Justicia, *Women's Link Worldwide*, available at http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=444.

³⁴ “Ultimátum para partidos por cuotas de género,” *Univisión*, March 27, 2012, available at <http://noticias.univision.com/mexico/elecciones-mexico/ultimas-noticias/articulo/2012-03-27/ultimatum-partidos-cuotas-de-genero-instituto-federal-mexico#axzz1qoV1t7D>.

³⁵ Diana Murray Watts and Eric L. Olson, “Mexico's Lingering Struggle for Gender Equality,” *Mexico Institute, Woodrow Wilson International Center for Scholars*, April 9, 2012, available at <http://mexicoinstitute.wordpress.com/2012/04/09/mexicos-lingering-struggle-for-gender-equality-in-politics/>.

³⁶ “El PRD sustituye 28 candidatos para cumplir cuota de género,” *Informador*, March 28, 2012, available at <http://www.informador.com.mx/mexico/2012/366518/6/el-prd-sustituye-28-candidatos-para-cumplir-cuota-de-genero.htm>.

As women's rights movements picked up steam, the issues of violence and discrimination against women came to the fore, along with a discussion on the place of gender in international human rights law.

Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. The Commission receives claims of human rights violations committed by governments of the Western Hemisphere and rules whether the state did in fact breach provisions of the American Convention on Human Rights and other agreements. After coming to its conclusion, the Commission can refer the case to be adjudicated in the Inter-American Court, or it can issue its own recommendations for how the state can better comply with its obligations.³⁷

Although the Inter-American Commission was created in 1959 and the Court came into being in 1979, human rights violations based on gender did not become a distinct focus of the Inter-American system until 1994. During the 1970s and 1980s, stemming the mass human rights violations associated with the region's armed conflicts and military dictatorships was at the center of the inter-American agenda, leaving "only a limited space for gender issues."³⁸

As women's rights movements across the hemisphere—and the globe—picked up steam, the deeply entrenched issues of

violence and discrimination against women came to the fore, along with a broader discussion on the place of gender within international human rights law. In response, the Inter-American System established two important instruments in 1994: the Convention on the Prevention, Punishment, and Eradication of Violence Against Women, also known as the Convention of Belém do Pará, and the Rapporteurship on the Rights of Women. The Convention of Belém do Pará, named for the Brazilian city where it was signed, defines violence against women and obliges member states to adopt legal and institutional measures to combat it.³⁹ The Rapporteurship of the Rights of Women is charged with "analyzing the extent to which laws and practices involving women's rights in OAS Member States comply with the general obligations set forth in regional human rights instruments."⁴⁰ Through country visits and in-depth studies, the Rapporteurship investigates both specific country conditions for women and region-wide phenomena, including issues such as reproductive rights, access to justice, and maternal health.⁴¹

As a result of these innovations as well as domestic and international civil society action, gender-based violence and discrimination has become a significant focus of the Inter-American System. As of 2010, the Inter-American Commission reported that it was analyzing or processing roughly 150 cases involving gender-based violations.⁴² The Commission and Court have already attended to a number of major cases from across the hemisphere dealing with issues

³⁷ Paula Spieler, "The Maria da Penha Case and the Inter-American Commission on Human Rights: Contributions to the Debate on Domestic Violence Against Women in Brazil," *Indiana Journal of Global Legal Studies*, 18 (1), Winter 2011, pp. 128-9.

³⁸ Claudio Grossman, "The Inter-American System: Opportunities for Women's Rights," the Conference on the Interventional Protection of Reproductive Rights: Civil & Political Rights and the Right to Nondiscrimination," *American University Law Review* 44 (4), April 1995, p. 1305, available at <http://aualawreview.com/pdfs/44/44-4/grossman.pdf>.

³⁹ See *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women "Convention of Belém do Pará,"* June 9, 1994, available at <http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>.

⁴⁰ See "Mandate: Rapporteurship on the Rights of Women," Organization of American States, available at <http://www.oas.org/en/iachr/women/mandate/mandate.asp>.

⁴¹ Dinah L. Shelton, "Presentation: Protection of Women's Rights and the Inter-American Commission on Human Rights," Inter-American Commission on Human Rights, September 24, 2010, available at http://www.esteri.it/MAE/approfondimenti/2012/20120411_Shelton.pdf.

⁴² *Ibid.*

such as the denial of health access, discriminatory provisions within national civil codes, lack of due diligence and access to justice, and domestic violence.

BRAZIL: THE MARIA DA PENHA CASE AND REFORMS TO NATIONAL LAW

One of the cases in which the Inter-American Human Rights System has had the strongest impact on domestic law was that of Brazilian pharmacist Maria da Penha Maia Fernandes, the victim of two murder attempts at the hands of her husband. The Maria da Penha case was the first related to domestic abuse to pass through the Inter-American Commission and led to substantial changes in the Brazilian state's treatment of gender-based violence.

The case, which was brought to the Inter-American Commission in 1998, dealt with events that occurred over a 15-year period. In 1983, Maria da Penha's then-husband Marco Antonio Heredia Viveiros shot her while she was asleep, leaving her paraplegic. This attempt on her life followed years of abuse against her and the couple's three daughters. Viveiros claimed the attack was committed by an armed assailant in an attempted home robbery. Two weeks later, however, while Maria da Penha was still recovering, Viveiros made another attempt on her life by trying to electrocute her while she was bathing. Following this incident, she sought legal separation from him and filed formal charges.⁴³

The judicial proceedings took eight years before a jury found Viveiros guilty of assault and attempted murder and sentenced him to 15 years in prison. The sentence was reduced to 10 years because Viveiros had no prior criminal record. Following the ruling, the defense filed an appeal, which was accepted by the court three years later, and the conviction was thrown out. A second

trial occurred in March 1996 in which Viveiros was again found guilty. When Maria da Penha brought her claim to the Inter-American Commission, the case was undergoing a second appeals process.⁴⁴

Maria da Penha, supported by the Center for Justice and International Law (CEJIL) and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), claimed that the state of Brazil violated her right to a fair trial and judicial protection under the American Convention and failed to uphold its duties to condemn all forms of violence against women under Article 7 of the Convention of Belém do Pará. On April 16, 2001, the Inter-American Commission on Human Rights ruled in her favor, contending that the Brazilian judicial system failed to act in a timely and competent manner. The decision also reflected the Commission's recognition of the case not as an isolated incident, but as an expression of the systemic problem of domestic violence in Brazil. Further, it deemed existing instruments to reduce domestic violence in Brazil—such as women's police precincts and special courts—insufficient to address the challenge.⁴⁵

As a result, the Commission recommended a number of measures to address Maria da Penha's claims and the broader issue of domestic violence. In the immediate term, it advised the Brazilian state to investigate the causes of the delay in resolving Maria da Penha's case, to immediately carry out criminal proceedings against her former husband, and to provide adequate symbolic and material redress for the costs of 15 years of impunity. It also recommended institutional reforms such as special training for police and judicial officials on domestic violence, alternate judicial mechanisms to process and raise awareness of domestic violence, and more special

⁴³ Inter-American Commission on Human Rights, *Report No. 54/01, Case 12.051, Maria da Penha Maia Fernandes*, April 16, 2001, Articles 8 & 9, available at <http://www.cidh.org/women/brazil12.051.htm>.

⁴⁴ *Ibid.*, Articles 11–19.

⁴⁵ *Ibid.*, Article 60.

The Maria da Penha law transformed the Brazilian state's treatment of gender-based violence, and illustrates the substantial impact possible under the inter-American system.

police units that deal specifically with women's rights violations.⁴⁶

The Brazilian government took the Inter-American Commission recommendations to heart almost immediately, passing a series of new legal and institutional measures between 2002 and 2008. Regarding the case itself, Marco Heredia Viveiros, who had remained free throughout the 15 years of judicial proceedings, was finally arrested in 2002. That same year, Brazil rewrote its civil code to establish the equality of men and women. In addition, the federal government created the National Pact to Combat Violence Against Women comprised of social programs to raise awareness and provide support.⁴⁷

Most notably, in 2006, Congress passed the Maria da Penha Law, a comprehensive bill to "create mechanisms to restrain and prevent domestic and family violence against women."⁴⁸ Among other provisions, the law "classifies and defines domestic and family violence," "alters the penal procedure code to allow the judge to decree preventive custody when there is risk to the physical or psychological integrity of the woman," and "determines the creation of special courts of domestic and family violence against women with civil and penal competence."⁴⁹ In the realm of police authority,

the law allows police officers to request that judges issue protective measures to defend a woman at risk as well as request preventative custody for potential aggressors.⁵⁰

With Maria da Penha herself, who has since become a prominent women's rights activist, as its staunchest defender, the law has been praised for transforming the Brazilian state's treatment of gender-based violence. Though the Inter-American Commission does not always succeed in compelling domestic adherence to its rulings and recommendations, the Maria da Penha case illustrates the substantial impact possible under the Inter-American system.

Alternate Mechanisms to Strengthen Women's Access to Justice

The impact of the courts on women's rights in the Americas can be seen not only in the cases that enforce domestic and international legal norms, but also in the innovative judicial mechanisms established specifically to address gender-based crimes and enhance women's access to justice. The idea of creating specialized institutions to attend to women is not new in the region. Women's police precincts, first piloted in Brazil, have spread to countries such as Ecuador, Peru, and Nicaragua. They were created to "put a spotlight on women," allow them to exercise their rights to equal protection and due process, and improve law enforcement intervention in cases of domestic violence.⁵¹

Given the success of these initiatives, models of specialized attention for women are being translated into the judicial sphere, as illustrated in the case below. Though less prevalent, they represent unique

⁴⁶ *Ibid.*, Article 61.

⁴⁷ Spieler, op. cit., pp. 135–7.

⁴⁸ Special Secretariat for Women's Policies, President of the Republic, *Maria da Penha Law, Law No. 11.340*, August 7, 2006, accessed February 8, 2013, p. 10, available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CGIQFjAF&url=http%3A%2F%2Fwww.brazilink.org%2Ftiki-download_file.php%3FfileId%3D13&ei=-XUVUaqVH-ro0GHiu4GYDQ&usq=AFQjCNFLzJCuO2FehWt2Op4JDTZY5jjzWQ&sig2=kdgFXnq_Go5FgdcIOB4KuQ&bvm=bv.42080656,d.dmQ.

⁴⁹ *Ibid.*, p. 7.

⁵⁰ *Ibid.*, p. 8.

⁵¹ Nadine Jubb et. al., *Regional Mapping Study of Women's Police Stations in Latin America*, Centro de Planificación y Estudios Sociales (CEPLAES), 2008, pp. 29–30, available at http://www.wunrn.com/news/2008/12_08/12_22_08/122208_latin_files/Latin%20America-Regional%20Mapping%20Study%20of%20Women%27s%20Police%20Stations.pdf.

mechanisms for addressing gender-based violations—and emboldening women to claim their rights.

GUATEMALA: SPECIAL TRIBUNALS AGAINST FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN

Gender-based violence is a growing phenomenon in Latin America and the Caribbean. A 12-country study released by the Pan-American Health Organization (PAHO) in 2013 found that between 17 and 53 percent of women were victims of intimate partner violence.⁵² Of the 25 countries with the highest number of femicides globally, 14 are located in the Americas.⁵³

One of the countries in which the regional epidemic of violence against women is felt most acutely is Guatemala. An estimated 5,200 Guatemalan women were murdered due to gender-related violence between 2000 and 2010.⁵⁴ Alarming, over the past few years, cases of femicide have exhibited an upward climb. Between 2010 and 2011, Guatemala witnessed a 17 percent increase in reported cases of femicide, from 608 to 711. On a global scale, Guatemala ranks as one of the countries in which women are most vulnerable to gender-related killings. In 2012, the United Nations reported that murders of women in Guatemala have reached 93 per one million inhabitants, a rate surpassed only by neighboring El Salvador.⁵⁵ Overall, there were nearly 20,400 cases of physical, sexual, psychological, and economic violence against



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women reported in 2012 alone.⁵⁶

Just as disturbingly, impunity for gender-based violence is rampant. According to information released by women's rights groups in Guatemala, 97 percent of cases of violence against women remain in impunity,⁵⁷ as authorities lack the resources, training, and political will to address this problem. And this figure only refers to reported claims brought to law enforcement and judicial institutions. It is believed that tens of thousands of cases of gender-based violence go unreported every year because of fears that perpetrators will seek retribution or that victims themselves will be ostracized by their families, communities, and the institutions from which they seek attention.

In recent years, Guatemalan officials have taken a number of steps to address the sluggishness and inefficacy of the legal

⁵² Sarah Bott et. al., *Violence Against Women in Latin America and the Caribbean: A comparative analysis of population based data from 12 countries*, Pan-American Health Organization, 2012, p. xvi, available at http://new.paho.org/hq/index.php?option=com_docman&task=doc_download&gid=19825&Itemid=270&lang=en.

⁵³ Small Arms Survey, "Femicide: A Global Problem," Research Notes, Number 14, February 2012, p. 1, available at http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf.

⁵⁴ Danilo Valladares, "Guatemala Heeds the Cries of Femicide Victims," *Inter-Press Service* (IPS), February 7, 2012, available at <http://www.guatemala-times.com/news/guatemala/2911-guatemala-heeds-the-cries-of-femicide-victims.html>.

⁵⁵ "Denuncian 97% de impunidad en casos de violencia contra mujeres en Guatemala," *Terra*, November 22, 2012, available at <http://noticias.terra.com/crimenes/denuncian-97-de-impunidad-en-casos-de-violencia-contra-mujeres-en-guatemala,362a0b7f5382b310VgnCLD2000000ec6eb0aRCRD.html>.

⁵⁶ "Guatemala: 97% de impunidad en casos de violencia," *Confidencial*, November 22, 2012, available at <http://www.confidencial.com.ni/articulo/9118/guatemala-alta-impunidad-en-casos-de-violencia>.

⁵⁷ *Ibid.*

From right: Carmen Alanís, María Francisca Zapata, Zaida Arguedas, Desiree Bernard, Gabriela Vega



system in addressing violence against women, and to reverse trends in impunity.

In May 2008, the Guatemalan Congress passed the Law Against Femicide and Other Forms of Violence Against Women, which, among other measures led to the 2010 creation of three special tribunals in the departments of Guatemala, Chiquimula, and Quetzaltenango to attend specifically to these cases.⁵⁸ The tribunals, pushed largely by Chief Justice of the Supreme Court Thelma Aldana and supported by Attorney General Claudia Paz y Paz, include 71 prosecutors with expertise in gender-based violence. In addition to taking on cases, they conduct training courses to inform and sensitize judges, prosecutors, and law enforcement on issues of violence against women.⁵⁹

The special tribunals have shown significant results in a short period of time. Whereas in ordinary tribunals only 7.5 percent of cases of violence against women end in judicial rulings, the special tribunals have handed down decisions in nearly 34 percent

of cases.⁶⁰ In addition to addressing the backlog of cases, it also appears as though the tribunals have encouraged more women to break their silence and report domestic violence. According to one press report, the number of cases presented since the creation of the tribunals jumped from 65 in all of 2010 to 758 between January and September 2011—nearly a twelve-fold increase.⁶¹ The encouraging results have prompted government officials to expand the special tribunals to other locations. In 2012, judicial officials inaugurated two additional special courts in the rural northwestern departments of Alta Verapaz and Huehuetenango along with the Center of Justice for Crimes of Femicide and Other Forms of Violence Against Women in Guatemala City.⁶²

Still, significant obstacles remain. In late 2011, Aldana warned that the tribunals could collapse if they were not allocated more money to process the increased caseload.⁶³ Despite the fresh funds to expand the tribunals and other mechanisms to attend to

⁵⁸ La Corte Suprema de Justicia de Guatemala, "Crea los Juzgados de Primera Instancia Penal y Tribunales de Sentencia de Delitos de Femicidio y otras formas de Violencia contra la Mujer en Guatemala, Chiquimula y Quetzaltenango," *Centro Nacional de Análisis y Documentación Judicial*, 2010, available at <http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnálisisDocumentacionJudicial/cds/CDs%20leyes/2010/pdfs/acuerdos/A001-2010.pdf>.

⁵⁹ "Juzgados contra Femicidio inician labores," *Prensa Libre*, September 27, 2010, available at http://www.prensalibre.com/noticias/justicia/juzgados-ninez_0_343166028.html?commentsPage=2.

⁶⁰ Louisa Reynolds, "Lucha contra el femicidio: entre avances y tropiezos," *Plaza Pública*, June 27, 2012, available at <http://www.plazapublica.com.gt/content/lucha-contra-el-femicidio-entre-avances-y-tropiezos>.

⁶¹ Magdalena Medina, "Este año han ingresado 758 casos por femicidio a los tribunales," *El Periódico*, September 2, 2011, available at <http://www.elperiodico.com.gt/es/20110902/pais/200362/>.

⁶² Sandra Valdez, "Abren complejo contra femicidio," *Prensa Libre*, August 25, 2012, available at http://www.prensalibre.com/noticias/Abren-complejo-femicidio_0_761923823.html.

women victims of violence, those fears have not been completely allayed. The 2013 budget will reduce funds for Guatemala's judicial and investigative institutions, including the Public Prosecutor's Office, the Public Defender's Office, and the National Institute of Forensic Sciences⁶⁴, which could affect resources for prosecuting perpetrators of femicide and other crimes against women.

Beyond budgetary constraints, another hurdle is simply the magnitude of the problem. Although the tribunals have put a dent in the impunity that surrounds cases of femicide and violence against women, the first three weeks of 2013 showed an alarming rise in these cases, with 41 reported femicides.⁶⁵ In one 24-hour period that made international headlines, six women were brutally murdered, including two young girls found in their pajamas lying in a roadside ditch.⁶⁶

Despite these continuing challenges, Guatemala's tribunals against femicide and violence against women offer the region one example of specialized institutions to attend specifically to gender-based crimes. The extent to which they could be replicated to fit other contexts, however, remains an open question, as both the problem of violence against women and the legal mechanisms and resources to combat it differ from case to case.

Women's Representation in the Judiciary

The emergence of women's rights issues on the political agendas of Latin American and

Caribbean countries has also coincided with the ascendance of women to top judicial posts in the hemisphere. The percentage of women judges in Latin America's high courts has risen dramatically over the past decade, increasing from zero positions in some countries in the year 2000 to a third of appointments in 2010. The bench of the Eastern Caribbean Supreme Court, which includes nine countries, is filled with 60 percent women. Latin America and the Caribbean ranks second in terms of women's representation in the judicial system with over one-third of seats occupied by women, beating the world average by nearly 10 percent.⁶⁷ This figure is also on par with Canada and the United States, which have seen a slower increase but still have women occupying 32 percent and 30 percent of federal judicial posts respectively.⁶⁸ And, since Justice Elena Kagan joined in 2010, the US Supreme Court is comprised of 33 percent women. Though a significant majority of judicial power remains in the hands of men⁶⁹, women judges have made important strides across the Americas.

However, the effects of this increase on judicial rulings—even on gender issues—remains unclear. The connection between women's representation on the courts and the protection and promotion of women's rights through the judicial system has been a topic of academic and policy debate for some time now. Numerous empirical studies on gender and judicial outcomes reveal mixed results—in some cases men and women judges arrive at different decisions

⁶³ Hugo Alvarado, "Juzgados de femicidio están por colapsar por falta de fondos," *Prensa Libre*, November 9, 2011, available at http://www.prensalibre.com/noticias/Juzgados-femicidio-colapsar_0_587941226.html.

⁶⁴ Rodrigo Baires Quezada, "Presupuesto: más represión que investigación y justicia," *Plaza Pública*, November 7, 2012, available at <http://www.plazapublica.com.gt/content/presupuesto-mas-represion-que-investigacion-y-justicia>.

⁶⁵ Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), "Comunicado: Grupo Enlace CLADEM Guatemala exige cese de la violencia y femicidios contra las mujeres," January 23, 2013, available at <http://www.scribd.com/doc/122045773/Femicidios-en-Guatemala-al-23-enero-2013>.

⁶⁶ Anastasia Moloney, "The Word on Women—Guatemala's femicides show no signs of letting up," *TrustLaw*, January 22, 2013, available at <http://www.trust.org/trustlaw/blogs/the-word-on-women/guatemalas-femicides-show-no-signs-of-letting-up/>.

⁶⁷ See, Sital Kalantry, "Women in Robes," *Americas Quarterly*, Summer 2012, pp. 84-5, available at <http://www.lawschool.cornell.edu/womenandjustice/Featured-Articles-and-Reports/upload/Women-in-Robes-Final.pdf>.

⁶⁸ *Ibid.*; See also, Linda K. Robertson, "Women on the Bench," *Slaw*, December 6, 2011, available at <http://www.slaw.ca/2011/12/06/women-on-the-bench/>.

⁶⁹ Alda Facio and Rodrigo Jiménez, "La igualdad de género en la modernización de la Administración de Justicia," Inter-American Development Bank, Department of Sustainable Development, August 2007, p. 25.

and in others they do not. The same can be said for rulings in gender-related cases. Due to the discrimination most women judges have experienced on the path to their current positions, some researchers have asserted that they are more sensitive to gender-based crimes, particularly discriminatory labor policies.⁷⁰

Recent evidence does reveal, though, that female judges have spearheaded many of the region's efforts to publicize and address gender-based violence and discrimination. Guatemala's special tribunals; Argentina's judicial office to provide attention to domestic violence victims, spurred by Supreme Court justice Elena Highton de Nolasco; and reforms to promote equality in

family law in countries like Guyana, emerging from recommendations in part made by now-Caribbean Court of Justice minister Desiree Bernard, are just a few of the many examples.⁷¹

At any rate, gender balance on the courts is a sign of greater equality of opportunities and access. This, in turn, boosts the legitimacy of the courts, as institutions founded on principles of independence and impartiality.⁷² While there may be no definitive link between women on the bench and judicial rulings promoting women's rights, efforts to inch closer to creating judicial systems that reflect the full diversity of a nation's citizenry may, in fact, be good for everyone.

⁷⁰ Kalantry, *op. cit.*, p. 86.

⁷¹ *Ibid.*; Vanda Radzik, "Honouring Chancellor Desiree Bernard," Stabroek News, May 27, 2011, available at <http://www.land-of-six-peoples.com/news/ns1052711.htm>.

⁷² Kalantry, *op. cit.*, p. 87.



María Eugenia Hirmas,
Joan Caivano,
Desiree Bernard,
Joan Winship

APPENDIX I



WOMEN AND THE RULE OF LAW

February 26-27, 2013

AGENDA

Tuesday, February 26, 2013

Location: IAWJ offices (1850 M St, Suite 350)

11:00 am Arrival and introductions, IAWJ offices (1850 M St, Suite 350)

12:00 pm Welcome Lunch with participants

1:00 pm Discussion of next day's public session

Moderator: Joan Winship, International Association of Women Judges

3:00 pm Private Tour of US Supreme Court

4:00 pm Private visit with US Supreme Court Justice Ruth Bader Ginsburg

7:00 pm Reception at the Embassy of Peru (1700 Massachusetts Avenue, NW)

Host: The Honorable Harold Forsyth, Ambassador of Peru

Keynote speaker: Kathleen Kennedy Townsend, Former Lt. Governor of Maryland and US Deputy Assistant Attorney General

Wednesday, February 27, 2013

Location: SEIU Conference Center, 1800 Massachusetts Ave, Rm. 1004

8:30 am Continental breakfast

9:00 am **Welcome:**

- Zaida Arguedas, League of Women Voters
- Joan Caivano, Inter-American Dialogue
- Joan Winship, International Association of Women Judges

9:00 am **Women's Rights Addressed by the Courts: Cases from the Americas**

Moderator: Hattie Babbitt, Attorney, Jennings, Strouss & Salmon

Panelists: Janet Tello (Peru)
Vanessa Ruiz (USA)
María Eugenia Villaseñor (Guatemala)

Commentator: Macarena Saez, Fellow,
Washington College of Law, American University

- 10:30 am Coffee Break
- 10:45 am **Strengthening Diversity in the Judicial System**
Moderator: Zaida Arguedas, League of Women Voters
Panelists: Desiree Bernard (Guyana)
 María Francisca Zapata (Chile)
 María del Carmen Alanís Figueroa (Mexico)
Commentator: Gabriela Vega, Gender & Diversity Division,
 Inter-American Development Bank
- 12:15 pm **Luncheon**
Keynote speaker: Roberta Jacobson, Assistant Secretary of State for
 Western Hemisphere Affairs
Moderator: Muni Figueres, Ambassador of Costa Rica
- 1:30 pm **The Role of International Law in Promoting Women’s Rights**
Moderator: Michael Shifter, Inter-American Dialogue
Panelists: Catalina Botero (Colombia)
 Desiree Bernard (Guyana)
 Janet Tello (Peru)
Commentator: María Eugenia Hirmas Rubio, Former Director of
 Socio-Cultural Affairs, Office of the President of Chile
- 3:00 pm **Wrap-up:**
 Anne Tierney Goldstein, International Association of Women Judges
- 3:15 pm Justices Travel from SEIU to the Organization of American States
- 4:15 pm Private meeting, OAS Inter-American Commission on Human Rights



Audience

APPENDIX II

PARTICIPANT BIOGRAPHIES

Harriet Babbitt (*United States*) is an attorney at the firm Jennings Strouss & Salmon. From 1997 to 2001, she served as deputy administrator of the U.S. Agency for International Development (USAID). She was the US ambassador to the Organization of American States from 1993 to 1997. She served as chair of the American Bar Association –Latin America Rule of Law program from about 2001-2007.

Desiree Bernard (*Guyana*) was the first female judge to be named to the Caribbean Court of Justice in 2005. Prior to that, she served on Guyana’s Court of Appeals, was chief justice of the Supreme Court, and was chancellor of the judiciary of Guyana and the Caribbean. She has served on the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) and is a member of the International Association of Women Judges.

Catalina Botero (*Colombia*) is the special rapporteur for freedom of expression of the Organization of American States. Before assuming this position, she was acting magistrate and auxiliary magistrate on the Constitutional Court of Colombia for eight years. She was also national director of the Office for the Promotion of Human Rights in the Office of the People’s Defender of Colombia.

Muni Figueres (*Costa Rica*) is the ambassador of Costa Rica to the United States. Between 1982 and 1986, Figueres served as director of Costa Rica’s Investment and Trade Promotion Agency. In 1986 she was named minister of foreign trade, and subsequently became special presidential trade representative, her two-year mission being to bolster support in the US Congress for approval of the Caribbean Basin Initiative. She has also served as the Inter-American Development Bank’s division chief for trade and integration.

María del Carmen Alanís Figueroa (*Mexico*) serves as a justice on the Electoral Court of Mexico, which she headed from 2007 to 2011. She previously served as executive director of the Federal Electoral Institute. She is currently Mexico’s representative to the European Commission for Democracy through Law, where she coordinates the Sub-Commission on Latin America. In 2011, she was appointed head of the OAS Working Group on American Electoral Jurisprudence.

María Eugenia Hirmas Rubio (*Chile*) was director of sociocultural affairs for the Presidency of Chile from 2007 to 2010 under President Michelle Bachelet. Previously, she was executive director of the *Fundación Todo Chilenter*. She was also head of communications and public relations for the *Servicio Nacional de la Mujer* (SERNAM).

Roberta Jacobson (*United States*) is assistant secretary of state for Western Hemisphere affairs. Previously, she served as principal deputy assistant secretary of state and coordinator of citizen security initiatives as well as deputy assistant secretary of state for Canada, Mexico, and NAFTA. She was also deputy chief of mission at the US Embassy in Peru.

Vanessa Ruiz (*United States*) is a senior judge on the District of Columbia Court of Appeals. Born in San Juan, Puerto Rico, she was appointed to the Court of Appeals by President Bill Clinton in 1994. Ruiz was previously corporation counsel (now District of Columbia

attorney general) for the District of Columbia and an attorney in private practice. Ruiz is active in numerous organizations, including the International Association of Women Judges, and serves as immediate past president of the National Association of Women Judges.

Macarena Sáez (*Chile*) is a fellow in the International Legal Studies Program and professor at Washington College of Law at American University. Her main areas of research are gender discrimination in Latin America, and comparative family law. She is also member of the Executive Committee of the Network of Latin American Scholars on Gender, Sexuality and Legal Education.

Janet Tello Gilardi (*Peru*) was appointed justice on the Supreme Court of Peru at the beginning of 2013. She previously presided over Lima's drug trafficking court and also led Lima's Superior Family Court. She is president of the Board of Directors of the Federation of Associations of Judges for Democracy in Latin America and the Caribbean.

Kathleen Kennedy Townsend (*United States*) is former lieutenant governor of Maryland. Before being elected to that post she served as deputy assistant attorney general of the United States. She taught foreign policy at the University of Pennsylvania and founded the Robert F. Kennedy Human Rights Award.

Gabriela Vega (*Peru*) is the lead specialist for the Gender and Diversity Unit at the Inter-American Development Bank. Vega has over 25 years of experience in socioeconomic research and project analysis in the fields of poverty, labor markets and gender issues. Before joining the IDB she was a consultant on social safety nets for the World Bank and a researcher at the Central Reserve Bank of Peru.

María Eugenia Villaseñor (*Guatemala*) is a judge on Guatemala's Fifth Court of Appeals on drug trafficking and environmental crimes in the department of Quetzaltenango. She served as president of the court from 2004 to 2009. She has presided over a number of human rights cases, among them the killing of forensic anthropologist Myrna Mack. In 2000, she published a book on domestic violence and social aggression in Guatemala. She is a member of the International Association of Women Judges.

María Francisca Zapata (*Chile*) is a judge on the First Supervisory Court of Santiago. She is a professor at the University Andrés Bello and has written widely on penal reform in Chile. Since 2004, she has served on the National Association of Magistrates promoting structural reforms to the judicial branch. She belonged to the Lawyers' Group of Chile, through which she promoted a gender perspective within public and private spaces of power. She is a member of the International Association of Women Judges.