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WOMEN IN THE JUDICIARY IN LATIN AMERICA: AN OVERVIEW OF PROGRESS AND GAPS

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Women in the Judiciary in Latin America: An Overview of Progress and Gaps

Maritza Formisano and Valentine M. Moghadam¹
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The political-judicial structure has been a key domain for feminist activism and gender analysis alike. Access to justice, gender-equitable laws, and involvement in judicial decision-making are key indicators of women's citizenship and gender equality. The global women's rights agenda also calls for the elimination of all forms of discrimination against women and for women's participation and rights across civil and political, economic, social, and cultural domains. This paper examines patterns and trends in women's participation in the judiciary in Latin America, with a focus on women in the highest courts. While the process of democratization, along with the growth of the women's movement and increasing educational attainment, has been conducive to a feminizing trend in the judiciary, women remain under-represented in the highest courts, and a kind of "glass ceiling" may be in place.

Introduction

The institutional changes that Latin America has undergone since the 1980s have generated changes at the social level as well as new forms of governance that redefine the relationship between state and society.² Structural reforms in Latin America have entailed fiscal, economic, social and political changes that, along with globalization, paved the way for institutional changes and a redefinition of power structures. The gender component in power relationships can be analysed at the structural level (the sexual division of labour) as well as institutional/normative level (legal frameworks). The social relations of gender, its organization in society, power relationships, and participation all have historical components

¹ This study was commissioned and supervised by Valentine M. Moghadam, who also edited and contributed to the writing of the paper. Much of the research was conducted by Maritza Formisano.

² Virginia Guzman, *Los azarosos años 80: Aciertos y desaciertos del movimiento de mujeres en América Latina y el Caribe* (Lima: Entre mujeres, 1994).

that have generated negotiation, consensus and ruptures throughout history and have been seen even at the state level.³

Feminist movements in Latin America have accomplished much. They have helped to defend the interests and rights of social groups and have contributed to the demise of Latin American dictatorships. According to a study by Sonia Montano, women's groups have helped formulate policies that would prevent the reappearance of dictatorship while also contributing to constitutional reforms, increasing women's representation in legislative circles, and public policies to address family violence.⁴ This suggests the incorporation of a gender perspective in the region's judicial systems, a development vital for the achievement of real access by women to the provision and administration of justice. After all, the judiciary ultimately decides on policies and decisions that contribute to the elimination of exclusive cultural policies. It is through the interpretation of principles and values by male and female judges that the doctrine of equity may be born. The judicial power must reflect within itself the same democratic values it upholds.

In order to build legitimacy and confidence in the legal system, a consolidated democracy must establish institutional mechanisms.⁵ A real democratization would expand and make more inclusive decision-making. One example of this may be the judicial system. The third branch of the state, the judiciary, is responsible for horizontal accountability and the effective implementation of and respect for the rule of law.

However, the Latin American judicial system has been historically weak compared to the executive and legislative powers. The centralization of political power in the executive branch has not allowed the development of a strong judiciary as a truly independent power. For example, during preparation of this study (January-June 2005), the 27 magistrates of the Supreme Court of Ecuador were removed by the Congress, and later, the members of the

³ ECLAC, *The Institutionalility of Gender Equity in the State* (Santiago de Chile: ECLAC, August 1998). See also Virginia Guzman, *Las relaciones de género en el mundo global* (Santiago de Chile: ECLAC, 2002).

⁴ Montano Sonia, *Mujeres: de actoras de la democracia a protagonistas de la gobernabilidad* (Santiago de Chile: CEPAL, 2000) and Nancy Fraser, "Repensar el ámbito de lo público: una contribución a la crítica de la democracia realmente existente", *Debate feminista* (Year 4, Vol 7, 1993, Mexico D.F.).

⁵ See P. Schmitter and T.L. Karl, "What Democracy Is ... And Is Not", *Journal of Democracy* (2, 1991): 75-88. The Corporation Latinobarómetro's annual poll indicates that Latin American public confidence in the judicial branch increased from 20% in 2003 to 32% in 2004. However the lack of confidence is important concerning this branch. See page 33 of the report about the public opinion in Latin America by the *Corporacion latinobarómetro*, of Chile, available in www.latinobarometro.org.

Constitutional Court were also removed. Even though Ecuador is not part of this study, this unexpected but non-extraordinary fact has once again highlighted the subject of weak independence and autonomy of the justice systems in Latin American countries.

The debate about the necessity for true judicial independence extends to discussions about the composition, effectiveness and accountability of the judiciary.⁶ Any assessment of judicial power requires a consideration of three key variables: independence, access, and efficiency. Gender issues are especially relevant with respect to access.

The Latin American region is a special case study. Because of certain historical factors and despite the consolidation of its democracies, Latin American institutions, and especially the judicial system, are plagued by corruption, nepotism and clientelism, all of which affect the judiciary's independence and the correct functioning of justice. In Latin America, legal systems have always been conducted by elites and corruption has undermined trust in the legal institutions.⁷ The transition to democracy in Latin America has not ended those practices and while equal protection exists on paper, many states seem incapable of correcting structural problems of inequality and exclusion and of ensuring independence and fairness.⁸ For example, the severe criticism of some judges on Argentina's Supreme Court of Justice, the removal of all members of Ecuador's Constitutional Court, and the suspension of the functions of Peru's Constitutional Court during the 1990s are some examples of the problems in the juridical sphere and of the power of Latin American governments over the judicial branch.⁹

⁶ The debate is divided in two groups of authors: for the first group, the political independence and strong judiciary branch is a precondition of any democracy. The second group is more prudent and remain skeptical (Gargarella, Capelletti, Robert Dahl). Today, the expression "the government of judges" shapes the debate, see Capelletti, *El Derecho de los Jueces* (Paris: Economica, 1999).

⁷ See M.A. Garretón, *Hacia una nueva era política. Estudio sobre las democratizaciones* (Santiago de Chile: Fondo de Cultura Económica, 1995).

⁸ See USAID/IFES, "Guidelines for Promoting Judicial Independence and Impartiality", *Judicial System Review, Judicial System Journal* (No.4: Independence and Judicial Responsibility, December 2002).

⁹ Several criticisms were elevated against the work of some magistrates in Argentina as for example M. Guillermo López and others ministers of the tribunal. The members of the Supreme Court of Justice were removed by a simple majority of the Parliament of Ecuador (52 parliaments). They were accused of being politically involved with the parties of the opposition of the President Lucio Gutierrez. This destitution violates the Inter-American Democratic Chart, the International Covenant on Civil and Political Rights and the American Convention of Human Rights. For more information see the journal *El Comercio* in www.comercio.com and also the Declaration of the Andean Commission of Jurist related to this destitution in: <http://www.cajpe.org.pe/rj/index.htm> .

The return to democratic values and systems and the consolidation of peace, democracy and development have been affected by economic and social slowdown in most of the region. This has brought about significant increases in crime and generated a general feeling of insecurity, mistrust and impunity. The inclusion and institutionalization of a gender perspective in the administration of justice is a fundamental step towards regaining trust and security and ending impunity within the system. An example is the establishment of grassroots-oriented and gender justice-based national mechanisms for women, such as Chile's SERNAM and Venezuela's National Institute for Women. Another example is the design of women-friendly legal frames. The Constitution of the Bolivarian Republic of Venezuela, for example, clearly states that women are entitled to full citizenship, and it addresses discrimination, sexual harassment, and domestic violence. In addition to guaranteeing full equality between women and men in employment, it is the only constitution in Latin America that recognizes housework as an economically productive activity, thus entitling housewives to social security benefits (Article 88).¹⁰ For the women and men of the popular classes, such institutions and laws have helped restore confidence in government and the judiciary.

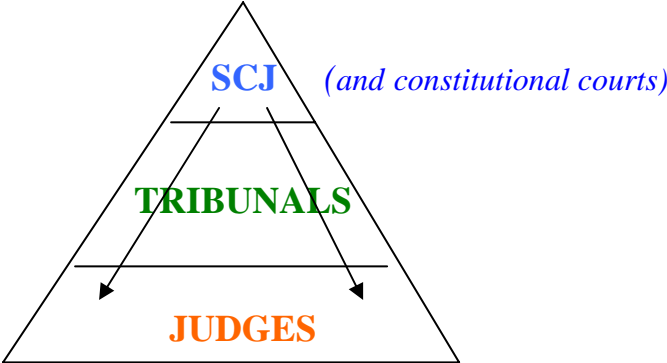
Despite these positive examples, many factors block women's access to justice. This fact is reflected in the existing legislative norms and their application and interpretation by those in charge of administering justice. The situation of women judicial actors is also reflected in the level of the posts that they occupy within the system of justice. The following interrelated questions engage us in this paper: women's access to the judicial system, the inclusion of a gender perspective in judicial decisions, and the gender composition of the highest courts. We examine access by women to the judicial system: enrollment policies and patterns, formal and informal procedures, gender bias, as well as real possibilities for enjoyment of the same opportunities as male colleagues for becoming judges. This is a preliminary and exploratory study which will require follow-up research, in particular on women judges in the Constitutional Courts.

We should begin by stating that in this study, the importance of representation of women judges in the lower levels of the judiciary is not underestimated. We realize that the majority of women judges are at the lower levels and thus close to the people in their pursuit of small claims, family matters, and similar cases. We recognize and appreciate that a process of feminization has been occurring within the judiciary, as measured by law students, lawyers,

¹⁰ See Sarah Wagner, "Women and Venezuela's Bolivarian Revolution", www.venezuelanalysis.com, via www.portside.org, January 15, 2005.

and judges. But we began this study with the hypothesis that women would likely be excluded from the highest juridical decision-making bodies, and we have sought to understand the factors behind this. The importance cannot be overemphasized, for it is at the higher levels of the judiciary where most decisive jurisprudence as well as precedents emanate in civil, family, and penal matters. Through the principle of *radiation* of jurisprudence, the highest and superior courts affect the entire judicial system, thus allowing the setting of precedents and creating of rules and interpretations that are used and followed by lower tribunals. It is clear that their power to suggest, shape and modify law is imminent and undeniable. This is illustrated in Figure 1.

FIGURE 1: Jurisprudential *radiation*



Research Methods, Sources of Data, and Plan of the Paper

The study was conducted through a reading of the relevant literature (including on-line resources), research travel to Mexico City, and the gathering of documents, statistics, and interview data for a sample of 12 countries, collected largely between March and May 2005. In addition, we searched for institutions and policies supporting women in the judiciary. Because of sub-regional differences in judicial institutions, we grouped the countries into four regions: Central/North America, Caribbean, Andean and Southern Cone. The countries are: for Central/North America: Guatemala, Costa Rica, El Salvador, Honduras and Mexico; for the Caribbean: Trinidad and Tobago and Jamaica. For the Andean countries: Colombia, Venezuela and Peru; and finally, for the Southern Cone: Argentina and Chile. Interview data was collected through face-to-face and telephone consultations with women judges, as well as written responses to questionnaires sent to magistrates and ministers of women’s affairs from

Latin America. We were keen to obtain their views on mechanisms to facilitate access to and participation in the judiciary.¹¹

The next part of the paper comes in three parts. In the first part we present a general overview of the Latin American judicial system, including the legal traditions and general structure of the Supreme Courts and Constitutional Courts; this information is presented by sub-region. This part also underlines the different existing institutions that play a crucial role in the selection and nomination of the magistrates, and the bar associations and academic institutions that participate directly or indirectly in the nominations and access of women. In the second part, we present a picture of the place of women in the judiciary, including findings from interviews and questionnaires. Finally, we present a summary and a set of recommendations to enhance women's participation in the judiciary and to encourage a more gender-sensitive approach to the law.

I. Latin American judicial systems: A general overview

The regional judicial systems in Latin America are influenced by two legal traditions: some countries follow the Anglo-Saxon tradition (the common law) and others the Romano-Germanic legal tradition (civil code). The two different models define a different internal composition, general organization and competences as it is presented in the table and the explicative overview will help us to understand the role of the judiciary within the State as well as to analyze the role of women within this branch (only the countries examined in this study are included in the table).

¹¹ The questionnaire included the following questions: 1) What elements do you think contributed to your nomination to the court? 2) What in your opinion are the formal and informal mechanisms for advancement of a judicial career or within the judicial system? 3) What are the legal institutions or associations in your country that support candidatures of female judges to positions in the main courts? 4) What are the obstacles to advancement of a woman's judicial career? 5) Which courts and judicial decisions most directly affect the lives of poor, working class, and indigenous women?

TABLE 1

Legal traditions of country case studies

Countries with a Common Law legal tradition	Countries with a romano-germanic tradition
<p style="text-align: center;">Trinidad and Tobago Jamaica</p>	<p style="text-align: center;">United States of Mexico* Republic of Honduras Republic of Costa Rica Republic of Guatemala Republic of El Salvador</p>
	<p style="text-align: center;">Republic of Colombia Republic of Peru Bolivarian Republic of Venezuela</p>
	<p style="text-align: center;">Republic of Chile Republic of Argentina</p>

**The Mexican legal system is based on Spanish civil law with some influence of the common law tradition*

• Caribbean
• North and Central American
• Andean Countries
• Southern Cone

a. The Caribbean judicial system: Trinidad and Tobago and Jamaica

The last legal recourse of all Commonwealth Caribbean jurisdictions except Guyana is the Privy Council of London; however, the institutionalization of a Supreme Court of the Caribbean has been discussed in order to replace the authority of the Privy Council, and it has raised considerable debate.¹² The Caribbean Court of Justice (CCJ) was inaugurated in April 2005 and is comprised of seven judges. The first President of the CCJ is Rt. Hon. Michael Anthony De la Bastide and the one woman appointed as a judge is the Honourable Mme Justice Desiree Bernard.¹³

Concerning Trinidad and Tobago, its judicial system is influenced by common law because of the British tradition. In a country divided in 12 magisterial districts, the constitution defines a judicial system composed by a Supreme Court and the Magistracy.¹⁴ In this regard, the Supreme Court, Chapter 7 Part 1 Section 99 of the Constitution states that:

¹² In fact, after support from the Organization of Commonwealth Caribbean Bar Association (OCCBA), a Caribbean Court of Justice (CCJ) has been proposed as an instance of appeal for the Caribbean Community and the Common Market (CARICOM) by the treaty of Chaguaramas in 1970. See Hugh Rawlins (2000), "The Caribbean Court of Justice: the history and analysis of the debate, Preparatory Committee on the Caribbean Court of Justice, University of West Indies.

¹³ See more information in www.caribbeancourtofjustice.org.

¹⁴ The Magistracy is the lower judiciary and deals about civil (which involve sums less than \$15,000.00) and criminal matters. It is divided into 13 districts and it is composed by 43 magistrates, including a Chief magistrate

There shall be a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice and a Court of Appeal with such jurisdiction and powers as are conferred on these Courts respectively by this constitution or any other law.

The Supreme Court of Trinidad and Tobago has a jurisdiction in Port of Spain, Tobago and San Fernando. At its head, the Court is presided over by a Chief Justice who is nominated by the President after a consultation of the Prime Minister. The leader of the opposition may play an important role also in the nomination. The nomination of the Chief Justice is for an unlimited period but until age 65. The Chief Justice is also the Chief Justice of the Judicial and Legal Services Commission, which plays a crucial role in the election of the judges, making recommendations for the election of the others judges. We may say that the person of the Chief Justice defines the composition of the court. The High Court has a maximum number of 20 judges and has jurisdiction for criminal and civil matters; the Court of Appeal a maximum of nine judges. For the High Court a minimum of 10 years of law practice is required and for the Court of Appeal 15 years or three years experience as a judge of the High Court.

Jamaica is similarly influenced by common law. It is defined in its constitution of 1962 as a constitutional parliamentary democracy. Because of the influence on its formal legal system by the United Kingdom, the head of the Jamaican judicial system is the Privy Council in London, the highest jurisdiction for civil and criminal matters coming from the Court of Appeal.¹⁵ The Court of Appeal is composed of eight judges including a President and a Chief Justice. The President is nominated by the general Governor in consultation with the Prime Minister and the opposition leader and, as in Trinidad and Tobago, he is also the Chief Justice of the Judicial and Legal Services Commission. The Supreme Court is composed of 16 judges including a Chief Justice and a senior judge and has jurisdiction on civil and criminal matters.

b. The Central American countries: Costa Rica, Guatemala, and El Salvador

In the Central American region, **Costa Rica**'s legal system is based on the civil law tradition. The judicial system is composed by a Supreme Court of Justice and Superior Council of the Judiciary.¹⁶ On 10 April 2000, the Supreme Court of Costa Rica voted a 5-year programme called Strategy of the Judicial Power in order to develop strategies for the judicial system

and a Deputy Chief magistrate. The qualification for appointment as a Magistrate is a minimum of five years standing as an attorney at law, see www.ttlawcourts.org.

¹⁵ See Lloyd G. Barnett, *Constitution of Jamaica* (Oxford [Eng.]; New York: Published for the School of Economics and Political Science by Oxford University Press, 1977).

¹⁶ See art. 153 of the constitution of Costa Rica.

including the restructuring of the judicial career and the participation in its dynamics. According to a study of the Supreme Court of Justice, there exists a majority of men throughout the entire judicial and public defense system in Costa Rica. A majority of women may be found at the lowest levels of the judicial organization pyramid, concretely at the level of judges. According to the Section Plans and Budget of the Judicial Power, the number of judges in 2004 in Costa Rica was 720 (386 men judges and 334 women judges).¹⁷

Concerning **Guatemala**, the legal framework of the judicial system and its Supreme Court of Justice is defined by the constitution of the Republic of Guatemala. The Guatemalan Constitution in its title IV, Chapter IV, in its sections I, II and III, has established the legal framework of the judicial system and its Supreme Court in its articles 203 to 222 and by the law of the Judicial organism, decree No. 2-89 and its reforms and ordinary laws of the state.¹⁸ The judicial system is composed of the Supreme Court but also by the Court of Appeal and by several organs, judges of first level, and judges of the peace. But the administration, the budget and leadership in within the judicial branch are the responsibility of the Supreme Court of justice (art. 52 of the law of the judicial branch). The interpretation of the Constitution is the prerogative of the Constitutional Court. There is also a Bar Association (*Colegio de Abogados*) and a College of Notaries and faculties of law that play an important role in the composition of the judicial career.

Since 1939 no President of the Supreme Court of Justice has been a woman. The first President was Mr. José Venancio Gómez and the current is Mr. Rodolfo de León Medina. The Supreme Court of Justice is composed of 13 magistrates, who elect their own president. In 2005 the Guatemalan Supreme Court had two women magistrates: the lawyer Ms Beatriz Ofelia de León Reyes (President of the *Cámara de Amparo y Antejuicio*) and the lawyer Ms Leticia Stella Secaria Pinto (member of the same chamber), both trained lawyers.

The Council for the Judicial Career is an organism for the administration of the judicial career that guarantees the respect of the judicial law giving stability, capacity and independence for judges and magistrates in Guatemala.¹⁹ This Council informs the Congress whenever there is a vacancy in the Supreme Court of Justice, in the Courts of Appeal, or in

¹⁷ Information provided for the author, by email communication, letter 020-pp-2005, from the Department of Panification, section *Plans and Budget* of the judicial power.

¹⁸ Law of the judicial organism ("*Ley del Organismo Judicial*"), 28 of March 1989.

¹⁹ This council is composed of the following "units": Executive Secretariat; Evaluation Unit, Unit for Logistic Support for the Judicial Career and Unit of Appeal.

any other tribunal at the same level. The Council for the judicial career carries out the convocations entering into the judicial programme for the training of the judges and magistrates, a programme that is part of the institutional capacity unit.

Concerning **El Salvador**, the first Tribunal of Justice was established in 1543 by Carlos III, and this tribunal had the competence for the study of civil cases. The first Supreme Court of Justice was established in 1824. The Supreme Court of Justice is composed by 14 magistrates and a President. The President of the Supreme Court of Justice is at the same time President of the judicial system and of the constitutional chamber. The magistrates are elected by the Legislative Assembly for nine years and can be reelected.

To be a magistrate the following conditions are required: nationality from El Salvador, lawyer, experience in the judicial academy for at least six years in the second level of the judicial pyramid, or nine years in the first level of the judicial system. The Supreme Court is divided into four chambers: the constitutional chamber is composed of five magistrates and in 2005 had one woman: Ms Victoria Marina de Avilés. The criminal chamber is composed of three magistrates, the administrative has four and the civil chamber three magistrates, of which one was a woman, Ms Mirna Antonieta Perla (April 2005).

In the case of the **United States of Mexico**, the Organic law of the judicial power defines the composition of the Supreme Court of justice of the Nation (SCJN).²⁰ The Supreme Court is composed of 11 ministers (art. 2 of the law). The administration of the judicial career is a responsibility of the *Consejo de la Judicatura Federal*, but this competence excludes the administration and monitoring of the Supreme Court as well as the electoral Tribunal. However this institution is constitutionally responsible for the independence and impartiality of the member of the judicial power of the federation (art. 68 of the Organic law).

c. The Andean countries: Colombia, Venezuela and Peru

Colombia's legal system is defined by continental law and influenced by the Romano Germanic tradition or civil code. The constitution of 1991 defined a new organization of the judicial system. In fact, four jurisdictions were introduced: the constitutional jurisdiction with the Constitutional Court on the top, the ordinary jurisdiction under the direction of a Supreme Court of Justice, the administrative jurisdiction with a State Council at its head and finally a

²⁰ Organic Law of the Judicial Power for the Federation, 22 of November 1996.

Special jurisdiction for the indigenous people.²¹ The Superior Council of the Judiciary is responsible for the administration of the judicial career and the judicial system. The magistrates in the four Courts are nominated for eight years. The Constitutional Court is composed of nine magistrates elected by the Senate, derived from a candidates list presented by the President, the Supreme Court of Justice and the State Council.

The Supreme Court of Justice is composed of 23 magistrates. The magistrates are nominated by the different judges of the specialized chambers of the court, and the selection is based on a list presented by the Supreme Council of the Judiciary. The State Council, head of the administrative jurisdiction, is composed of 27 magistrates divided in different chambers and sections. The candidates are nominated by the administrative section of the Judicial Council but are nominated by them. The Superior Council of the Judiciary is composed of 13 magistrates and divided in two sections: the administrative section composed of six magistrates and the disciplinary section composed of seven.²² The members of the administrative section are elected: two by the Supreme Court of Justice, one by the Constitutional Court and three by the State Council. The members of the disciplinary section are elected by the Parliament based on three lists of candidates proposed by the President.

Colombia has a judicial career system.²³ There is a National Register of the Promotion of Judges (*Registro Nacional del Escalafón*). In 2004, there were a total of 21,712 registered including judges, magistrates and support staff. The number of inscriptions of magistrates in 2004 was 731 and for judges 4,644.²⁴

In the **Bolivarian Republic of Venezuela** the citizens own the faculty for administering justice and it is performed on behalf of the Republic by way of its authority invested through law. The judicial system is composed of the Supreme Court of Justice and the other tribunals that may be determined by law, as well as the Public Ministry, the Public Defense organ, the institutions for criminal investigation, the judicial civil servants, the penitentiary system, alternative justice organs, citizens taking part in the judicial process within the rule of law, as well as lawyers and magistrates authorized to practice the profession.

²¹ Juan Enrique Vargas, "Judicial Independence versus Control of the Judicial Branch", *Judicial System Review, Judicial System Journal* (Journal No. 4, Independence and Judicial Responsibility, December 2002).

²² There are 21 sectional councils in every capital of each department of Colombia.

²³ Constitution of Colombia, art. 125; Law 270 of 1996, art 85, num 17 and 22 and Pact n° 724 of 2000.

²⁴http://www.ramajudicial.gov.co/csj_portal/jsp/contenido/plantillaFrame.jsp?idseccion=18&idpagina=225&idtitulo=6 .

The judicial branch is independent of the other power, and enjoys operational autonomy. The Supreme Court of Justice is the highest tribunal in the country and the highest representative of the judicial branch. It is composed of a High Chamber, as well as Constitutional, Political-Administrative, Electoral, Criminal Appeals, Civil Appeals and Social Appeals chambers. Each chamber is composed of three members, except the Constitutional Chamber, which has five. It is competent in matters handed to it by national legislation. Its main function is to control conformity with the Constitution and the law, as well as the legality of actions by the public authorities, financial and administrative matters.²⁵

The Supreme Court of Justice has 20 Magistrates divided as follows: three Magistrates (Chambers: Political-Administrative, Electoral, Civil Appeals, Criminal Appeals, Social Appeals) and five Magistrates (Constitutional Chamber).²⁶ The Supreme Court of Justice has initiated a process of consultations with the objective of reaching some consensus on the next steps to be taken in order to modernize the judicial system, and to this effect it has organized a forum on *Alliance for the Transformation of the Judiciary*, that will allow the participation of institutions, organizations and persons related to the subject and, in general, all those who would like their voice to be heard concerning the formulation of a *Plan for transforming the judicial branch* in the next five years.

The judicial system of the **Republic of Peru** consists of several juridical organs, including the Supreme Court of Justice, the superior courts in each district, and the tribunals.²⁷ Alongside this, we find the control organism, the Constitutional Court. The Supreme Court is divided into several specialized chambers: criminal, civil, constitutional and social. The Court chambers are composed of five members each, presided in each instance by the member with more seniority. The 18 senior members meeting in full session elect, in turn, the President of the Supreme Court, as well as the Chief of the OCMA (The Supervisory Office for Magistrates) for a period of two years. The Full Session of the Supreme Court, in line with the Constitution and the Judicial Branch Organic Law, is the country's highest body for deliberation. Additionally, art. 72 of the organic law of the judicial power calls for six

²⁵ See art. 253 of the Constitución Política de 1999 de la República Bolivariana de Venezuela.

²⁶ According to the constitution of 1999, Art. 262.

²⁷ The elected President of the judicial power for the period 2004-2005 is Dr. Walter Vásquez Vejarano. See also the Peruvian's Constitution of 1993, art. 143 y 144 and the Organic law of the Judicial Branch ("*Ley Orgánica del Organismo Judicial*") promulgated through Law 26435 of 1995 and law n° 27367.

members of the Executive Council, the organ responsible for the direction and administration of the judicial power.²⁸

The Constitutional Court of Peru is derived from the former tribunal for Constitutional Guarantees, in the former Constitution of 1979. The latter was abolished following the *coup d'état* of 5 April 1992 and the new Court that replaced it did not have the mandate for constitutional control of legislation between the coming into force of the new Constitution in 1993 and 1996.²⁹ Nevertheless, the Constitution of 1993 does grant it the abstract and concentrated power of overview and makes it independent and autonomous. This autonomy and independence has been subject to various reforms during the past ten years. Indeed, after the 1993 Constitution, the Court was composed of seven members elected by the Congress, but in a 1997 reform (law 26081) the number of magistrates was reduced to four and the Congress removed three.³⁰ After that, its ability for constitutional control was further limited, but was restored in 2000. Following the restitution of its members, the total number of magistrates is seven and in April 2005 one magistrate was a woman, Ms Delia Revoledo Marsano.

d. The southern cone countries: Chile and Argentina

The judicial legal system in the **Republic of Chile** is based on the tradition of the continental European law. The judicial system is composed of five tribunals: the Supreme Court, the Court of Appeal, the Ministers and Presidents of the Courts, the Writ Tribunals, Courts of Guarantees, the Oral tribunals and the Constitutional tribunal. The Supreme Court of Justice is the head of the judicial system and it is composed by 21 judges or Ministers and a President elected for two years. The Courts of Appeal are spread out throughout the country and we find 17 in Chile, for a total number of 155 ministers.

The Constitutional tribunal shares with the Court the interpretation of the law. Articles 73 to 83 of the Constitution of Chile of 1980 define its organization and competences. It is composed of seven members (for an eight-year mandate and with possibility of being reelected). Apart from the Courts, there is a Judicial Academy responsible for training and the

²⁸ See Organic Law of the judicial power and law N. 27465: <http://www.justiciaviva.org.pe/normas/loj.doc> .

²⁹ Cesar Landa, *Tribunal Constitucional y Estado democrático* (Lima, Perú: Fondo Editorial de la Pontificia Universidad Católica del Perú, 1999).

³⁰ This removal came in the context of a decision of the Constitutional Court relative to the candidacy of Pres. Fujimori for the elections of 2000 in Peru, in which the Court had to examine the effects of the law during the presidential period.

development of the judicial system. Nine members of the judicial academy make up the directing council of the Academy; those members, according to law n° 19346, are: the President of the Supreme Court, the Minister of Justice, a Minister of the Supreme Court, the Prosecutor of the Supreme Court, a minister of the Court of Appeal, a member of the primary levels of the judicial system, a representative of the law associations, and two scholars with at least five years of academic experience.

The judicial system of the **Republic of Argentina**, as a federal country, is based on the civil law and composed by 25 independent judicial powers. The reform of the Constitution of 1994 has introduced several changes concerning women's participation all over the country. This is because the Argentine Constitution was reformed in 1994 whereupon the city of Buenos Aires, the capital city of the country and seat of the Federal Government, acquired a new legal status equal to a province (Art. 1 of the Constitution). There is a judicial federal power and the judicial power of the capital: Buenos Aires.³¹ The judicial system is composed by the Supreme Court of Justice of the Nation, the Council of the Magistrates, the Prosecution (or Impeachment) Jury. The Argentine Judicial System comprises the National Judicial Branch, the provincial Judiciaries and the City of Buenos Aires Judicial Branch, the Attorney General's Office, the Public Defender's Office, the Ministry of Justice and Human Rights and the Federal Penitentiary Service. There are other support organizations that collaborate in this area.

The Judicial Branch is headed by the Supreme Court of Justice, its nine members designated by the President of the Republic, with the approval of the Senate.³² The nomination of the magistrates is responsibility of the Commission for Selection of the Magistracy Council.³³ Additionally, the new Decree 222/03 defines criteria and regulates the presidential faculties that are in Article 99 of Argentina's Constitution. In April 2005, two vacant posts in the SCJ were available; the Supreme Court was composed of six men and one woman (Ms Elena I.

³¹ However, the Judicial Branch in Buenos Aires is not entirely centralized in it in since ordinary justice is the prerogative of the federal branches. Only violations and administrative matters are included.

³² Article 99 INC. 4 Text del inciso 4° of the article 99, chapter III of the constitution of Argentina of 1994, refers to the attributions of the executive power and says: *The president of the Nation has the following competences (...): 4°. The nomination of the magistrates of the Supreme Court with the recommendation of the Senate for the 2/3 of its members in public session. The nomination of all the judges of the federal tribunals of the inferior level taking in account the proposition of the Council for Magistrates and the Senate, in a public session. A new nomination will be required in order to maintain the post for the magistrates once they will be 75 years old. All the nominations of the magistrates will be for 5 years, and can be nominated for a new period with the same procedure".*

³³ As ordered in Law 24.937.

Highton de Nolasco). For the vacant posts, one woman (Ms Carmen Argibay) was endorsed by the law associations in Argentina.³⁴

The Magistrate Council is responsible for the election of the judges of the first and second level, of the administration of the system. It is also a supervisory institution responsible of the independence of the judicial system. There are 20 members: the president of the Supreme Court of Justice, four judges, eight representatives of the Parliament, four lawyers, a representative of the government, a scholar and a law professor. The removal of judges is handled by the Jury of Prosecution, which comprises nine members: three judges (one Supreme Court Justice and two Appeals Courts judges); three legislators (two from the senate, one from the house of representatives), and three lawyers.

In 2000 there were 810 judges and 568 tribunals.³⁵ For every 100,000 inhabitants there were 2.2 judges and 1.6 tribunals. Today, the number of judges is 820, counting all the courts in lower and higher level. Of those 820 judges, 219 are women, representing 27 percent.³⁶ The national judicial power deals with federal cases. There is also a Council for Magistrates (*Consejo de la Magistratura de la Nación*): it is a permanent organ of the judicial system and is competent in disciplinary matters concerning magistrates.³⁷ It is in charge of dictating rules and principles to guide the independence of judges and the efficient administration of justice. The Council is composed of twenty members: the President of the SCJ, four judges, eight representatives of the Congress, four lawyers, one representative of the executive Branch, one academic and one professor of law. There is also an Impeachment Jury composed of the Appeals Chambers and the first instance tribunals (instruction and judging).³⁸

2. Bar Associations and Law Schools

Feminization has taken place in the region's law schools. There has been a large incursion of women into university teaching in law reaching even levels of 50% of enrolment and graduation in countries such as Mexico, Colombia, Costa Rica, Panama. This trend is

³⁴ The candidature was highly supported by the Bar Association of Argentina in the resolution n° 1/04 - 14/02/2004.

³⁵

http://www.cejamericas.org/reporte/muestra_pais.php?idioma=ingles&pais=ARGENTIN&tipeport=&seccion=0.

³⁶ Information from the Office of statistics of Argentina (PJM) directly requested by the author to M. Sandro Mario Garófalo.

³⁷ And a magistracy council for every province of Argentina.

³⁸ Article 115 of the national constitution deals with smaller claims courts and items.

reflected also in the bar associations. In fact, women's legal associations inside and out of the profession have played a key role permitting the sensitization and institutionalization of women at this level.

a. The Caribbean region

In the Caribbean, we find two associations that aim to maintain and support the independence of the judiciary: the Caribbean Bar Association (OCCBA) and the Organization of Eastern Caribbean States (OECS) Bar Association.³⁹ The Regional Judicial and Legal Services Commissions (RJLSC) entered into force on 23 July 2003 and since then plays a crucial role in the Caribbean judicial system. This commission, established by the Agreement Establishing the Caribbean Court of Justice, is today composed of 10 members, of which two are women: Ms. Gloria Gray and Ms. Nelcia Robinson, representatives of the civil society. Other institutions include the Trinidad and Tobago Judicial Institute and the Bar Association of Jamaica and Trinidad. Trinidad and Tobago's High Wooding Law School graduated 129 students in 2002. The Law Association of Trinidad and Tobago had 1,000 lawyers in 2002.⁴⁰ Jamaica's University of the West Indies similarly has a law programme. In 2000, there were 2,500 lawyers in Jamaica. In 2003-2004, for law, there were a total of 406 full time students, of which 91 males and 315 females and two part time students, of which one male and one female.⁴¹

b. The Central American countries

The Bar association of **Costa Rica** (*Colegio de Abogados de Costa Rica*) was founded in 1881. Early on, this institution aimed for the role of women and their participation in the judicial system, for example, since the 6th of July 1925 the *Ley del Notariado* permitted the possibilities for women to opt for a degree as notaries). This was an initiative of Miss Angela Acuña Brown. The first woman lawyer (and first notary) was Virginia Martén Pagés in 1947. Today, the *Colegio* of Costa Rica has the following structure: an executive board and a general assembly. In the executive board we find a total of 11 members, including the President. In 2005 there were five women in the roles of secretaries, treasurers and vocals. To

³⁹ The OCCBA is the successor of an organization known as the West Indies Bar Association, which was established in 1957 in Barbados after a conference in Trinidad in 1952. It is composed in particular by the associations in Anguilla, Antigua and Barbuda, the Commonwealth of the Bahamas, Barbados, Bermuda, Belize, British Virgin Islands, the Cayman Islands, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and the Turks and Caicos Islands.

⁴⁰ http://www.cejamericas.org/reporte/muestra_pais.php?idioma=ingles&tipereport=REPORTE0&seccion=0 .

⁴¹ Source: information sent by Ms. Celia Davidson Francis, Director of the Alumni Relations, Institutional Advancement Division, Office of the Chancellor, University of West Indies.

enter the bar is needed to be a lawyer and some formal requirements. We also find a Judicial Academy (*Escuela Judicial*) and the Association of Women Judges (*Asociación de Juezas*).

In **Guatemala**, the Association of Lawyers and Notaries of Guatemala (*Colegio de Abogados y Notarios de Guatemala*) has just elected the first Chair woman: Ms Yolanda Perez Ruiz.⁴² The importance of this association in the election of judges is crucial: the association takes part in the nomination of magistrates of the Court of Appeal and Constitutional Court (the election is a responsibility of the Congress), as well as in the election of a member for the Superior University Council and for the Council of Legal and Social Affairs of the State University. In 2002 the College registered 7,394 lawyers.⁴³

It should be noted that some human rights institutions and activists, such as the 1992 Nobel Prize Winner, Ms Rigoberta Menchú, have been raising the lack of participation of indigenous lawyers and indigenous women lawyers in the judicial system of Guatemala. In fact, in the last meeting of the Presidential Commission against Discrimination and Racism (*CODISRA*), 10 names of indigenous lawyers (coming from Quetzaltenango and Alta Verapaz, the two departments with more number of indigenous in the country) were put forward. A new association of indigenous (Mayas) lawyers and notaries has been created (AANMG) which has already appointed seven magistrate candidates.

In **El Salvador** the *Federación de Asociaciones de Abogados* of the El Salvador and the *Centro de Estudios Jurídicos*, can be considered as the two main bar associations. The *Escuela Judicial* under the control of the National Judicial Council is also considered one of most advanced training institutions with programmes and courses for lawyers and students of law faculties. The University that plays a crucial role in the training of lawyers is the Centro-American University José Simeon Cañas.

c. The Andean countries

In the **Republic of Peru**, and in regards to the judicial system, we find the Academia de la Magistratura, responsible of the training and preparation of the judiciary career.⁴⁴ The Academy is an academic institution aiming at strengthening the relations between the judges

⁴² Ms. Perez Ruiz was elected in February 2005. She is 59 years old, has 19 years of experience in the judicial branch and was magistrate of the chamber of appeal.

⁴³ <http://www.infovia.com.gt/cang/> .

⁴⁴ See <http://www.amag.edu.pe/html/main.htm> .

by proposing programmes and inter-institutional covenants with the others judiciary national institutions and other countries.⁴⁵ At a national level we find the *Colegio del Peru*, which is the country's umbrella bar association. Of the 26 bar association deans, just five are women. In 2002 there was a ratio of 250 lawyers per 100,000 habitants for a total of 66,829 registered lawyers. That same year, some 35,946 law students were inscribed in 44 law faculties.⁴⁶

As we saw, the composition of the Supreme Court of Justice, its Executive Council and the Constitutional court has a very low representation of women. However, and it seems to be an ironic fact, the women on the judiciary have a strong and global presence in a sort of a "parallel structure", mainly in the form of the Association of the Ladies of the Judicial Power (ADAPOJ), whose president is the wife of the President of the Supreme Court.⁴⁷ The purpose of this association is to organize and coordinate activities in the judicial systems, such as visits to rehabilitations centers and celebrations of mother's day.

In the **Bolivarian Republic of Venezuela**, the *Federación de Abogados de Venezuela* comprises all bar associations in Venezuela, including the capital city's *Ilustre Colegio de Abogados del Distrito Capital*. There is a new legislation concerning the Bar associations in Venezuela: the *Ley Marco de Protección a los Colegios Profesionales y del Ejercicio Profesional de las Carreras Universitarias*, with a General council for the protection and supervisory functions. In addition, the Institute INPREABOGADOS plays an important role in the administration of legal careers and the registration of the lawyers. In 2000 Venezuela registered a total number of 98,370 lawyers and 1,508 judges.⁴⁸

d. The Southern Cone

The bar associations in **Argentina** are at the national and federal level. At the national level we find the *Colegio de Abogados de Argentina*. This institution is led by a general assembly and a directive council: the assembly is composed of five members, including a President, two vice presidents and two secretaries. For the period 2004-2006, the only woman is the secretary, responsible of the final reports.⁴⁹ Two women were in the Junta Electoral.⁵⁰ The

⁴⁵ For example, a covenant for professional training was signed between the Academy of the Magistracy (Academia de la Magistratura) and the Judicial Academy (*Escuela Judicial*) of Paraguay.

⁴⁶ http://www.cejamericas.org/reporte/muestra_pais.php?idioma=ingles&tipereport=REPORTE0&seccion=0 .

⁴⁷ The current President is Luisa Elizabeth Aguilar, a lawyer, with a master on criminal law, a former judge and a professor of University.

⁴⁸ http://www.cejamericas.org/reporte/muestra_pais.php?idioma=ingles&tipereport=REPORTE0&seccion=0 .

⁴⁹ See <http://www.cpacf.org.ar> .

Argentina Federation of Lawyers (*Federación de Abogados de Argentina*, FACA) is composed of 78 bar associations. There is also a law Association of Buenos Aires, a public association of the federal capital (*Colegio Público de abogados de la Capital Federal*) and a National Federation of Lawyers (*Federacion Nacional de Abogados*).⁵¹ The University of Buenos Aires plays an important role in the training of future magistrates. In June 2005, the Minister of Education, Sciences and Technology has presented a report of Statistics in Higher Education 1999-2003. The report presents the following data: in the last five years, the total number of students in the public and private universities has increased from 1,243,368 to almost 1,500,000 students. The number of graduate students increased in the same period by 50 percent. The total number of students was 1,493,556, of whom 1,278,284 were public institutions and 215,272 private ones. From this number, 55% of the students were women. Fully 16.5% of the students in private universities and 10.9% of the students in public universities had chosen law studies.⁵²

The first Bar Association of **Chile** (*Colegio de Abogados de Chile*) was created in 1862 and the first law institute in 1925. The General Council of the bar association of Chile is composed of 21 members, with a president, a vice president and 18 advisers and a secretary.⁵³ Concerning the current composition, the General Council has three women as advisers for the period 2005-2007 and a woman as a secretary. Law schools are found at the country's numerous universities. In 2002 there were 138 lawyers per 100,000 inhabitants.

II. The Judicial System: A Gender Analysis

The above overview has indicated a general tendency in the region towards a feminization of the judicial system. This has been taking place since the 1990s, when the women's movement and the process of democratization led countries to adopt policies to enhance women's social participation. Regional reforms have been undertaken in order to increase the participation of women in the judiciary, with some legal institutions and paralegal organizations playing an

⁵⁰ Art: 9 of the general regulation of the Junta affirms the *Junta Electoral* will be integrated by five principal members and five substitutes elected by the General Assembly with the majority of all the present members. The candidates should have five years inscription and should not be a part of any directive post in the Bar Association during their mandate.

⁵¹ See www.faca.org.ar and <http://www.aaba.org.ar/> .

⁵² See www.me.gov.ar .

⁵³ And the foundational law was the law n° 406 of the 19th of March of 1925, see <http://www.colegioabogados.cl> .

active role in organizing women magistrates.⁵⁴ Data show that the participation of women in the judiciary exceeds 20% in Brazil, Paraguay, Bolivia, Peru, Chile and Guatemala, and over 50% in Venezuela and Uruguay.⁵⁵ Women ministers and magistrates who were interviewed in the course of this study stated that the increasing numbers reveal a certain confidence in the judicial system on the part of women. Still, in the case-studies countries, female participation rate in the Supreme Courts of Justice is roughly 20 percent, as illustrated in Table 2.

The presence of women in the judiciary in Latin America can be seen at the normative/regulation level, within an organized system of regional (and inter-American) associations and institutions, and through programmes promoting gender equality and meetings of women magistrates and main Courts, with the objective of creating policies for inclusion of women in judicial spheres. Furthermore, in each country groups have emerged for the advancement of women in the judiciary.

⁵⁴ See working document: CEPAL (ECLAC), DAW, *Gobernabilidad democrática y género: una articulación posible*, Working document of the ECLAC and DAW, Meeting n° 34 , Regional Conference: Women in Latin America and the Caribbean (Santiago de Chile, 2002).

⁵⁵ Data from Janice Duddy, "How are the Judicial Systems in Latin America Approaching Issues of Reproductive Rights?", a summary of a study by the Center for Reproductive Rights and Universidad de los Andes School of Law , reprinted by the Association for Women's Rights in Development, <http://www.awid.org/go.php?stid=795> , accessed 4 August 2005.

TABLE 2

Presence of women magistrates/ministers/vocals in the Supreme Courts of Justice (SCJ) in Latin America

COUNTRY	NUMBER OF MAGISTRATES/MINISTERS/VOCALS IN SCJ	NUMBER OF WOMEN IN SCJ	Percentage %
Jamaica	16	2	12.5
Trinidad and Tobago	33*	6	18
Costa Rica	24	6	25
Guatemala	13	2	15.3
Honduras	15	8	53.3
El Salvador	15	2	13
Mexico	11	2	18
Colombia	23	2	8.6
Venezuela	20	3	15
Peru	18	1	5.5
Chile	21	2	9.5
Argentina	9	2	22

**Counting the total number of judges of the Court of Appeal and the High Court.*

Compiled by the author from the following sources: Andean Commission of Jurists (CAJ): www.cajpe.org.pe
Justice Studies Center of the Americas (JSCA): <http://www.cejamericas.org>; Trinidad and Tobago:
www.ttlawcourts.org , Jamaica: www.moj.gov.jm; Costa Rica: www.poder-judicial.go.cr; El Salvador:
www.csj.gob.sv ; Guatemala: <http://www.organismojudicial.gob.gt>, Mexico: <http://www.scjn.gob.mx> ;
Colombia: www.ramajudicial.gov.co; Peru: <http://www.pj.gob.pe>; Venezuela:
<http://www.tsj.gov.ve/eltribunal/sobretribunal/organizacion.asp> ; Chile: <http://www.poderjudicial.cl>; Argentina:
www.me.gov.ar.

a. Associations and institutions attentive to women/gender

In fact, at the regional level, one may find numerous associations and institutions that are promoting reforms and adapt their policies and legislation along the principles of international instruments, but at the same time, are also in charge of controlling and monitoring the presence of women in the mechanisms for access to the judicial levels. In the beginning we find the **Inter-American Commission of Women (ICW)** that since 1928 has actively worked as an intergovernmental forum for the protection of civil and political rights of women in order to achieve balanced participation of men and women in society. It works in cooperation with OAS States to monitor and help incorporate public policies based on gender perspectives in its member countries. In 2000 it adopted the **Inter-American programme for the promotion of human rights of women and gender equality in government (PIA)**, a

project that has a component to improve the situation of women in the administration of justice.

The UN's **Latino American Institute for the Prevention and Treatment of Delinquents (ILANUD)** through its **programme for women, justice and gender** works for gender equality in the administration of justice. The different areas of work of this programme are the following: 1) Research: on the situation of women as a victim, user, and administrator of justice in the region. These investigations have helped some States in the region to design policies, actions and norms that incorporate a gender perspective. 2) Training: directed at a victim, user, and administrator of justice on how to transversally incorporate a gender perspective in different spheres, as well as to raise awareness of the rights of women in the justice system. 3) Production of training materials for a victim, user, and administrator of justice; and training on State obligations and the rights of women within the system and their responsibilities. 4) Technical Assistance to international, national and non-governmental institutions on the elaborations of norms, legislation and regulations pertaining to the full enjoyment of human rights of women in the administration of justice system. Part of these activities includes the technical secretariat of the meeting of women magistrates of Latin America and the Caribbean. The **Inter-American Institute of Human Rights (IIDH)** that has a special programme for the administration of justice, from which there can be effective protection of human rights.

The **Center for Justice and International Law (CEJIL)** is an NGO with consultative status with the OAS that works for the promotion and the defence of human rights. Its main goal is to secure the full implementation of international norms of human rights in OAS member states through the effective use of the Inter-American System. It has led the follow-up work to the *Belem do Para Convention* and other international protection mechanisms. This NGO has helped to clarify the notion of gender discrimination by analysing the large presence of men in the main courts of Latin America.

The **Inter-American Commission of Human Rights (CIDH/ICHR)** has played a leading role in the development of gender policies in Latin America. This organ of the OAS promotes the observance of human rights throughout the hemisphere in accordance to the principles of the Inter-American Convention on Human Rights. CIDH has the mandate to create special rapporteurs to better accomplish its tasks, and in 1994, established the Office of the Rapporteur on the Rights of Women. In 2005 the rapporteur was Marta Altolaguirre, who had

been named in 2000 and was Vice-President of CIDH. Among other activities, in 1998 the ICHR published the *Report of the Condition of Women in the Americas (Informe sobre la condición de la mujer en las Américas)*, elaborated by the Special Rapporteur, and in February 2002 conducted its first visit *in loco*.⁵⁶

b. Programmes to advance the presence of women in the judiciary

The Women, Justice and Gender Programme (PMJG) was created in 1991 to address the lack of gender perspectives in schools of law and supreme courts in Central America, which leads to discrimination, inequalities, oppression and violence against women. This programme claims that sexism can lead to a lack of justice and development.

In 1994, the American University in Washington D.C. launched a programme on Women and International Law through Gender and Judicial Education. This Programme aims to incorporate a gender perspective in the Law faculties of Latin America and to eliminate all forms of gender discrimination in the administration of justice. It contains scholarships, programmes and networks.⁵⁷

c. The Meeting of Women Judges

At the regional level, the **meeting of Latin American and Caribbean women magistrates** brings together the highest juridical bodies and authorities of Supreme Court, Constitutional Councils or Court, and other courts of the region with the aim of promoting women in the administration of justice.⁵⁸ This has played an active role in the launching of the *Plan of Action for Latin America and the Caribbean: For Gender Justice 2001-2005*, by which seminars were held throughout the region in order to incorporate a gender perspective, and meetings with presidents of the main courts were held to discuss gender issues and suggest new policies or reforms.

At the **IV Ibero-American Summit of Presidents of Superior Courts of Justice** it was agreed to promote and institutionalize a gender perspective in the administration of justice and in training programmes for the judiciary. It endorsed the Plan called *For gender Justice 2001-2005*, elaborated by the First Meeting of Women Magistrates of Superior Courts of Justice (*I*

⁵⁶ Available at www.cidh.org .

⁵⁷ See <http://www.american.edu> .

⁵⁸ See <http://www.ilanud.or.cr> .

Encuentro de Magistradas de Cortes y Tribunales Superiores de Justicia), held in San José Costa Rica 4-6 December 2001, followed by meetings in Honduras in 2003 and in El Salvador in 2004. This programme seeks to promote women magistrates in Latin America, include gender perspectives in the administration of justice in Central America and the Caribbean, and requires countries to present indicators on anti-discrimination practices.

Women in the judiciary: a view from within

Having examined the varied judicial systems, institutions, policies, and data on women's participation in the judiciary, we now present some views of women judges themselves, based on interviews with women ministers and magistrates concerning the role and participation of women in the judicial system, especially at higher levels. As described already, the same questions were posed to each and the answers allowed us to obtain an "internal opinion" that women have within the judicial system and what they think of their role, influence, obstacles and prospects. (See table 3 for the details on the interviews.)

The President of the Central American Council of Women Ministers and President of the National Institute of Women of Honduras (INAM), Minister Marcela Suazo, said that women have been identified in Central America as a "social cost" and that this perception impedes their access to the judicial system. Still, there is a trend toward including more women in public life.⁵⁹ Her country, she said, encouraged the inclusion of new actors in various domains, notably academia and civil society. There is also a better cooperation between women's legal associations and the institutions that have traditionally been in charge of naming magistrates and Ministers, she said.

Prior to the reform of 2002 of the judiciary, the Supreme Court of Justice was composed of only male judges. After the reform, parity was introduced: today of the 15 magistrates that compose the Supreme Court of Justice, eight are women. Not only has the number of women magistrates increased since the reform, but one woman magistrate was named to the Presidency of the Supreme Court. This action has been supported by the National Institute of Women in Honduras, a *Rectorat* which in cooperation and dialogue with the state has introduced priorities in the institutional agenda and drafted an agreement with the judges to

⁵⁹ Personal interview, 10 February 2005, Secretariat for External Relation of Mexico.

ensure that they follow and respect parity in the country in their jurisprudence. This jurisprudence will be a compulsory guide for the judges in lower levels.

TABLE 3
Interviews with Ministers and Magistrates

Name and	Affiliation	Date Interviewed/questionnaire completed	Place, Modality of Interview
Georgina Vargas	Minister for Women's Affairs and President of the National Institute for Women, Costa Rica	Mexico City, Secretary of External Relations, 10 February 2005	Recorded
Gabriela Nuñez	Secretary of the Presidency for Women's Issues, Guatemala	Mexico City, Secretary of External Relations, 11 February 2005	Recorded
Marcela Suazo	President of the Centro American Council of Women Ministers and President of the National Institute for Women, Honduras	Mexico City, Secretary of External Relations, 10 February 2005	Recorded
Leonor Calderón	Minister for Youth, Childhood and Family, Panama	Mexico City, Secretary of External Relations, 10 February 2005	Recorded
Sanchez Cordero	Minister of the Civil Room, Supreme Court of Justice of Nation of Mexico	Mexico City, Supreme Court of the Nation, 10 February 2005	Recorded
Diaz Granados	Minister of the Administrative Room of the Supreme Court of Justice of the Nation of Mexico	Mexico City, Supreme Court of the Nation, 10 February 2005	Recorded
Patricia Espinosa	President of the Women's National Institute of Mexico	Filled and sent by email, 21 February 2005	Questionnaire
Anabelle Leon Feoli	Magistrate, President of the First Chamber, Supreme Court of Justice, Costa Rica	Filled and sent by email, 22 February 2005	Questionnaire
Clara Ines Vargas	Magistrate of the Constitutional Court, Colombia	Filled and sent by email, 28 February 2005	Questionnaire

The *Rectorat* has also an academic and pedagogical role. Minister Suazo informed how the Institute has created a seminar on Gender and Justice and it is trying to give publicity and public recognition of the role of women within the judiciary. The publicity is such that the civil society has even started to propose women candidates as magistrates, candidates who

will then be considered by the Congress. Through this mechanism the socio-cultural obstacles can be progressively removed, said Mrs Suazo.

Mexico and Costa Rica offer additional examples of this networking trend. Mrs. Claudia Espinosa Torres, President of Institute for Women of Mexico (INMUJERES) explained that thanks to this institute, activities and publications for the judicial systems have been prepared in order to implement the CEDAW in 28 federal entities in Mexico.⁶⁰ This important action has been supported thanks to the participation of the Highest Tribunals of the Republic of Mexico.⁶¹ Actions in order to bring publicity to the women in the judicial system have been undertaken by the INMUJERES. Minister Espinosa explained that Article 7 of the Law that created INMUJERES defines one of the goals of the Institute: the promotion of the dialogue among the three public branches in order to promote the social condition of women and to struggle against all forms of discrimination against women in the social, economic, cultural and political level. For this reason, Minister Espinosa explains how the action undertaken by the institute is focused on a federal level and pursues the preparation and holding of seminars, forums and meetings. An example is the national meeting on women's issues for judges and representatives of 28 federal institutes, a meeting that received the support of Mexico's Superior Tribunals of Justice. Another activity was the ceremony for awarding a prize for the professionalism at work that awarded five women in the administration of justice; this activity, like others, was held by the Institute to make more visible the presence of women in the judiciary.

As part of this research, two Mexican high court judges were interviewed: Minister Sanchez Cordero (from the civil chamber of the Supreme Court of Justice of Mexico) and Minister Luna Ramos (from the Administrative Chamber).⁶² The two Ministers confirmed the gradual participation and visualization of the women in Mexico's judicial system. They were of the opinion that the strength of associations in Mexico and the reforms that took place in the country in 1994 have allowed better access to the judicial system. One indicator is that for the first time in Mexico, a woman was named President of the Superior Council of the Judiciary (created in 1994), a selection that was supported by the women's legal associations. In the opinion of Minister Sanchez Cordero, the growing presence of women throughout the system

⁶⁰ Questionnaire filled by Minister Espinosa and received the 21 February 2005.

⁶¹ The workshop for the "Application of the CEDAW in Mexico" was organized in 2002 and the book "How to judge with a Gender Perspective" appeared, summarizing and commenting the decisions of the Mexican judges.

⁶² Personal interview 11 of February 2005, Supreme Court of Justice of Mexico.

is not matched by their inclusion in the highest decision-making posts.⁶³ Nevertheless, her general perception is that things are changing and that women are now recognized as analytical persons as well as sensitive persons. One important issue raised by Minister Sanchez Cordero was that in Mexico a woman should be economically independent in order to reach high positions. The “economic issue” has been raised as an important factor for women’s professional promotion.

In Costa Rica, according to the minister of women’s affairs and President of the National Institute of Women Mrs. Georgina Vargas, different gender units have been created in each of the State institutions of Costa Rica. This has allowed the opening and permeability of the judicial system and of dialogue between civil society and the judicial system, through agreements reached by these units.⁶⁴ In Costa Rica, one can find a “cross-cutting” gender judicial system without forgetting the important role that has been played by the National Women Institute since its creation in 1998.⁶⁵ The National Institute for Women in Costa Rica is also a *Rectorat* and develops an important pedagogical action across the country in three different areas: public policies, violence, and construction of identity. That is why the Institute has created gender units in the local level (in 81 cantons and one office at the local level) and a unit for each state institution. Finally in her opinion, gender equality in a country like Costa Rica faces two main obstacles. First, there are economic and fiscal constraints, because financial and human resources are needed for the implementation of public policies. Second, the participation of women is conditioned by particular connections. Women’s right to take part in the public domain should be acknowledged, and their identity as political and juridical actors should be recognized, she emphasized.

Responding to our questionnaire, the Costa Rican President of the First Chamber of the Supreme Court of Justice Ms. Anabelle León Feoli, said she was aware of the necessity of increasing awareness as well as more actions and programmes for better representation within the system.⁶⁶ She raised the idea that the Costa Rica judicial career carries its own obstacle: it is founded on a “system of merits” that pushes magistrates toward constant upgrading of their professional skills and capacities. This system constitutes, in her opinion, an obstacle for

⁶³ Ramos and Sanchez Cordero estimated that the percentage of participation of women is around 50% at the local level, 50% at the Federal level and 30% in the High Courts.

⁶⁴ Personal interview, 10 February 2005, Secretariat for External Relations of Mexico.

⁶⁵ Created by Law 7801 of 1998.

⁶⁶ Questionnaire, 22 February 2005.

women magistrates whose domestic and reproductive responsibilities place a limit on their time, a burden that male magistrates do not have.

In the Andean countries progress has been slower. Since the 1990s in Colombia the participation of the women in the judiciary system seems to have increased thanks to the constitutional framework of the Constitution of 1991 and the elaboration of the quotas law that fixed a rate of the 30% for the participation of women in the directives posts. Nevertheless, the presence of women in the judiciary system continues to be very low. For example, the most recent study by the Prosecutor's Office in Colombia, shows that 33 State bodies do not comply with the prescribed minimum female participation levels in directorship posts.⁶⁷ The Prosecutor had established this minimum participation level at 30%, in application of the quota law. The most paradoxical cases are those of the Supreme Court of Justice and the Constitutional Court, where only 4.3% and 11.1%, respectively, of high responsibility posts are occupied by women. The paradox lies in the fact that those tribunals have issued the jurisprudence and interpretation of the quota laws concerning the necessity of respecting the presence of 30 % of women in the decision-making posts. The President of the Supreme Court, Carlos Isaac Nader, admitted that of 23 full magistrates, only two were women (8.7%), but said that this is also understandable since they are selected from a pre-selection pool. He admitted that *"When different people are applying or are candidates to a post, the quota law does not necessarily apply to a decision, since voting is free and secret"*, and he added that 33.3% of adjunct magistrates are women.⁶⁸ The Ministry of the Interior and Justice is also at fault, with its rate of only 16.6% female participation in high posts. Nevertheless, spokespeople for this Ministry claim that five out of 15 directors' posts are occupied by women (33.3%), and that of the total number of employees 252 are women, compared with 195 men.

If we compare this opinion with that of a woman magistrate in Colombia, Mrs. Clara Ines Vargas, we find that, even if participation is increasing and women magistrates seem to receive the same responsibilities as men judges and magistrates, there is nonetheless "informal" and "social" discrimination within the men's networks and groups of men judges and magistrates. Women are blocked from access to the existing networks – and one response

⁶⁷ See the national Colombian journal *El Tiempo*, 22 March 2005.

⁶⁸ *Ibid.*

has been to conduct their own networking action. In order to open up the system, she recommended pedagogical training and awareness-raising within the judicial system.

We also tried to understand if the presence of women magistrates at the higher levels could *radiate* the system via gender-sensitive decisions. Almost all the magistrates interviewed were convinced of the need of women magistrates at high levels of decision-making, and pointed to the example of domestic violence. Magistrate Sanchez Cordero's explanation was instructive. The Mexican magistrate explained how her decision on abortion was made in part on the basis of her identity and experience as a woman and mother, as well as on juridical interpretation. Her decision took into account the claim of groups of women who felt victimized, were in a difficult position, and lacked state protection. She stressed that gender issues could be interpreted by men and women but given current social awareness in Latin American societies, some issues have to involve women opinion. This does not mean that a gender perspective can only derive from a woman magistrate. Rather with the incorporation of women magistrates and ministers at high levels, new perspectives can "radiate" the system and include the point of view of the "other": in this case, the woman. "A woman judge has different arguments that have to be included when a judge makes an interpretation of a case that deals with women's issues."⁶⁹

And what of the question of the transparency and efficiency of the judicial system? The women ministers and judges interviewed were of the opinion that since the levels of participation of women in the judicial system has increased, transparency and efficiency has likewise improved.

Conclusions and suggestions for further policy oriented research

As we have seen, women's participation in the judiciary is uneven. In the ministries of justice, or the state prosecuting institutions, women are in charge in only two cases. Although there is a trend toward feminization in the lower courts, this is not the case in the highest courts in most countries. In the majority of cases, the rate of women is zero percent, and in many is no more than 20 percent, except in Honduras where nine out of 15 in the highest court are women. The monopoly of power is still in the hands of men, and there are few curricular,

⁶⁹ Mrs Sanchez Cordero, interview. See the decision "*Acción de inconstitucionalidad*", 10/2000, Supreme Court of the Nation of Mexico.

training, or professional programmes that incorporate a gender perspective. But awareness of the need for inclusiveness – gender as well as ethnicity – is increasing.

Practices and experiences in the countries mentioned in this study have showed that the quota laws are a first step to increase the participation of women in the judiciary. Nevertheless, the quota laws are not well implemented and in some cases are resisted. So we can affirm that cultural understandings play a role and that advocacy for women's participation and rights remains necessary – as ECLAC found in 1999, when the share of women in the Supreme Courts in Latin America was barely 10 percent for the South American countries and between 10 and 22 percent for the Central American ones. As important as the application of quota laws is, this must be generalized to all three branches of power – judicial, legislative and executive – since in many of the countries the laws have been approved but only applied at certain levels. Also important, as we have seen, is networking, institution-building, advocacy, and awareness-raising for gender perspectives in the law and for greater access by women to the judiciary and to the highest courts.

The consolidation of democracy has favored women's participation and rights in Latin America. Indeed, the relationship between women's participation and democratic culture seems to be direct and necessary. Patriarchy is typically the logic of authoritarian states, whereas women's rights reflect and reinforce democratic political cultures. The women's movement has brought about many cultural changes, but pockets of resistance remain. Given the long history of patriarchy, as well as the long experience of authoritarianism, what is required for women's participation and rights in the judiciary is social recognition (that is, changes in societal attitudes and norms) as well as the political recognition (entailing gender-sensitive reforms and policies in the political-judicial structure). In turn, real democracy and real juridical equality require a stronger role for women in decision-making.

An interesting finding from the interviews, especially those concerning the Central American countries, was that respondents are convinced that when women are in decision-making positions there is less corruption and more efficiency. Even if difficult to prove, there is anecdotal evidence for this claim. Therefore, in order to test this hypothesis while also meeting the goal of gender equality, it is important to introduce monitoring institutions, starting at the university and law faculties, passing through judicial training institutions and

arriving to the judicial system. This is needed in order to permeate the judicial system and change traditional “male centered” practices.

This allows us to propose that the following be introduced:

1. Courses on women’s rights and gender issues in the core curriculums of law studies;
2. Training sessions with a gender perspective within the Bar Associations;
3. Policy dialogues between the bar associations and women associations;
4. A system of “rotation” or “alternation” in high-level posts of the judiciary, especially in the cases of non-elective posts;
5. A new gender quota, whereby the benchmark would be 40% for women and 40% for men, with neither sex having more than a 60% share of judicial posts.

The introduction of these elements will enhance women’s participation in the judiciary and will reinforce gender-sensitive interpretation of the law. Further research should analyze the effects in jurisprudence and interpretation by women judges, and any gender-based differences in legal opinions and decisions.

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