

Women on the bench in Guatemala: Between Professionalization and State Capture

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Abstract

Based on qualitative research, interviews, and life histories with a random sample of women judges carried out in 2019, in this paper we examine the relationship between the experience of women judges in Guatemala and the limits to judicial autonomy. Specifically, we analyze the intersections between various factors including women's experiences of becoming and working as judges; means of accessing the bench; vertical and horizontal organization of the courts; and informal networks and corporate politics within the judiciary. We argue that increased professionalization of the judiciary since the end of the armed conflict in 1996, together with the creation of specialized courts addressing core human rights issues such as gross violations, corruption, and femicide and other forms of violence against women, has opened spaces for women judges and strengthened a "legal preference shift" amongst a significant part of the Guatemalan bench in favor of international human rights standards and greater accountability (González Ocanto 2016).

However, Guatemala's dual system of access to the bench involving professionalization at entry level and appointments of career and non-career judges to higher courts determined by nominating commissions ultimately controlled by Congress, together with pressure from corporate and informal networks operating within the judiciary means that state capture ultimately trumps professionalization and judicial modernization within an important part of the judicial apparatus. While greater female representation in the judiciary alone cannot guarantee judicial independence, our findings suggest that political capture of high-level courts dissuades human rights and anti-corruption oriented female judges from pursuing their judicial careers. Corruption and insecurity are major factors underpinning limits to judicial autonomy in Guatemala, and while these affect all judges our data signals important gendered specificities.

I. Introduction

An extensive literature has focused on women's representation in the different branches of government, although by comparison there is less research on the representation and experience of women in the judiciary than in the legislative branch (add refs). Much of this literature is driven by the hypothesis that changing the gender balance will positively affect outcomes, leading to greater gender equity and/or less gender discrimination while at the same time increasing the legitimacy of these institutions (add refs). However, there is comparatively little work exploring women's everyday experience, particularly within the judiciary. This paper examines women judges' experiences in the courts in Guatemala. It finds that individuals women's experiences are affected by both Guatemala's bifurcated judicial system and broader societal norms, producing some commonalities across women's experiences, and some differences between women's experiences in higher and lower courts. Our findings demonstrate that post-conflict reforms, supported by the international donor community, increased the number of women in the judiciary but failed to sufficiently challenge key sources of institutional weakness, therefore limiting those women's impact. Our analysis is based on some 30 face-to-face semi-structured interviews of women judges carried out in April and May 2019. As opposed to a snowball method working through our existing contacts, our sample was drawn randomly from lists of all the female judges in the country, although time and financial constraints led us to restrict the sample to judges in Guatemala City, the second city of Quetzaltenango, and the corridor between Guatemala City and the west of the country, including the towns of Sololá, Totonicapán and Chimaltenango. We interviewed judges at all levels of the system (see below), from justices of the peace to Supreme Court judges, and in different courts, including criminal, labor, family, and mixed tribunals, and specialized courts including high-risk and femicide tribunals. Each interview, of between 60 and 120 minutes was transcribed and codified. In addition, ethnographic registers were taken of the encounters themselves, and the judicial installations in which they took place. (To be added: appendix with details of interviews, anonymized but specifying level and type of court).

Following the end of the Guatemalan armed conflict in 1996, the judiciary became a central site for institutional transformation. Professionalization of the bench was promoted as a means of strengthening judicial independence, policies to combat gender and ethnic discrimination were implemented, and specialized courts were subsequently created to address core human rights issues such as gross violations, corruption, and femicide and other forms of violence against women. Such transformations have opened spaces for women judges and strengthened a “legal preference shift” (González Ocantos 2016) amongst a significant part of the Guatemalan bench in favor of international human rights standards and greater accountability. Yet as Rachel Bowen rightly observes in her study on the limits to judicial autonomy in Central America, threats to judicial independence emanate not only from politicians who maneuver to achieve more pliant courts, but also from a wide range of powerful social actors (Bowen 2017). Bowen explores the relationship between judicial independence (guarantees that insulate the judiciary against inter-branch pressures) and what she refers to as “societal independence” - guarantees against pressure from social actors, particularly organized crime. She suggests that in terms of the formal structures of judicial organization Guatemala is a case of relatively high judicial independence, but one that evidences low “societal independence”. While the formal rules guaranteeing judicial independence were strengthened in the postwar period and direct executive control over the judiciary removed, this was replaced by “more diffuse and clandestine control” exerted by “hidden powers” via corruption, thus ultimately undermining the formal rules (Bowen 2017: 175-6). In this paper, we consider both formal judicial settings and informal networks that influence the opportunities for women to access the bench, as well as the different obstacles they face in their work as judges.

Key commitments in the peace accords to improve accountability and respect for human rights meant international donors lent their support to judicial modernization and professionalization. The number of courts grew, as did specialization within the judiciary. Today the structure is as indicated in the diagram below: at the apex is the Supreme Court, which has three chambers or *salas*, criminal, civil and a third dealing with *amparo* appeals and legal actions to remove immunity from prosecution for certain state actors (*antejuicio*). The Supreme Court comprises

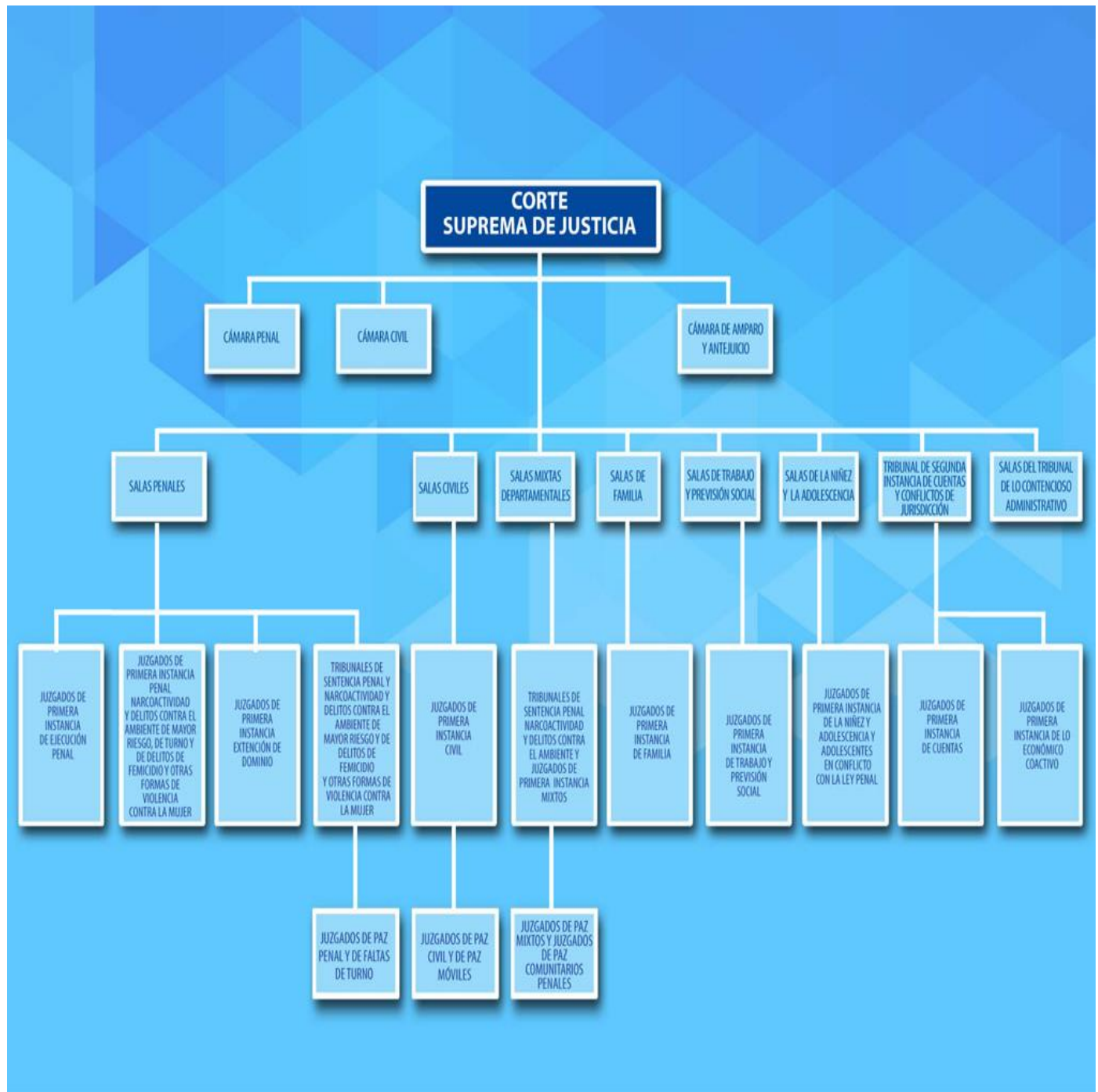
thirteen judges, including the president.¹ Below the Supreme Court are the *salas*, or courts of appeal. Numbering 30 in total, these are divided by criminal, civil, family, labor, children and adolescents, administrative and fiscal law, together with the *salas mixtas departamentales* – departmental appeals courts that deal with all branches of law. Appointments to the supreme and appeals courts are made by congress from lists of candidates proposed by two nominating commissions integrated by the deans of the country’s Law Schools.² Those eligible include judges who have progressed through the judicial career, and lawyers who are not professional judges. As we discuss in more detail in the final section of this paper, influence trafficking was rife within the nominating commissions in 2014 and again in 2019, and members of congress generally have scant interest in appointing independent judges who might authorize investigations into the multiple allegations of corruption against them.³ Judges in the lower echelons of the judiciary – justice of the peace courts, courts of first instance and sentencing courts – enter exclusively via the professionalizing route of the judicial school. Courts of first instance and sentencing tribunals include ordinary criminal courts, and new specialized criminal courts set up in recent years, including those dealing with femicide and other forms of violence against women, and narcotrafficking and cases designated high risk (usually complex corruption cases). Judges in these specialized courts are directly recruited via competitive calls directed at judges of the first instance courts and justice of the peace courts, all of whom entered the bench through the School of Judicial Studies. Other lower level courts (courts of first instance) deal with civil, family, labor, children and adolescents, administrative and fiscal law and number 218

¹ Guatemala’s Constitutional Court is not part of the judiciary and is constituted as a separate body independent from the other branches of government. The Court receives a percentage of the budget allocated to the judiciary, and its magistrates are selected by the other branches of government, the national university, and the Guatemalan bar association. Our research did not include the Constitutional Court, although it should be noted that in 1995 Alma Beatriz Quiñones López became the court’s first female president.

² The nomination process has two stages: first, two nomination committees are integrated by the deans of the country’s Law Schools, one for the Courts of Appeals, and the other for the Supreme Court. Then, the candidates from this first selection are presented before two nomination committees integrated by members of Congress. Congress makes the last and final selection of the magistrates appointed to the Courts of Appeals and the Supreme Court.

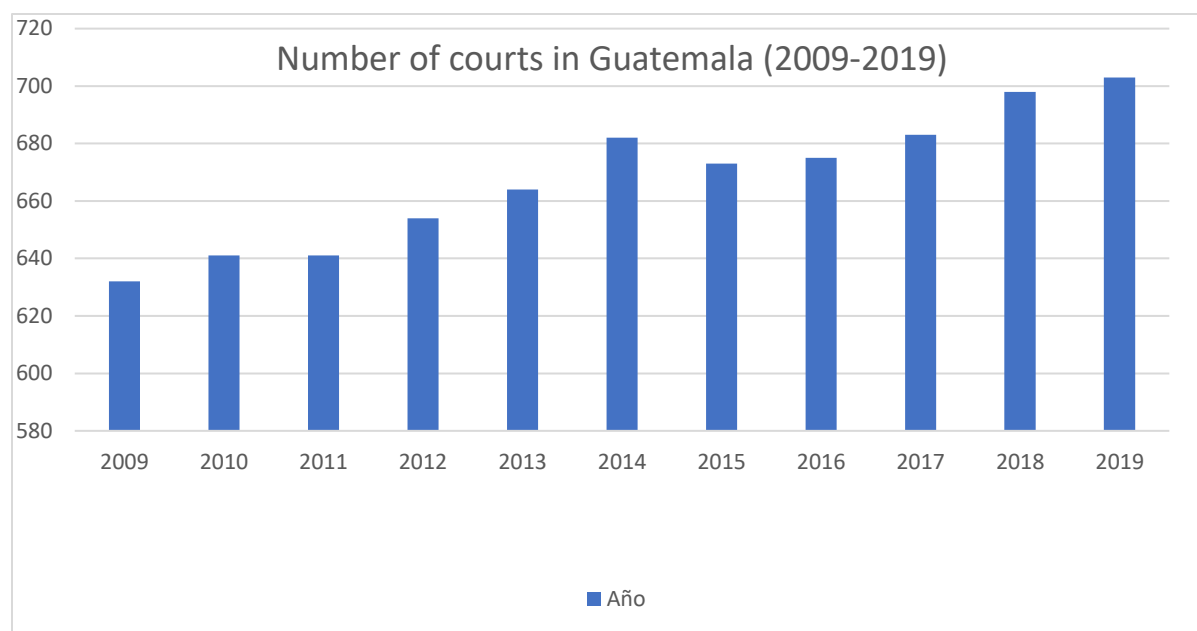
³ See <https://www.ijmonitor.org/2019/09/guatemala-poised-to-appoint-new-supreme-court-judges-absent-meaningful-vetting/>

in total. At the bottom of the court hierarchy are the 370 justice of the peace courts, present in every one of Guatemala's municipalities and dealing with civil and criminal cases.



Organigram of Guatemala's court structure. *Source:* Organismo Judicial.

Since the end of the armed conflict the absolute number of courts has increased in Guatemala, in part driven by the creation of specialized courts to address violence against women, and narcotrafficking and high-level corruption.



Source: CIDEJ, *Acuerdos de la Corte publicados en el diario oficial*.

The creation of the professionalized judicial career involving competitive entry exams to the School of Judicial Studies opened new opportunities for women to become judges.

Professionalization favored women's representation in the judiciary and today some 42 per cent of judges in Guatemala are women, higher than the regional average and a significant increase compared with less than 10 per cent in 1991 (Impunity Watch 2017: 14).⁴ Women are present at the highest levels of public office: for example, the last three heads of the public prosecutor's

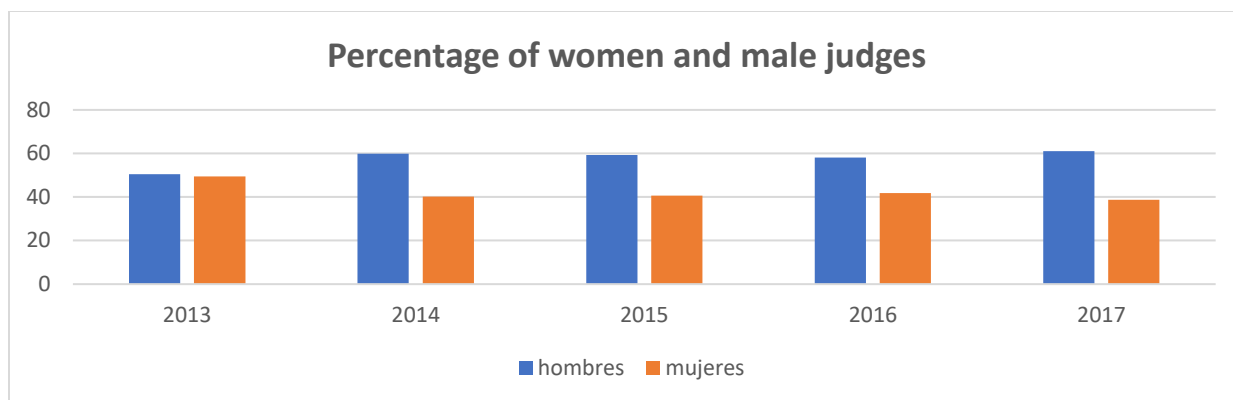
⁴ Guatemala was the first Central American country to offer law as a career in 1620, but it was not until 1927 that a woman first graduated as a lawyer, and she was not able to practice until 1946 because prior to that, women did not have any civil and political rights and could not vote. The first woman judge was appointed in 1964 (Impunity Watch (2017: 14). The first woman magistrate on the Supreme Court was María Luisa Beltranena de Padilla, who also served as the court's president following the Serranazo in 1993.

office were women, and two female candidates competed for the presidency in the 2019 elections. Yet women's representation in the political branches in Guatemala is below the regional average: in the most recent elections in 2019 less than 20 percent of congressional deputies and only eleven of the 333 elected mayors in the country were women. By contrast, the courts have undoubtedly been a space for female participation in public office within an overall national context of acute gender inequality.⁵ In the 2000s, three women magistrates have presided the Supreme Court (Ofelia de León, 2005-2006; Thelma Aldana, 2011-2012; and Silvia Patricia Valdés, 2016-2017).⁶ In 2019 for the first time ever the Supreme Court had gender parity, including six female and six male magistrates (the thirteenth post is vacant because magistrate Blanca Stalling is in preventive prison accused of influence peddling and abuse of power).

Undoubtedly women have made significant advances within the judiciary over the last three decades. However, as we argue, the prevailing patriarchal culture of politics means that courts are not spaces women can always access easily, or in which they can advance their careers past particular “glass ceilings” and “broken rungs”. The growing tendency in recent years towards state capture, particularly at the higher levels of the judiciary, has reduced the space for independent, human rights-oriented lawyers, both men and women, to ascend to the highest courts.

⁵ According to the United Nations gender inequality index (2019) – a composite score including measures for employment, education, political representation, and reproductive rights - Guatemala has one of the worst rates of gender equality in the world (ranked 120th for gender equality out of 159 countries), and the worst in Latin America. (Add ref).

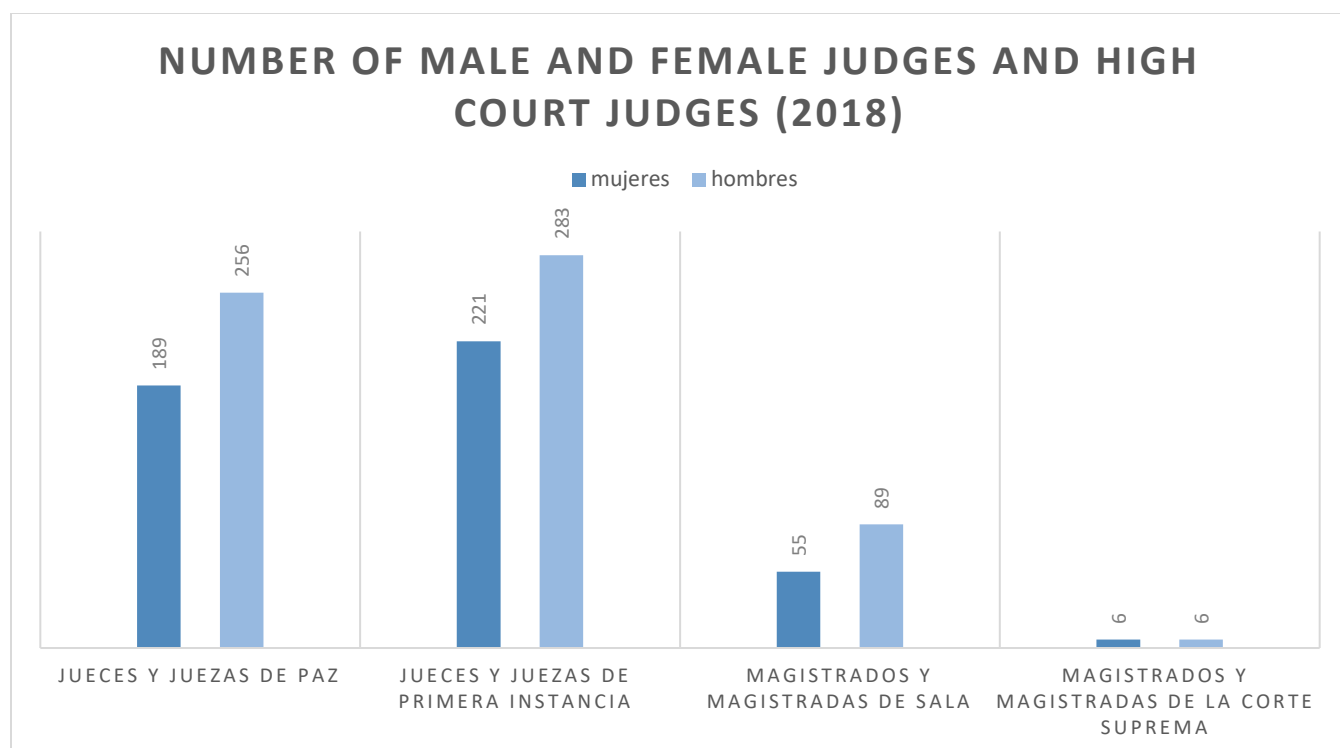
⁶ Silvia Patricia Valdés was removed from the presidency of the Supreme Court after just six months in post because the constitutional court identified anomalies in the process of her election and ordered the Supreme Court to repeat the election.



Source: Impunity Watch (2017) *Liderazgo y participación de las mujeres en la justicia de Guatemala: Guatemala*.

Number of Judiciary Magistrates and Judges 2016			
	Women	Men	Total
Total number of judges	396	551	947
First instance court judges	145	172	317
Justices of the peace	182	263	445
Total number of magistrates	55	81	136
Supreme Court of Justice magistrates	7	6	13
Courts of Appeals magistrates	48	75	123
Total magistrates and judges	451	632	1083

Source: CIDEJ 2017, cited in Impunity Watch (2017: 15)



Source: our elaboration based on data from the *Sistema de Gestión de Tribunales*.

Section II: Becoming and working as a judge

The School of Judicial Studies: a way in for women

The peace accords concluded in 1996, specifically the agreement on Strengthening of Civilian Power and the Role of the Army in a Democratic Society, reaffirmed the need for a law regulating the judicial career. In 1999, congress approved the Judicial Career Law (Decree #41-99 and Agreement 6-2000), which sought to promote a transparent system of election and promotion of judges, and female and male magistrates to the Supreme Court. The law specifies that “judicial policy includes gender and multicultural perspectives”, and that “gender and ethnic equity should apply in all processes related to judicial training” (Judicial Career Law, 1999, article 2). It reformed the School of Judicial Studies, which had been formally established in 1986, mandating it as the institution in charge of “planning, executing and facilitating the

technical and professional training and education of judges, magistrates, officials and employees of the judiciary, in order to ensure excellence and professional updating for the efficient performance of their positions” (Judicial Career Law, 1999). The reformed School of Judicial Studies has favored the professionalization of women judges.

As signaled above, entry to the bench in Guatemala has two main modalities: (1) by selection, through the School of Judicial Studies where external or internal candidates (lawyers external to the judicial apparatus, and law graduates already working within the judiciary) compete for a place to study for two years in the school and, (2) at the level of the appeals courts and Supreme Court by appointment through the nominations commissions and the national congress. Before the approval of the judicial career law in 1999, it was commonplace for judicial support staff to be promoted to the position of judge through internal examinations. Several female judges interviewed who had studied at the School of Judicial Studies had previously worked as judicial assistants and were encouraged to apply to the school by the judges they worked for. Typically, they started from the bottom of the ladder, even from entry level administrative posts, but over the years the field was opened so that they could aspire to become judges.

“During the 20 years that I worked as a judicial assistant.... most of us were women and I had female judges as my bosses, so that motivates you to pursue a career, to say well I also want to be a judge. They were excellent judges.”⁷

Since 1999, candidates for judges have competed through recruitment calls (*convocatorias*) to enter the School of Judicial Studies; interviews confirmed that the selection of candidates has generally balanced male and female candidates in line with article 2 of the law. The role of María Eugenia Morales, feminist jurist, first director of the School of Judicial Studies and subsequently magistrate of the Supreme Court, was fundamental in this regard. At the school Morales and her staff took advantage of the 1999 law and international donor support for greater gender equity in the judiciary to ensure equitable representation of male and female candidates.

⁷ All interviews have been anonymized to preserve confidentiality. (Though we may include some indication of the court in question for each quote).

Women have also become judges through the route of appointment to the higher courts. In accordance with the Political Constitution of the Republic of Guatemala, lawyers may be appointed as judges and magistrates (art. 207, Constitution of the Republic of Guatemala). In some cases, there is a degree of tension and even rivalry between career judges and judges named “from the street”, that is, those who come from outside the judicial career structure. A female judge appointed to the appeals courts commented:

“It’s a bit complicated because the professionalized judges think that only they can impart justice and that’s not so. I came from “the street”, not from the judicial school.... I litigated civil, criminal, labor, you have more experience because you are used to handling other types of cases.”

Appointments to the bench: gender discrimination, sexual harassment

Once candidates have completed the pensum at the School of Judicial Studies, the final grades of each promotion are published in ascending order. In accordance with the civil service law and the career law of the judiciary, the judicial authorities must then appoint the best qualified group as justices of the peace or first instance judges (depending on the terms of the original call). Likewise, after completing their course of study selected candidates are obliged to take up their mandated post, wherever it be located. As one judge from the first graduating class of the judicial school (1998) confirmed:

“We all signed contracts to participate in full-time training. We were remunerated (during the period of study) and made a commitment to accepting the appointments we were given. We couldn’t say ‘I want to stay in such-and-such a place’ or choose which posting we preferred.”

A first appointment as justice of the peace in a municipality far from the cities of Guatemala or Quetzaltenango (where most professionals in the country live, study and work) is particularly challenging for women with young children. Justices of the peace are legally obliged to be available every day of the year and are supposed to reside in the municipality where the court is located. In practice many tend to return to see their families on weekends, but this is only feasible if they work at a distance not so far from their homes:

“My first appointment as an interim judge was in Canillá, a municipality in (the department of) Quiché, which apparently is close, but is actually very far away. That was my first appointment and I started when I was about four months pregnant. I left my oldest daughter in Guatemala City; she was about a year and three months old. I was pregnant, the roads were impassable, the conditions were terrible. I couldn’t leave; the justice of the peace works 24 hours 365 days a year without the right to rest. I was so far from home.”

Gender discrimination and specifically the expectation of sexual favors are present in some cases of entry level appointments. Supreme Court magistrate Delia Dávila, who has spearheaded policies to investigate and combat sexual harassment within the judiciary, told us she had heard rumors that the president of the Judicial Council received favors or asked female candidates to have intimate relationships in exchange for entry to the judicial school or postings on graduation. One judge told us:

“They sent me to (the department of) Zacapa, but to the mountains. Zacapa is quite near the capital, but I was sent to a mountainous area. A male judge was posted nearer, and they sent me much further away ... there were many things involved ... maybe because I didn’t turn up in a skirt ... later I learned they revoked my previous appointment in order to give the place to that male judge. (Where they sent me) there’s a lot of machismo and one has to go to the villages with a police patrol. It’s hard for them to respect a woman’s authority, they want to see an old male judge.”

Although women have excelled in the School of Judicial Studies, their appointment to the bench has not been automatic. In the school's initial graduating classes, female candidates generally received high marks, some obtaining the highest scores. Yet this did not always guarantee them appointments. Several judges told us that more than gender discrimination, this was due to political factors or *"connections ... which matter for you to be appointed"*.

Discretion in appointments negatively affects both men and women, but gender discrimination can be combined with factors of political affiliation or loyalty. One judge commented that, in her graduating class, although three women qualified in first, second and fifth place, none of the three was appointed to a post: *“when we sat down to analyze, we saw that of the first five places, the three that had not been appointed were women, and there were men who had even missed courses*

and were appointed.” This judge, who came first in her graduating class, presented an *amparo* writ before the constitutional court, which she won a year later. The constitutional court then gave the Supreme Court of justice a period of five days to issue her appointment as a judge, and the court appointed her to one of the most remote and under-resourced courts in the country, where she worked for three years before being transferred to another region. This judge, who currently works at one of the most important high-risk courts in the country dealing with high level corruption and narcotrafficking cases, interpreted her transfers as a kind of retaliation, specifically by interests within the judiciary linked to organized crime. Another judge who had obtained a very high score in the first graduating class of the School of Judicial Studies commented that the results were never made public because most applicants did not in fact qualify. However, several candidates who had not passed the tests were appointed as judges. When she complained to a Supreme Court magistrate about this, he dismissed her saying, *"You are very young."* She subsequently presented an internal complaint: *"I made an allegation that there was corruption, I made it clear I was going to make it public."*

Although they qualify to become judges by the professionalizing route, the weight of “connections (*los conectes*)” in the appointments process exposes women to sexual harassment:⁸

“To be appointed you have to... to know someone. In my case I had no connections.... I spoke with a friend who is a woman justice of the peace and she told me, look, the magistrate who (is in charge of appointing the judges in these parts of the country can help you, he’s very accessible. I went to see him, but he didn’t have any posts as justice of the peace available. He sent me to see another magistrate who did, but when I started to ask what he was like they told me, look, if you arrive in a skirt he’ll welcome you and appoint you where you want...It was sad for me to be in that situation ... Obviously I said I am not going to go in a skirt, if you want to appoint me I am going in trousers, and if not, well then it’s not for me. That was an unpleasant moment.”

Gender discrimination also occurs in the upper echelons of the judiciary. For example, in a case commented on by Supreme Court judge Delia Dávila:

⁸ Despite being mandated by the peace accords to do so, congress has consistently failed to pass legislation criminal harassment - indeed sexual harassment was initially included in the femicide law only to be stripped away to appease congressmen. We thank Erin Beck for bringing this point to our attention.

“The Council (of the Judiciary) issued a call for judges to the high-risk courts (jueces de alto riesgo). Two people participated, a man and a woman. He had been working for fifteen years, but he had two or three disciplinary sanctions, he’d been suspended from work and sanctioned three times in those fifteen years for different offenses. She had seven years’ experience, but without a single administrative fault. She had a higher rating than him, in the evaluation she scored better and who do you think the council appointed? The man with administrative sanctions and poor evaluations, because he was the oldest: according to that criterion the Council appointed him. We said we did not endorse the appointment because according to the meritocratic system the female judge should have been selected. But the Council left the (male) judge in place.... It is difficult, you can see how spaces are closed to women”.

Compromised security

Being a judge in Guatemala can involve great security risks, and those risks have their gender specificities. Most justices of the peace have no security detail assigned to them, and in the event of a problem must rely on the national civil police or local civilian authorities. Security assignments are reserved for judges in first, second and third instance courts, and particularly judges in the specialized, high-risk courts, although coverage is often inadequate and security is generally only assigned when there are threats or attacks, a sadly common occurrence (add footnote data).

Judges of the courts designated high-risk (*tribunales de alto riesgo*), dealing with issues such as corruption, gangs, drug trafficking, organized crime and past crimes against humanity/transitional justice, have security assigned by the judiciary, which generally consists of two bodyguards and a car, although sometimes budget shortfalls mean judges end up using their own private vehicles. Bodyguards are usually male, and several of the women judges commented that their presence severely restricted their private lives. In some cases, they told us that their security agents reported their movements to organized crime, informing when they were alone, for example, so that lawyers or individuals could threaten them if they did not resolve in their favor: *“I have received threats covertly ... For example, the lawyer comes and threatens the judge that he will make complaints, accusations, that this or that may happen.”*

Insecurity is linked, in part, with the physical conditions of many courts. Security conditions at the *Torre de Tribunales* in Guatemala City, where most of the high-risk courts in the country are located, are notoriously poor.⁹ For example, despite having four separate elevators for people in pretrial detention, the general public, and judges, these lack regular maintenance and do not always work, meaning that staff and visitors sometimes have to share the small elevator spaces with police and several handcuffed detainees. The basement area where judges leave their vehicles also houses the jail (*la carceleta*) where prisoners in pre-trial detention are transferred prior to their hearings. The entrances to some of the high-risk courts lack restricted access, and there are not always enough security officers present at hearings. Some judges told us that many times they had to pass in front of detainees or their relatives in the corridors to go to the bathroom because not all of them have bathroom facilities inside their offices.

A judge at the duty court for femicide located inside the headquarters of the Public Ministry in Guatemala City (located in a fairly high crime area of the capital city) said that many times she felt it was dangerous to go to the bathroom at night because it was far from her office and the building was quite empty, "*there are areas where there aren't even cameras and if you shout for help they will never hear you.*" When it comes to cases of gang members, intimidation of judges – both men and women - can be very direct. One judge told us:

"I had security assigned to me because I was a judge on the (high risk) court in Villa Nueva, the persecution was very severe there. The gang members would do terrible things in front of the court. They even killed a person at the entrance when we had just arrived, we knew they were messages ... They defecated and urinated at the entrance to the court, they threw dead rats there, dead animals, to intimidate us. I was appointed a bodyguard from the national civil police, not from the judiciary because we had an attack.... they shot up the court with heavy caliber weapons. It was a horrible scare... there were wounded

⁹ *La Torre de Tribunales* is a fifteen-floor skyscraper located behind the Supreme Court in downtown Guatemala City, that dates to when the justice system was written and *La Torre* concentrated office work. Following the shift to oral trials and court diversification, some courts were placed in the building and others transferred to different places in the capital city. Each floor in *La Torre de Tribunales* has administrative and judicial offices, courtrooms, shared bathrooms, and very reduced spaces between the corridors and the lobby.

policemen.... I was pregnant with my last child at the time... I consequently suffered gestational diabetes.”

The degree of risk and threat experienced by the judges varies significantly: in one high-risk court, one judge indicated that she suffered from a very high degree of insecurity - throughout the interview we were very aware of the presence of her bodyguards in the anteroom between her office and the corridor - while another judge from the same tribunal said she had no problem walking on the street, at least during daylight hours. For instance, labor judges generally do not have bodyguards assigned by the judicial authorities, and the labor court facilities in Zone 10 of Guatemala City are much better equipped than the criminal courts.¹⁰ However, judges in the labor courts may also face security risks due to the situation of violence and widespread impunity in the country: one judge who had ruled that security companies should pay proper benefits to their employees reported feeling insecure due to the type of interests that are usually behind these firms. Another labor judge was given a security detail from the judicial authorities because she had ruled against a powerful trade unionist with connections to the government.

Being posted far away from the capital city can also imply security risks, depending on the geographic location and the type of cases treated. A female judge who accepted a promotion to go to a court in a municipality in the region of Petén, where there is a strong drug trafficking presence, commented:

"La Libertad Petén is a court where there's a lot of corruption...there had been many substitute (judges) because the Los Cocos massacre had occurred¹¹ ... it was a shock for me, it was a mixed court (tribunal mixto), dealing with criminal, drug activity, crimes against the environment, family, civil, labor cases. It was very difficult there...I trusted this clerk without knowing that he was the one who was going to sell my head to the highest bidder....When I arrived, the court was in poor physical condition, it was a house, my office looked straight onto the street. The clerk told me, 'look, I don't know how long you're going to last here'."

¹⁰ Reform of the Guatemalan labor courts was supported by USAID, which continues to contribute towards payment of the lease on the buildings where these tribunals are located.

¹¹ Los Cocos massacre occurred in 2011. 27 people were murdered by the Zetas drug traffickers.

Although this court (La Libertad Petén) does have security assigned from the judicial authorities due to the high presence of drug trafficking in the area, the judge said the threats she received were in fact from her own administrative staff inside the court.

Machismo and fighting violence against women: challenges for female judges

Several judges commented that in certain regions of the country - rural areas, but generally throughout the whole of the eastern region - it was difficult for users of the judicial system to accept a woman as a judge, even more so if she was relatively young:

"My first posting was in San Francisco el Alto (Totonicapán), in the justice of the peace court and it's different there, because when I arrived people would say 'excuse me, is the judge here?' 'I am the judge', I would say, 'please come in'. 'Oh no, we want to talk to a man', and they would leave. One man would come ...he made me smile because he would say, 'what are you doing here? What are you doing sitting there? You should be at home in your house'."

Mistrust of women judges is particularly marked in cases of violence or intra-family disputes: *"there are times when they insult us saying 'of course, a woman will not resolve in favor of men', that happens a lot. Or they say a woman is protecting women, so we (men) are discriminated against, that it's unconstitutional, I have often heard that."*

Guatemala has one of the highest rates of femicide and violence against women in the world: in 2018, 172 women were killed, a femicide rate of two for every 100,000 women.¹² The highest number of criminal complaints received by the public prosecutor's office relate to violence against women. Following the approval in 2008 of the Law against feminicide and other forms of violence against women, specialized criminal courts were established to hear cases classified as feminicide or physical, psychological, or economic violence against women. Judges appointed to these courts, together with their support staff, receive mandatory training with a gender focus.¹³

¹² UN-CEPAL, Observatorio de Igualdad de Género de América Latina y el Caribe <https://oig.cepal.org/es/indicadores/feminicidio>

¹³ The femicide courts are part of System of Comprehensive Assistance to Victims (SAI) established in the late 2000s. The SAI applies a series of laws and regulations, including: The Law against femicide and other forms of

Between 2010 and 2013, the Supreme Court of justice created the criminal courts of first instance and the sentencing courts for femicide crimes and other forms of violence against women. These specialized courts are located principally in Guatemala City, and in the departments of Quetzaltenango, Huehuetenango, San Marcos, Sololá (west), Izabal, Escuintla, Chiquimula (east), Quiché, Alta Verapaz, and Petén (central highlands and north). Each tribunal has four judges; although there are male judges, most of this specialized bench is female. Many of the women judges (and some male judges) on the femicide courts have a strong commitment to gender equality and fighting gender violence. Indeed, some of the judges interviewed had deliberately moved between different femicide courts and were committed to developing more effective local mechanisms to tackle gender violence in coordination with other state and community institutions. These specialized courts can order preventive detention of alleged aggressors and open criminal proceedings. The establishment of tougher penalties for gender violence and the rise in the number of cases reported has inevitably led to a backlash. Women judges on these courts are attacked by legal professionals, political parties, and members of the public alike:

“They have called us the holy inquisition, witches and the last thing they called me was feminazi. When his client was sentenced, a lawyer told me ‘this is a Feminazi court’. We have been told we suffer from misandry, the hatred of women towards men. I say no, I love men, I have a husband, I have two children, I have brothers.”

violence against women (2008); The Law against sexual violence, exploitation, and human trafficking (2009); The Law for the Dignification and Integral Promotion of Women (1999); The Law to Prevent, Punish, and Eradicate Domestic Violence (1996). As part of this new policy, the public prosecutor’s office has developed dedicated spaces to coordinate psychological and medical services to attend to women and child survivors of gender violence, who are treated in line with protocols that seek to prevent the re-victimization of victims of violence during the investigation process and guarantee women’s human rights. The femicide courts have spaces where victims can stay with their children and a childminder during hearings, and Gesell chambers, where children can give their testimonies without having to see or share the space with their aggressors.

Working conditions: salaries, retirement

The workload on the bench is considerable, and almost all the judges interviewed reported work overloads. Sometimes they lack enough administrative support staff. And between reviewing records, hearings, internal and external meetings, and trainings, all judges spend many more hours on the job than the time they are in their offices or in public hearings. Furthermore, due to the social expectations placed on women, the burden on female judges tends to be even greater:

“A woman has not only to do her work, but also take care of the house, the children, take the children to school, return, worry about your house. You say to yourself, I must write the sentence, but you’re tired. I often have to work into the small hours of the morning to keep on top of my workload.”

Judges frequently work on public holidays and weekends without being paid. Almost all those interviewed brought work home, and some had occasionally become ill due to excessive workloads. This is also combined with the emotional burden of some of the issues they address, for example, in femicide and violence against women courts:

"It's an exhausting court in the sense that many emotions are handled ... here we work with battered, raped women ... it is an emotionally exhausting court. I don't know if anyone else feels this, but I know someone who says I don't want to be on femicide anymore, but not because it's bad but because, emotionally, it's so hard."

Because the local courts are open 365 days a year, it is common for justices of the peace to work practically all week and at any time, they are not even entitled to overtime or holidays. The law states they are entitled to their birthdays and mothers' day and can ask for five days a year for health reasons or other emergencies, but in order to take them, they must make a formal request for someone to cover them in their absence and receive authorization. Frequently there are no substitute personnel available -either judges nearby or judges sent from the capital (the latter involving additional expenses for the judicial authorities) – and permission is denied. Many justices of the peace often lack an adequate place to rest or prepare food. Supplies and services are minimal for many courts far from urban centers; some judges commented that they were frequently left without electricity, telephone and running water.

Nonetheless, interviewees frequently pointed to the judiciary as an institution able to provide job security and opportunities to advance in a professional career.

"You ask me how I came to be a judge. (Before I applied to the bench) I stopped working because I had my second son and my job situation became more difficult to balance with my personal life. I chose to resign because I prioritized my children. My financial situation changed substantially. I was more personally disadvantaged, more limited as a professional. I ended up separating (from my husband) because it was not the life I imagined."

However, although being in the judiciary offers job stability, prospects for professional advancement and specialization, and a pension, salary conditions are not competitive compared to the private sector. Pensions are limited: a judge with almost twenty years of service said:

"Our pension is very little, five thousand quetzales¹⁴ which is barely enough for my family, I'm a mother in charge of my daughters and it's just not enough. Although I could retire after twenty years of service, I won't be able to."

Appeal court and Supreme Court judges have private health insurance, but all other judges' healthcare needs are covered by the Guatemalan Social Security Institute (IGSS); several judges said they wished the judiciary would give them private health insurance as the slowness of service at the IGSS meant they couldn't guarantee access when they needed it.

Section III: Training and Professionalization: a double-edged sword

Through their initial training programs (for aspiring judges), ongoing training, and specialization programs including diplomas, master's degrees, or doctorates, women judges in Guatemala have found ways to specialize professionally. This plays an important role in their performance evaluations and career advancement. According to interviews carried out with judges from different courts, academic specialization, and judicial professionalization influence not only their

¹⁴ 5,000 quetzales is the equivalent of almost 650 US dollars.

performance as judges but also their working conditions. Amendments to the Judicial Career Law approved in 2017 increased the weight given to training and academic merit as means of career advancement in order to strengthen judicial independence: judges must be chosen for their academic and professional profile, thus supposedly excluding the corruption that may result from the positioning of officials with links to certain political and economic interests, including organized crime.

Although our sample is not representative of the total universe, our findings suggest that most women judges graduated as lawyers and notaries at the public Law School in the national San Carlos University, either in Guatemala City or Quetzaltenango. Many went straight into the School of Judicial Studies, while others traveled different professional paths prior to entering the bench, as teachers, project managers in national and international non-governmental organizations, or in government positions. Women's professional experiences prior to entering the judiciary can contribute to their understandings and interpretations. For example, according to a femicide court judge:

"[In my previous job] there was a youth animators' program, with colleagues who trained young people about prevention of unwanted pregnancies and these young people had to reproduce that knowledge on the sports-field, in the high schools. It was a great experience because it gave me more scientific knowledge of sexuality and a gender perspective. In other words, the whole topic of equality in the exercise of sexuality. It also helped me break those myths about gender roles, myths about virginity. [...]"

In terms of ongoing training once women enter the bench, the School of Judicial Studies has developed different programs, as well as signing academic agreements with universities and NGOs. Other training activities have been promoted by professional associations such as the Judges and Magistrates Association, the Association of Women Judges, and the Guatemalan Association of Lawyers and Notaries. In 2012 regional headquarters of the School of Judicial Studies were established in Quetzaltenango and Chiquimula. This geographical decentralization has benefited many judges by bringing training options closer to them: *"I went [to the School of Judicial Studies], for six months [training as] a justice of the peace. The school was only in Guatemala City then, but it's better now it's in Quetzaltenango. Back then I used to work for a few days, and then had to travel to the capital to go to school."*

Academic and professional training for judges covers multiple subjects and approaches. Some have been imparted by NGOs or international bodies, others by state institutions. Efforts have been made to strengthen training on issues of women, gender, and access to justice, particularly following the expansion of laws covering violence against women.¹⁵ These specialized trainings are currently part of the judiciary's *Institutional policy on gender equality and promotion of women's human rights* (Women's Commission, 2016). International cooperation funding has been crucial to carry these efforts forward.

Institutions within the Supreme Court and other state agencies also provide training for judges. For example, the women's commission of the Supreme Court has held workshops for the promotion of women's human rights, as has the women's secretariat of the Executive. Since the creation of the Judicial Secretariat of Indigenous Peoples in 2012 many diplomas and courses have been offered on issues of indigenous peoples' rights, indigenous law, and legal pluralism. The secretariat has carried out training on issues of access to justice for indigenous peoples, and specifically for indigenous women, developing intercultural approaches and exchanges of experiences between state and community indigenous justice systems.

"Yes, we have received training, workshops about indigenous rights. This issue is important for the judiciary.... there are many collaborative alliances with international organizations, and we are constantly undergoing training in indigenous rights."

Likewise, learning a Mayan language is encouraged and is considered in the points-based scoring evaluation system for judges. One judge even expressed an interest in learning a Mayan language to "break the language barrier":

"One of my challenges if I stay in Chimaltenango is to speak the language (Maya Kaqchikel). Another challenge is to establish a referral network in Chimaltenango where we can coordinate with the indigenous authorities...so we can harmonize our efforts to

¹⁵ According to reports from the Supreme Court, the judiciary has signed agreements to promote gender training with the Association Movement for Equity of Guatemala (AME), the Institute of Comparative Studies in Criminal Sciences of Guatemala (ICCPG), Women Transforming the World (MTM), and the Myrna Mack Foundation. For example, together with the School of Judicial Studies, the Myrna Mack Foundation has implemented a program to strengthen access to specialized justice for women victims of violence.

ensure justice (for women). We've started to contact the authorities, establish who and where they are, we're in that process right now."

In terms of international organizations, USAID, OXFAM, UN Women, OHCHR, and Impunity Watch have implemented training programs for judges that span intersections such as youth and gender, peace building, security and justice, sexual violence, and post-conflict humanitarian planning.

Another type of training is via postgraduate studies in agreement with national universities. Scholarships are offered as an incentive for specialization, contributing to judges' opportunities for professional advancement. For example, since 2017 an "Academic Update Program" exists with the Rural University of Guatemala offering members of the judiciary the opportunity to complete a closed master's degree curriculum. According to the academic cooperation agreement, the Rural University offers equivalencies to the pensum so that employees of the judiciary can graduate and obtain a university degree, allowing judges and other judicial employees to continue with postgraduate studies.

"The magistrates motivate us and make inter-institutional agreements, for example with the Mariano Gálvez or San Carlos universities. They say "look, if you haven't finished a master's degree, you should take advantage."

Agreements to offer specialized training in labor law have been signed with the San Pablo University (in 2019) and the Mariano Gálvez University (since 2016). The former coordinates a Master and Doctoral program in Labor Law; the latter has offered postgraduate degrees in Labor Law, Social Security and Business Administration. Finally, the Master's Program in Gender and Justice (in agreement with the Mariano Galvez University, since 2015) was repeatedly mentioned in our interviews. This includes jurisprudential analysis at national and international level, the study of rulings applying a gender perspective, and the analysis of public policies from a gender perspective. Several interviewees indicated that it has been especially useful for judges in the femicide and violence against women courts. For one judge, the master's degree has influenced her legal interpretation and forms of justice administration:

“I saw the master’s program in gender in the newspaper and it caught my attention. I said women’s rights, that’s great. I even invited several of my classmates to apply. I was in the last year of my doctorate in criminology. They said, “you’re crazy, that horrible subject, what’s wrong with you?” Well, I went and participated in the selection process because the scholarship was also by opposition. I sent off the application. I loved it! I was able to recognize many mistakes I had made in the past: blaming the victim, revictimizing her. I made it public. I was also able to see that many of my resolutions were focused on favoring the victim.”

Just as the School of Judicial Studies encourages education and training, so the judiciary’s performance evaluation system also recognizes judges’ postgraduate qualifications and other studies. However, the Judicial Career Council has not yet drafted clear regulations: according to public information, there is a percentage distribution that is difficult to interpret. Other “extracurricular merits” are considered, including publications, university teaching, and participation in the School of Judicial Studies.

As in most professional evaluations, there is no consideration for the family situation of women:

“We are evaluated every five years, but we’re at a disadvantage because they evaluate us according to the same criteria as a male judge (....) They ask us for the same amount of training, the same knowledge when you apply for appointments. If you are a mother when are you going to train? We’re automatically excluded because they measure (male and female judges) the same way.”

Interviewees pointed out multiple times that access to training and professionalization lacks equal conditions due to unequal gender relations in the family and marriage:

“I think the gender issue affects everyone’s personal circumstances. For example, I’m sure I’ve come as far as I have because I don’t have a husband. Because I invest my time in my own training and don’t have someone questioning me. For example, the father of my children: if I went to study and I wore a dress like this, he would say, are you going to model or study? Or you know how the traffic is in Guatemala. You can’t say “I’m going to be home at seven” because you won’t be home at seven. So then, “did you go to study? Why

did it take you so long? That all weighs in. Many women colleagues aspire to study, but they don't pursue it in order to avoid problems (at home)."

While in this respect gender undoubtedly influences access to training, the women judges interviewed also pointed to other factors that restrict their access to education and training, such as geographic factors or high costs and limited places. According to women judges, these difficulties transcend gender. For many, the points-based evaluation has "perverted" the search for education and training, which has become a race to accumulate merits for career advancement. Several judges stressed that training is an area in which they can increase their score to speed up their ascent in the judicial career. Although training in women's rights or indigenous peoples' rights has positively impacted judicial deliberation and conflict resolution, there is no mechanism in the judiciary that certifies the application of the contents learned during the courses.

Judges' Associations: Opportunities for Professionalization but also for Political Capture of the Judiciary

Literature on "informal networks" has contributed to understanding the "continuing tension between professionalism and informality" (Dressel and Inoue 2018); "[...] formal and informal practices are interwoven, and personal interactions are central to the day-to-day agency of the judiciary. Judicial behavior can thus be seen as a function of how judges relate to each other and to individuals and groups in the surrounding sociocultural context" (Dressel, Sanchez-Urribarri and Stroh 2017: 7.6) Many expressions of "informal networks" are at play in the judiciary, for instance university studies, work affiliations, seniority (Dressel and Inoue 2019: 617) and of course gender. One area that straddles work affiliations and informal networks is that of membership of judges' associations. Following the initial period of post-conflict judicial reform, Central American legal scholars predicted that the development of judges' associations would strengthen judicial independence in the region, as these associations would defend improved working conditions and create epistemic communities (ICCPG 2001). Two decades later, evidence suggests that judges' associations do not always work in favor of greater judicial independence: they can also serve sites for corporate and patronage politics where appointments to the bench are political. Judges' associations in Guatemala play a crucial role in advancing the

careers of judges, but they also increasingly serve as a conduit for “informal networks” and “clandestine control”.

Different professional associations are an important element in Guatemala’s judicial politics. Four national associations currently exist: the Judiciary’s Judges and Magistrates’ Association (AJMOJ), established in 1992; the Association of Women Judges of Guatemala, created in 2016, the Guatemalan Association of Judges for Integrity (AGJI) which was formed in 2018, and the Institute of Judges of the Appeals Courts (IMCAOJ). Of the four, the Association of Women Judges has focused its efforts to date most clearly on training and ongoing professionalization for women judges. Created by Magistrate Delia Dávila (from the Supreme Court’s Criminal Chamber), the association has organized talks and training in different topics, for example on people trafficking, and the 2017 reforms to the Judicial Career Law. However, the association also seeks to defend women judges’ rights, and mobilizes support for improved working conditions, decent retirement, and greater opportunities for women on the bench. With more than 200 members at present, Dávila anticipates that the association will continue to grow.¹⁶ It has supported graduation procedures, participated in international conferences, denounced sexual harassment within the judiciary, and encouraged women judges to put themselves forward for selection for the Appeals and Supreme Court. Interviewees agreed that the association’s principal focus is on professionalization and, to a lesser extent the promotion of women judges to the higher echelons of the bench.

The Judiciary’s Judges and Magistrates’ Association (AJMOJ) was created in 1992 and includes almost 1000 judges from all over the country. The Guatemalan Association of Judges for Integrity (AGJI) was created in 2018 and its members integrate the specialized high-risk courts that have decided high profile cases of transitional justice and corruption. These two judges’ associations have taken a central role in judicial and national politics and considerable tensions exist between them. The Guatemalan Association of Judges for Integrity has focused mainly on denouncing state capture involving attacks against judicial independence and judges’ autonomy (see below). By contrast the AJMOJ has been questioned for its politicization and alliances with central actors behind state capture (Comisión Internacional de Juristas – ICJ- 2016). Judge Mynor Moto,

¹⁶ <https://www.prensalibre.com/guatemala/justicia/el-40-por-ciento-de-jueces-del-pais-son-mujeres/>.

AJMOJ's former president, has played a central role in the association over many years and has repeatedly been linked to so-called "illicit political-economic networks" (Fundación Myrna Mack 2019). The CICIG and the public prosecutor's office formally challenged his irregular conduct in the "*Bufete de la Impunidad*" case, where former Supreme Court magistrate Blanca Stalling was found responsible for influence trafficking within the Judiciary.¹⁷ AJMOJ's proximity to the highest echelons of the judicial apparatus means the association is used to decide judicial quotas and leverage candidates to the appeals court and supreme court; it also serves as a conduit to exercise behind-the-scenes pressure to ensure judicial decisions in key cases that guarantee impunity for powerful actors. The Institute of Judges of the Appeals Courts (IMCAOJ) has also been associated with influence trafficking. In the controversy over appointments to the appeals courts in 2020, IMCAOJ openly denounced investigations by the Special Prosecutor's Office against Impunity (FECI), which had pointed to links between seven magistrates, all members of IMCAOJ, and the former secretary to the presidency allegedly aimed at ensuring the appointment of particular judges to the higher courts.¹⁸

Section IV: Political Capture of the Judiciary: implications for women on the bench

In theory, the culmination of a professionalized judicial career means aspiring to positions in the high courts of justice, and ultimately the Supreme Court or Constitutional Court. However, as we have emphasized in this paper, Guatemala has a two-tiered structure for the appointment of its judges: the lower ranks - justice of the peace, first instance and sentencing judges – have been professionalized via the School of Judicial Studies. But the appointment of the highest echelons - Courts of Appeals and the Supreme Court - depends on the nomination commissions, which are ultimately controlled by Congress. This is formally an open process involving lawyers who have held positions in state institutions (such as the public prosecutor's office, the human rights ombudsman, and other agencies), in NGOs, or as attorneys for private law firms. Despite reforms to the Judicial Career Law in 2017 that sought to promote sitting judges to occupy positions in

¹⁷ <https://www.cicig.org/casos/solicitud-de-antejuicio-contrajuez-mynor-moto-morataya/>

¹⁸ "Magistrados que se relacionaron con Alejos arremeten contra el informe del MP", *La Hora*, 1 June 2020 see <https://lahora.gt/magistrados-que-se-relacionaron-con-alejos-arremeten-contrael-informe-del-mp/>

courts of first and second instance, the nomination commissions continue to evaluate litigating attorneys more highly and it appears that the proportion of career judges to non-career appointments has declined in recent years.¹⁹ Although the selection system considers candidates' academic and professional training, patronage and exchanges of favors have come to play an increasingly central role. First instance judges present their candidacies, knowing that if they do not have political alliances and support, it is unlikely they will be selected.

When asked about the future, one judge stated:

"I would have liked to be a magistrate. I already have a master's degree in gender and justice, another in criminal law, but to become a magistrate you need contacts with congressional deputies in the nomination commissions. I'm not going to lend myself to those things because you ask for a favor to be named a magistrate, to put you on the list, you can be appointed as a magistrate, but you have to pay back the favors, and that is neither correct nor legal, it goes against all my principles. There's no motivation to participate if the system doesn't change. It doesn't matter how much training or experience you have. That's why many magistrates arrive who have never been in a court, who know nothing about gender, about criminal law, or even know how to draft a ruling."

Another judge with even more academic credentials commented:

"I discovered many things. For example, that the written process is very different from the practical process. If you don't participate in a group where certain commitments are made, then you cannot aspire to these positions. With all the changes and the reforms, I hoped we would have a different process, but it has not happened. The law says the Judicial Career Council must promote colleagues [already on the bench]. I learned that my score is one of the highest. I think that only one Supreme Court judge has a score like mine. In theory I should only have to present my papers. But I know it will not be like that."

More concerted attempts to secure "clandestine control" over the judicial nominations procedure can be understood as a backlash effect against the attempts of the Commission against Corruption in Guatemala (CICIG) and the public prosecutor's office to investigate and bring charges against

¹⁹ This conclusion is based on press reports and anecdotal evidence; repeated attempts to obtain figures via public information requests have proved unsuccessful to date.

high-ranking politicians, including former President Otto Pérez Molina (jailed in 2015 on charges of illicit association and corruption) and various ministers and congressmen. Since 2015, powerful interests have redoubled their efforts to secure a judiciary that does not confront their political and economic interests. This does not necessarily imply a disadvantage for women, but it does mean that successful candidates (men and women) are at best subject to many pressures, and at worst are already committed to certain political interests. According to one high-ranking judge:

“Those are political stitch-ups, under-the-table agreements. Right now, they are in many meetings, making lists, you give me this and I give you that. That is another dynamic, it’s not so much that women face sexual harassment in order to get to those positions... .. it’s a form of management by politicians on the outside to select their representatives (in the judiciary) through the elections on the inside.”

There is strong evidence pointing to the role of organized crime in the selection of judges in Guatemala: for example, in 2019 the magistrates of the Appeals Courts - more than 100 judges - chose a non-career and inexperienced magistrate as their representative. She was a protégé of Roberto Villatoro López, the famous “King of Tennis”, currently in jail and accused by CICIG and the public prosecutor’s office of orchestrating the purchase of judges.²⁰

Many judges committed to the fight against impunity do not compete for appointment to the high courts because they know they have no chance of being selected:

“From the moment I participate and I know that I have to knock on the doors of the congress, from that moment I am corrupt because I am asking someone to appoint me and I am basically telling him I do not believe in the (formal appointments) process. If

²⁰ In October 2009, the then head of the CICIG, Carlos Castresana, accused Sergio Roberto López Villatoro of manipulating the election of Supreme Court magistrates and of being part of clandestine structures in the country. Castresana reported that the investigations confirmed that at least 26 of the 47 members of the nomination commissions for magistrates of the courts of appeal and the Supreme Court of Justice were awarded a scholarship by López Villatoro. Castresana stressed that López Villatoro was behind 26 postuladors, four Supreme Court magistrates, six appeal court magistrates, seven deans of the law schools and nine representatives of the Bar Association. "For several years, he has been co-opting magistrates of various jurisdictional orders and hierarchies, with the purpose of directly or indirectly controlling the Courts of Appeals and the Supreme Court," Castresana said, referring to López Villatoro. He stressed he had ties to and supported political parties and law firms that process clandestine adoption processes, law firms that defend drug traffickers, as well as the military involved in human rights abuses and corruption cases. *Prensa Libre*, February 23, 2018,

they change the way of choosing magistrates for appeals courts, then with pleasure I will apply, but not otherwise.”

Our findings suggest that under prevailing conditions, professionalized judges committed to human rights standards and to advancing “legal preference shifts” in favor of greater accountability tend to opt to remain within the lower echelons of the judiciary rather than attempting to enter the higher courts, reasoning that they can have more impact and independence from their existing positions. Despite prevailing trends within the judiciary as a whole mitigating against judicial independence, the relative autonomy of judges within their courts is a fundamental part of legal culture, legal training, and judges’ self-identity (Jaramillo Sierra and Buchely Ibarra 2019: 31). The highest profile human rights cases of recent years, specifically those dealing with transitional justice, including genocide and sexual slavery during the armed conflict, together with high profile anti-corruption cases aimed at dismantling the mechanisms of clandestine control have been pursued by specialized first instance high risk courts (*tribunales de alto riesgo*). **INCLUDE MORE DETAIL ON CASES IN TEXT OR IN FOOTNOTES?** Women judges, including Yassmin Barrios, Patricia Bustamante, Érika Aifan and Dinora Martínez, have played a key role in these tribunals and have secured historic judgements to combat impunity. Consequently, they have been subject to public criticism, threats, and violence, together with harassment, surveillance, and pressure via the judiciary’s internal evaluation system (IW 2019). As clandestine control mechanisms consolidate their hold on Guatemala’s judiciary, mechanisms originally designed to ensure professionalization of the bench are increasingly deployed as weapons to coerce and silence non-compliant judges. As one judge observed:

“In highly paradigmatic cases, supervision is used as a mechanism to harass the judge. It happened in the case of genocide, and in the case of Sepur Zarco. They come and ask for reports and reports. Supervision should not be allowed to become a mechanism to oppress judges.”

In 2019, judges within the high-risk courts located in the *Torre de Tribunales* denounced the infiltration of clandestine control mechanisms within the Torre’s security apparatus. In February 2019, the Guatemalan Association of Judges for Integrity (AGJI) publicly called for the removal of the judiciary’s head of security, Roberto Mota Bonilla. The trade union of workers within the

judiciary also called for Mota Bonilla's removal, questioning his recruitment of security agents from the Executive's Secretariat of Administrative and Security Affairs.²¹ In May of the same year the AGJI participated in a special session of the Interamerican Commission of Human Rights (IACHR) to denounce threats to judicial independence in Guatemala. They particularly underlined the gendered political attacks against women judges on key transitional justice and corruption cases, and in general the malicious use of internal monitoring and evaluation mechanisms against independent judges. For example, at the time of the audience at the CIDH Erika Aifán, judge on the high-risk court D, had faced six charges to remove her immunity from criminal prosecution (*antejuicios*), seven disciplinary complaints within the judiciary's internal control mechanisms, ten complaints lodged at the Human Rights Ombudsman, six complaints presented to the Office against Torture, and three complaints before the Honor Tribunal of the Guatemalan bar association. Most of these charges were subsequently dismissed.²²

Our findings suggest that women judges also tend to “stay put” in other, less highly politicized branches of the judiciary. For example, labor court judges have become increasingly professionalized and specialized in recent years, in large part due to the support USAID has lent to modernization of Guatemala's labor courts. These courts have evidently been an avenue for women judges to build their careers, and the level of expertise and training demonstrated by those labor judges we interviewed was impressive. However, when asked about their future professional aspirations, most expressed similar sentiments to judges in the high risk courts: they preferred to exercise their professional expertise in the court they presided over, rather than enter the political negotiations and trade—offs required to climb higher up the professional ladder.²³ It is notable that for those judges in Guatemala committed to pursuing accountability and resisting state capture, the separation between the lower and higher echelons of the judiciary has become

²¹ <https://elperiodico.com.gt/nacion/2019/02/20/jueces-piden-destitucion-del-director-de-seguridad-del-organismo-judicial/> (Mota Bonilla subsequently resigned his post).

²² See https://www.youtube.com/watch?v=NMPzfRDb-ps&list=PL5QlapyOGhXvvyKD3Y0-GblPrDQ1xE_Ht&index=6&t=0s

²³ We lack data about administrative and fiscal courts, but our initial findings suggest that women judges are in a much greater minority in these courts than in other branches. In contrast to other courts, administrative and fiscal tribunals are still governed by written, as opposed to oral proceedings. They are mainly located within the *Torre de Tribunales* in Guatemala City. Given that of all the courts these are the least reformed (i.e. where we see less rupture with the preexisting “legal culture”) we would expect that (a) these courts are more governed by patriarchal networks, and; (b) that they are more permeable to clandestine control mechanisms aimed at state capture.

ever more pronounced, with career judges increasingly suspicious of non-career judges who enter the appeals courts by appointment. As one career judge commented: “*it is a freedom and a strength, knowing that we arrived here because of our abilities and not because of any type of privilege.*”

Conclusions (to be developed)

- International support for professionalization/ gender equity/ gender training has been key and has transformed significant parts of the Guatemalan judiciary.
- Specialized courts (femicide, high risk, and to some extent labor courts) provide niches where women judges have excelled.
- Political and professional circumstances, together with life/ personal circumstances, explain why women judges advance up the career structure, or choose to stay in their niches at the lower levels.
- Formal reforms to increase judicial independence have been subverted by clandestine networks of control, which have accentuated the vertical fragmentation of the judiciary (professionalized lower ranks; politicized higher ranks).
- Informal networks matter, and over time can subvert institutional design aimed at guaranteeing judicial independence. Vulnerability of independent judges.

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