

LEADERSHIP AND PARTICIPATION OF  
**WOMEN**  
IN GUATEMALA'S JUSTICE



**Leadership and Participation  
of women  
in Guatemala's justice**

impunity  watch

## **Leadership and Participation of women in Guatemala's justice**

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## Initials and Acronyms

CANG	Lawyer and Notary Bar of Guatemala
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEH	Commission for Historical Clarification
CIDEJ	Center for Information, Development and Judicial Statistics
FLOW	Financing, Leadership and Opportunities for Women
IGSS	Guatemalan Institute of Social Security
INACIF	National Institute of Forensic Sciences
IW	Impunity Watch
MP	Public Ministry
OASIS	Organization of Support for an Integral Sexuality facing AIDS
OJ	The Judiciary
OTRANS	Trans Organization
PAC	Civil Self-Defense Patrols
PAN	National Action Plan



## Introduction

Resolution 1325 of the United Nations' Security Council, approved in 2000, highlights the negative and disproportionate impact of armed conflicts on women's lives, and calls to promote a meaningful participation of women in conflict resolution and peace building. The Resolution calls for the States to ensure that the representation of women increases at all decision levels of national, regional and international institutions dedicated to conflict prevention, management and resolution. Moreover, Resolution 2106, also of the Security Council, underlines the importance of women's inclusion in the higher levels of security and justice institutions (S/RES/2106, 2013).

However, great structural obstacles persist in many transitioning societies, which impede women from inserting themselves in public institutions and exercising their rights fully. Pertaining to this issue, Resolution 1820 states that there are "persistent obstacles and challenges that hinder the participation and full intervention of women in the prevention and resolution of conflicts as the result of violence, intimidation, and discrimination, which undermine the ability and legitimacy of women to participate in public life after the conflicts" (S/RES/1820, 2008).

This study examines the participation of women in the justice system of Guatemala, particularly in the Judiciary, and presents the experiences lived by women judges and magistrates who face a system of gender discrimination and violence, its manifestations, and its consequences. In Guatemala, many women in these positions have done an exemplary job in breaking with impunity, but at a very high cost to themselves. This study shows that women face masculine structures, in which mechanisms that promote corruption and impunity exist, buttressed by a patriarchal culture that hinders the judges' work. These structures and mechanisms are not solely internal, but also external power groups that want to obstruct justice and attack these women judges.

The continuous violence against women in decision-making posts manifests the need for a transformative focus, to deal with the effects of the internal armed conflict. This requires efficacious strategies that address the causes and structures in which this violence is reproduced. Without an analysis that



provides an adequate understanding of the challenges and obstacles that women face, it will not be possible to create adequate proposals.

The report is structured in five chapters. The first chapter examines the recent history of Guatemala and the continuum of post-conflict violence against women. The second chapter describes the leadership and participation of women in the Judiciary. The third chapter examines the construction and reproduction of masculinities. The fourth chapter describes the forms of discrimination and harassment suffered by women judges and magistrates. And the fifth chapter describes the psychosocial consequences and challenges for women. The last part presents the conclusions and recommendations of the investigation.

This study was accomplished by Impunity Watch within the framework of the “Addressing violence against women beyond the frontiers: Burundi, Guatemala and Liberia” program. The program is implemented by an alliance with Oxfam-Ibis and is financed by the “Financing Leadership and Opportunities for Women” fund –FLOW—. The program regards compared studies between Burundi and Guatemala, two post-conflict countries, and this report corresponds to the investigation done in Guatemala.

For Impunity Watch, justice must contribute to the transformation of gender relations in society, that is, that besides clarifying the truth, punishing those responsible for crimes, and providing reparations for victims, it must also inspire structural changes that allow the construction of equitable gender relations and measures to prevent new forms of violence against women and girls. Furthermore, it must encourage the participation of women in all decision-making institutions and spaces, including security and justice institutions.

## **Methodology**

This study was done in eight months (March – October 2017) and was developed using a qualitative methodology that includes semi-structured interviews with key informers, focus groups with male and female judges, document reviews and media analysis. A semi-structured guide was designed for the interviews, which was given to 24 male and female judges, fourteen women and ten men, in five departments: Guatemala, Quetzaltenango, San





Marcos, Sacatepéquez, Jalapa, and Alta Verapáz (see table below). Five key informers were also interviewed, all women, selected for their ample knowledge of gender issues and discrimination within the justice system. These interviews included two Supreme Court magistrates, the Judiciary's Secretariat for Women, and two women judges who were expelled from the Justice System because of their independent work and their constant denunciations against acts of corruption and anomalies within the Judiciary.

Three focus groups were formed with male and female judges from the Departments of Guatemala, Sacatepéquez and Quetzaltenango. These were developed through exercises of reflection about personal experiences and discussion about gender-related obstacles that place limitations on women's participation in leadership positions, identifying causes, discrimination situations within the Judiciary, and solutions. The individuals were selected from the Judiciary's directory, according to the regions defined. We also coordinated with two organizations of male and female judges to create the focus groups and some interviews: The Association of Judges for Integrity and the Judiciary Institute.

Number of interviews and focus groups:

	Women	Men	Total
<b>Interviews with key informers</b>	5	0	5
<b>Interviews to male and female judges</b>	14	10	24
<b>Guatemala</b>	5	2	7
<b>West</b>	5	4	9
<b>East</b>	3	3	6
<b>North</b>	1	1	2
<b>3 Focus Groups</b>	24	11	35

Of the interviews performed, twenty-one were recorded, transcribed and coded to guarantee confidentiality of information and the safety of the informers; eight of the interviewees requested that their interviews not be recorded; in this case, the interviewer took notes and those were analyzed. After reading the interviews, a code matrix was created in which the interview information was entered. The name of the interviewees is not used in this study, unless they had authorized it. Otherwise, only the codes are used.



Furthermore, the available literature was reviewed, including the internal policies and procedures of the Judiciary pertaining to gender issues.

A hemerographic analysis of digital news media from 9 national newspapers and 2 national television channel websites (Guatevisión and Canal Antigua) was done. The news items were selected for dealing with male and female judges, all of them from the national press. These were systematized in a database according to type of document, most recurrent media, as well as for content.

Sixty-six news items and reports were entered; dealing with the Judiciary, male and female judges linked to penal processes, male and female judges who report irregularities in the justice system, news on risks and threats, and sensationalist news items on what the judges say. It was also determined that the online news outlets that most frequently publish these types of items are "Prensa Libre", "La Hora", and "elPeriódico". We also searched through the national newspaper pages and the different fan pages of the social media site Facebook; from these we gathered publications about women judges and the comments of the users of each publication, which allowed us to reach an approximate understanding of the public's opinion on the judge.

The research team was integrated by a researcher specializing in social psychology and gender, a sociologist specialized in gender, a research assistant in her senior year of anthropology. For the focus groups, we received methodological assistance from a psychologist who is an expert in masculinities<sup>1</sup>.

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<sup>1</sup> Franc Kernjak German Cooperation staff, a consultant for the Community Studies and Psychosocial Action Team -ECAP, by its Spanish acronym-.



# 1. Background and context

## a. Impact of the internal armed conflict on women

Power relations in Guatemala have been marked historically by the racism, classism, and sexism of a small dominant elite set above the rights of a large majority of the population. These relations of inequality and discrimination were exacerbated by the brutal violence of the internal armed conflict (1960-1996). The Commission for Historical Clarification (CEH, by its acronym in Spanish), estimates that the internal armed conflict left over 200,000 dead, 45,000 disappeared and over a million displaced, of which 83% were indigenous people who lived in impoverished rural communities (CEH, 1999b). The CEH concluded that the military and the State security forces in Guatemala went to the extreme of committing acts of genocide against the indigenous population and that acts of international transcendence, such as torture, forced disappearance and sexual violence against women occurred.

The CEH estimated, as well, that 75% of direct casualties were men and that 25% were women. Women were victims of arbitrary executions, torture, deprivation of liberty, forced disappearance, and sexual violence. The average percentage of women for all crimes is of 21% to 23%, except for forced disappearance and sexual violence. The victims of forced disappearance were mainly men, by 88% compared to 12% for women. Whereas the victims of sexual violence were mostly women, 99% compared to 1% for men (CEH, 1999, parr. 2376, tome III; parr. 1749, tome II).

The crimes committed against women stemmed from counterinsurgency and military control state policies, and share common characteristics across regions occupied by the military, to the extreme that sexual violations against women were systematic, public, massive, and multiple when they were committed by the military and by paramilitary groups, demonstrating in this manner power and control, enforcing macho ideas based on the exercise of violence against women (García, G., 2015, p. 2).

The security forces of the State were responsible for 93% of human rights violations and acts of violence, the guerrilla for about 3% and other groups for about 4%





(CEH, 1999b parr. 1754). The military was responsible for 85% of the total registered violations, the Civil Self-Defense Patrols (PAC, by its acronym in Spanish) are responsible for 18%, military commissioners for 11% and other state security forces for 4% of registered violence (CEH, 1999b parr. 1752). The strong militarization of this period exacerbated the social imagery of a masculinity based on the domination and oppression of women. A previous Impunity Watch study established that “in armed conflict situations the exercise of power by the State or by armed groups assumes a masculine character, under the concepts of dominance, control and power. It is precisely in conflicts and wars that sexual violence is exacerbated as a mechanism of the most recurrent systems of patriarchal and colonial dominance, to the extent that it becomes a weapon of war” (Impunity Watch, 2015a, p. 10).

This exacerbation of violence against women is possible because there is a structural, political and cultural basis in gender relations that has become normalized, and in general shares the notion of masculine power as set above feminine power (García, 2012, p. 94). The characteristics of dominance, control and power are supported by masculinities, mainly hegemonic, in which they intersect with other (economic, political and cultural) powers. Society as such also adopts these forms and the State, institutions, the organization of communities and family, are rooted in a logic of masculine power above feminine power (Impunity Watch, 2015a, p. 9).

Political repression and violence were applied against communities, populations or individuals considered an “internal enemy” or as supporters of guerrilla groups. That is, many women were direct victims and viewed as dangerous for performing an action or leadership role in their communities. However, the women were not only victims of the conflict, but also active protagonists in the search for their relatives, in the demand for justice and in peace-building. The first organizations were those of widows and the victims’ committees in the 1980s. Among many of the displaced families and communities, it was women who were left at the forefront and were able to establish the communities of peoples in resistance. It is important to acknowledge the women’s leadership, and that which they have had before, during and after the internal armed conflict, demonstrating peace-building capabilities and strength.



## **b. The continuum of violence against women and the prolongation of post-conflict violent masculinities**

Even though over 20 years have gone by since the Peace Accords of 1996, the level of violence continues to be high and is growing. The violence experienced today echoes the violence of the past. To the extent that this violence is accepted, is not stopped or confronted and this impunity is maintained, it becomes normalized and it reproduces itself, which is why it is necessary to address its causes.

Currently, violence against women is the most reported crime in the justice system. In 2015, 2,570 crimes of femicide and other forms of violence against women were filed in the courts of first instance of the Judiciary and 432 sentences were adjudicated (OJ, 2016, p. 45 y 46).

According to data from the National Institute of Forensic Sciences –INACIF, for its acronym in Spanish— a total of 5,718 autopsies related to criminal acts were performed in 2015 and a total of 5,459 in 2016 so that, they concluded, the number of deaths decreased during this period. Men were the main victims of violent death, with women accounting for 13.4% (766) and 13.5% (739) for both years respectively. However, it is of interest that the causes of death for asphyxia by strangulation and of body sectioning (decapitation or dismemberment) increases their percentage relative to that of men. In 2016, women accounted for 45% of victims of body sectioning and 29% of asphyxia by strangulation (INACIF, 2017). This kind of attack is similar to patterns used during the armed conflict.

This data reflects the continuous use of extremely aggressive and violent forms that are used more and more against women. In traditional gender relations, it is said that men are more exposed to violence, since it is they who are in the public, political and economic spheres. However, women have been exposed to internal violence in their homes and to sexual violence more often than men. In 2015, INACIF performed 3656 clinical exams of lesions compatible with abuse on women and 822 on men. As has been stated previously, violence is a historic construct. It is learned through socialization and through time, normalizing the use of violence to solve problems. To the extent that impunity is high and the justice system is not working, the use of violence becomes more frequent.



The permanency and systematization of violence occurs in a political sphere of economic globalization, scant democratic consolidation, and impunity, in which women seek to strengthen their political participation as well as their struggles against violence. As Rosa Cobo affirms, we are facing a worldwide scenario in which hegemonic, masculinized forces are responding with violence: “In the last three decades, a patriarchal reaction has occurred unusual in its systemic intensity” (Cobo, 2011, p. 13).

This exacerbation of violence occurs in a context in which women in general have achieved important advances in the struggle for their rights, especially with the creation of legislation such as the Law Against Femicide and Other forms of Violence Against Women, and the Law Against Sexual Violence, Exploitation and Human Trafficking among others, and the institutionality of the State, with, for instance, the Presidential Secretariat of Women, the Defense of Indigenous Women, the National Coordinator for the Prevention of Intrafamily Violence and Violence Against Women, and the courts and tribunals specialized in femicide. The gaps in education are decreasing and women occupy important political posts, even though they continue to be a minority.

Achievements and advances in favor of their rights and against gender violence have been possible due to the effort and work of women's and feminist movements, as well as that of individual women. However, as will be seen in this report, factors that limit the full participation and exercise of women's leadership continue to operate. To the extent that systematic and implicit violence continue to exist, society will continue to be affected by gender inequalities and will continue to accept, naturalize and normalize a culture of violence. This is why it is important that women continue to empower themselves and challenge violence and inequality, but also to generate changes in the androcentric culture.

### **c. The role played by the justice system during the internal armed conflict**

The justice system was also affected by human rights violations. Judges, lawyers, and staff of the Judiciary were executed arbitrarily and, according to CEH, this resulted in the intimidation of justice operators and caused an





increase in impunity and the inaction of the courts (CEH, 1999, Tome II, parr. 1999).

During the military regimes of Lucas García and Ríos Montt (1978-1983), the disengagement and ineffectiveness of the Judiciary in the face of human rights violations committed during this period increased. During the Lucas García regime, more judges and lawyers were executed than in any other government, “especially those who had processed a recourse of personal exhibition or who had dictated resolutions contrary to the interests of Government” (CEH, 1999, Tome I, parr. 589), so that this entity, meant to favor victims, became inoperative during this period and that of following governments. According to a report by the Interamerican Human Rights Commission for the period of 1984-1985, 400 individuals had filed a recourse of personal exhibition, all of them dismissed by the courts (CEH, 1999, Tome III, parr. 2563). According to an interview, the armed conflict weakened and corrupted the Judiciary, did not allow the application of law, sealed lips, and tried to quiet consciences (E12FJA).

After weakening the justice system, Ríos Montt managed to institute the “Special Jurisdiction Tribunals” with the purpose of trying alleged criminals so that they were sentenced to death (CEH, 1999, Tome II, parr. 1932). At the same time, he maintained military control over the Supreme Court, to the extent that magistrates consulted the files at the Ministry of Defense and judges and auxiliary judicial staff had to serve shifts in the patrols of civilian self-defense (CEH, 1999, Tomo I, parr. 626).

As one of the interviewed judges explained, no recourse for objections existed in these tribunals. In one case, a lawyer filed an appeal to prevent that a group of people be executed:

“... he arrived at the Supreme Court and in a complicit silence they said to him ‘it is not possible to file an appeal here, because we are not part of that court’, that is, a parallel justice system existed (...) After he had gone around for a while, they told him at the Palace that he had to go to the Ministry of Defense and they received him there and then he could prevent that 4 individuals were not executed for a few days, because after that they executed them anyway” (E6MJA).



Most of the judges interviewed said they do not know about the impact of the armed conflict on the justice system because they joined the Judiciary after that period, but according to some male and female judges, operative practices inherited from the war still prevail: “the main percentage of possibilities to administer justice, of coopting all of the justice schemas, continues to be manifestly clear, it is only necessary to search a little bit and we will find military structures, political structures, represented in the Supreme Court, in the Courts of Appeals, in the Constitutional Court, and that scheme of cooptation by the State is not new” (E6MJA).

There have been positive changes since the signing of the Peace Accords, mainly the move from a written system of inquiry towards an oral public system, there is a larger acknowledgment of Indigenous Justice in rural communities, and the participation of women as judges and magistrates has increased in the Judiciary and other justice institutions.

## **2. Leadership and participation of women in justice**

*“We women exert change in the spaces where we are,  
(...) because we are agents of change” (E12FJA).*

### **a. Leadership and participation of women in the Judiciary**

Historically in Guatemala, the Law has been considered as a male profession, so that the incursion of women in Law has been slow and continues to be less than that of men. Guatemala was the first country in Central America that offered Law as a career in 1620, but it was until 1927 that a woman first graduated as a lawyer, and she was not able to practice her profession until 1946 because prior to that, women did not have any civil and political rights and could not vote (Monzón, A., 2006). The first woman judge was appointed in 1964 (FLACSO, 1991).

In 1991, barely 9.6% of the Judiciary personnel were women. However, this situation began to change progressively after the Peace Accords and currently the percentage of women judges and magistrates is of 42%. Furthermore, in the last years three women have been appointed to preside the Supreme Court of Justice: Ofelia de León (2005-2006), Thelma Aldana (2011-2012) and Silvia



Patricia Valdés (2016-2017); the latter occupied the post for six months only because the Court of Constitutionality found anomalies in the process of her election and ordered the Supreme Court to repeat the election. For the first time in history, the current Supreme Court is integrated by 6 women and 6 men, and there is a vacant post because Magistrate Blanca Stalling is in preventive prison accused of influence peddling and abuse of power.

The Judiciary of Guatemala is organized along two large areas: The Jurisdictional area and the Administrative area. The Jurisdictional area is formed by the Supreme Court of Justice, 30 courts of Appeals, 218 First Instance courts and 370 Peace Courts. There are also special courts, such as the Court of High Risk, which deals with organized crime and corruption cases, and grave human rights violations.

**Table 1: Judiciary Staff 2016**

	Women	Men	TOTAL
Administrative Staff	1560	2716	4276
Judicial Staff	2420	2183	4603
<b>TOTAL</b>	<b>3980</b>	<b>4899</b>	<b>8879</b>

Source: CIDEJ 2017

Judicial personnel include Supreme Court and Court of Appeals magistrates, First Instance court judges and judges of peace, as well as secretaries of the courts and tribunals, officials and commissars. The total number of judges and magistrates in 2016 was of 1083, of which 451 are women (42%) and 632 are men (58%).

**Table 2: Number of Judiciary Magistrates and Judges 2016**

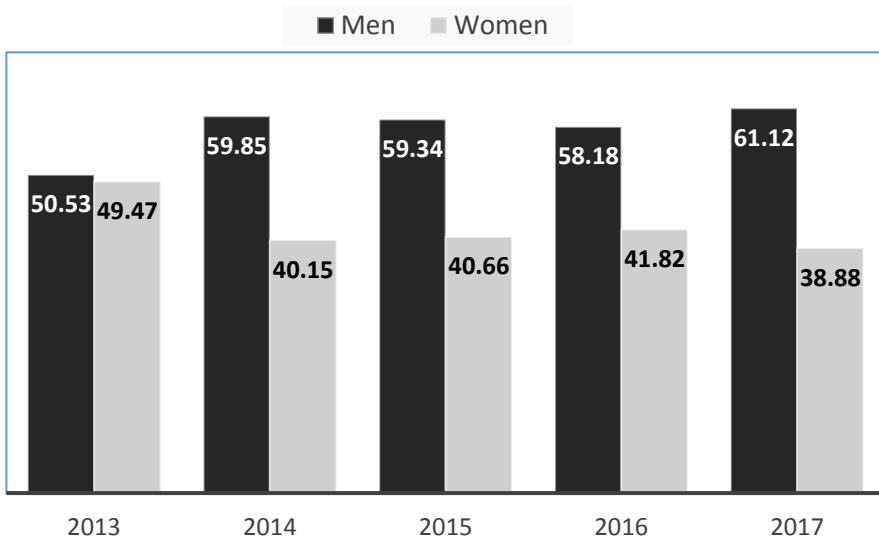
	Women	Men	Total
<b>Total number of judges</b>	<b>396</b>	<b>551</b>	<b>947</b>
First instance court judges	145	172	317
Judges of Peace	182	263	445
<b>Total number of magistrates</b>	<b>55</b>	<b>81</b>	<b>136</b>
Supreme Court of Justice magistrates	7	6	13
Courts of Appeals magistrates	48	75	123
<b>Total magistrates and judges</b>	<b>451</b>	<b>632</b>	<b>1083</b>

Source: CIDEJ 2017



The previous table shows that in 2016 there was a significant increase of women in the jurisdictional area, particularly in the positions of judges and magistrates. However, in the four years before, there were variations in the number of women and men judges. The following graph shows that between 2013 and 2016, there were changes in the gender composition of the Judiciary.

**Graph 1**  
**Total Percentage of Men and Women Judges in the Judiciary**



Source: CIDEJ, 2017. Data for 2017 is current to May of that year.

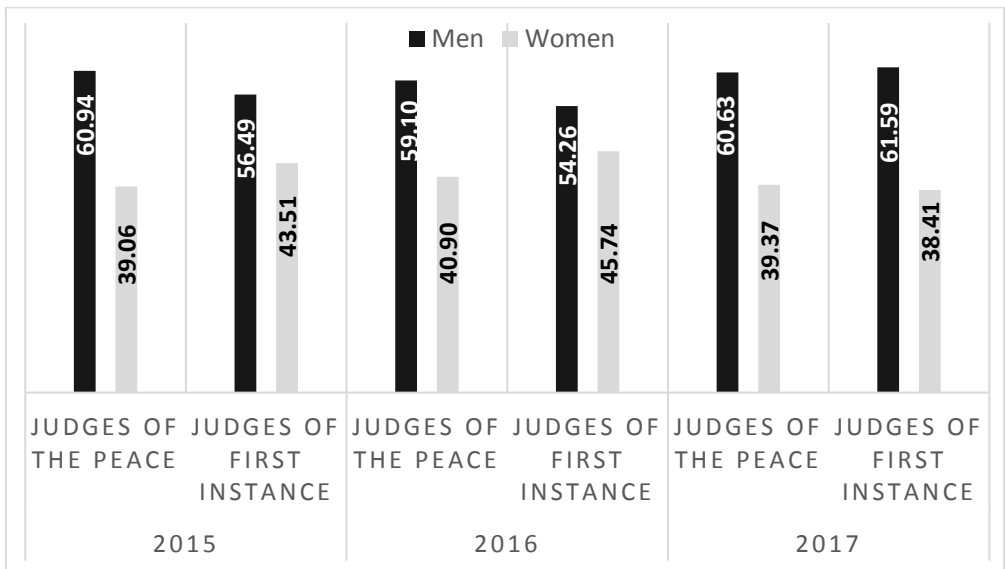
The majority of male and female judges belong to courts of Peace or First Instance, as can be seen in Graph 2; almost 80% of the total. The Judiciary data reflects a smaller gap between men and women in First Instance, even though the participation of women is still lesser.

It is of interest that most of interviewed women judges pointed out that it is in the Courts of Peace where they have found greater obstacles to do their work because in the rural areas, the personnel and users of the justice system do not acknowledge the authority of women. In many rural communities, people doubt the capacity of women to solve conflicts: "it is not the same to be a woman judge in the capital city, as to be a woman judge in the rural area, a judge of peace, who will be solving conflicts, and who will be in direct contact with the population where that same population does not acknowledge her



authority” (E5FJA). Some of them attribute this to machismo, considering it a cultural practice that is more normalized in the rural and community areas: “it is cultural, due to the predominant patriarchal culture. There is machismo in all of Guatemala, but it predominates in the rural and indigenous areas” (E23FJB). These statements reflect that the subtler forms of machismo are difficult to recognize, as well as its impact in the perpetuation of violence and discrimination against women.

**Graph 2**  
**Percentage of the total of men and women Judges of Peace and First Instance**



Source: CIDEJ, 2017. Data for 2017 is current to May of that year.

Besides the increase in the number of women judges and magistrates in the Judiciary, other important achievements in the last years have been the Secretariat of Women and Gender Analysis in 2012 and the implementation of the Gender Policy of the Judiciary in 2016. However, subtle practices of machismo and gender discrimination prevail, as will be shown below.

**b. Women as promoters of change**

The incursion of women in the Judiciary has been similar to the insertion of women in other public institutions or work spaces that have been traditionally





exclusively male, and this has been achieved due to the personal and collective efforts of women. For women to join the Judiciary, they first had to have access to education and to graduate as lawyers, and to postulate for posts as judges of peace, judges of first instance or magistrates of the court of appeals or the Supreme Court; and this represents an example of inspiration for other women. As one of the interviewees explains: “it is difficult to forge a path ahead here, but seeing other women in State positions, such as Magistrate María Eugenia Morales, is an impulse to forge ahead” (E23FJB).

Women in positions of power can promote important changes in gender relations, but they must first be sensitized to and conscious of gender inequalities. Otherwise, women may also reproduce practices of male dominance, as well as the traditional ways of exercising leadership and politics. The figure of Magistrate María Eugenia Morales is an example for many women. She was first principal of the School of Judicial Studies, and other women judges acknowledge that when she was at the director of that institution important changes took place to promote access for judges in a more transparent way and according to their capacity and fitness: “the time in which she was there was the awakening of the Judiciary, at least many young and professional women, as we were at that time, entered the Judiciary. She marked that change in the Judiciary” (E5FJA).

Some women judges argue that when a woman rises to a decision-making post, she makes real changes; this is because historically, women have occupied subaltern positions and when they manage to arrive to a leadership position they use all of the resources and values available to them in order to create change:

“I believe we women make changes in the spaces where we are, I work in the justice system, so I do it here; but I know that you do it within your work, in academia, in the spaces that you move in. Because women are agents of change” (E12FJA).

Another way in which women are promoters of change is in the ways they resolve conflict. Judges must impart justice in an objective and impartial way, based on the law and the evidence available. Nevertheless, women's experiences provide important elements for decision-making, their own experience gives them the abilities to analyze some types of problems and may



offer closer solutions for other women who use the system. Pertaining to this, some of the interviewees stated:

“The idea exists that women are more just and guarantee-based, and that men are more practical and thus, do not seek for justice so much. Women do seek to be fairer, abiding by values of justice, and men are more legalist” (E13FJA).

“We women are very sensitive in what we do and there is much expression of feelings which we may convey, not only by word, but also in writing. When you write a scientific analysis, you are expressing not only your sources, the methodology you used, the technique, your hypothesis, but also the activities that you performed, how you did it and this is being recorded there. Issues are visualized somewhat more concretely; clearly, she holds her sentiments somewhat more concrete” (E12FJA).

This idea that women are more sensitive has also been used to question women's capacity for objective decision-making. However, many women who go to the courts and tribunals feel more trust when the judge is a woman, as one of the interviewees explained: “women feel empathy in cases of gender or childhood, they feel trust and feel supported to present their cases and talk about them with a woman” (E23FJB).

Another way in which women are agents of change is when it comes to resisting and promoting breaks in the authoritarian, discriminatory or corrupt systems within the Judiciary. There is scant culture of denunciation within the Judiciary. Therefore, to the extent that women maintain the courage to denounce acts of discrimination, violence, harassment or corruption, they are contributing to the changes in these practices or acts.

Young male and female judges may also be agents of change, as one of the interviewed woman judges indicated: “in the School of Judicial Studies there is support for younger individuals to enter, which is good because we young people already bring other ways of thinking and doing things, more focused on human rights and not so much on authoritarianism” (E23FJB).



### c. Gender equality policy

In institutional terms, the Judiciary has implemented measures to strengthen the access of women to justice, particularly with the creation of courts and tribunals specialized in femicide. Moreover, it counts with the Secretariat of Women and Gender Analysis, as well as with the Women's Commission at the Supreme Court. In 2016 it created the Institutional Policy of the Judiciary on Gender Equality and Human Rights Promotion, as well as the Protocol of Attention to Indigenous Women for Access to Justice. Even though these actions are important, they focus primarily on bettering the access to justice for women victims, indigenous women and women who use the justice system.

The Judiciary's gender policy has as its objective "to promote the strengthening of the rights of the female workers in the institution, as well as the services it provides for them, guaranteeing an effective access of women to justice, considering their ethnic, age, cultural, social and economic identity" (OJ, 2016, p.10). It contains five cores: gender equality in the jurisdictional field; gender equality in the administrative field; women's access to justice with warmth and quality; social communication with a focus on gender; and respect to women's human rights pertaining to ethnicity, culture and age.

Nevertheless, the content of the five cores reflects a vision aimed at improving the service and the measures meant to support women workers are unclear. There is an action line in the fifth core which establishes that "the Women's Commission of the Judiciary, through the Secretariat of Women and Gender Analysis, based on diagnoses of gender equality and equality between men and women, shall implement affirmative actions necessary to optimize the situation, condition, and position of women workers in the institution." (OJ, 2016, p. 85).

Actions to promote gender equality within the Judiciary focus on education for jurisdictional and administrative personnel. According to the Secretariat, this corresponds to the first phase of policy implementation. Most of the interviewees stated they know about the workshops on gender organized by the Secretariat of Women, but indicated that these are usually offered to family court judges or judges of specialized courts and tribunals. Individuals who have participated in these workshops acknowledge that they have been important for their education and to resolve cases of violence against women;



furthermore, they believe that they contribute to changing discriminatory practices within the Judiciary. As one of the interviewees pointed out: "Gender is in everything, in all problems, so we seek gender education in order to be able to adjudicate better judgements. The courses are for mixed groups. Some of the talks are even provided by men, so that the message gets across better to the men" (E23FJB).

#### **d. Appointment, promotions and evaluation system**

The Judiciary's Judicial Career Council is the organism in charge of convoking, electing and evaluating Judges of Peace and First Instance. The magistrates of the Court of Appeals, the Supreme Court and the Constitutional Court are elected through a system of postulating commissions. According to the Constitution of the Republic (article 205), all magistrates and judges will serve in their posts for five years, with the possibility of re-election for the first and of re-appointment for the second. After having been selected by the Judicial Career Council, the aspiring judges must approve the course in the School of Judicial Studies.

Mechanisms of appointment and selection of judges, as well as of performance and evaluation, are officially the same for men as for women. In fact, some of the judges said they were motivated to join the judicial career because there had been changes in the convocation and selection mechanisms, which were based more on the evaluation of capacities and not on influence peddling. The new Law of Judicial Career (Decree 32-2016) establishes that the performance and behavioral evaluation of judges will consider: ethical and disciplinary evaluation, office performance, quality, academic evaluation, direct evaluation, and internal and external evaluation.

Some of the individuals interviewed considered that the evaluation mechanisms are not the best and believe that the parameters should not be the same for all; that it should depend upon the type of judgeship and the place in which they are or their work conditions. Some women proposed taking into consideration the different conditions between men and women, as is explained below.

Even though officially men and women have the same opportunities for participation in the educational courses, as has been mentioned before, some



women judges indicated that for women with children it is more difficult to participate in the education courses because they must care for their children, which implies individual and family coordination that many men do not have to do, because there is somebody else in the family unit who takes care of that. One of them stated:

“Women who are mothers do not have the same opportunities for studying, and single fathers have to deal with that, too. They should evaluate us among peers, those of us who are in the same conditions. Currently there is a daycare, but it is small and there is this idea that only people with influence have access to it” (E13FJA).

Another one added, “the (daycare) service is provided for a small group of auxiliary personnel, but, aren't we also mothers and need help or support in that respect? There is none of that for us” (E5FJA).

### **3. Construction and reproduction of masculinity**

*“A congressman referred to two female judges as ‘women who wear aprons’ -who do not know how to judge” (T1A).*

It is important to remember that most of the State institutions were conceived under a hierarchic and bureaucratic structure dominated by men and the Judiciary is no exception to this model. The idea of a male judge as a figure of authority persists in the social imaginary, and it is a challenge for women to break this paradigm. As has been stated before, even though the Judiciary has begun some measures to promote gender equality, these are not sufficient to guarantee equality in power relations within the Judiciary nor to avoid gender discrimination and other forms of violence against women judges, magistrates and other Judiciary employees. To date, practices persist that contribute to the perpetuation of patriarchal masculinity.

A patriarchal structure and a normalization of traditional dominant masculinity can be observed in the hierarchical structure of the Judiciary and in daily interactions. In interviews and focus groups we observed that men are unable to identify gender discrimination towards women even though these are obvious, as one of the interviewed judges pointed out: “The men [colleagues]



do not notice what we face, they don't notice. After listening to situations, as in the workshop we had, they say, 'but I see them as so strong, so sure and so determined'" (E13FJA).

In this study, traditional masculinity is understood as a cultural model based on "values and practices that encourage self-sufficiency, heroic bellicosity, authority over women and the valuing of hierarchy, which men through their socialization internalize in the way of ideals and obligations" (Bonino, 2002 p. 1). These traditional masculinities and unequal gender relations are reproduced in State institutions.

"Gender –and at the same time, masculinities— is reflected implicitly or explicitly in all politics. In other words, all politics are "generalized" or influenced by the understanding of gender in explicit or implicit ways. Masculinities refers to the multiple ways in which manhood is defined through historic and cultural contexts and to the powerful difference between specific versions of masculinities" (Berker y Greene 2011:23).

This is made evident from the most basic, such as the use of language, the words used to designate. For instance, the case recounted by one of the women interviewed:

"The challenge that we face, when I was incorporated last year, I realized that my button stated Magistrate (in the male noun, in Spanish), even though in Guatemala has signed upon, there is an agreement, in which all careers, all titles, are acknowledged in the feminine form" (E3FCA).

Language expresses and shapes social relations and relations of oppression, the construction of equals and the differences go through a designation process. Words name and define the other, saying the "(male) magistrate" instead of the "(female) magistrate" has implications for self-perception of those who occupy that position, it is a message that makes clear that it is a post that is, by definition, male. Added to this is the generalized idea that it is the male figure who carries authority, it is men who should make decisions and occupy those posts. "The auxiliary personnel who is male is called "licenciado"





(title of bachelor degree, in Spanish) and women are called “miss” [*seño*] or “little miss [*señito*]” (T3B).

These ideas underestimate women, a judge explains that this occurs as part of the culture: “I say that the authority stems from man and I think that maybe the custom stems from, the person who makes decisions is the man” (E1MJA). “Yes, positions of leadership are for men. Authority is assigned to men (...) And when a woman is empowered and makes firm decisions, some say ‘and this one, who does she think she is?’” (E13FJA).

This is reinforced in most of the interviews, in which they express that there is this idea that men are the ones who should occupy these posts as judges and not women, because they do not have the “character” needed to impart justice.

“[women] are given denigrating qualifiers, such as “frightened”, “this post is not for women”, “sentimental.” Their impartiality in sentencing is questioned because it is believed that their emotions overcome their reasoning skills and being a mother is considered an obstacle to doing their job” (T1A).

This idea is also shared by the users of the justice system, who expect a man to attend to receive them when they arrive: “When users arrive at court, upon realizing that the person who is going to help them is a woman, they show discontent and request to speak with a man and they think that a judge is necessarily a man” (T1A).

An interviewed woman judge reflects about this topic: “What sense does it make that you are intellectually making adjudications, when nobody is going to comply with them because they do not accept your authority? This causes them to lose morale and feel disqualified. If a man makes a mistake, it is not noticed, it is not mentioned, no matter who he is; but if it is a woman, yes, it is thrice harder for us women to be able to fill any job” (E5FJA).

Other women judges state that the administrative personnel and the auxiliary staff of the court do not respect them: “I have felt sometimes that they do not want to obey, mainly if I give orders to a subaltern man, I have experienced this in several courts” (T3B).



Facing this, women adopt hard and rigid stances to gain respect, which conveys a masculinization of the post: "One has to be strong, has to have the personality of a judge, is what they say" (E25FJB).

Some interviews reflect the existence of strong gender prejudice and stereotypes. For example, it is said that women engage in gossip, that they cause problems and that it is not possible to trust them. As a woman judge explained when asked if she believed that women are treated differently: "They hold a negative concept of women, that they gossip, that they are problematic, that women only ask for permission to go to IGSS (the social security health service, for its initials in Spanish)" (E21FJD).

For French sociologist Pierre Bourdieu, the system of domination consists in attributing to women the responsibility for their own oppression. Symbolic power cannot be exerted without the contribution of those who are burdened by it because they are constructed as such" (Bourdieu, 2000, p. 56). "One works better with men than with women, there are more problems when one woman leads the others, we women elbow each other out instead of joining forces" (E25FJB).

They are devalued, their intellectual capacity and their efforts to reach and occupy those positions are always questioned, and instead of acknowledging their qualities, it is believed that they are occupying a post that does not correspond to them.

"The structure is very bureaucratic, very closed. It is very competitive for women, doubly for being women. It is heard a lot that they say that if a woman is in a post it is because she 'gave up her butt,' or they ask her, 'Who did that miracle for you?'" (E13FJA).

Some of the interviewees, both men and women, explain that the idea exists throughout the court system that a woman judge is not impartial, especially in cases of violence against women, and if a man is judged in a case involving a woman, he will be sentenced for sure; instead, if the judge is a man, it is believed that he is going to understand the situation.



“It is said that among women, it is safe to assume that the defendant is going to be sentenced (...) among men, there is the possibility that he understands or comprehends better what the situation really is for the accused, the defendant” (E1MJA).

**a. Male complicity**

*“Men are better, they are more faithful, more loyal, because men band together, we women trip each other up” (E17FJD).*

According to some of the women interviewed, “among male judges and the attorney there is a natural camaraderie” (E5FJA). A basic aspect of dominant masculinity is that it creates connections between men, there is a natural complicity between male judges and lawyers. According to Bourdieu, “Men produce some signs and exchange them actively, as allies-opponents united by an essential relationship of equivalent honorability, an indispensable condition for an exchange that may produce an unequal honorability (for women)” (Bourdieu, 2000:56).

“You don’t understand because you are a woman” (T3B). According to the women interviewed, men are more corruptible, therefore, they benefit from a culture of complicity. Ex-magistrate Claudia Escobar explains it as follows:

“In my case, workers would not do their job if there wasn’t an extra payment from the user, I denounced all of this; there was a group of men, sadly all of them were male, dedicated to extorting the users (...) officials tried to minimize its importance ... [They said or thought] she is a woman, we can do more, we have been in the Judiciary for years, and I had just started there” (E16FCA).

Another woman judge pointed out:

“We also deal with disloyal litigation, done in bad faith; it feels stronger against a woman judge than against male judges. There is a natural camaraderie between male judges and the attorney, instead with a woman judge; they always seek how to try to catch her by surprise in her good faith” (E5FJA).



To summarize, within the Judiciary a dominant masculinity exists, which promotes relationships and associations among men that obstruct the full participation of women in these posts.

### **b. Inclusive masculinities, transforming violent masculinities**

There are no programs or policies within the Judiciary that directly encourage inclusive masculinities. Nevertheless, gender-focused education processes contribute to its transformation. Education is the clearest measure promoted institutionally within the Judiciary and it is also considered by some as a way to sensitize, even though others consider that it is necessary to create sensitizing processes from personal experience, “people still do not identify with the issue, they see it as somebody else’s issue (...) you may often pass the course with a grade of 100, but you see the implementation of the course in real life, and there is no change” (E5FJA).

Some judges’ associations, independent of the Judiciary’s institution, have encouraged initiatives to talk about and reflect on masculinities:

“We have not only participated in workshops about gender, but we have also invited OASIS (Organization for the Support of Integral Sexuality in the Face of AIDS, by its acronym in Spanish), Queens of the Night, OTRANS (Trans Organization, by its Spanish acronym) we have activities that we are constantly developing with people who have gone to talk to us (...), we have sat there, we fill up salons, the male judges are there and many of them are amazed” (E6MJA).

In another organization, they combine ethical, social and judicial aspects: “and since the department is *machista* [male chauvinist], we engage in activities that are aimed precisely at changing those attitudes among our male colleagues, and make them visible” (E2FJA).

The associations have also been a support for situations of threats or harassment against women judges, as a woman judge narrates:

“we have seen the support as soon as we have mentioned some issues, as well (...) male and female judges of Jutiapa wrote a statement repudiating the events and a good number of male colleagues signed it,



they approached me and they showed solidarity towards me, and they told me that they considered it an action that could be construed as violence against women, and that they believed my position and my condition as a woman had to be respected and they indicated that if there were any legal action that I might want to do or consider, that they could help me in some way ” (E2FJA).

At the individual level, actions and practices among men and women have begun to appear, to encourage another type of relationship and to stop discrimination and violence against women: “if I see a male colleague that is disrespecting a female colleague with a bad word, mistreatment, I stop him, I have done it, and I know of male colleagues who do it also, so, and female colleagues who have also defended that, because it is not valid to do that among colleagues –in no way, it even sounds denigrating” (E8MJB).

#### **4. Discrimination, harassment and violence against women judges and magistrates**

##### **a. Threats and attacks**

*“if a man is threatened, they threaten him to death; we women, precisely because we have that mothering-caretaking function, they do not only threaten you, but they tell you: we know where you go and that you are with your children” (E5FJA)*

Judges and magistrates face daily risks for their work in imparting justice. The importance of their decisions places them at risk of different kinds of threats and attacks against their lives and that of their families, and it affects their emotional health. In this study, some of the male and female judges interviewed said they had been threatened or attacked for their sentencing decisions as well as for advancing internal changes in the departments in their charge. However, most of them said that they had not received threats or been attacked.

Threats are received depending on the cases that they deal with and both men and women are a target of threats. According to the Public Ministry, by August of 2017, it had received 11 claims from judges for threats, 6 women and 5 men (obtained through the Law of Public Information Access). Several of the



interviewees agreed that there is scant culture of denunciation, which limits the recording of these incidents.

Forms of attack or aggression include direct threats, physical aggression, screams, the use of social media, among others. In the case of women judges, there is the use of stereotypes and sexist prejudices by way of aggression and threats. In this section, two cases of external threats and attacks against two judges are narrated, as an example of what happens with judges who act independently, ethically and honestly in their post.

The first case is that of judge Yassmín Barrios, who currently presides the First Court of High Risk A. In her trajectory in the Judiciary she has dealt with relevant cases, such as the murder of Bishop Juan Gerardi, the Ixil genocide, the sexual slavery of the Sepur Zarco women, as well as cases of organized crime groups and gangs. The sentences she has issued in these cases have represented an important advance for historic truth in Guatemala, to provide symbolic reparation to victims of the armed conflict, and has opened new spaces for strategic litigation in other cases of transitional justice.

However, these court sentences provoked reactions from pro-military and extreme rightwing groups. Judge Barrios has suffered attempts against her life; for instance, she received threats and direct attacks to her house when she tried the case against Bishop Juan Gerardi: “they threw two grenades (...) tried to shoot me entering my home’s garages” (E12FJA). At another time, there was a gang shooting in the basement where Judge Barrios was: “at the end of July 2015, when there was a shooting by gang members below in the basement, we were by the elevator and had to take refuge in the bathroom (...) we were not harmed because the problem was that they take us as hostages” (E12FJA). Also, in 2001, when she was trying the case of the “rooster gang”, gang members threatened her and said they would do a “drive by shooting at her house”. They did not shoot, but they did persecute her:

“...On May 14, 2011, when I left a breakfast meeting (...) when I returned home, I saw that I had received several calls (...) 2, 3, 4 calls, a colleague called me, she was crying, and said: Yassmin, are you all right? We have been trying to locate you for hours because we received information that they were going to eliminate the high risk judge” (E12FJA).





Another strategy meant to wear down the judges is malicious litigation, with which they seek to obstruct processes, not only by filing appeals, but also by emotionally wearing down members of the court. The Ixil genocide trial against the former head of State, Efraín Ríos Montt in 2013 exemplifies this strategy. Lawyer Francisco García Gudiel<sup>2</sup>, who was part of the defense team, publicly insulted judge Yassmín Barrios in court during the trial:

“I knew the case, but my strategy was to immerse myself in the case and suspend it, what happens is that I knew of the whim, and look, if you allow me to be a bit indiscreet, I knew that they were not going to give me the five days, but she (Judge Barrios) was the one who would look bad, because I have the right to request those five days” (The Good Christian, 2016)

He also filed a legal recourse aimed at separating Judge Barrios from the case. However, in June 2017, the Constitutional Court reaffirmed the decision issued in 2015 by the Honor Tribunal of the Lawyer and Notary Bar of Guatemala – CANG, by its acronym in Spanish— which suspended Francisco García Gudiel for a year from exercising as an attorney; furthermore, he was sanctioned with a public admonition and a fine.

Despite these attacks, judge Barrios has achieved important advances for justice in Guatemala. She has played an important role in access to justice for indigenous women and indigenous peoples who suffered grave human rights violations during the internal armed conflict. Her work makes possible the acknowledgement of truth during the events of that period, which military and extreme rightwing groups deny and seek in all ways possible to forget.

The second case is that of former magistrate Claudia Escobar, who is known for having denounced influence peddling and irregularities in the selection process for Supreme Court and Appeals Courts magistrates in the 2014.

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<sup>2</sup> He has also defended Carlos Muñoz, former superintendent of customs in the La Línea case, and Bryan Jiménez, former president of FEDEFUT (The Soccer Federation, by its acronym in Spanish), both implicated in corruption cases (Butler, 2016)



She denounced corruption in the processes of election and selection of magistrates, and abuse by former congressman of the Patriot Party, Gudy Rivera. In that way, she was able to make evident to the public the corruption within the justice system, despite the consequences for her and her family. She also accused attorneys' networks tied to corruption and other anomalous situations. She said about those threats:

“The first time they threatened me it was the officers, precisely for trying to fight against them, later it was the attorneys but that time it was a much more serious issue because armed men went to the court looking for me, with high grade weapons, to try to intimidate me so that I would not continue to file claims against those men (...) The second time, the magistrates of the Civil Chamber Court, which is where I worked, suggested to me that I leave the court for at least a few months, not to go there, because they knew these criminal groups very well, criminals with degrees, right? And that it was best that while the investigation was ongoing, I did not go to work, and they gave me a 2 or 3 month leave of absence... ” (E16FCA).

Magistrate Claudia Escobar left the country with her family for fear of retaliation against her for her accusations of 2014 and this caused multiple effects and consequences against her and her family.

### **The use of media and social networks**

The communication and social media have been channels used to influence public opinion. When the decisions of male and female judges in high impact cases become public, it causes them to become a target for the multiple reactions of different sectors of society.

For Zimbardo, the creation of words and images that lead to the dehumanization of others is necessary (2008:34). Victor Klemperer (2002), who studied the words and discourses used by Germans during the Second World War to construct a negative identity of Jews as “the other” and thus justify genocide, demonstrated that a relationship exists between the words that name a person and the way the person is treated (2002).



By giving coverage to the attackers of women judges, rather than covering the judges, the media function as a channel for attacks. Furthermore, the systematic attacks in social media are discourses that reach people who read this media and it gradually exerts a social influence. These attacks occur by way of net centers, which are characterized for the use of different profiles and fake sites in different social media, created and managed by one or several individuals who provide their services to whomever pays best, or to several of these; these are used to set a tendency in public opinion about a specific topic in the networks.

To achieve this, they attack key people, who due to their work encourage substantial change; this is perceivable, because multiple sites and users spread the same accusations and defamation against a person they seek to harm, in similar time frames; they do not have a picture or else, use false photographs, have few friends or followers, and publish solely about the topic for which they were created (Istupe, September 9, 2017).

The attacks against Judge Barrios by different social media users is the clearest example of this strategy. Comments criticized her appearance, the way she dressed, her hair, etc.; and because of the cases of transitional justice she had to deal with, she was accused of being a communist. These attacks contained a discourse of hate and violence implicitly addressed against Judge Barrios: "Shameless old woman, the shame of law professionals, she did not even restrain herself from going to have breakfast with her flatterers and who gave her money for selling her morals (...) she is as corrupt and a sellout as she is ugly" (A Conscious Citizen, May 11, 2013). Of the attacks that targeted her, Yasmín explains: "I think they wanted me to feel bad, they wanted me to cry, [that is] surely what they wanted and one of the mechanisms they used is to discredit me: that fool, she knows nothing" (E12FJA).

Both are clear examples of women in key positions, emancipated, who challenge a corrupt, violent and masculine system, denouncing corrupt practices and performing an honest and independent job; the attacks and attempts against the lives of the independent administrators of justice are samples of the violent responses by this system and by those who defend its continuity and permanence.



## b. Discrimination and racism

*“there are some women colleagues who, because they use wear their typical attire, they speak a different language, a Mayan language, are sometimes discriminated by our colleagues, so a male or female judge who speaks like that is an object of mockery for other colleagues” (E8MJB)*

According to the Convention for the elimination of all forms of discrimination against women (CEDAW, by its acronym in Spanish), discrimination against women is “all distinctions, exclusions or restrictions based on gender which have as its object or result, the diminishment or annulment of the acknowledgement, enjoyment or exercising by women, regardless of their marital status, based on the equality of men and women, of their human rights and fundamental liberties in the political, economic, social, cultural and civil sphere or any other sphere” (CEDAW, 1981)

Gender discrimination, identified by the women judges, is applied against them by two channels: internal (their male and female colleagues, subordinates, personnel, etc.) and external (the users and population where they perform their job). They are, in general, subtle daily expressions and at other times, they are more explicit.

The underestimation of women judges by personnel is inseparable from the stereotypes and socially-assigned roles of women; a woman judge narrates:

*“It fell to us [the judge, support staff and police officers] to go run an errand (...) and two police officers turn around and say to me: licenciada [bachelor degree title, in Spanish], I think you better wait for us here (...) and we will let you know what we find and then you document it in the writ, because you are not going to stand getting to the place (...) and we are not going to be carrying you, it's up to you, I say that you won't be able to stand it and you stay there, so it's best that you wait for us here” (E2FJA)*

La majority of women judges affirm that sexist mockery is very common among personnel and judges:



“that day the blinds were closed; but I was on the other side of the blinds and they did not realize it (...) they were all male district attorneys, defense lawyers, and they started to chat, I had just arrived and then, they said: look, they appointed her judge of criminal court. How is it that they appoint her to criminal court if criminal court is for men? They should have appointed her to family court (...), neither family nor criminal court; here in Jutiapa, she would be cooking” (E2FJA)

These daily jokes are clear macho expressions in which the skills of women are devalued and underestimated, and it is men who from their male position in society seek to affirm the traditional place for women: home. The fact that they are women with academic and professional achievements, among others, challenges masculine identity: “it is characterized by the domination of one gender over the others, which is why they seek to undermine women” (Garcia, 2015). Nevertheless, many of the women judges explained that they do not tolerate racist or sexist jokes in the courts under their charge.

“Discrimination also takes place between peers, many male colleagues, judges, treat women judges differently, negatively, they talk to their male colleagues with trust and fraternity, and they treat women as a sex object (...) they, in turn, may even feel flattered at a certain point, but if you look at it coldly, they are being sexually harassed, and disqualified” (E5FJA)

Besides comments about how they dress and look, women judges also speak about sexist content and the prevalence of a general idea: “the idea that women dress and act in a certain way in order to get promotions” (T2A).

Users also manifest discriminating practices and discourses in which they reject women's authority: “I had a case of violence against women, I summoned him, and the man arrived and said: ‘look, you are not going to put me in jail. It is not possible that a woman is going to tell me what to do’” (E2FJA). Authority, intimately linked to masculinity, is expressed as disobedience and rejection towards women judges.

The naturalization and normalization of machismo in daily life causes that women appropriate the discourses and practices of discrimination and



reproduce them among each other; one of the interviewed women judges told us: “one works better with men than with women, there are more problems when women lead other women, we women go ahead elbowing each other out instead of uniting, men are better, they are more faithful, more loyal” (E17FJD). Several of the women judges interviewed and who participated in focus groups, who expressed this idea, not only reproduce a sexist discourse but also a racist one.

It is difficult to identify gender discrimination, both for men as for women. Many of the male judges, and some of the female judges, stated that there is no discrimination within the Judiciary; for some other women judges, it is more evident. However, in the case of indigenous women judges, they are discriminated not only for her gender, but also for her ethnicity; this type of discrimination is easier to identify, and takes on subtle shapes in the daily workplace interactions with colleagues and, in more expressive ways, by the system users.

Race discrimination, in accordance with the Convention on the Elimination of all Forms of Racial Discrimination is

“all distinction, exclusion, restriction or preference based on race, color, lineage or national or ethnic origin which has as its object or outcome to annul or undermine the acknowledgement, enjoyment or exercise, in equal conditions, of human rights and fundamental liberties in the political, economic, social, and cultural spheres or in any other sphere of public life” (OACNUDH, 2006).

A woman judge stated: “sadly, I received a comment from a Magistrate of the Supreme Court, which is not from these days but from previous years, who asked a work colleague if I still wore my indigenous attire: And does she still wear her indigenous clothing?” (E29FJE)

Male judges are also discriminated for their ethnic appearance, as explained by a judge:

“Sadly, a stereotype that we have [about the] indigenous people is that they are ignorant, that they do not know; more than one person has said it, has mentioned it in recusal cases that they have filed: ‘that one is ignorant’; so it is difficult, but it is the hardest circumstance with





which we must deal (...) the one from the City of Guatemala, the lawyer who comes to the provinces, when they found out, because our last name gives us away, that is when they say that" (E24MJB)

Responding to racial discrimination within the Judiciary, a women judge explains:

"there was a court officer who was very cranky (...) she had a colleague who was indigenous (...) and said to her: 'don't you about helping out the lawyers and neither selling avocados in the market'; [she] filed a discrimination claim and it went to trial, and she was sanctioned, so here the justice system cannot allow that." (E15FJA)

The importance of denouncing those who discriminate establishes a precedent that validates their rights, but also works to stop the reproduction of racism.

The discrediting of the abilities of female and male judges for their gender and their ethnicity constrains the full exercise of their work. The historic context of some areas has affected the population and they may feel defensive about individuals assigned to new posts, specially if they do not belong to their community or nearby communities. One of the judges said:

"When I was appointed (...) to the area of Cotzal, Nebaj and Chajul, they do not accept women judges there, she cannot go there and be a judge if she is white, because that is what they call us (...) it is the population those who does not accept (...) when the mayor saw me there, he said 'she cannot be a judge' (...) and it is a conversation we had, I said to him: 'how difficult it is for a woman to be a judge of the Cotzal Peace Court, where they are macho to the core, and they do not want a woman and a white woman even less'"

The presence of a mestiza woman in a rural community with an indigenous population so harmed by the internal armed conflict explains the mistrust of the population; however, machismo is evident in this case by the rejection of a woman in a position of authority.

There are people within the Judiciary who seek to stop discrimination in subtler ways. As a judge explained, pertaining to racist and sexist jokes: "what most of



us do: we choose to leave and not laugh at the jokes, and that seems to have helped, and then sometimes the isolated comments: 'that is not a proper way to joke'; so, people have been understanding more and those types of jokes have been diminishing" (E24MJB)

On openness to change, a male judge explained:

"About the judges, yes, I feel as if the sensitizing has helped, but there are some who say that women are not going to win over us, that women are not equal to us, I have heard it from some judges, now the auxiliary personnel, they are very closed, they really say no, one cannot work with women, it is best if there are only men here, and with my peers, we opined that way at one time too" (E24MJB)

There are also courses promoted by judges' associations on sexual diversity; and it is heartening that there are judges who do not tolerate jokes or contemptuous comments with a sexist or racist content in their courts. The efforts within the Judiciary have sensitized some of the male and female judges and it is important that these continue to promote substantial change.

### **c. Sexual harassment and workplace harassment**

*"[the police officer] came with me, there was enough space behind (...) and then I felt his leg leaning on mine, so I moved aside, so then he turned on his side and started to rub his leg again. So I yelled at him: 'either you sit correctly or I will get you off the car!' (E2FJA).*

This comment evidences the harassment that women must live through every day, from judges to auxiliary personnel and secretaries. That is how it was expressed by some judges in individual interviews as well as in focus groups. It is of interest that most men interviewed say they do not know of harassment cases close by, being that it is one of the most common forms of violence against the women. Some of them have said, "I have heard of it, but not here" (E22MJD), some of them perceive that, as is the case with society in general, there is very little culture of denunciation.



It is important to highlight that the Law of Femicide and Other Forms of Violence does not include harassment as a crime; however, the CEDAW identifies sexual harassment as a manifestation of gender discrimination and a specific form of violence against women. Sexual harassment is a violation of fundamental rights, constitutes a health and safety problem in the workplace and an intolerable labor situation. It tends to occur very subtly; the victim, however, identifies it immediately. In the workshops, participants mentioned that harassment occurs “in exchange for favors from magistrates, judges, and administrative personnel” (T2A). And that “women are considered sexual objects, for wearing a short skirt, we are labelled as ‘sex workers’ and if women are in a bad mood, they are deemed as being sexually unsatisfied” (T1A).

According to the International Labour Organization, sexual harassment can take physical, verbal and nonverbal form (such as whistles, gestures, and presentation of objects). The victim suffers humiliation because it is a demonstration of male power over her. “They start seeking you out sexually and if they do not get anything or if they do get it, in order to get rid of her, they start messing with her in the workplace” (SITA).

Harassment goes from flattery: “One day I arrived with a green blouse and a lawyer tells me –typical compliment, right?—if this is how you look when you are green, how will you look when you mature” (E2FJA); to uncomfortable proposals.

Harassment is done not only by superiors, they also receive it from other employees, including police officers harass them: “I suffered a different treatment from police officers who want my phone number and when I refuse to give it to them, they get upset” (T3B).

The following interview illustrates how harassment occurs by taking advantage of power relations to resolve a claim filed against her, about which the supervisor insinuated that if she was affectionate with him he could avoid sending the claim to a hearing:

“In the afternoon a friend called me, dying with laughter, and another judge, and then I asked: ‘Why are you laughing?’ And he said, ‘look, you had a supervisory visit, right?’ And I said yes. And he said, ‘he wanted you to convince him some other way, that you be more affectionate with him (...) [now] he is going to send you to a hearing.’ If they dare to



do this with one who is a female judge, how are they not going to do it with the female auxiliary personnel, right?" (E2FJA).

The same judge explains about another harassment case:

"We were left alone in office and he said, 'I am not here to talk about work, I am here to talk to you (...) to know how you are doing (...) Why don't you come work in my region? I can propose a transfer for you to my region and I can take care of you well, improve your work conditions, you would be better off'" (E2FJA).

The harassment of women in the workplace is a grave matter, because it attempts against the dignity of women, it constantly denigrates them and being that is has become naturalized and invisible, even the interviewees do not recognize it and that is why they say they do not know of it or they see no evidence of it. Harassment is a form of violence against women that is intimately related with ways of being male. Women are treated as an object of satisfaction and they must be amenable to respond to this demand. This form of violence is deeply rooted, and it translates in individual attitudes that are reinforced by other men.

### **Workplace harassment - mobbing**

Another of the forms –which occur informally in work places—is workplace harassment. Male and female judges may be victims of discrimination and harassment internally, which affects the participation of women and sometimes generates violence, mainly psychological. In some interviews, workplace harassment or mobbing was identified. In this study it was reported solely by women and those who harass them have been men as well as women. It is possible that men decline to report it, as we will see further ahead.

When these situations occur, the mechanisms are: to file a claim or complain with the disciplinary board or the Public Ministry, depending upon the case. In 2016, only 29 of 933 were processed (3.10%), and 161 (17.25%) are pending. Of the 29, two were settled and the rest were given sanctions. Sanctions may be written or verbal admonitions, suspensions for a maximum of 30 days, and destitution. From 2014 to 2016, according to the Judiciary, there were no destitutions and of the 11 judges who were removed for that period, 7 of those



was due to their resignation (Judges and Magistrates file, Judiciary information request).

Of the cases known to this investigation, one of the solutions for cases of harassment is transferal. This does not solve the problem of harassment, it just moves it, since a person who harasses in one place will probably do it in any other workplace, if the problem is not addressed.

According to the interviews, workplace harassment occurs internally when somebody, some staff member from the court or other departments within the Judiciary, wants to maintain control and power over the court or over the decisions of the male or female judge. The following case illustrates these types of harassment and violence suffered by a woman judge for opposing corruption practices:

“when I arrived here there was a huge disadvantage, the personnel was very bad, they liked corruption, the secretary, well, there was tremendous corruption and she did not want another judge (...) the conflict was such that they started to attack me. Well, I said: ‘Why aren’t you here? There is a morning work schedule. It gradually turned into a huge problem. They started filing claims against me with the Disciplinary Board, at the Public Ministry; they tapped my phones at court, they tried to kill me not one, but several times, they stuck screws into my car tires, the situation I lived through was martyrdom” (E25FJB).

These kinds of workplace harassment can happen to men as well as women, but it is of interest that only women mentioned having workplace harassment experiences. Why did only women speak out? It is possible that more than one of the men interviewed were also victims of workplace harassment, but in order to maintain a strong, manly appearance, they did not speak. Women are probably considered an easier target of attack, a mechanism of rejection to the authority of a woman judge.

On the other hand, sexist and macho imaginaries are used when harassment takes place. When a woman judge finally began to be listened to by a male magistrate, and she gained the support of others, the secretary, who was the one who harassed her, met with the judge supposedly to reach an agreement;



instead, what she did was pray for the judge: “she kneeled here and started saying, ‘Lord, send the attorney a husband so that she can be at peace’, it was a prayer so long I felt as if it would never end, it was horrible’ (E25FJB). That phrase is loaded with sexism, minimizing the problem, suggesting that it is for lack of a partner that a woman may be conflictive or problematic. The harassment in this example shows the ways in which the exercise of power and control has been traditionally taught, with intimidation and threats, which are types of violence that may be attributed to masculinized forms of operation.

Thus, in daily life, subtle manifestations of sexism and discrimination against women appear in personal relations, in the form of jokes. One of the women interviewed explained: “they do play ugly jokes against women, but if they are the butt of unpleasant jokes, they don’t like it, they defend themselves and fight” (E27FJB). In several interviews they acknowledged that this type of situation happened and attributed it to something cultural within personal relations and they did not see it as subtle kinds of violence, discrimination or harassment. As a female judge states, “we cannot stop them from making gender-related jokes among themselves” (E15FCA). Another person explains that on many occasions, jokes and comments take place due to the trust and friendship that has grown among men as well as among women, and that does not mean “that the man is disparaging or devaluing her or is doing it with the purpose of making her feel lessened as a woman, maybe it is a consequence of that trust and the woman does not feel devalued” (E22MJD).

#### **d. Lack of safety measures**

Safety is a fundamental aspect of the work of justice, because women judges must resolve conflicts and make determinations in the commission of crimes and in many cases, they must try a person with economic or political power or who uses violence to exert pressure. And as will be seen in this section, the implications for women are different. Most of the people interviewed do not feel protected or supported by the Judiciary. The perception exists among men and women that when there are threats, there is no immediate response from the Judiciary: “The biggest challenge that we may face is to overcome the insecurity in which we live, the court does not give us security coverage. We live at the mercy of people, of crime, of the very litigants that come here feeling discontent, unfortunately sometimes it is possible to notice that they are discontent” (E24MJB). “I filed a claim at the security department of the



Judiciary and to this day, they have never provided security for me, they never sent me even one police officer” (E25FJB).

A magistrate explained that there are resource limitations in the Judiciary pertaining to security and that they give priority to the judges with higher risk: “we pay a great deal of attention to judges from High Impact and Major Risk courts. They all have armored cars, all have double security. The normal security that the Judiciary provides is a driver and one guard for the judges, that is the regular security, but, for instance, Mayor Risk judges have four or five security elements” (E15FCA). She also explained that if, for example, somebody has these elements assigned to him or her, and another case comes up, which is deemed at being of even higher risk, they take away the ese elements from the first person to assign them to the other person who is at higher risk.

Women worry about safety in their daily lives, it is not solely a matter of having a police officer to accompany them: “It would be very good to identify, because here we do not have women in security (...) it is different to be able to evaluate, maybe getting to know your geographic environment, your roles, too, as a professional woman, without dealing with these rings of security you have to have, without causing violence some individual mechanisms for your family (...) there must be judges who go to the market, a county market, so, what about your security there? ... male magistrates do not use that, none of them go to the market” (E3FCA).

Some of the female judges interviewed mentioned that the Judiciary does not evaluate or considers their security when they appoint some women judges of peace to specific places and the living conditions that will be available to them. The appointment to remote areas may also be considered as a measure to pressure or punish, as a woman judge explained: “I was appointed all the way there precisely because the Sentencing Court was angry with me because the Constitutional Court had ordered it to appoint me, therefore they sent me there, which was a very far away and inhospitable place, because they expected I would resign” (E2FJA).

On the one hand, in this type of situations, the different social and cultural conditions that women face are not acknowledged, especially in terms of being more exposed to an attack or sexual violence.



And what happens when one's car breaks down on the highway? As women we are exposed not only to robbery, but they may also attack our sexual liberty, a risk that is not the same for a man, so if I have an alternate male judge and an alternate female judge and I have a judgeship (...) in a department, I could consider sending my male colleague, because he faces less risks, less exposure than my female colleague does (...) for me, this does not necessarily imply that [she] does not have the capacity or conditions to perform the job, but I see it as different kinds of risk" (E2FJA).

On the other hand, it may be understood as the Judiciary taking a standpoint of equality and that it makes no difference or discrimination if it is a man or a woman, as was stated by a male judge:

In the case of the youth safehouse Virgen de la Asunción, the female colleagues complained much because they were being sent there to process personal exhibitions, they said 'men should be sent there', but that is not valid either (...); if you are appointed a judge, you have to go, not necessarily because it is nighttime or it is a prison, it means that a man must go; in that case, there would be no principle of equality (...) that is what they have authority for, you have to request the police authorities, first, that they protect you as a woman judge and secondly, that they allow you to work in there, so that is where I see that there should be no difference" (E8MJB).

Another woman judge narrates that on one occasion a judge told her: "I don't know what you fight for gender equality for, if later you are going to be crying about where you get sent" (E25FJB). These ideas reflect that the perception exists that equality means that actions taken must be the same, without taking into consideration the different conditions that exist between men and women.

Given the evident insufficiency in security measures, it is pertinent to ask if there is an interest in keeping male and female judges unsafe. May this be another control mechanism, such as there were during the internal armed conflict, to destabilize judges, to immobilize the justice system?





## 5. Psychosocial consequences

### a. At the individual level

In general, the male and female judges interviewed feel unprotected. Some of the interviewees did not allow the interview to be recorded because they did not feel safe, they feared that what they said became known. A woman judge who allowed herself to be recorded expressed: “many judges (...) feel fearful and unprotected by the system and often do not participate, quote-unquote, to avoid getting in trouble” (E12FJA). This judge was referring to internal pressures within the Judiciary.

She explains that male and female judges feel they are being controlled and, in order to intimidate them, they “use other mechanisms, such as refusing to give leave of absence to attend courses, not consider you for national and international trainings” (E12FJA). Within this internal control the male and female judges do not enjoy the independence needed to adjudicate and sometimes the punishment can cost them their jobs. A woman judge was fired for opposing that their male colleagues wanted to hide a theft within the court. She denounced it to the Public Ministry and was fired through an anomalous evaluation of her performance. She said she feels frustrated, that she suffered a profound injustice and that after giving her life to the justice system, they fired her without acknowledging all her work and without a pension. She cries while she talks, she looks overwhelmed. This judge requested an interview behind closed doors at a back room of a hotel, because she feels as if they follow her and watch her. She expressed that she cannot sleep and that her situation gives her constant anxiety and harms her life plans. In this way, mistrust invades relations and some people even mistrust the people in charge of their security.

Another woman judge opines that many judges “feel fearful and unprotected by the system and often do not participate, quote-unquote, to avoid getting in trouble” (E12FJA).

About outside threats, women judges believe that they never imagined the scope of the effects they would suffer until they experienced them: “because when one is asked about it, and one has not been threatened, one cannot



understand the magnitude of the feelings, of the risks that all of this will generate” (E2FJA). Threats and attacks affect all aspects of life, causes a feeling of not living in a safe world anymore. They sense that those who do things ethically and abiding by Rule of Law will be punished for it –be it internally or by outside actors. This state of vulnerability leads honest judges to resist these threats in their daily lives, but there are some who grow tired and adapt to the system out of fear. This pattern of psychological violence gradually permeates its victims by pretending to control the work of female judges through fear, causing effects such as illness, fatigue, headaches, insecurity, and sleeplessness.

### **b. Familiar**

“I got rid of all television sets at home because my family could no longer deal with the situation of, ‘the judge did this, the comments’ so I would say to them: ‘stop watching the news’” (E2FJA).

Both women and men suffer threats from system users, defense lawyers or the defendants. However, in the case of women, threats have the additional component of gender. As several of the female interviewees explained, women generally suffer threats that use their children in order to generate terror.

Another of the effects that women judges identified is changes in family dynamics. A woman judge said that, due to the threats she received, even her children developed phobias.

“It is hard for children, because sometimes they (...) do not understand the reasons for it directly, but they know that there are problems, (...) from the very first time when I started with the denunciations, the threats started, and they had to give me at court a security system (...); the message was ‘my mom is in danger, because there is a bodyguard with my mom all the time’ and that generates a great deal of anxiety for the children; we tried to talk to the kids and they understood, but I know of some judges whose children have developed huge phobias, they have witnessed some attacks (...). My daughter had a nightmare and said: ‘I feel as if 70 robbers are going to enter my home’ because the impact of seeing strangers, with arms, is not normal” (E16FCA).



The family feels the effects especially because they watch what the judges suffer:

“Terrible, they were even more affected because they would see that I was so upset, right? So it does impact my family a lot, because I, believe it or not, would go home and cry. One has to be strong, one has to have the character of a judge, that is what they tell you; but they are touching you in your being a woman, one's sensitive side, one cannot be as a stick in the face of so much injustice” (E25FJB).

The family system in its entirety suffers the impact when one of its members is affected, boys and girls perceive stressful situations in their families and may develop night terrors, school failure, diminished concentration, even spells of crying and panic attacks.

### **c. Social**

When judges feel attacked, they need social support. However, these kind of attacks cause fear to expand to nearby groups and that these move away from the target of attack; this is how they are made into instruments with which to generate fear among other judges, since they become examples of what may happen if they dare to confront the system of impunity: “in my case, I have been criticized a great deal, for the cases I have judged, so people move away, they take their distance from me because they don't want to be criticized in the same way, right? It should not be like this, but I believe it is a foolish way to act” (E12FJA).

This fear and anguish can be perceived in judges who requested that their interview not be recorded: “In this manner, it is possible to break the basic social networks of the victims, those based on the solidarity and trust of the group to which they belonged. They try to introject fear in people and to maintain it by way of reinforcements and following stimuli, in order to achieve social paralysis” (Paz-Bailey, 2004, p. 50).

When women transcend traditional norms and reach positions within the justice system and try to exercise their duties independently, they are criticized severely for not adapting to the implicit norms. Users as well as their peers



react negatively to the figure of a judge who dares to question the system. As explained previously, threats are made effective through social networks, direct threats or by discrediting. At the social level, the harm is reproduced and affects other women who might want to occupy those posts, who, even though they may admire the adjudications, do not want to be in a position in which they are criticized, and their private life is shared on social media. According to Aronson, the social communication that privileges negative emotions must make subtle use of these to provoke fear in their receptors, and argues that excessive fear can have a paralyzing effect, that it generates denial (1999, p. 93). Daily publications on social media about the hairstyle of a judge, her fashion style, the mockery, etc., could in the end prove more efficacious than a death threat.



## Conclusions and Recommendations

Guatemala has taken important steps to promote the participation of women in the justice system. In 2016, women represented 42% of judges and magistrates and the Judiciary counts with a Women's Secretariat, a gender policy, and special courts to try cases of femicide and violence against women. These advances have been achieved largely due to the persistent struggle of women and the support of the international community, within the framework of the Peace Accords implementation.

Without a doubt, one of the most significant changes between the past and present is the rising number of women in the Judiciary. Whereas in 1991 only 9% of the staff were women, in 2016 the percentage rose to 42%. However, from 2013 to date, there is a downward trend, which shows that the absence of specific policies to guarantee the parity and participation of women can impact their permanence. The growing numbers of women in the Judiciary have not been enough to achieve a transformation of interpersonal relations and power relations in the justice system. For this to happen, it is necessary to continue to provide gender workshops so that women and men are conscious and sensitized about gender; otherwise, male forms of leadership and power will continue to replicate.

This study proved that the Judiciary continues to be a hierarchic, bureaucratic and masculinized institution. The image of the male judge persists in the social imaginary and for women it is difficult to break with this paradigm, for many times, within and without the Judiciary, the legal authority of judges and magistrates is not acknowledged for their condition as women, and they are considered as weak, emotional and incapable of exercising judgeship. These prejudices are more obvious in the interior of the country, to the extent that auxiliary and administrative court personnel do not follow the instructions of women judges and their procedural subjects do not acknowledge their legal resolutions.

Entrenched sexism and practices of male dominance persist in the Judiciary, and many judges and justice officers –male and female—reproduce these practices almost unconsciously. For instance, justice officers continue to use male language, they repeat gossip and jokes that are denigrating to women, and practices of bullying and sexual harassment against women also exist. It is



concerning that sexual harassment within the Judiciary is silenced and naturalized. This demonstrates that, regardless of the charge or post that they occupy, women are always exposed to sexual and gender violence.

When female judges and magistrates challenge masculinized ways of exercising leadership and authority, they are discredited and excluded by their colleagues and other male officers of justice, who criticize them because they hold no authority. Men who also challenge these ways, or who confront the status quo, suffer criticism and discrimination. However, this study shows that the forms of social sanction and discrimination are different for women than for men.

The study also shows the external risks and internal reprisals faced by women judges and magistrates who act independently and with integrity. The case of judge Yasmín Barrios illuminates the insults from defense attorneys, the discrediting campaigns by pro-military and extreme rightwing groups, and the attacks against her by gang members and organized crime groups. This in addition to the marginalization she has suffered by her colleagues and authorities of the Judiciary. However, it also demonstrates the integrity and courage of an impartial judge who has adjudicated sentences of historic importance for the nation.

Harassment, threats, disparagement, and attacks cause negative psychosocial effects for justice officers. Several male and female judges interviewed stated having suffered illness, fatigue, headaches, chronic insecurity, fear and sleeplessness. They also manifested concern for the safety of their families and that they fear public spaces. Moreover, these types of harassment and attacks generate fear among other judges and magistrates, who prefer to recuse themselves from trying high impact cases that involve politicians, businesspeople or members of organized crime.

The Judiciary offers courses and workshops on gender equality, but these are provided mainly for male and female judges who hear cases categorized as gendered, such as family court and femicide court, whereas gender education should be part of the education of all judges of the Judiciary Studies School, and should be included in the continuing education courses that judges must take nationwide. It is important to consider that gender education processes



can contribute to the transformation of traditional masculinity and prevent sexist practices within the justice system and in the services it provides.

## **Recommendations**

It is important that the State of Guatemala implements the National Action Plan of Resolution 1325. The Interinstitutional Table on Women, Peace and Security of Guatemala, of which the Judiciary is part, presented in 2017 its National Action Plan and it is imperative that all State institutions adopt specific programs to promote the participation of women and prevent new forms of violence against girls and women. Interinstitutional coordination and alliances with women's organizations in civil society are important for the implementation of the Plan.

It is necessary that the Judiciary strengthen the Secretariat of Women and Gender Analysis, as well as the Indigenous Peoples' Secretariat, to encourage a greater participation of women and indigenous people within the Judiciary; it is also important that mechanisms of parity between men and women are established in gender policies.

The Judiciary must incorporate gender education and sensitizing at all levels of internal education, from the training of peace judges to specialized courses for magistrates of the Supreme Court. Gender education must transcend its focus on women, that is, it should not be limited to the treatment of women and the application of the law in cases of violence against women, but also include the transformation of traditional masculinity and gender relations within the Judiciary. It should also seek the collaboration of national universities so that gender education begins in Law school.

The Judiciary should create a clear regulation in order to hear and judge cases of sexual and work harassment among the personnel, and should promote a campaign to prevent these kinds of practices within the institution. Furthermore, it should strengthen the programs and the safety measures for judges and magistrates, considering the factors specific to women. For this to occur, it is necessary to increase security resources and personnel, to be able to guarantee protection for judges.



The media must play an important role in illuminating the work of women in leadership positions in a positive way and thus, promote new role models to inspire other women and youth. Therefore, it is necessary that the media also receive gender education.





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Impunity Watch is an international NGO seeking to promote accountability for past atrocities in countries emerging from a violent past. IW promotes an integrated and participatory approach to transitional justice and produces research-based policy advice. IW aims to assist communities affected by violence and local organisations to have a stronger voice in policymaking for transitional justice.

The programme "Tackling Violence against Women beyond Borders: Burundi, Guatemala & Liberia" is implemented by a consortium composed of Oxfam-Ibis and Impunity Watch. It aims to promote a life free from violence and as active citizens for women, adolescents and girls. By empowering women as change agents, fostering greater awareness of gender equality and women's rights, while enhancing the prevention and response to violence against women by public institutions and regional and international authorities, it seeks to address unequal gendered power relations through a transformative approach. The programme is financed by the "Funding Leadership and Opportunities for Women" (FLOW) fund set up by The Netherlands Ministry of Foreign Affairs.

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