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Ms. Margaret Satterthwaite, UN Special Rapporteur on
the independence of judges and lawyers
Special Procedure Branch Thematic Engagement, Special
Procedures and Right to Development Division Office of the
High Commissioner for Human Rights OHCHR- UNOG CH -
1211 Geneva

Switzerland

2 July 2024

ARGENTINA: GENDER DIVERSITY SHOULD BE ENSURED IN THE HIGHEST COURT.

Dear Ms. Satterthwaite,

We have the pleasure to write to you on behalf of Amnesty International to express our deep concern regarding the recent nominations of two male candidates to fill vacancies in the Argentine Supreme Court of Justice (Supreme Court) - which were made without consideration for Argentina's national and international commitments and obligations to promoting gender equality. These nominations will result in an all-male composition of the court, marking a clear setback in gender diversity, that should be ensured in the highest court as a basic pre-condition for the Court's legitimacy, suitability, and commitment to human rights.¹

Argentina has ratified several international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and it has granted them constitutional hierarchy.

Therefore, it has assumed the responsibility at both the international and national level to promote gender equality. In this regard, as highlighted by the Special Rapporteur, "*States have an obligation to guarantee women's rights and ensure their full participation in the judicial and prosecutorial system. The mere adoption of laws and public policies will not change structural and systemic discrimination against women.*"² At the same time, your mandate has explained that the equal representation of women and men in the system of administration of justice is both an objective and an essential condition for the equal and effective protection of human rights and substantive equality.³

In addition, your predecessor has stated that "*[t]he judicial system must contain plural and diverse representation at all levels as a way of preserving and enhancing public confidence and the credibility, legitimacy and independence of justice institutions. [There is an] ...urgent need to promote the inclusion of women not only in the administration*

¹ As stated by the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul. A/HRC/17/30, 29th of April 2011, paragraph. 45.

² Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán Participation of women in the administration of justice. 25 July 2021. A/76/142, para. 87.

³ Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán Participation of women in the administration of justice, op. Cit., para. 19.

of justice, but also in the highest positions of responsibility in that area.”⁴ In this sense, gender diversity in public office and decision-making spaces is not an option but a legally binding obligation stemming from Argentina's commitments upon ratifying various international instruments, including the CEDAW.⁵

Despite the duties assumed by the State and the measures implemented so far, there are still serious inequalities in access to high-ranking positions in the State in general and, especially, in the Judiciary.⁶ Women occupy only 31% of the positions of magistrates and judges in the national and federal justice systems,⁷ and only 29% of the highest authorities of the Judiciary.⁸ This gender gap is mainly observed at the highest positions, even though 57% of the staff of the Judiciary System⁹ is comprised by women.¹⁰ Furthermore, throughout the history of the Argentinian Supreme Court of Justice, only three women have served as judges, while 104 men have held this position¹¹.

The obstacles that women face to achieve high-ranking positions can be attributed to prejudices and stereotypes, difficulties in reconciling personal and professional life, the shortage of effective mentors and support networks, the clash with the “glass ceiling” or the lack of transparency in the appointment procedure.¹² Therefore, it is essential that states comply with their general obligation to take all appropriate measures to eliminate discrimination against women in the political and public life of the country,¹³ that prevents them from occupying high positions in the judiciary. In particular, the CEDAW Committee has highlighted that *“it is essential to involve women in public life, to harness their contribution, to ensure that their interests are protected, and to fulfill the guarantee that the enjoyment of human rights is universal, regardless of the sex of the individual. The full participation of women is essential, not only for their empowerment, but also for the advancement of society as a whole.”*¹⁴ However, Argentina is the only State in the Ibero-American region with no women sitting at the highest court of justice or supreme court.¹⁵ In order to address this particular inequality, according to the Committee’s General Recommendation No. 23 on women in political and public life, States parties have a responsibility, when it is within their control, to appoint women to senior decision-making roles.¹⁶

Since the resignation of the former Justice Elena Highton de Nolasco from the Supreme Court of Justice on November 1st, 2021, the highest court is composed of four male members out of a Court of five judges. At the end of 2024, a new vacancy will open up due to the retirement of one of the judges.

⁴ Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán. Independence of judges and lawyers. 13 July 2022. A/77/160. Para. 86. This point has also been raised by the Special Rapporteur, Gabriela Knaul. In the Report A/HRC/17/30. 29 April 2011. Para 45 & 48.

⁵ Executive Branch. Decree 222/03. Procedure for the exercise of the power that section 99, subsection 4 of the Constitution of the Argentine Nation confers to the President of the Nation for the appointment of the justices of the Supreme Court of Justice of the Nation. Regulatory framework for the pre-selection of candidates to fill vacancies. Available at: <https://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/86247/norma.htm>

⁶ ELA. Women in power, available at: <https://www.muieresenelpoder.org.ar/monitoreos-electorales-cupo-paridad.php?a=2024&i=25>. Updated as of March 2024; SIGEN. Gender Policy Observatory. Women’s Participation in the National State. 2021.

https://www.argentina.gob.ar/sites/default/files/presentacion_pp_genero_julio_2020-02.pdf

⁷ Women’s Office of the Supreme Court of the Nation. Gender Map of Argentine Justice. Edition 2023.

<https://om.csjn.gob.ar/consultaTalleresWeb/public/documentoConsulta/verDocumentoById?idDocumento=200>

⁸ *Idem*.

⁹ The Argentine judicial system as a whole comprises the Supreme Court of Justice, the National Attorney General’s Office, the National Public Defender’s Office, the National and Federal Courts, the provincial justice systems and the justice systems of the Autonomous City of Buenos Aires.

¹⁰ Women’s Office of the Supreme Court of the Nation, *op. Cit.*, p. 14.

¹¹ Argentina Supreme Court of Justice. <https://www.csjn.gov.ar/institucional/jueces/historicos>

¹² Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán Participation of women in the administration of justice, *op. Cit.*, para. 33.

¹³ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979, art. 7.

¹⁴ CEDAW. General Recommendation No. 23: Political and Public Life, A/52/38, 1997. Para. 17.

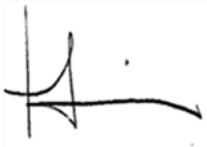
¹⁵ CEPAL, Gender Equality Observatory (2021). Judiciary: percentage of women ministers in the highest court of justice or supreme court. <https://oig.cepal.org/es/indicadores/poder-judicial-porcentaje-mujeres-ministras-maximo-tribunal-justicia-o-corte-suprema>

¹⁶ CEDAW. General Recommendation No. 23: Political and Public Life, A/52/38, para. 26; CEDAW, Draft General Recommendation No. 40: Equal and Inclusive Representation of Women in Decision-Making Systems, para. 60.

The judges of the Supreme Court are chosen through an indirect mechanism (Decree 222/2003), in which the President proposes candidates and the Senate consents to their appointment with a two-thirds majority vote. The Executive Branch had the opportunity to reverse gender underrepresentation in the Supreme Court; however, the President has proposed two men to serve on the country's highest court,¹⁷ which leaves the Senate without options to strike a balance in terms of gender equality and would exacerbate gender inequality and the lack of parity in the Judiciary. Those designations aren't effective yet since they require the agreement of two-thirds of the votes by the Senate. However, there is still no public information about when the Senate will schedule the public hearing of the candidates where civil society representatives can ask them questions and make observations.¹⁸

In view of this situation, we are writing to you to request your intervention to draw the attention of the Argentinian President and Congress and urge them to fulfil their international human rights obligations regarding gender equality. It is crucial to grant diverse and plural representation in the Supreme Court, which is essential to ensure its legitimacy, suitability, and commitment to human rights.

Sincerely,



Mariela Belski
Executive Director
Amnesty International Argentina

¹⁷ See official web page of the Honorable Chamber of Senators of the Argentine Congress, where the Executive Branch sent on May 28, 2024 the nomination of Ariel Oscar Lijo and José García Mansilla as judges of the Supreme Court of Justice of the Nation. Available at: <https://www.senado.gob.ar/parlamentario/comisiones/verExp/37.24/PE/AC> and <https://www.senado.gob.ar/parlamentario/comisiones/verExp/36.24/PE/AC>.

¹⁸ Senate of the National Congress. Rules of procedure. <https://www.congreso.gob.ar/reglamentoSenado.pdf>