

International Seminar

# The Challenges of Gender Mainstreaming in the Administration of Justice in Ibero-America

17-18  
- MAY 2023 -

Santiago, Chile



COMISIÓN PERMANENTE DE  
GÉNERO Y ACCESO A LA JUSTICIA



PODER JUDICIAL  
REPUBLICA DE CHILE

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## CONCEPT NOTE

### International Seminar “The Challenges of Gender Mainstreaming in the Administration of Justice in Ibero-America”

#### I. Context

The “Gender Equality Policy to be implemented in the organizational and operational structure of the Ibero-American Judicial Summit”, approved at the Plenary Assembly of the XVIII edition in 2016, establishes between the Summit countries that “(...) *the Judicial Summit, with the support of the Standing Commission on Gender and Access to Justice, will promote the exchange of experiences between the countries that make up the Summit, in order to foster dialogues that enrich the processes of incorporating gender mainstreaming within the Summit, as well as in the different judicial branches that make it up. This impetus will also be given to the production of studies that will make the difficulties visible that women in the region have in accessing justice.*” For its part, the “Gender Equality Policy to be implemented in the organs of administration of justice that belong to the Ibero-American Judicial Summit”, also approved at the Plenary Assembly of the XVIII edition of the Summit, establishes among its objectives to “*promote awareness and training for those who impart justice in order to judge with gender mainstreaming.*”

Between its lines of action, it expressly states the need to *“promote meetings and activities between Ibero-American judges to disseminate good practices and experiences in the administration of justice with a gender and non-discrimination perspective”*, among others.

The Commission has stimulated dialogue and reflection on gender mainstreaming and its continued incorporation in the judicial institutions of the region since the creation of the Standing Commission on Gender and Access to Justice of the Ibero-American Judicial Summit in 2014. This, with the purpose of the approval of the Declaration of Santiago, Chile, during the Plenary Assembly of the XVII edition of the Summit. Therefore, in its first integration, during the XVIII edition, the bases of its work were established, among them, the approval of the Plenary Assembly of the Gender Equality Policy to be implemented in the Summit and the policy model for the organs of administration of justice. A model for incorporating gender mainstreaming in judicial sentences was also made available to the Judiciary, and important dissemination actions were carried out, such as the First Ibero-American Meeting on Gender Equality and the Delivery of Justice, which was attended by representatives from the twenty-three countries that make up the Ibero-American Juridical Committee (IAJC). For its part, in the Commission of the XIX edition of the Summit - in addition to the various products and actions carried out - specific training actions for the Ibero-American Judiciary were implemented, including gender awareness workshops conducted by the Supreme Court of Argentina and workshops for the incorporation of gender mainstreaming in the administration of justice conducted by the Dominican Republic and Nicaragua. In the XX edition, dissemination and awareness raising activities continued on various topics, including a laboratory on mechanisms for the protection of women’s rights in America.

In order to fully comply with the guidelines established in the aforementioned policies and actions, the third objective of the work plan of the Standing Commission on Gender and Access to Justice of the XXI edition of the IAJC – which refers to the development of tools for incorporating gender mainstreaming in the adjudication/impartation of justice – approved this project whose purpose is to generate a space for reflection of an academic and international nature. This has the objective of analysing strategies for incorporating gender mainstreaming in the administration of justice. This will take up the experience of the analysis laboratories carried out by previous members of the Commission, in order to sustain and expand on the basis of evaluations and experiences that have already been verified.

## **II. Seminar Justification**

The international human rights framework contains specific obligations for States to ensure effective and equal access to justice for all persons. Both the universal human rights system and the Inter-American system consecrate the right of persons to be heard and to have access to judicial remedies of an equal footing. These rights make up what has been recognized as the right of “access to justice.”

In the Inter-American area, the right of every person to be heard is established in Article 8.1 of the American Convention on Human Rights, and implies, on the one hand, a formal and procedural area - in the sense of ensuring access with due guarantees to the competent body that will determine the right claimed - and on the other, an area of material protection that implies ensuring the capacity of the proceeding to produce the result for which it was conceived. For its part, Article 25 of the Convention requires that the remedies that the States provide to victims of a violation of their human rights are effective for the purpose of determining whether the violation has occurred and providing the necessary remedy. Therefore, States have the obligation of ensuring that every person has access to the administration of justice, and that the remedy - or rather, the actions - that are provided for, make it possible to achieve, among other results, the prosecution of those responsible and the obtaining of reparation for the harm suffered.

In the Universal Human Rights Protection System, we can identify several instruments that recognize and consecrate access to justice, such as the Universal Declaration of Human Rights, in Articles 8 and 10, and the International Covenant on Civil and Political Rights (ICCPR) in Articles 2, 3, 14 and 15. Specifically, Article 14 states, "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law (...)." In this matter, the United Nations Human Rights Committee in its General Comment No. 32, on the right to a fair trial and to equality before courts and tribunals, has stated "(...) the right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law." Therefore, to the extent that access to justice is fundamental to safeguard the rights of persons and groups that have been violated, it is the State's duty to adopt a set of measures to ensure the exercise of this right without discrimination.

Ultimately, access to justice must be understood as a fundamental right that imposes on the State duties of conduct in order not only to allow for access, but also to generate the conditions for this access to be possible and effective lifting the barriers that hinder this result, which implies that magistrates recognize the multiple discriminations associated with gender that are present in the cases submitted to them. Based on this, it acquires great value as a guarantee of protection for those groups that have always been excluded or discriminated against in society.

Given these mandates, gender mainstreaming as a methodological tool, reveals situations of disadvantage in treatment, access to opportunities, the exercise of power, access to resources, for people in situations of disadvantage or vulnerability in general, including women and girls. Therefore, incorporating gender mainstreaming in the administration of justice seeks to enable the judiciary to recognize and judge the cases that reach the justice administration, understanding and making visible the barriers that hinder equal enjoyment or the exercise of certain rights that a person claims and, consequently, to be able to interpret and apply the law, in light of the relevant national and international standards, in a way that does not perpetuate such discrimination and respects the principle of equality.

Having understood the above premise, it is necessary to inquire into the concrete way in which it can be implemented in judicial cases and the legal aspects that derive from it. Within the framework of the legal theory, a reflection has been generated in relation to the question of how to control judicial decisions and avoid arbitrariness. To this, the justification of judicial decisions is an element of the guarantee of due process. It is precisely in this area that gender mainstreaming in the administration of justice works as a tool for revealing gender biases, gaps and stereotypes that may interfere in judicial reasoning. It is a contribution in the line of granting rationality to decisions and avoiding arbitrariness.

When hearing a case, judicial operators may incorporate their own prejudices, stereotypes and gender values associated with how men and women should be and behave, which could result in them not being able to see the case or the situation in a comprehensive manner. It is in the field of evidence assessment, that is, in the discussion on the assumptions and conditions for affirming that a certain statement is proven, where the greatest challenges may arise regarding the use of biases, stereotypes and prejudices associated with gender, which also has an impact on the development of judicial reasoning.

The purpose of this seminar, therefore, is to generate a space for reflection where the experiences of those who impart justice and those who are dedicated to the study and teaching of law converge, in order to address in a broad manner, those technical, normative and practical aspects that are required for gender mainstreaming in judicial interpretation and argumentation.

### III. Objective of the Seminar

To analyse those critical points in which gender mainstreaming should be effectively incorporated in judicial decision making, in order to overcome gender biases, gaps and stereotypes that could influence judgment, with a jurisdictional approach and contributions from academia.

### IV. Methodology

The international seminar is a two-day, in presence seminar, held in collaboration with national and international organizations working on gender and human rights issues. The speakers will be experts in the chosen topics including judges who can share their experience.

The activity will take place in Santiago, Chile and is organized by the Standing Commission on Gender and Access to Justice of the Ibero-American Judicial Summit and the Chilean Supreme Court. It is sponsored by the Universidad de Chile, the Chilean Judicial Academy, the Network of Latin American Academics in Law (Red ALAS) and the International Association of Women Judges (IAWJ).

The seminar will have an inaugural conference and then five lectures with national and international speakers and will end with six simultaneous workshops for the attendees.

- The inaugural lecture block will last 75 minutes. It will consist of a presentation by the invited expert (30 minutes) and a question-and-answer session to explore certain topics in greater depth. For this purpose, a prominent jurist is invited to serve as interviewer. This second part will last 45 minutes.
- Each panel of experts will last approximately 90 minutes and will have the following structure: a moderator who will be a commissioner or a member of one of the institutions sponsoring the event and two or three speakers selected for their expertise in the relevant topics defined by the organization. The moderators will introduce each speaker and control the time of the interventions. It should be noted that each speaker will have 20 minutes for his or her presentation. In order to allow for effective participation, the moderators should be strict with the time limits and emphasize to the speakers that their interventions cannot exceed 20 minutes. Each panel ends with a 30-minute constructive dialogue with questions from the audience selected by the moderator. The questions must be formulated in writing on the paper supplied by the organizing team for such purposes.

- The objective of the workshops is to reflect on emerging issues through the analysis of a judicial decision. The purpose is to provide a space for reflection to the participants, in an informal environment that allows for a greater interaction. To this end, they will have a maximum of 15 people and will be supported by a pair, consisting of an expert on the topic and a member of the judiciary.
  - o For each workshop, a judicial decision will be selected and a working draft with a conceptual introduction and normative references will be prepared.
  - o The workshop will be conducted for two hours as follows: i) Presentation of the topic by an expert; ii) Problematization of the central issue addressed in the judicial decision through the presentation of the case by the member of the judiciary; iii) Then, an interactive dialogue will be developed in which the academic will be the moderator and will formulate the three questions that the group will work on; iv) Conclusions; v) Closure. There will not be a coffee break, but it will be made available in the hall.
  - o For the workshops, attendees must apply in advance (online) pointing out what their choice is, indicating three topics from most to least interest. The organization of the event, based on the responses received, will assemble the groups of participants, taking into consideration a geographic and parity balance.

## Target Audience

150 people are expected to participate each day. The participants of the seminar are the following:

- Magistrates from the Judiciaries of Ibero-America (2 persons per country: 44 people in total)
- Magistrates from the Chilean Judiciary (Judicial Branch) (44)
- Members of the Gender Commission of the IAJS (12)
- National and foreign speakers (16)
- Representatives from relevant institutions of the administration of justice.  
(Chilean Public Prosecutor's Office, Public Defender's Office, Chilean Police (Carabineros de Chile), Chilean Investigative Police (PDI), Ministry of Foreign Affairs, Ministry of Justice and Human Rights, Ministry of Women and Gender Equity, National Service for Women and Gender Equality (Sernameg)) (30)



**PROGRAM**

International Seminar “The Challenges of Gender Mainstreaming in the Administration of Justice in Ibero-America”  
 May 17<sup>th</sup> and 18<sup>th</sup>, 2023  
 Santiago, Chile

Activity organized by the Standing Commission on Gender and Access to Justice of the Ibero-American Judicial Summit and the Chilean Supreme Court of Justice; sponsored by the International Association of Women Judges (IAWJ), the Chilean Judicial Academy, the Universidad de Chile, and the Network of Latin American Academics in Law (Red ALAS).

| TUESDAY, MAY 16 <sup>th</sup> , 2023 |                                  |                  |
|--------------------------------------|----------------------------------|------------------|
| Schedule                             | Activity                         | Location         |
| All day                              | Arrival of participants to Chile | Santiago Airport |

| WEDNESDAY, MAY 17 <sup>th</sup> , 2023 |                 |   |  |
|--|-----------------|---|--|
| 8:15 AM                                | 45 minutes      | Transfer<br>From the Sheraton Hotel to the Supreme Court of Chile |  |
| 8:30 AM                                | 30 minutes      | Accreditations<br>Supreme Court Honour Room                       |  |
|  | <b>ACTIVITY</b> | <b>TOPIC</b>  | <b>SPEAKERS</b>  |
| 9:00 AM                                | Start of Event  | Welcome Remarks   | - Chilean Supreme Court President, Minister Juan Eduardo Fuentes Belmar. |



|  |  |   |   |
|--|--|---|---|
| 9:45 AM  | 45 minutes   |   | <ul style="list-style-type: none"> <li>- President of the Permanent Commission on Gender and Access to Justice, Minister in charge of Gender Affairs of the Chilean SCJ, <b>Minister Andrea Muñoz Sánchez.</b></li> <li>- Universidad de Chile rector, <b>Dr Rosa Devés Alessandri.</b></li> <li>- President of the International Association of Women Judges. Judge Susan Glazebrook.</li> </ul> |
| 09:45 AM to 11:00 AM   | Inaugural Conference<br>75 minutes   | <b>Gender Mainstreaming in law and legal education</b>  | <b>Sandra Fredman (Oxford University)</b><br><br><u>Interviewer:</u><br>Judicial Academy Director, Juan Enrique Vargas Viancos.   |
| <b>Coffee 11:00 AM to 11:20 AM</b>                             |  |   |   |
|  | <b>TOPIC</b>   | <b>SPEAKERS</b>   |   |
| 11:20 AM to 12:20 PM   | <b>Gender Mainstreaming as a new constitutional paradigm: the experience of Chile and Colombia</b><br>60 minutes | <b>FIRST PANEL</b><br><b>A. "The incorporation of Gender Mainstreaming in Colombian constitutional law."</b> Dr Isabel Cristina Jaramillo Sierra (Colombia) (Red ALAS).<br><b>B. "Gender Mainstreaming and the new constitution process."</b> Academic at Universidad Austral de Chile, Dr Yanira Zuñiga Añazco (Chile).  |   |
| <b>OFFICIAL PHOTO OF THE PARTICIPANTS 12:20 PM to 12:30 PM</b> |  |   |   |
| <b>Cocktail lunch 12:30 PM to 1:30 PM</b>                      |  |   |   |
| 01:30 PM to 02:15  | Transfer   |   | <i>SHERATON HOTEL</i>   |
| 03:00 PM to 04:30 PM   | <b>Scope of the Gender Mainstreaming in Judicial Reasoning</b><br>90 minutes                                     | <b>SECOND PANEL:</b><br><b>A. Gender Mainstreaming in the judicial rational activity.</b> Academic at Universidad de Chile, Dr Flavia Carbonell Bellolio (Chile).<br><b>B. Comprehensive analysis of gender mainstreaming: its link with the standard guarantee of impartiality.</b> Former Special Rapporteur on the independence of judges and lawyer of the United Nations, Mr. Diego García-Sayán (Peru).<br><b>C. Gender Mainstreaming as a guarantee of access to justice for women.</b> Minister of the Court of Appeals of Copiapó, Dr Marcela Paz Araya Novoa (Chile). |   |
| <b>Coffee Break - 04:30 PM to 05:00 PM</b>                     |  |   |   |
| 05:00 PM to 06:30 PM   | <b>Contributions of gender mainstreaming to addressing stereotypes in evidentiary reasoning</b>                  | <b>THIRD PANEL:</b><br><b>A. Stereotypes and case law of the Inter-American Court of Human Rights.</b> Lecturer and Director of the Human Rights Center of the Law School of Universidad Diego Portales. Lidia Casas Becerra (Chile).<br><b>B. Utility of gender mainstreaming: stereotypes and valuation of evidence.</b> Adjunct Researcher at National Scientific  |   |



|  |  |  |
|--|--|--|
|  | <b>(first part)</b><br><br><b>90 minutes</b> | Universidad Blas Pascal, Dr. Federico José Arena (Argentina).<br><b>C. Witness and expert evidence with a gender perspective.</b> Associate Lecturer in the Academic Department of Law at the Autonomous Technological Institute of Mexico (ITAM), Dr. Raymundo Gama Leyva (Mexico). |
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**THURSDAY, MAY 18<sup>th</sup>, 2023**

|  | <b>TOPIC</b>   | <b>SPEAKERS</b>  |
|--|--|--|
| <b>09:00 AM to 10:30 AM</b>                        | <b>Contributions of gender mainstreaming to addressing stereotypes in evidentiary reasoning (second part)</b><br><br><b>90 minutes</b> | <b>FOURTH PANEL</b><br><b>A. The criminal standard of proof and gender mainstreaming.</b> Dean of the Faculty of Law and Social Sciences at the Universidad Austral de Chile, Dr. Daniela Accatino Scagliotti (Chile),<br><b>B. Legitimate defence and gender.</b> Coordinator of the research group “Feminist Criminal Doctrine” and Lecturer at the Law Faculty of the Universidad de Buenos Aires (Red ALAS) Dr Julieta Di Corleto (Argentina).<br><b>C. Evidentiary issues in crimes of gender violence,</b> Minister of the Court of Appeals of Concepción, Rodrigo Cerda San Martín  |
| <b>Coffee Break - 10:30 AM to 11:00 AM</b>         |  |  |
| <b>11:00 AM to 12:30 PM</b>                        | <b>Applying gender mainstreaming and the intersectional approach in Latin America</b><br><br><b>90 minutes</b>                         | <b>FIFTH PANEL</b><br><b>A. Approach to gender issues and the intersectional focus in Inter-American case law.</b> Lawyer. Master’s degree in law. Lecturer of Human Rights, Gender and Constitutional Law, Mariano Fernández Valle (Argentina).<br><b>B. Gender mainstreaming as a key tool for advancing the recognition and protection of LGBTIQ+ people in Latin America.</b> Vice Rector of Institutional Relations with the Environment of the Universidad de Concepción (Red ALAS), Dr Ximena Gauché Marchetti (Chile).<br><b>C. The relevance of the intersectional approach for the effective protection of indigenous women’s rights.</b> President of the Constitutional Court of Chile, Dr Nancy Yañez Fuenzalida (Chile). |
| <b>Lunch at Sheraton Hotel 12:30 PM to 1:30 PM</b> |  |  |
| <b>01:45 PM to 04:00 PM</b>                        |  | <b>Simultaneous workshops</b>  |