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Judging with a Gender Perspective to Guarantee Access to Justice for Women and Girls

EQUIS: Justicia para las Mujeres A.C. (EQUIS)¹

I. JUDGING WITH A GENDER PERSPECTIVE

Mexico has one of the highest rates of violence against women in Latin America: Almost 7 out of 10 women have suffered from it.² However, few women get access to the justice system, partly because of persistent social, cultural, and economic barriers, but also largely because of mistrust in Mexico's justice institutions³—due to high rates of impunity in the

country. Between 2014 and 2018, only 5 out of every 100 cases in which women denounced an assaulter resulted in a sentence.⁴

Unfortunately, not even the cases the judicial powers receive are guaranteed a fair sentence. At EQUIS Justicia para las Mujeres (EQUIS), we have observed actions and judicial decisions based on prejudices and gender stereotypes that contribute to invisibilization, impunity, and the persistence of violence over

About the Series

Gender-based violence (GBV) affects one in three women worldwide, making it an urgent and important policy challenge. Many countries around the world have passed laws intended to protect women from violence, yet violence persists. Over the past year, the COVID-19 pandemic has raised awareness of the perils women face from gender-based violence—what has come to be known as the “shadow pandemic”—but it has also aggravated risk factors while increasing barriers to protection, support, and justice.

This publication aims to focus on the intersection of gender-based violence and the rule of law by examining how legal frameworks, judicial system responses, and public policy contribute to the ways in which gender-based violence is—and is not—addressed around the world. Each piece addresses the complicated challenge of gender-based violence and the successes and failures of various public policy responses globally, and offers recommendations for a path forward.

long periods of time—in part because of the lack of training of jurisdictional personnel. For example, an analysis of 100 sentences in 2017 by the Red por la Ciudadanización de la Justicia (Citizen Network for Open Justice) found that 85 percent of judges did not take into account how power and gender relations influenced their cases; 69 percent failed to assess the victim’s risk and to dictate protection orders; 79 percent did not respect the norms of human rights protections; and 86 percent did not dictate measures to repair the damage.⁵

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For women, the possibility of accessing justice and having their rights restored is almost nonexistent, since they are frequently assisted by public servants who lack comprehensive training on gender and intersectional perspectives (as established by specialized national and international organizations).

The obligation to judge with a gender perspective is not new; it is found in several binding international instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁶ and the Convention of Belém do Pará,⁷ both of which establish the obligation to guarantee women legal protection of their rights with competent courts and adequate measures to eradicate discrimination. In addition, these conventions compel states to have fair and effective legal procedures for women that include protection measures, a timely trial, and effective access to such procedures, as well as other rights. Mexico’s Supreme Court, particularly since the 2011 reform,⁸ has been developing a solid jurisprudence line in order to establish the obligation of judging with a gender perspective, paying special attention to the conditions women face in judicial processes. Through various judicial resolutions, the court established an obligation to

apply such methodology in all cases, with the purpose of eliminating stereotypes, verifying situations of inequality of power, and meeting the needs of groups in special situations of vulnerability.⁹

II. CRITERIA FOR THE SUITABILITY OF TRAINING

One of the main challenges that Mexico faces in fulfilling the aforementioned obligations is that judicial powers do not regard the training as essential.

In 2017, EQUIS found that 34 percent of judicial trainings in Mexico were, in reality, academic diffusion events (conferences, forums, presentations); 75 percent had a short duration; 36 percent covered general content or content unrelated to the matter; 37 percent were taught by personnel without the required expertise; and none included an evaluation strategy to verify if the training had had a significant impact on the administration of justice.¹⁰

Based on these results, EQUIS developed six minimum suitability standards required to move judicial training processes away from institutional simulation, in order to achieve adequate results and guarantee access to justice for all people:

- a. Implement activities that represent true teaching-learning processes (events should not be limited to conferences or lectures).
- b. Make enough time to address all subjects contemplated in the training program, while digging deeper into questions that are more complex or relevant.
- c. The content shared during the training must be adequate, allowing judges to offer judicial attention according to the highest national and international standards regarding human rights and gender.

d. Training must be given by specialists who possess extensive knowledge and experience in the matter, as well as a deep understanding of the tasks judges perform daily. Additionally, these specialists must have teaching experience in the judicial field.

e. Contemplate a strategy of continuous and rigorous evaluation, based on excellence and the objective standards previously established.

f. The training programs must be designed to address the specific duties of magistrates, judges, secretaries, officials, administrative employees, and other judicial assistants, in order to make possible for each judicial officer to improve access to justice for everybody.

III. EQUIS'S EXPERIENCE IN JUDICIAL TRAINING

In line with the standards developed, since 2013 EQUIS has facilitated training processes aimed at different state courts in Mexico. During this time, we have asked ourselves, has the training really changed the way women receive justice?

Alarmingly, we have found that there are multiple states where millions of pesos have been invested in judicial training, yet the sentences issued by their courts are still discriminatory and allow or protect violent acts against women. In this regard, it is necessary to clearly determine whether the training is being effective enough—and what other measures must be taken to further ensure its effectiveness.

Therefore, we've developed comprehensive training processes that contain a gender and human rights approach and an intersectional perspective. Such training also contains pedagogical tools and citizen participation to help match the needs of the participants with the justice needs of women. We have provided judicial training to more than 10 states in the country, including Nuevo León, Guanajuato,

Puebla, Jalisco, Quintana Roo, Oaxaca, Coahuila, Tlaxcala, Mexico City, and Yucatán.

In the case of Poder Judicial del Estado de Nuevo León (Judicial Power of Nuevo León), EQUIS has facilitated workshops and open spaces for dialogue about judging with a gender perspective, in order to educate judicial officials about gender-based violence and discrimination against women. During the workshops, we have discussed: (1) gender-based violence against women, its consequences, modalities, and areas in which it takes place, as well as the existent stereotypes about women who suffer violence, (2) the obligation of enhanced due diligence in cases of gender-based violence, (3) the obligation to judge and make comprehensive assessments of evidence and reparation measures with a gender perspective, and (4) the need to reinforce a preventive approach to femicidal violence, through the issuance and monitoring of protection orders¹¹ as mechanisms of quick, simple, and comprehensive action to specifically protect women at risk of gender violence.

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IV. WHAT IS NEXT?

To accomplish justice in equality and nondiscrimination, we need trained and updated personnel who fulfill their obligation to judge using a gender and human rights perspective, in order to guarantee access to justice for all women.

Training of jurisdictional and administrative personnel in the country's courts should no longer consist of isolated events and activities. Training on judging with a gender perspective means responding to the obligations and recommendations of national and international organizations. It implies that institutions must designate enough resources to personnel training, apply suitability standards throughout the process of planning and executing the training, and monitor its impact.

It is also necessary to establish mechanisms that evaluate the training results. These mechanisms must be built in collaboration with civil society organizations that face the challenges of the lack of justice in Mexico. The opportunity of opening justice to citizens is key for institutions in order to identify, through the voices of women and civil society, the areas of opportunity in the training of judges.

An example of the latter is Oaxaca, where EQUIS, together with local organizations and the state judiciary, promoted the foundation of the Citizen Consultative Council, which aims to issue observations and recommendations about the judicial training process. This includes the definition of important indicators, such as the analysis of sentences, that will allow us to try to make gender perspectives and intersectionality a fundamental part of the legal rationale in all cases.

NOTES

1. EQUIS: Justicia para la mujeres (EQUIS), A.C. is a feminist organization based in Mexico City that works to transform institutions and public policies and strengthen women's leadership to improve access to justice for all women. EQUIS contributes to creating conditions where women can exercise all of their human rights in a context that's free of violence and discrimination.
2. National Institute of Statistics and Geography (INEGI, by its Spanish acronym), "National Survey on the Dynamics of Household Relationships" (ENDIREH, by its Spanish acronym), 2016, https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2020/Violencia2020_Nal.pdf.
3. In a survey carried out by INEGI, it was registered that only 14.8 percent of the people surveyed mentioned that they had a lot of trust in the judges of Mexico. INEGI, "National Survey on Victimization and Perception of Public Safety" (ENVIPE, by its Spanish Acronym), 2019, https://www.inegi.org.mx/temas/percepciondes/default.html#Informacion_general.
4. Arturo Angel, "In Five Years, Only 5 Out of 100 Complaints of Sexual Abuse and Rape Obtained a Conviction," *Animal Político*, February 4, 2021, <https://www.animalpolitico.com/2021/02/5-cada-100-denuncias-abuso-sexual-violacion-sentencia/>.
5. EQUIS, "No es Justicia," 2019, <https://equis.org.mx/wp-content/uploads/2021/02/noesjusticia.pdf>.
6. United Nations, "Convention on the Elimination of All Forms of Discrimination Against Women," December 18, 1979, <https://www.ohchr.org/sp/professionalinterest/pages/cedaw.aspx>.
7. Organization of American States, "Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women," June 9, 1994, <https://www.oas.org/es/mesecvi/convencion.asp>.
8. In June 2011, the Federal Congress reformed the Mexican Constitution to recognize the authorities' obligations to respect, protect, promote and guarantee human rights, those written in the Constitution and all those stated on international treaties signed by Mexico.
9. Supreme Court of Justice of the Nation (SCJN by its Spanish acronym), First Chamber 1a./J. 22/2016 (10a.), "Access to Justice in Conditions of Equality. Elements for Judging with Gender Perspective," April 15, 2016.
10. EQUIS & Transversal, "Judicial Training on the Rights of People with Disabilities," 2019, https://equis.org.mx/wp-content/uploads/2019/09/La_Capacitacion_Judicial_en_Derechos_de_las_Personas_con_Discapacidad.pdf.
11. Those contained in the General Law on Women's Access to a Life Free of Violence.



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