

The Role of the Judiciary in Addressing Wrongful Stereotyping
Workshop with Judges and the Gender Unit of the Supreme Court of Argentina
23 November 2017 (tentative)
Draft Concept Note

1. Introduction

The workshop aims to consider the role that the judiciary in Argentina can play in upholding women's rights by addressing harmful gender stereotypes and wrongful gender stereotyping, interrogate the impact of judicial stereotyping in cases concerning gender-based violence (GBV) and sexual and reproductive health and rights (SRHR), and facilitate the development of concrete follow-up actions. Although the workshop will draw on extensive research, including a global comprehensive review of case law, conducted by the United Nations Office of the High Commissioner for Human Rights (OHCHR), it will also seek to provide a space for judges to exchange experiences, challenges and ideas.

2. Background

The challenges women face in accessing justice have been partly attributed to judicial stereotyping which is referred to as the practice of judges ascribing to an individual specific attributes, characteristics or roles by reason only of her or his membership in a social group (e.g. women). It also refers to the practice of judges perpetuating harmful stereotypes when they do not explicitly address and challenge wrongful stereotyping, for example by lower courts or parties to legal proceedings or in laws. While there is growing jurisprudence on the impact of stereotyping on enjoyment of the right to an effective remedy in cases of gender-based violence, it is acknowledged that judicial stereotyping can also affect women's ability to pursue their rights in other areas, including sexual and reproductive health.

Both the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disability (CRPD) impose legal obligations on States to address stereotyping. Article 5 (a) of CEDAW requires States to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; while Article 8 (1) (b) of the CRPD obligates States to adopt immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life. Moreover, other international human rights treaty bodies have identified such obligations through their interpretation of the right to non-discrimination and equality, as well as other human rights¹ and regional human rights instruments also require States Parties to eliminate stereotyping, including stereotyping by judges.

¹ See for instance, CEDAW Committee, *General Recommendation No. 33*, supra note **Error! Bookmark not defined.**, para. 8; Committee on the Rights of the Child, *General Comment No. 20: on the implementation of the rights of the child during adolescence* (2016), para. 28; CRPD Committee, *General Comment No. 3: on women and girls with disabilities* (2016): paras. 8,17(e), 47.

These obligations, apply to all branches of government, including the judicial branch and their effect is that judges must:

- a) Refrain from stereotyping (obligation to respect)
- b) Ensure stereotyping does not infringe on human rights (obligation to protect)
- c) Ensure women can exercise and enjoy the right to be free from wrongful gender stereotypes (obligation to fulfil)

3. Objective and expected outcomes

By raising awareness, encouraging experience-sharing and advancing capacity of the judiciary to identify, address and counter wrongful gender stereotyping in line with international human rights standards, the workshop aims to advance women's rights and access to justice, in particular in cases related to SRHR and GBV.

The expected outcomes of the workshop are to:

1. Unpacked wrongful stereotyping, including judicial stereotyping, and Argentina's legal obligations in international and regional human rights instruments.
2. Explored the impact of judicial stereotyping on women's rights drawing from jurisprudence, in particular in the context of SRHR and GBV.
3. Discussed the role of the judiciary in addressing wrongful stereotyping and harmful stereotypes.
4. Explored strategies and recommendations to strengthen the role of the judiciary in addressing wrongful stereotyping and counter judicial stereotyping.
5. Identified key follow-up actions.

1. Target beneficiaries

The target audience is judges of all levels in Argentina, including from outside Buenos Aires, and the focus is on their role in upholding women's rights by addressing harmful gender stereotypes and wrongful gender stereotyping. Gender balance among participants will also be a key consideration in this context.

2. Methodology

The workshop will adopt a participatory learning methodology that will consist of brief theoretical presentations and group exercises and case studies (either from international and regional case-law or from national practice and decisions). It will ensure that ample opportunity is provided for the judges to share experiences, views and concerns. Faculty will be drawn from OHCHR, as well as the participation of external experts such as the Center For Reproductive Rights. The possibility of experiential sharing by peer judges from other countries to enrich the discussions is also being explored.

3. Duration of the meeting

A meeting agenda and relevant documentation will be provided upon confirmation by the Court concerning its interest, availability and the time allocated for the Workshop. Given the number of issues to be considered, OHCHR recommends that at least one full day be allocated for the workshop.