

Sentences with Gender Perspective Without a Common Criterion: A Foreseeable Mistake?

An Analysis of Provincial High Court Rulings in Argentina

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Research questions

Do provincial High Courts rule with a gender perspective?

What type of gender perspective are judges applying?

Does this represent an advance in protecting women's rights?

What factors influence this behavior?



Background

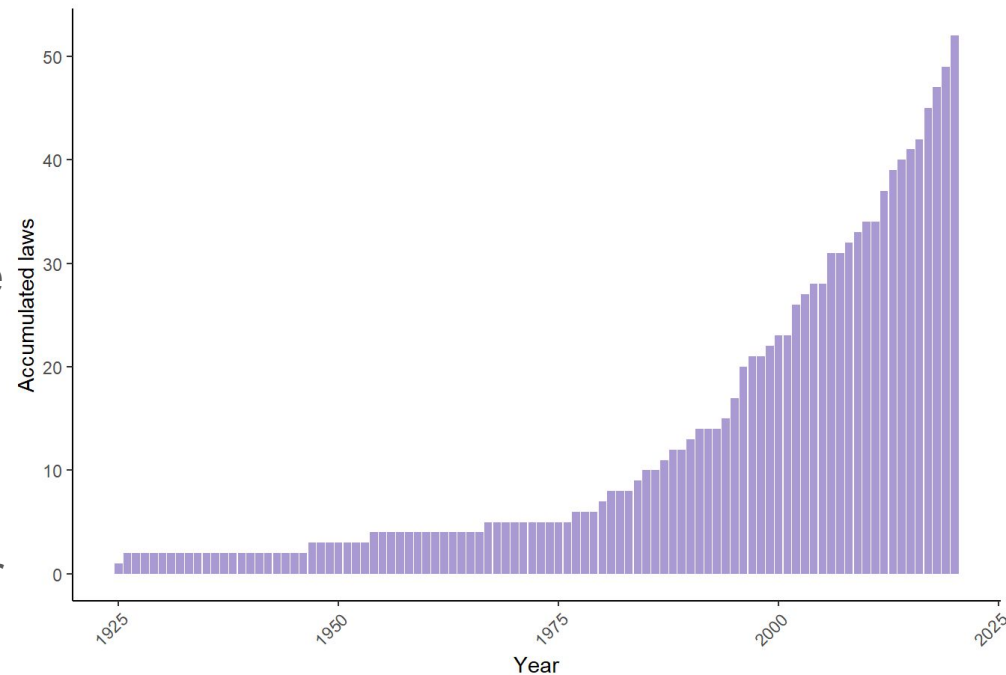
- Argentina is transitioning from the pursuit of legal equality to true equality
 - Requires concrete actions and integrating a gender perspective into the justice administration system is a fundamental step to avoid perpetuating inequalities.
- Why is important? There is work to be done
 - Argentina ranked 36th out of 146 countries in the World Economic Forum's Gender Gap Index
 - Not on track to achieve gender equality by 2030, and the COVID-19 pandemic has set back progress in this area (UN Women, 2022)
- The role of the justice system is important in closing gender gaps
 - Incorporating the gender perspective makes visible the inequality relations involved in each case and ensures access to justice to remedy these asymmetric power situations (Hürst, 2021, MMGyD, 2021).

Legal framework in Argentina

Argentina has a **robust national legal framework** in terms of gender and women's rights

The 1994 constitutional reform gave Human Rights Treaties **constitutional status**, such as CEDAW and the Belém do Pará Convention

This combination **guarantees rights** for women and LGTBQ+ people



Source: Own elaboration.

Protocols for judging with a gender perspective

An **instrument** intended for those who administer justice **to resolve cases involving people in situations of vulnerability** due to their gender, sex, or sexual orientation

- Increasingly frequent and relevant in the region, but a noticeable absence outside LATAM.
- Absence of a shared framework among provinces → translates into a lack of tools for justice operators reflected in reality.

Name	Country	Year
Criterios de equidad para una administración de justicia con perspectiva de género	Colombia	2011
Protocolo para juzgar con perspectiva de género	México	2013
Modelo de protocolo latinoamericano de investigación de las muertes violentas de mujeres por razones de género (feminicidio/feminicidio)	ONU Mujeres	2014
Guía para la aplicación sistemática e informática del Modelo de incorporación de la Perspectiva de Género en las Sentencias	Cumbre Judicial Iberoamericana - Comisión Permanente de Género y Acceso a la Justicia	2014
Protocolo para juzgar con perspectiva de género	Bolivia	2016
Cuaderno de buenas prácticas para incorporar la Perspectiva de Género en las sentencias	Chile	2018
Protocolo para juzgar con perspectiva de género	México	2020
Guía para el Poder Judicial sobre estereotipos de género y estándares internacionales sobre derechos de las mujeres	Uruguay	2020
Protocolo de juzgamiento con perspectiva de género interseccional para la jurisdicción constitucional	Bolivia	2021
Herramienta para incorporar el enfoque de derechos humanos, género e interseccionalidad en sentencias sobre violencia de género	Guatemala	2021
Guía para garantizar el acceso a la justicia a todas las personas sin distinción en Paraguay. Apoyo a la transversalización del enfoque de género en la administración de justicia	Paraguay	2022
Protocolo de administración de justicia con enfoque de Género del Poder Judicial	Perú	2022

Literature review I

- Importance of a gender perspective in legal rulings
 - **methodological tool for understanding and applying national and international human rights standards**, which in turn strengthens access to justice (Beigel, 2021, MMGyD, 2021; Palomo Caudillo, 2021)
- Increasing concern for the equal delivery of justice in LATAM
 - Protocols as a way to face that challenge
- Challenges faced by the judiciary in implementing this perspective
 - such as lack of capacitation for judges, in other instances like law universities and resistance of some sectors of society

Literature review II

- Shortcomings of the judicial system (Mesías Ortega, 2022)
 - Leaving the victims in a place of vulnerability in the facts that they pursue in order to remedy the damage caused and restore through a sentence the altered order.
 - Cost in terms of efficiency → Superior Courts have to review those rulings.
- Most studies focuses on the analysis of case law
 - Field that has not been studied in depth → opportunity

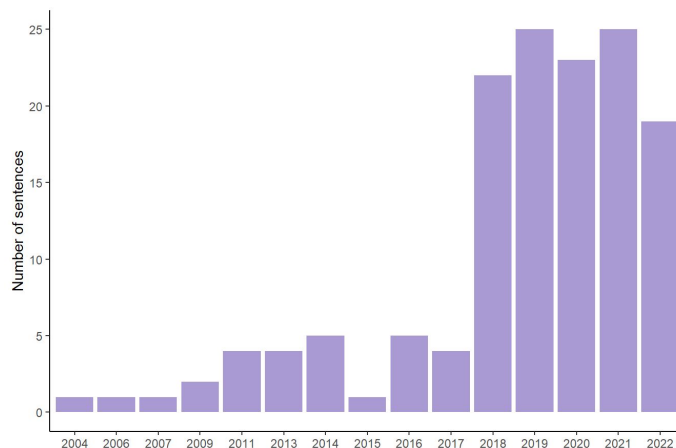
Database I

- Construction of a proprietary database based on a compile made by the Women's Office of the Supreme Court of Argentina
- Selection criteria as a manifest limitation
 - the fact that a ruling is framed as a violation of a Women's Right does not necessarily imply that its outcome incorporates a gender perspective.
 - It may pose a problem as to what the provinces interpret when determining which rulings to send to the compendium.

Database II

Analysis of 143 sentences from 21 provincial High Courts.

- Notable differences between provinces with respect to the number of rulings sent.
- A cut-off was established in order to have a homogeneous sample and the exclusion criterion in the case of provinces with more than 10 sentences was the representativeness of the subject matter and type of crime.



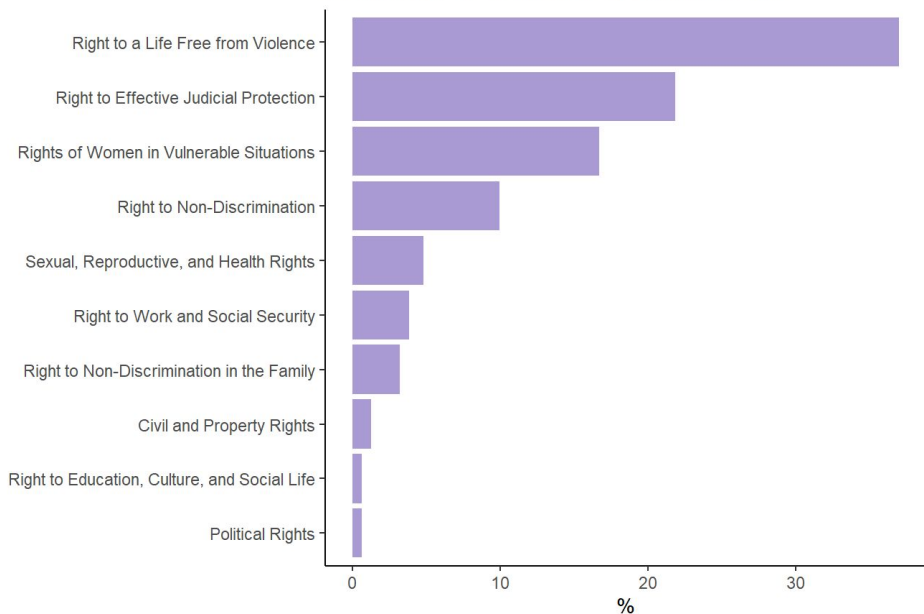
Province	Number
Buenos Aires	10*
CABA	1
Catamarca	10*
Chaco	10*
Chubut	8
Córdoba	10*
Corrientes	5
Entre Ríos	1
Formosa	6
Jujuy	10*
La Pampa	1
La Rioja	0
Mendoza	10*
Misiones	10*
Neuquén	7
Río Negro	10*
Salta	3
San Luis	10*
San Juan	3
Santa Cruz	4
Santa Fe	0
Santiago del Estero	0
Tierra del Fuego	10*
Tucumán	3

Database III

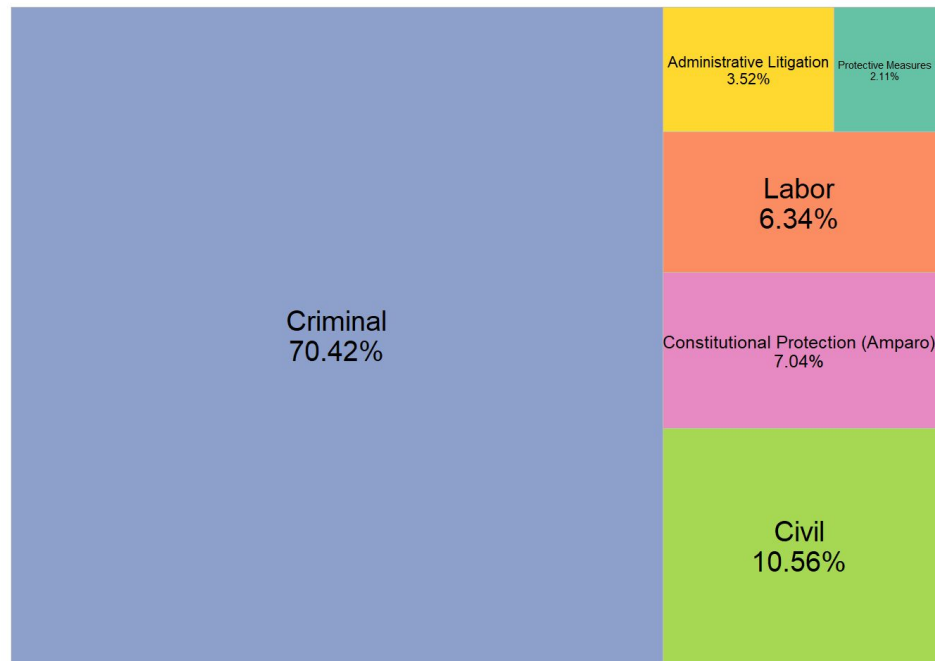
Overrepresentation of cases that correspond to crimes related to gender violence

→ **Criminal cases**

Percentage of sentences by women's right



Source: Own elaboration.



Database IV

Unit of analysis: judge's vote

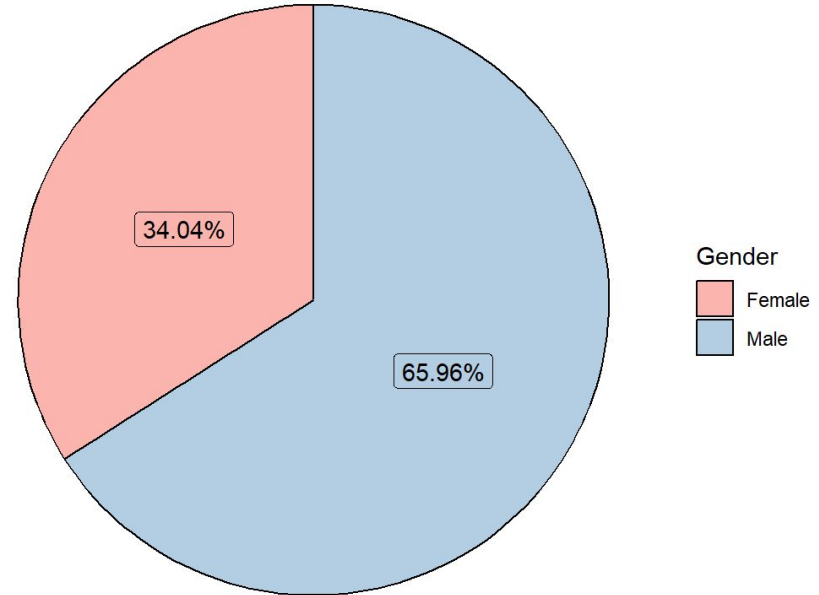
The vote is in favor of women (88.46%) while 10.26% is no and only 1.28% does not apply, i.e. cases where the situation of a woman is not strictly determined → ***Implicit selection criteria?***

High percentage of unanimity on the decision (88%)

Who are the judges?

- 61 years old average (men 61.8 and women 60.5)
- 18 years of of judicial career seniority on average for both men and women
- However, men have an average of 12 years in the position, while women have less than 9 years → glass ceiling?

Percentage of judges by gender



Source: Own elaboration.

Variables

Provinces effectively judge with a gender perspective despite not having their own or common criteria?

Hypothesis I: without clear parameters, the provinces do not judge with a gender perspective.

Hypothesis II: women, and even more so, young women have a greater predisposition to judge with a gender perspective.

Dependent variable	Gender Perspective
Measurement	5 steps of the Mexican Protocol: <ul style="list-style-type: none">●Special protection measures●Facts and interpretation of evidence●Applicable law as an argumentative tool●Argumentation with a gender perspective●Reparation of harm
Independent variable	Judge profile
Measurement	<ul style="list-style-type: none">●Sex●Age●Length of judicial career●Seniority in office

Data analysis I

Step 1: **special protection measures**. In 84% of the cases these measures are **not applied**. This type of intervention is usually required with a certain degree of **urgency**, fundamentally in the first instance. This would also explain why most of the cases that reach these Courts are appeals for cassation, unconstitutionality, extraordinary or inapplicability of the law.

Step 2: **facts and interpretation of evidence**. Biased analyses enter the compendium in sentences by the **minority**. This 1% containing this type of stereotyped interpretations are entirely committed by men.

Step 3: **Applicable law to the case**. In more than half of the cases, an international treaty such as CEDAW or Belém Do Pará, as well as relevant national legislation on gender and women's rights, is used as an argumentative tool.

Data analysis II

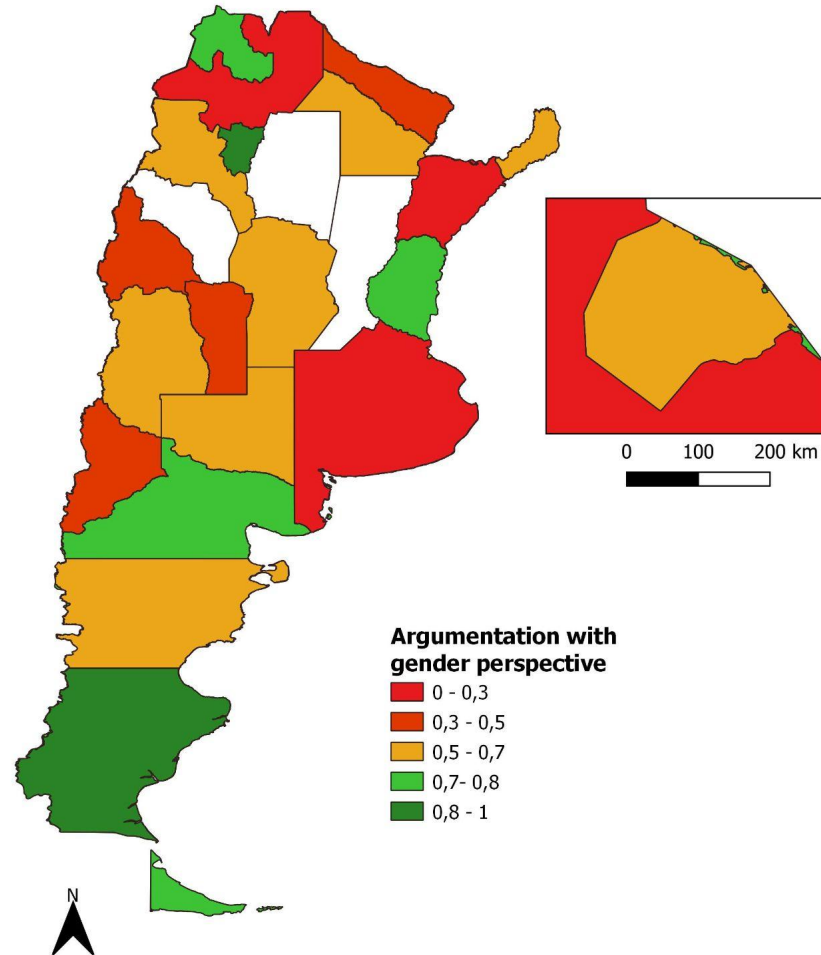
Step 4: **argumentation with a gender perspective.**

52% of the arguments effectively integrate this perspective.

The perspective applied in the compendium is **binary** → strictly related to women and this represents a pending debt

Younger women judges are those who, on average, incorporate this perspective more.

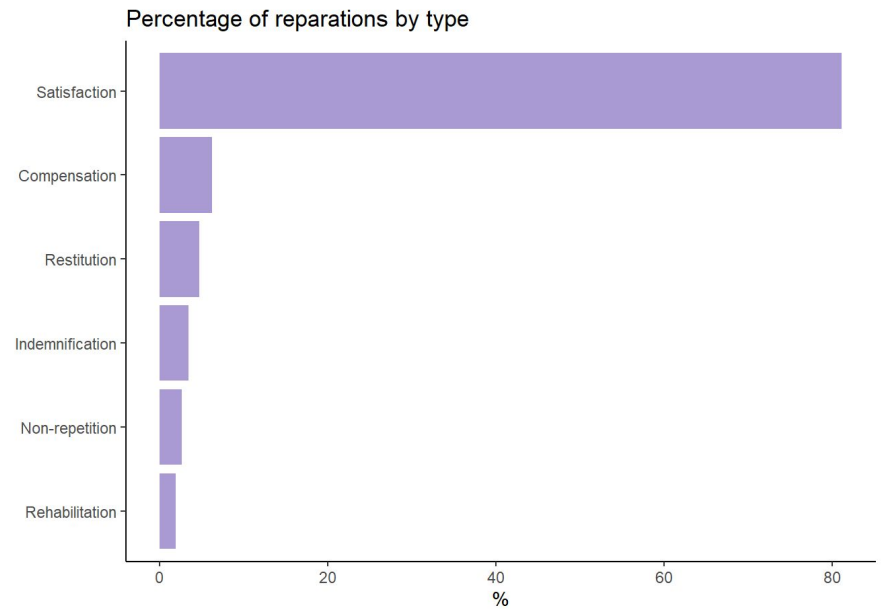
Much of the country is above a score of 0.5 in terms of gender-sensitive argumentation. *Only two provinces - Santa Cruz and Tucumán - would actually meet the criteria of the Mexico Protocol.*



Data analysis III

Step 5: repairing the damage.

In 94% of the votes,
reparation is effectively sought.



Source: Own elaboration

80.75% **satisfaction** (recognizing and restoring the victim's dignity)

Even when there is a reparation of the damage, which reaches a favorable conclusion for the victim, it has not been done with an argumentation with a gender perspective (30%) → solution reached through votes of a more procedural nature.

Key findings

These types of rulings have **favorable results for women**, but **not an argumentation** that contains decisive elements that make the judgment with a gender perspective

Only **half of the rulings use a gender perspective** as an argumentative tool, but even more if we limit ourselves to those sentences that repair in some way the existing damage in the case we see that this figure drops to almost 30%.

Younger female judges are more likely to incorporate a gender perspective.

Challenges and recommendations

- It is a **priority to have a more egalitarian justice system** that does not reproduce gender stereotypes → need to elaborate a protocol that allows judging with this perspective, maximizing international, national and provincial legislations of the latest generation existing in the country, becomes a **necessary discussion to be held** considering
 - Bias towards criminal cases and a more explicit degree of violence
 - Demands and needs of the people who make up the justice system
 - Resistance to gender equality in some sectors
 - A strategy that takes into account the federal system
 - Importance of training for judges and legal professionals.

Q&A

Thanks for listening!