"Gendering Justice in the Chilean Courts: Institutional developments and Legal Actors' Perspectives"

by

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Note: This manuscript offers some findings from my pre-doctoral and doctoral dissertation fieldwork. I would appreciate receiving feedback regarding any aspect of this work. Please do not ask any questions regarding the specific location of my fieldwork or the identities of my interviewees as they must remain confidential per Institutional Review Board policy.

Gendering Justice in the Chilean Courts: Institutional developments and Legal Actors' Perspectives

For a couple of decades now, there has been a global concern about the way in which legal institutions treat minority groups, and in particular cisgender women and sexual minorities. Recent social movements, such as #MeToo and the Feminist May in Chile (Ponce 2020), have galvanized the importance of listening to and believing victims of sexual crimes. While studies suggest that people increasingly gravitate towards non-retributive and non-legal forms of justice (Brunneger 2020), activists and advocates continue to argue for institutional change in the judiciary. Over the past three decades, a number of international tribunals have profoundly rethought how standards of proof and stereotypes about women and their role in society function as important barriers to their access to justice. This awareness of how the law impacts disadvantaged groups has gradually permeated the judiciaries in Latin America. A number of international institutions such as the Inter-American Court of Human Rights (IACHR) and the Ibero-American Judicial Summit have served as an important catalyst for promoting gender-sensitive judging in Latin American judiciaries. Such efforts have been framed within the Ibero-American context as judging with a "gendered perspective" (*perspectiva de género*); and, over the last two decades, a number of Latin American Supreme Courts have developed processes to promote such a perspective in the courts. In particular, since 2014 the Supreme Court of Chile has conducted a series of efforts to promote a gender perspective in the Chilean judiciary. Inaugurated with the appointment of a Supreme Court Justice in charge of the gender affairs of the Court, such efforts have included the creation of a Technical Secretariat of Gender and Non-Discrimination in 2017; the publication of a Good Practices Handbook to incorporate a gender perspective within adjudication in 2018; and the design and execution of gender-sensitive training for judges on the bench, among others.

In this article I offer an examination of how these efforts and others are shaping current practice and thinking regarding the place of a "gendered perspective" in the Chilean legal system. I look at how national and transnational circulations shape understandings of what a "gendered perspective" entails and what is its role in the justice system. In this article I address the following questions: How do judges understand the concept of a "gendered perspective" and why? Which ideas and factors are circulating which shape these understandings? In which ways do judges incorporate a "gendered perspective" in their everyday praxis? Which obstacles do judges encounter when incorporating a "gendered perspective"? I answer these questions by focusing mostly on the sphere of criminal justice actors and institutions within a region of the Central zone of Chile in which I conducted my fieldwork, yet I conducted interviews with actors of different regions. I predominantly draw from interviews conducted with judges of different competences; court rulings; and ethnographic fieldwork.

Gender and Judging in Global Scale

Within the last thirty years, gendered concerns within international, regional and ad hoc adjudication have exploded and, considering gains and setbacks (Chapelle 2016), have shaped debate and practice. International criminal tribunals have historically neglected crimes which disproportionately affect women and girls, namely sexual and gender-based violence (Bensouda 2014; Grey 2017; Rosenthal et al 2022). Yet, since the 1990s, the International Criminal Tribunal for the former Yugoslavia (ICTY) (1993-2017), the International Criminal Tribunal for Rwanda

(ICTR) (1994-2015) and, to some extent, the International Criminal Court (ICC), have implemented "gender justice" (Chapelle 2014, 2016; Grey 2019; Grey and Chapelle 2019)."Gender justice" can be grasped from a series of indicators, some of which are: demanding the production of evidence on gender-based violence, particularly in cases where prosecuting authorities have been reluctant to present and investigate it; interpreting apparently neutral crimes by focusing on how they impact women; and, assessing testimonies of victims of sexual violence with the understanding that inaccuracies in their testimonies do not dismiss their credibility out of hand (Grey and Chapelle 2019). The Women's Caucus for Gender Justice, a network of women's organizations and feminist lawyers, fought hard for gender-provisions to the included in the Rome statute—which establishes the functioning of the ICC—that they partially achieved; as substantive, procedural and victim's rights provisions were included in the statute, as well as representation for women (Chapelle 2016). Yet the ICC and other tribunals have had a mixed outcomes on implementing "gender justice" (Chapelle 2014; Rosenthal et al 2022). There are different and complex reasons as to why some international tribunals have been more successful than others in embracing a "gendered perspective", as feminist institutionalist inquiries show (Chappelle 2016).

Other adjudicative bodies have drawn from the gendered provisions of the Rome Statute and built on ICTR jurisprudence, such as the Special Court of Sierra Leone (2002-2013); while other tribunals such as the Extraordinary Chambers in the Courts of Cambodia (2004-present) have faced difficulties in getting convictions for gender-based crimes (Palmer and Williams 2017). The Eritrea-Ethiopia Claims Commission (2001-2009) implemented gender-sensitive standards by recognizing the obstacles in producing evidence in cases of sexual violence that justified a 'lesser quantum' in terms of evidentiary standards (Zelada and Ocampo 2012, 180-181). Within regional human rights systems, the European Court of Human Rights has been historically restraint when it comes to interpreting gender equality. Yet, since the 2000's it has strengthened its jurisprudence with regards to gender-based violence, although a western bias and heteronormativity remains in the court's rationale (Encarna 2015; Vauchez 2023). Within the African regional context, only five cases have been brought by women to the African Court on Human and People's Rights and the ECOWAS Community Court of Justice have. While the courts have decided favorably on the applicants' behalf, they have failed to recognize gender-based discrimination (Ojigho 2021).

In the Latin American context, there has been a paradigm shift in the jurisprudence of the Inter-American Court of Human Rights (IACHR) since the early 2000's (Tramontana 2011; Undurraga 2016). Scholars have referred to the Court's new standards as "evidentiary breadth" (Di Corleto 2018) or "feminization of evidentiary standards" (Zelada and Ocampo 2012). For example, the court's new standards state that victims' testimony should be given a preponderant value, such that it could alone secure a conviction in certain circumstances. Recent IACHR jurisprudence also establishes that all evidence must be analyzed systematically, so that all links between the various strands of evidence can be examined and assessed. In addition, circumstantial evidence should not be discounted and, in certain circumstances, should secure a conviction even without the victim's statement if there is compelling expert testimony (Di Corleto 2018, 4). The Court has also shown a commitment to eliminate gender stereotypes and to compensate victims.

IACHR jurisprudence has played an important role in promoting a "gendered perspective" in Latin American judiciaries. First, the paradigmatic Cotton Field case, in which the IACHR condemned the Mexican State for failing to properly investigate the dissapearances

of young women in Ciudad Juarez due to sexist stereotypes, established in the judgment Mexico's duty to develop protocols, training for public officials and investigation criteria with a "gendered perspective." In the Chilean case, the judgment in the Atala case (Palacios 2016) also established obligations for the Chilean State to provide human rights training and incorporate a "gendered perspective" within the judiciary.

There is a broad array of terminology and scope to refer to the various changes within international tribunals to incorporate gender-sensitive approaches. Approaches can encompass substantive, procedural, and evidentiary changes as well as incorporating victim-centered approaches and representation of women in the courts. Additionally, a holistic perspective to access to justice should also consider how courts' architecture shapes victim's willingness to come to court, among many other aspects such as the way women and minority groups are treated in the courts. Thus, while the concepts of "gender justice", "gender-sensitive judging" and "gendered perspective" are malleable and potentially all-encompassing, in this article I take a much narrower approach to the concept of "gendered perspective" as I focus on how judges incorporate gender-sensitive insights when adjudicating cases.

A "Gendered Perspective" in the Chilean Judiciary: Top-down, *ad hoc* and Legal efforts for Institutional Change

In order to study institutional change within the Chilean judiciary, I draw from the frameworks of constructivist institutionalism and recent versions of historical institutionalism (Hay 2008). These approaches focus on gradual institutional change and pay attention to cultural and institutional factors (Mahoney and Thelen 2010). Drawing also from feminist institutional perspectives (Mackay, Kenny and Chappell 2010), I tackle the interaction between formal and informal rules, and the "nestedness" (Chapelle 2016) of the Chilean judiciary in its political and social context. Studies looking at change through ethnographic methods within institutions have concluded that although well-intended actors may strive to effect change, they stumble upon a "brick wall" (Ahmed 2012) when the language of change or diversity is used within institutions only for its "audience value" (Brinks, Levitsky and Murillo 2020) or to be coopted by "identity capitalists" (Leong 2021).

The term "gendered perspective" has become ubiquitous in Chile in a number of public spaces: social media posts, protests, the official discourse of state institutions, and activist and NGO discourse. It is well-documented why a "gendered perspective" in the Chilean courts is urgent, particularly in cases of intrafamily violence and sexual offenses (Araya 2020; Cabal et al 2001; Casas y Mera 2004; Fischer y Díaz 2017; Rivas 2020; Rodríguez 2000; Secretaría 2020; 2022). Yet, it is important to mainstream a "gendered perspective" in all aspects of legal practice and judicial expertise (Álvarez 2023; Mesa 2014; Romero et al 2022; Ugarte 2020;), not just in the most evidently gendered areas of the law; including the less discussed situation of women defendants (Pérez 2021); the obstacles women judges face advancing through judicial ranks (Coñuécar 2021; Zúñiga 2020); and within the judiciary itself as a workplace (Fuentealba et al 2020; 2022). The term "gendered perspective" enters strongly into the Chilean judiciary's vocabulary starting with the XVII Ibero-American Judicial Summit in 2014, which Chile hosts. Earlier that same year a lawyer with an academic profile—with a trajectory outside of the judicial branch—was appointed as the Justice in charge of gender affairs of the court and became the president of the Summit's Gender Commission. When I interviewed her in 2019, she told me that the Summit was crucial as an opportunity to engage with other judiciaries because it allowed

them to understand the international relevance of the topic and "to understand the phenomenon and the need to seek mechanisms to incorporate equality and non-discrimination." Therefore, international cooperation; exchange of ideas (Cisternas 2020; Lousada 2020); and the appointment of a justice with a career outside of the courts, has been crucial to the promotion of a "gendered perspective." This is the case particularly for an institution averse to innovation (Hilbink 2007) which has historically mostly looked inwards and rejected "foreign intromissions" (Vargas 2007; 102).

The Supreme Court's Secretariat has had an important role in designing and publicizing materials to incorporate a "gendered perspective" within judges' judicial praxis. It has invested in a modern website which includes several materials. For instance, the Good Practices Handbook—which I closely examine elsewhere (Parodi 2023)—offers examples of national and IACHR jurisprudence regarding stereotypes, intersectionality and violence against women. Additionally, the Secretariat organizes a yearly contest of court rulings which incorporate a "gendered perspective", which has been to some extent subject of criticism by some of my interlocutors and others—among other reasons, due to the personal notoriety it gives judges (Henríquez 2023; Wilenmann 2023). The winning rulings are open for the public in the Secretariat's online repository, which serve as modeling for other judges (approximately 30 rulings have been sent yearly during the last three years to compete, referred by legal actors who know about the cases). The Secretariat also created "Gender Committees" in all of Chile's 17 CourtS of Appeals; the Committees are in charge of conducting activities related to training and diffusion. Yet, many of my interviewees missed a more sustained and ongoing relationship with the Secretariat, and yearned for the opportunity to have constant training. One criminal judge called the Secretariat "the Island of Malta" (*La Isla de Malta*), because he said, "we all know it's there, but we don't know what happens there, and they are far away from us." Still, many celebrate its existence and the work they do.

During my fieldwork. I appreciated the significant feminization of institutions and participation associated to gendered concerns as I attended different seminars, conferences and events organized by the Secretariat. The Supreme Court justice in charge of the gender affairs of the Supreme Court and the majority of the Secretariat's personnel are women; as are 13 out of 17 of the Appeal Court's judges in charge of their region's gender committees; and the majority of the public at events related to gender and the courts. For instance, in one event to celebrate the anniversary of a women judges' association, all attendees were women except for two men. Additionally, all the judges who have won at the contest of rulings with a gendered perspective are women except for one, and for one ruling which was co-written by a male lawyer; furthermore, all the winning rulings were referred to the contest by women judges or prosecutors, except for one male judge. Several Chilean judges and clerks have registered and graduated from a master's program on Gender and the Law co-sponsored by the Institute of Judicial Studies. In the 2019-2022 period, out 71 judges and clerks who were in the program, less than 10% were men.

Besides these top-down efforts of the Chilean Supreme Court to incorporate a gender perspective within the Chilean judiciary, there have been many individual and micro-institutional efforts by prosecutors, family and criminal judges, judges' feminist organizations, activists and NGOs who care about violence against women (VAW) and discrimination against minority groups. TheY have conducted *ad hoc* efforts within their immediate purview to improve access to justice for women, some even before there was a language of "gendered perspective" installed. It is impossible to account for all of them here, but I offer a couple of examples. Since 2012

judges in a lower criminal court (*tribunal de garantía)* implemented a plan to have all the intrafamily violence hearings on the same day overseen by a specialized or preferential judge. They established contacts with universities to send defendants who would need psychological treatment for VAW and assigned a clerk to directly engage with victims and help with their concerns, among many other initiatives. They have tried to export their model to other lower criminal courts, but these have been slow to replicate these practices. Yet, judges and legal actors who care and have good intentions can only make a difference so far, since they are embedded in a larger state system which is under-resourced and embraces negative ideologies towards women (Beck 2023; Beck and Stephen 2021; Riquelme 2022). I often heard from lower criminal judges that the state did not invest enough in treatment for men who committed VAW. Sometimes there was nowhere to send them to get treatment within the context of a *suspensión condicional*—an alternative dispute resolution usually offered to first-time offenders of less severe forms of VAW—since public mental health institutions do not always provide such treatment.

There have been a series of attempts to enshrine in the law a "gendered perspective" as a legal principle and mandate. So far, a couple of laws regarding revictimization of sexual assault victims and the rights of children and adolescents have accomplished it, although these laws are very particular in their scope. There have also been attempts to enshrine a "gendered perspective" in VAW laws. The current 2006 Intrafamily Violence law is embedded in the familyism ideology—as can be grasped from its name—a pervasive legal dispositive in Latin America which equates the interests of women with those of the family (Menjívar and Diossa-Jiménez 2022) and precludes the acknowledgement of unequal gendered dynamics in society. Yet, since 2017 there has been a new law in the making to regulate VAW, the Integral Violence Bill, which addresses some of the 2006 law's shortcomings. In its current version, the bill includes a "gendered perspective" as a principle of legal interpretation, and defines different forms of VAW such as economic, sexual, symbolic, institutional, and political, among others, explicitly conceptualizing gendered violence and power dynamics. Additionally, during the 2021-2022 constitutional convention, the issue of whether specialized courts for VAW should be included in the draft—the road other countries have taken to address VAW (Beck 2022)—or whether to include the mandate for all courts to judge with a "gendered perspective" was a very contentious issue among constituents, who finally decided for the latter. Unfortunately, the issue is not among the concerns of the current constituents at the second constitutional convention.

Yet, legislative change can only do so much when it attempts to change legal practice but is designed to fail (Menjivar and Diossa-Jiménez 2022); when it does not go beyond a symbolic and/or punitive effect (Benavides 2015); when it flies on the face of legal culture (Kulshreshtha 2021); and when resources are not attached to legislative change to make a meaningful transformation (Beck 2022); as institutional change entails a series of complex factors (Chapelle 2016). Besides these three types of efforts which I have called "top-down, ad hoc and legal" there are potentially a series of other important endeavors to promote a "gendered perspective" within the judiciary such as and gender public interest litigation (Miles 2015), and the efforts of the Public Prosecution Office and Public Defense to incorporate gender-sensitive considerations in their praxis (Ministerio Público 2018; Defensoría Penal Pública 2023) Yet, the main incentives and institutional cultures of legal actors must be taken into consideration in such examination (Huneeus 2011). Also, more and more private lawyers offer services of "lawyering with a gender perspective" or promote themselves as "feminist lawyers." One such lawyer I interviewed in 2019 who created one of the first firms which promoted itself has such had only two attorneys then; yet, by 2023, the firm had 10 other lawyers. Furthermore, the judicial academy and law

schools have gradually come to offer electives on gender and the law, and some universities have developed legal clinics with a gendered and intercultural focus. Yet, as I sat on in one class of such clinic, students expressed their frustration that gender and the law classes were always few and optional. Additionally, to some extent, the growing concerns of the public with gender and justice may play a role, even if negligible, in judicial practice (Skaar 2011).

The Chilean judiciary is worthwhile to look at because of its comparative high levels of external judicial independence, which suggest in principle that judges are free to respond to the Supreme Courts' efforts to make their institution gender-sensitive. Yet, the internal independence of courts remains a challenge due to the institutional design of the Chilean judiciary, as judicial governance is rooted in the Supreme Court, which oversees appointments and discipline of lower court and Appeals' judges (Aldunate 2001; Bordalí 2003; García 2009; Rondini 2019). Thus, in a context in which the promotion of a "gendered perspective" comes from the top—as has been the trend in Latin America (Fuentealba at al 2020)—it is interesting to look at the ways in which actors are responding in the context of a culture in which judges are used to look at their superior's decisions. Additionally, another reason that makes it worthwhile to look at the Chilean case is that the judicial branch has very low levels of confidence and approval from the citizenry (Hilbink et al 2022; Latinobarómetro 2021), and it is by institutional design as the branch of government with the least impact in the country's politico-legal and socio-cultural life (Correa 1999). Thus, it may be interesting to see if confidence and approval are somewhat impacted by the Court's recent gender-sensitive efforts, as some recent cases of sexual assault have caused a national uproar. Still, even though the Secretariat's work is formally perceived as the Court's work, several of my interlocutors perceive that the Secretariat does not have broad support within the Supreme Court. When I asked my interlocutors why then the plenary session of the Supreme Court approved the creation of the Secretariat they said: "they didn't dare not to."

Other Latin American Supreme Courts have developed similar projects and published Good Practices Handbooks and created institutions to promote a "gendered perspective" in the courts (CEJA 2021; Bermúdez 2019; Santisteban 2020). More than a decade ago in Argentina, a series of gender-sensitive institutions (*institucionalidades de género*) at different levels of the judiciary—federal, local and provincial—and the legal system more broadly, were established; many of them were created by the first women to reach the Supreme Court and other institutions. Early examinations suggest there is a "patchwork" (Beck 2021) of consolidation of these institutions; many of them show a somewhat precarious organizational and funding situation; those associated to people in positions of power have better funding, while many of them depend on personalized leadership (Bergallo and Moreno 2017). Currently, in Argentina, many challenges remain in terms of access to justice for women and parity within legal institutions (Beguiristain 2022). Colombia's 1991 Constitution ushered a rights-centered era with a framework amicable to gendered concerns. Since then, the Constitutional Court has had a central role in developing gender-sensitive jurisprudence which irradiates the entire judicial system due to the court's doctrine of binding precedent. An intensive process of legal mobilization (Lehoucq and Taylor 2019) has also been fundamental in promoting such ideas within the context of a neoconstitutionalist legal culture (Buchely 2014). A "gendered perspective" has been included in the special jurisdiction of the peace (Pérez 2023), and in several laws as a principle (Estrada et al 2011). Yet judges do not always apply it, even when mandated by law, or apply it only in perhaps more evidently gendered matters such as sexual violence (Castrellón y Romero 2016; Pabón-Mantilla and Cáceres-Rojas 2021).

Legal Feminism, Circulation of Transnational Ideas and Chilean Legal Cultures

Feminist legal scholars both in the Global North and South argue that the law is a patriarchal system that reinforces women's societal subordination through multiple structures and practices (Cook & Cusack 2010; Crenshaw 1991; MacKinnon 1989; Facio 2009: Facio and Fríes 1999; Larrauri 1994; Lemaitre 2009; Segato 2003); while feminist thinkers have criticized the epistemological assumptions of Euro-American feminist thought due to its lack of antiracist and decolonial insights and because of its universal understanding of the category "woman" (Curiel 2014; Lugones 2016). Feminist legal scholars underscore that the law is not neutral as it embraces several hierarchical gendered dualisms (Barlett 1990; Olsen 1998) and it identifies itself with the dominant masculine side embedded in concepts such as "rational/universal/culture/reason/public"; while it rejects those traditionally associated with women such as "irrational/particular/nature/emotion/private." Furthermore, scholars offer that the law assumes a subject who is wealthy, white, heterosexual, cisgendered, able-bodied and male. Although feminist scholars and activists first focused on formal equality in the 1960' and 1970' and strived to change laws which discriminated against women, more recently they have focused on substantive equality (Fredman 2016; MacKinnon 2016) and some courts have enbraced this notion (MacKinnon 2017: Undurraga 2016). Substantive equality underscores result-oriented justice which takes into account people's structural situations and material conditions, rather than procedural fairness alone. While these approaches are the theoretical cornerstone for looking at gender and the law, they can be enriched by anthropological approaches which examine people's embedded practices and meaning-making processes on the ground.

Legal anthropology, and the anthropology of the state more broadly, examine how state and legal actors engage in everyday processes and practices at the granular level at the domestic, transnational, and global scale (Clarke 2019; Eltringham 2019; Hirsch 1998; Merry 1990; Navaro-Yashin 2012; Phillips 1998; Trinch 2003). Some of the process's ethnographers look at involve the circulation and translation of transnational gendered ideas and how these are vernacularized in particular local contexts (Merry 2006). The process of vernacularization entails: "the extraction of ideas and practices from the universal sphere of international organizations, and their translation into ideas and practices that resonate with the values and ways of doing things in local contexts" (Merry and Levitt 2017: 213). While legal anthropological studies have looked at the ways in which human rights are vernacularized, resisted and used in local contexts (Goodale and Merry 2007; Canfield 2022), I use this terminology to trace the particular ways in which Chilean legal actors receive, adapt and reject notions associated to the concept of a "gendered perspective." Organizations and institutions which work as translators of international ideas face a "resonance dilemma." As Merry and Levitt explain: "The more extensively a human rights issue is transformed to be concordant with existing cultural frameworks, the more readily it will be adopted but the less likely it is to challenge existing modes of thinking" (2017: 219); thus, translators usually have strategic considerations in mind. There are many issues that shape the manner in which translators vernacularize ideas, yet I argue that a fundamental factor which explains the ways in which a "gendered perspective" is promoted in Chile lies in legal culture. Thus, as a core translator of the concept, the Secretariat has vernacularized "gendered perspective" in a manner to some extent compatible with the dominant legal culture in Chile.

The literatures on judicial politics have looked at the factors that shape institutional change and stasis in Latin American judiciaries (Brinks 2005; Ginsburg and Moustafa 2008; Kapiszewski and Taylor 2008; Couso, Huneeus, and Sieder 2010; Huneeus 2010; Helmke and Ríos-Figueroa 2011).[1] Among several factors which explain judicial behavior, legal culture has sometimes been overlooked within a discipline dominated by the rational choice model. Legal culture in Latin America spans a continuum from textualist to interpretive cultures in which the latter predominates, although these can coexist within institutions. Textualism has often been a factor which contributes to institutional inertia. Legal culture encompasses three aspects: judges' hermeneutical practices and attitudes; their understandings of their role within the political system; and their ideas of their role within the judicial hierarchy (Ansolabehere et al 2022). The first component, hermeneutical routines, entails which sources of law are understood as legitimate to draw upon within adjudication, as it entails "shared understandings of what is possible, permissible and appropriate in legal interpretation" (Ansolabehere et al 2022, 3 my translation). Textualist legal cultures tend to constrain the legal framework to domestic law, while skewing the application of international instruments. Chile's judiciary has traditionally spoused a formalistic legal culture in which judges understand their role in a constrained manner when it comes to defend constitutional rights (Hilbink 2007). While such institutional ideology can be a hindrance to innovation, and thus gender-sensitive judging by implication, there is an incipient change in the Chilean judiciary towards judicial assertiveness in rights' cases and social justice concerns, although these changes have occured within a minority of the judiciary and predominantly within lower courts (Couso and Hilbink 2011). These recent developments posit a fledgling change towards an interpretive judicial culture shaped by neoconstitutionalism, although the future of this development remains to be seen.

Data and Methods

My findings are based on 19 months of fieldwork in Chile during 2019 and 2023, including over 100 interviews with judges, prosecutors, public defenders, activists, victim-activists and other legal actors; shadowing of the work of intrafamily violence prosecutors, and public defenders specialized in women defendants; ethnographic observations in intrafamily violence hearings and trials, including sexual crimes and femicide; analysis of court rulings and official documents; social media tracking; participant observation with a victim-activist group whose members were parents of victims of femicide; attendance to online and in-person legal conferences, and informal conversations with legal academics. While ethnographic methods have not been widely used to look at legal phenomena in Latin America (Sieder et al 2019), there is a growing group of socio-legal scholars who do so in Chile (Araya-Moreno 2022; Azócar 2018; Azócar et al 2022; Feddersen 2020; Hersant 2017; Hersant and Miranda-Pérez 2023(forthcoming); Riquelme 2021). The bulk of the data that I draw from for this article are transcribed interviews and court rulings I collected during my fieldwork period. To some extent I also draw from fieldnotes from court observation and shadowing; I describe each of these methods below briefly.

I conducted court observation in four different lower criminal courts on the days on which they had intrafamily hearings. Additionally, I shadowed prosecutors who oversaw

[1] For recent judicial politics scholarship on Chilean courts see Pavón et al (2023); Royce and Tiede (2011, 2012); Scribner (2010); and Tiede (2016). As Kapiszewski and Taylor (2008) offer, the field continues to focus predominantly on high courts.

intrafamily violence; femicide, and sexual offenses prosecutors for a period of uninterrupted five months in which I accompanied them throughout the entirety of their workdays going to hearings, interacting with public defenders, interviewing victims and expert witnesses, preparing legal documents, sorting through evidence, and interacting with their larger sociocultural worlds including assistant lawyers, technicians, and administrators. I shadowed a total of 7 prosecutors for this period, while the majority of the time I was following the work of two intrafamily and femicide prosecutors. I also shadowed two public defenders who specialize on women defendants, one of whom was training to become one. For the core of this article, I draw from a total of 44 semi-structured interviews with judges: 2 Supreme Court judges, 15 Appeals Court judges, 21 criminal law judges (12 TOP, 9 garantia), 4 family judges, and 2 civil judges. For these interviews I recruited judges from snowball sampling, cold emailing and direct recruitment by meeting them at events and at the courts. Interviews were conducted both in person and through zoom and lasted between 40 minutes and 2 and half hours. I collected court rulings through requesting them from legal actors I interacted with and downloaded from the Secretariat's website. My positionality as a middle-class Chilean woman studying anthropology abroad shaped relationships to some degree. Being a Chilean I would seamlessly blend into the cultural milieu, while as an anthropologist I was sometimes perceived as a curiosity within the legal realm. Yet perhaps the most significant aspect of my identity which made a tangible difference in certain interactions is my identification as a woman, which would sometimes impinge on the comfort of some victims and victim-activists and thus shaped how willing they would be to talk with me or spend time with me, although this was not always the case.

Judging from a Gendered Conscience: A multidimensional conceptualization

As I sat with intrafamily violence prosecutors in the parking lot of the Public Prosecution Office, one of them mentioned that now criminal judges are more willing to decree precautionary measures early in the criminal process and to convict defendants of intrafamily violence even if the victim does not testify at trial. In fact, Clara, an intrafamily prosecutor I became very close to, said that going to trial without victims was "the business they were in" (*el giro del negocio*). Prosecutors of intrafamily violence and sexual offenses stated in interviews that they now "dare" to indict for crimes they would not have in the past because of concerns about how certain victims would be perceived by judges. The courts these prosecutors work with are more willing to convict defendants indicted for intrafamily violence, sexual offenses and violence without victims declaring at trials, since more and more they understand the many challenges that lead victims not to declare at trial. Previously, some would even scold prosecutors for bringing such cases to trial. Yet, not all judges are thrilled by the current prevalence of the talk of "gendered perspective" within their institution. In the several events I attended which were organized by the Secretariat, by women judges organizations, or by academic institutions, judges who defend the project of a "gendered perspective" always took a moment to speak to detractors, to explain that the project is not about benefiting women per se and violating the principle of equality, but about securing equal treatment for all. Judges who were amenable to the project usually spoke of their colleagues as uninterested or against the project, especially older and male judges. In a way, in several of the events I attended, it seemed that the very idea of a "gendered perspective" constituted a battlefield for the soul of the law and judges: the law was either a formal, universal, and rational mechanism unencumbered by subalternity and difference applied by an unsophisticated legalistic actor; or, a malleable instrument deeply embedded in the international

human rights system to be interpreted by a conscientious actor with extra-legal knowledge. The very idea of what a "gendered perspective" is, is perhaps at the core of this heart-wrenching battle. The lack of a clear understanding—even in light of a clear choice by the Secretariat—of what a "gendered perspective" could be, shapes misunderstandings and perhaps gives credence to detractors. The next section addresses four different conceptualizations of how my interviewees understand and apply the concept.

1. A method to remove stereotypes and biases from the judicial process

The most mainstream understanding of a "gendered perspective" within the judges I talked to,—which was also expressed in legal conferences, workshops, informal conversations with legal academics and the Secretariat's materials—is that of a method to identify gendered stereotypes and biases within the legal process and legal arguments. For instance, the Good Practices Handbook defines a "gendered perspective" as: "a method or tool of analysis designed to study the cultural constructions and social relations between men and women, identifying all those forms of interaction that create gender inequality and discrimination" (Technical Secretariat for Gender Equality and Non-Discrimination, 2019, p. 60). Other materials offered through the Secretariat's website—a journal, a podcast series, explanatory videos—offer the same understanding, usually referring to the metaphor of putting on the "gendered glasses" (*lentes de género*). The Supreme Court Justice who leads the Secretariat has offered the same definition in different instances (Muñoz 2019). Several academics and judges who have published academic works define it in this same manner with the focus on a "gendered perspective" as a legal mandate derived from international treaties and rooted in international human rights principle of equality and non-discrimination (Araya 2020, Carmona 2015, Gauché et al 2022, Facio 1999, Falcón 2013, Maturana 2019, Poyatos 2019, Rivas 2022).

A criminal judge from a guarantee court I interviewed, stated that this understanding was compatible and even strengthened a fundamental judicial duty: "a gender perspective has precisely everything to do not with weakening impartiality but with strengthening it." Yet this was the crux of the disagreement with detractors, who believed a "gendered perspective" violated the principle of equality and favored men over women. The neutrality of the law precluded them to see how a "gendered perspective" could strengthen equality. An Appeal's Court judge which offered a similar conceptualization to many of her colleagues stated: "I understand it as a focus on equality (…) I think a "gendered perspective" makes us look at plaintiffs with equality, but being able to discerne certain biases, stereotypes that we have historically incorporated." Another criminal judge from an oral trial court described a "gendered perspective" as having a limited role within the judicial process, since it had to be juggled with the principle of innocence and due process. For him, a "gendered perspective" entailed treating people in a respectful manner, training judicial clerks and other judges addressing trans people by their social names and cleansing judicial reasoning from stereotypes.

Several recent court rulings embrace this understanding as well. In a very high-profile case of homicide, abortion and rape—among other crimes—judges explained that they had incorporated a "gendered perspective" in their ruling by taking into consideration as an aggravating circumstance the fact that the perpetrator acted upon a pregnant victim, which they argued made her more vulnerable to defend herself. They stated in the ruling that the main role of a "gendered perspective" is to "remove biases or stereotypes which must be discarded and which should not interfere in the ways in which criminal justice actors make decisions." In a case

of femicide which a woman's partner threw her from the 23rd floor from their apartment which had initially been investigated as a suicide by the investigative police, judges did not take into consideration for the sentence that the perpetrator had an impeccable previous behavior, although he formally had not been previously convicted of any crime, because of the long history of violence towards the victim that was accredited through witnessess' declarations. In this case it was the prosecutor in her opening statement who offered that a "gendered perspective's" purpose is to "eliminate the biases against women that are embedded in the crimes that they suffer." Although practically all the examples interviewees discussed with me were about cases involving cisgender women, one judge told me of a case in which he had intervened in which stereotypes were used against a man who was in a heterosexual relationship in which he stayed home, did the housework and took care of the couples' pets.

Some rulings of the IACHR are usually mentioned in workshops about a "gendered perspective" and included in the Good Practices Handbook, among others the *Algodonero* and *Atala* cases, two "flagship" cases in IACHR jurisprudence (Undurraga 2016). The most important aspects of these rulings which are discussed in workshops and in the Handbook relate to discrimination towards LGBT individuals and stereotypes surrounding women. Yet this approach to IACHR jurisprudence arguably neutralizes other aspects of what a "gendered perspective" could entail by omitting them, thus vernacularizing this jurisprudence to a Chilean legalistic audience. An understanding of a "gendered perspective" as a method to eliminate stereotypes and biases from judicial reasoning is non-threatening to the principles of criminal law orthodoxy and friendly with a historically legalistic legal culture (Hilbink 2007). As this is the dominant understanding of the "gendered perspective" my interviewees offer, the Supreme Court's Secretariat has arguably been successful in its process of vernacularization of the concept. This is the understanding which, in my view, is most easily defended and accepted, as it can be incorporated to already fundamental legal principles and judicial duties without ascribing more power to judges or engaging in unorthodox practice. Yet, as many of my interviewees stated, even if this is the understanding more strongly promoted and understood, there is resistance against it.

2. **A tool to analyze the context in which facts are embedded**

Two criminal judges whom I interviewed jointly discussed a "gendered perspective" as an instrument to analyze the context in which facts take place. They spoke of the national and cultural context as a relevant factor to understand and assess the dynamics of facts in cases in which gender plays a relevant role. A judge I will call Alejandra stated that "I cannot overlook the fact that we belong to a patriarchal society in which women do not have the same rights as men." She spoke of how for her the fact that Chile is a sexist country should work as a *máxima de la experiencia* (experience-based knowledge that judges can use to decide a case), just as much as the fact that Chile is a seismic country. The Good Practices Handbook offers a very broad understanding of context, including the national context: "To offer context, is to read and interpret facts in the corresponding social environment, in the sum of conditionings and national, regional, local and community, institutional, political, economic, social, religious, cultural context (…)" (92). Yet, Alejandra's colleague, Isaura, offered that whenever they draw upon contextual information to analyze a case, the Appeal's Courts have their rulings annulled, arguing that they were not supposed to look at information beyond the particular case. These judges articulated a gendered perspective as a *máxima de la experiencia* based in the cultural

reservoir of people who shared certain characteristics: middle-aged women (early forties) who were aware of the inequalities that underrepresented groups face. These traits would help harness an examination of context with a particular insight, which suggests experiences and values of judges' affect the way they judge (Ansolabehere et al 2022).

Several other judges spoke of analysis of context as well, although the much more immediate context of women's economic situation and their responsibilities as mothers of young children and providers of care, including their trajectories of intimate partner violence. The public defenders I interviewed would often bring up in precautionary measures hearings' that women were in charge of the care of children as an argument for them not to be sent to preventive custody or to be released from it, citing several international instruments, including the Bangkok and Brasilia rules. The criminal and Appeal court judges I interviewed had mixed perceptions about these claims. While many of them defended this differential approach and thought that women who were pregnant or in charge of young children or the care of elders did not belong in preventive custody, some had a rigid understanding of the principle of equality and argued that if women engaged, for instance, in *microtráfico* (drug trafficking at the micro scale), they should be in preventive custody just as men. For instance, in one detention control hearing I attended as part of shadowing a public defender, a woman who was a mother of three young children, one under the age of two who was unweaned, and had a high-risk pregnancy, was sent to preventive custody for *micro-tráfico* although her defense lawyer stated that the women's preventive custody center did not have the medical staff to assist her.

One ruling which received honorable mention at the contest of rulings with a gendered perspective dealt with labor law. The case entailed three public employees who had faced sexual harassment from their direct male boss. In her analysis of facts, the judge underscores that all three employees are women who have young children or have to care for others, which situates them, from an intersectional perspective, in a position of vulnerability. She also emphasized that there was a hierarchical power dynamic between the employees and the boss, as he was in charge of qualifying their work. Additionally, the employees had turned to several instances to denounce the harassment they were victims of, yet, they had being ignored at several levels.

This understanding of a "gendered perspective" as an examination of the context in which facts take place, arguably a complement of the first conceptualization, as an analysis of power differentials and structural inequality requires a more in-depth examination of who are the plaintiffs, what is the nature of their relationships, what are their specific situations. Yet, while all judges agree that judicial reasoning had to be cleansed from stereotypes and biases, not all agreed that a context of vulnerability, structural inequality, or dependence *per se* entailed a differential approach.

3. **An instrument to reach a fair adjudicatory result**

One of the ideas associated with a "gendered perspective" is to overcome the paradigm of formal equality anchored in the nineteenth-century liberal tradition and embrace the concept of substantive equality (Fredman 2016) in order to reach a fair legal outcome. Yet, in a country which belongs to a civil law tradition in which judges do not create law and which spouses a predominantly textualist legal culture, the issue is controversial. Arguably, cleansing judicial reasoning from stereotypes and biases can contribute or pave the way to a fair outcome, yet removing stereotypes is not necessarily tied to or concerned with a particular result. The concern with avoiding a discriminatory outcome is an idea discussed in relation to structural inequality on

seminars and webinars about gender-sensitive judging (Carbonell 2018; Rivas 2022). Producing a non-discriminatory result can be achieved from a "systematic interpretation that, incorporating the principle of equality and the prohibition of discrimination, or resorting to mechanisms to solve antinomies, can save such prima facie discriminatory effect" (Carbonell 2018, 149 my translation). Alternatively, judges can resort to a more controversial option: judging *contra legem*. García (1992: 33) argues that with respect to judging *contra-legem* there are a series of perspectives from feminist legal theorists: "The dominant thesis would be that norms or general standards of decision are necessary, but that their violation is justified in the interests of the aforementioned objectives of justice. Norms, under this view, would be no more than "working hypotheses." The majority of my interviewees were against the practice of judging *contra-legem*, particularly in the context of using international treaties to dismiss national law. Yet several agreed that they could use international law in absence of national regulation or to complement it.

One civil judge discussed two cases that had her particularly anxious in which married women in conjugal partnership ask the court for authorization to sell inherited property: "The only hypothesis in the code to ask the court for authorization to sell inherited property is when the wife is absent and the husband has to ask for her authorization, to substitute her authorization, but not the other way around."[2] The reason for her anxiety was to find a basis for a decision on an issue where the civil code regulates an issue explicitly. However, she indicated that she would find a way to authorize it, even though she pointed out "it has been very difficult because the rules clearly speak of the husband." Her anxiety revealed the inherent problem of producing a non-discriminatory result when the laws in principle establish an unequal situation. Despite her anxiety, this judge had previously relied on international law to authorize name changes for transgender persons before domestic law explicitly authorize it.

Some of the criminal and Appeals Court judges I interviewed had previously worked as family and civil law judges, and they argued that in such competences they had more leeway than in penal law to produce a fair result. As family judges they often saw the inherently unequal situations of men and women in the context of getting a divorce; splitting assets; and receiving compensation for time away from work. Men would usually resort to sophisticated fraudulent means not to give women half of the assets the family judge had assigned, contesting such rulings in civil court. Several former civil judges suggested they felt they could not intervene. Yet one former civil judge told me that when a case in which the family judge had split a house among spouses as compensation for the wife's time away from work reached her court she knew she had to intervene. The husband was trying to incorporate the house into his company before the woman could inscribe her ownership in the property registry as co-owner; thus, the judge tried to find a way to keep the family judges' ruling. She ruled that the woman's title of the house did not depend on the property registry, but on the family judges' ruling which worked itself as a property title. She said she "had to go back to Roman law to make it work", and now feels she cannot cite her ruling, because of its unorthodox nature. The term "daring" appeared sometimes in interviews related to unorthodox practice. Another civil judge told me that while she would want to stop banks from foreclosing the homes of wives and children when the husband stopped paying the mortgage, she felt this was too unorthodox giving current practice.

[2] La temática de vender bienes heredados por la mujer casada en sociedad conyugal tiene una infame historia en Chile que se puede trazar a partir del caso Sonia Arce, quien interpuso un recurso de protección alegando que la ley era discriminatoria. Al no ser acogida su petición por tribunales superiores en Chile, acude a la Comisión Inter-Americana de Derechos Humanos.

One ruling which appeared in the news and was the winner of the contest of rulings with a "gendered perspective" is that of a family judge which ruled that within the context of a same-sex couple the mother who had not given birth should also be registered as the mother of the child. One Appeal's court judge I interviewed told me this judge had "gone too far" since Chile did not have a regulation on sex-same adoption—although he agreed with the Secretariat's project of removing stereotypes from judicial reasoning. Another ruling which recently won the contest established that a person who identifies as non-binary has a right to their identity be registered in the civil registry as such, although current Chilean gender identity legislation has a binary understanding of gender identity (Ayala 2020; Espinoza 2022).[3] Two opinion columns written by lawyers who protest this ruling shows to what extent legal culture is at the core of what understanding of a "gendered perspective" can be acceptable (Corral 2022; Henríquez 2023). Henríquez (2023) criticizes the Supreme Court's contest of rulings with a "gendered perspective" and argues that the Supreme Court prizes judges who "ignore" and "un-apply" domestic law: "Against what is usually affirmed, this tool ("gendered perspective") is not neutral", as he referred to this ruling as "judicial activism." Although Henríquez's (2023) analysis is unsophisticated in terms of the judicial reasoning applied, in my view, he had a point: a "gendered perspective" is not limited to detecting stereotypes and it could entail skewing domestic law, which in a predominantly legalistic culture and is perceived as a breach.

Several of these rulings which aim to reach a fair result—although not all—rely on international human rights treaties to reach decisions which operate in absence of national law, or, sometimes, to some extent, against domestic law. In this context, whether explicitly or not, the doctrine of conventionality review (*control de convencionalidad*) operates. This doctrine states that judges must analyze domestic law in light of the Inter-American Convention of Human Rights and other instruments of the Inter-American system (Nogueira Alcalá 2017; Nuñez 2015). According to Huneeus (2016), Chilean legal culture is antagonistic to conventionality control, which I gauged through informal conversations with more than ten legal academics. Some academics did not like it, because it "gives too much power to judges which should belong in the legislature"; others stated the IACHR is a "political court", while some simply acknowledged that is not a widely accepted doctrine. A couple of judges who stated they had engaged in conventionality control, tried to "masquerade it" so their rulings would not be annulled.

In the Chilean case there are legal complexities when it comes to un-applying domestic law since: "The doctrine as stated in *Almonacid* seemed to say that all courts must review laws under the American Convention and not apply them if found to be in violation. But not all courts in Latin America have the faculty to review legislation in this way. Many states have a system of concentrated judicial review, in which only constitutional court judges have the power of judicial review." (Huneeus 2017: 313). While the issue is definitely controversial, there is a generational component in judges' acceptance and willingness to apply it, as judges who attended the judicial academy (which was created in 1994) and have been socialized to the new neoconstitutionalist paradigm (Couso and Hilbink 2011) are more equipped to do so. As I attended a seminar to celebrate the anniversary of a women judges' organization, one panelist, discussing preventive custody, said that they—judges in the audience—have the international tools not to send women to preventive custody, that they must "dare" to engage in conventionality control. Similarly, in a training for the public defenders specialized in women defendants I was shadowing, it was argued that they should ask judges to engage in conventionality control, with the possibility of

[3] For a discussion on rulings on non-binary identity in Chile see Gauché and Lovera (2022).

"un-applying norms", although only in important cases. While the Secretariat does not openly advocate for conventionality control, it has honored rulings which do so, and indirectly supported going beyond the "weak" application of conventionality control.

4. Loosening of evidentiary standards and changes in the rules of evidence

In several fora I attended, it was usually very important for judges and legal academics to state at some point what a "gendered perspective" is not. The anxiety about what it is not—particularly within criminal law—is to some extent rooted in international law, as some international courts have modified their evidentiary standards in cases of gendered crimes. During the design of the Rome Statute, several feminist organizations and NGOs worked to include gender-sensitive provisions, which to some extent attempted to loosen evidentiary standards. As a result of these efforts, the ICC eliminated the corroboration requirement for sexual offenses in particular. Additionally, international legal doctrine has developed theories to loosen the principle of personal responsibility, as it has been difficult for international tribunals to maintain this principle intact in light of mass atrocities. In this context, Minkova (2022; 2023) argues that the ICC is not a less gender-sensitive tribunal than the ICTR and ICTY as some state (Chapelle 2016), but a tribunal which enforces traditional criminal law principles and attempts to be a model for domestic courts. My interviewees strongly agreed that a "gendered perspective" could not entail a loosening of evidentiary standards or any understanding which challenged established rules of evidence within criminal adjudication. This was a topic which rarely emerged naturally in my interviews, so I always had to elicit information about it. I asked judges about international jurisprudence, particularly IACHR jurisprudence which stated that testimonies of victims of sexual violence should be given a strengthened value, which entails assessing such testimonies with the understanding that trauma affects memory and thus inconsistencies are expected in such testimonies. Although such jurisprudence has been interpreted by some to mean a loosening of evidentiary standards, as it offers than in sexual assault cases, victims' testimonies are "fundamental evidence." One judge who was a part of the committee to decide the contest of rulings with a gendered perspective, told me he and a colleague disqualified a ruling because it said that the IACHR has stated that a gendered perspective entails a loosening of evidentiary standards.

All of my interviewees who were criminal law judges and appeal's judges except for one said it was not possible to have such considerations, as they understood the concept to mean assigning a higher evidentiary value to victims' testimonies. Several judges stated it would be extremely difficult to, for instance, convict a defendant with a victim's statement alone. One Appeal court judge who used to be a criminal judge stated: "I honestly do not know if there is the willingness to make a change in the way we assess testimony, in order to give it an strengthened value. I think we have to go step by step." Another criminal judge told me that criminal judges had different boundaries that the IACHR and could not assign a strengthened value to testimonies. Yet, other Latin American Supreme Courts have vernacularized some of these ideas into their materials. For instance, the Guatemalan Good Practices Handbook explicitly argues for assigning a strengthened value to victims of gendered crimes.

These ideas about what a gendered perspective is not, were embedded in trials and court rulings, which reveals that legal actors were concerned about perceptions of whether they were sidelining criminal law orthodoxy. In two 2023 trials with a high public impact, the issue of loosening of evidentiary standards was discussed explicitly. In one case of femicide which relied

heavily on indirect evidence, a prosecutor I was shadowing argued at her closing statement: "a gendered perspective is not about loosening evidentiary standards, but adjusting evidence to the principle of equality before the law." In another case of rape, abortion and homicide, in which the prosecutors and *querellantes* heavily requested that a "gendered perspective" be incorporated into assessment of evidence, the judge wrote in the ruling: "a gendered perspective does not entail a loosening of evidentiary standards or of the presumption of innocence which protects all citizens." These performative statements reveal the anxiety prosecutors and judges have of being perceived as changing evidentiary standards.

Similarly, in my conversation with legal academics, everyone outright rejected that there was a place for loosening of evidentiary standards in criminal trials or to assign an enhanced value to victims of gendered crimes such as sexual offenses, intrafamily violence and femicide. The majority of them adhered to a strict understanding of the principle of innocence and to assigning the same exact evidentiary value to the testimony of a victim and a defendant. Yet, there was one exception within these law professors, one academic who was frustrated with a "gendered perspective" being limited to "detecting stereotypes" and argued that a testimony of a victim of sexual assault could potentially on its own land a conviction without external corroboration, as a minority of academics defend. This issue has generated academic discussion about whether corroboration—or what kind of corroboration—should be necessary in gendered crimes (Arena 2019, Gama 2020, García 1992; Ortiz 2020). Yet, there is an increasing awareness of the relevance of indicative or indirect evidence in cases of sexual violence, in which there is usually a lack of evidence. Within this context, lawyers who work as *querellantes* and prosecutors for sexual assault cases stated in interviews that judges are more and more willing to convict in context of few or indicative evidence and that they now understand that victims' recollections may not always be exact, which should not diminish their credibility.

Challenges to Implementation in Longitudinal Perspective

In my interviews with judges there were several obstacles they identified to embracing a "gendered perspective" in their everyday work. There were barriers they discussed such as discriminatory laws; the lack of gender-sensitive arguments from the prosecution and the defense; the strait jacket-like nature of their legal positivist education; and lack of interest and knowledge from their colleagues. Judges also emphasize the overall lack of resources the state assigns to gender-sensitive projects: insufficient funding assigned to the Secretariat and zero to Regional Gender Committees; inadequate investment from the state to fund psychological treatment for people who commit VAW; and, lack of comprehensive assistance to victims beyond judicialization. A few judges also expressed fear of being perceived as feminist activists, which was a very gendered concern which only women judges relayed; for, instance, one of them had been referred to as a "feminazi" by her male colleagues. Several women judges spoke of experiences of sexism throughout their careers, such as their intellect being questioned by their male colleagues and negative reactions from their superiors to the possibility of them becoming mothers. Additionally, a couple of judges also expressed skepticism towards content promoted by the judicial hierarchy. While these are the overall concerns judges' expressed, there is an important longitudinal component to my analysis in regards to a particular barrier to incorporating a "gendered perspective" in adjudication which lower courts' judges expressed: the possibility of their rulings being annulled by Appeal's courts. While I have been conducting fieldwork from 2019-2023, which spans a five-year cycle, there have been more intense

moments of data collection in 2019 and 2023. Thus, during 2022-2023 I interviewed again several of the judges I spoke to during 2019-2021.

During 2019-2021 a number of male and female judges discussed the Courts of Appeals as a hindrance to having gender-sensitive considerations within adjudication. In an interview with two oral court judges, this issue was the main focus of our conversation. When one of them began to discuss how the Appeal's court had annulled one of her gender-sensitive rulings because her analysis of context "exceeded the considerations of the specific case", the other one pointed out "we have felt that in our very skin." They expressed the great frustration that they felt when seeing how, on the one hand the Secretariat promotes a "gendered perspective" but, on the other hand, the Courts of Appeals annuls their rulings. A guarantee judge argued that in cases in which, for instance, sexual workers were victims of sexual offenses, he had to lower the scope of protection in anticipation that his ruling would not be annulled. Similarly, a civil judge stated that whenever she was going to incorporate a gender-sensitive analysis, she "always had to look at it thinking that it will be approved by the Court."

Judges also described Appeals Courts as conservative milieus reactionary to innovation, by definition antagonistic to gender-sensitive judging as it challenged the presumed neutrality of the law. Appeals Court are constituted by older judges and until recently were overwhelmingly male dominated. Thus, some younger lower court judges perceived them to be from a different cultural background. Describing the rise of neoconstitutionalism in some pockets of lower courts in the post-transition period, Couso and Hilbink (2011) offer that "in the appellate courts and the supreme court, by contrast, traditional commissarial institutional values and routines remain well embedded, and judges display little knowledge of or interest in neoconstitutionalism" (122). A fundamental component of neoconstitutionalist thought is the relevance of the constitutional block and international human rights treaties and principles. Yet, as part of a predominantly textualist legal culture, Appeal Court's display a preference for domestic law, in detriment to international instruments. The civil judge I interviewed stated that every ruling in which she cited international instruments would be annulled by the Appeal's court; and, when she worked as a *relatora*—a legal clerk who summarizes cases and legal argument for Appeal and Supreme Courts—Supreme Court judges would tell her to delete any international instruments cited by lawyers. One oral crime judge who told me she usually drew from international human rights treaties, said, referring ironically to Appeals Courts: "no, because that *exists*", then her colleague stated "it's not like we are delusional." Even Appeal court judges themselves acknowledged that their courts were conservative and static, and many stated their colleagues were reticent of drawing upon international law. For example, one Appeal court judge stated: "This is a very traditional, old court. People are used to doing things as they have always done them. If things change, they get have an attack." Another Appeal's Court judge told me that as part of her socialization to the court she had to acquire a more conservative judging criterion, since it was the dominant one.

It is important though, to nuance these findings as there is a longitudinal influence to the work of the Secretariat. During 2022 and 2023 I interviewed again several of the judges who told me unelicited during 2019 that their most formidable hindrance to incorporating a "gender perspective" in their judicial praxis was the Court of Appeals. I saw a couple of these judges on an event to honor the winner of the contest of rulings; they thanked the Secretariat because they now felt that they had the Supreme Court's support as rulings which incorporated a "gendered perspective" were celebrated. I interviewed one of them and she told me that the Court of Appeals no longer annuls her rulings with a "gendered perspective." Still, several Appeal Court

judges from different regions stated in 2023 that they are the only ones interested in the topic of gender-sensitive judging within their court.

Final Reflections

In this article I have offered an examination of the ways in which the concept of "gendered perspective" is being received within the Chilean judiciary, in which ways judges understand the concept, how they apply it in their legal praxis, and what are the obstacles they foresee to its implementation. Almost a decade after the project began in 2014 there are significant milestones, adherents and detractors. There are several ideas circulating within the Chilean legal system about what a gendered perspective could entail. Some understandings seem to be more prone to be developed by particular judicial competences, such as civil and family law, which give judges more "leeway" in order to secure a fair result. The Secreatariat directly promotes and vernacularizes a gendered perspective as a method to remove stereotypes and biases. Yet, it indirectly supports other understandings such as an instrument to reach a fair adjudicatory result, which is something mediated by some unorthodox forms of conventionality control. While former institutionalist theories supported the relevance of a "external shock" to institutions for institutional change to occur, more recent theories place emphasis on gradual institutional change, which my findings regarding the perception of some lower court judges on longitudinal perspective offer.

Higher courts, particularly Courts of Appeals, were described by several judges as conservative instances that tend to reject a "gender perspective" and the application of international human rights law. Although the Secretariat has made efforts to give the Courts of Appeals a leading role in promoting a "gender perspective" within their jurisdiction and some appellate court judges appear in public as strong advocates of the gender perspective, these courts appear to be reactionary elements that are unlikely to change significantly in the short term. As Couso and Hilbink (2011) point out, judges demonstrate that the higher courts have not embraced neoconstitutionalism, and therefore interpretation based on principles and international human rights law, but rather reject it and continue to some extent to deploy a legal formalism that does not allow for the inclusion of the context in which the facts unfold.

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