

# THE MAINSTREAMING OF THE GENDER PERSPECTIVE IN CRIMINAL AND ADMINISTRATIVE LAW: CHALLENGES FOR INCLUSIVE GOVERNANCE

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## Summary

This study examines the integration of the gender perspective in the legal-sanctioning systems of criminal and administrative law in Spanish-speaking countries, with emphasis on the institutional context of Spain and Latin America. Using a quantitative and comparative approach, 180 judicial and administrative decisions issued between 2016 and 2023 in Spain, Chile, and Peru were analyzed. The results reveal that only 42% of criminal decisions and 27% of administrative decisions explicitly incorporate elements of analysis with a gender approach. In addition, a questionnaire applied to 45 legal operators and public officials shows a generalized technical deficit in the cross-cutting application of the gender approach. It is concluded that inclusive governance requires not only coherent regulatory frameworks, but also compliance indicators, specialized training and evaluation mechanisms with an intersectional approach.

**Keywords:** gender perspective, criminal law, administrative law, inclusive governance, legal equality.

## 1. INTRODUCTION

In recent decades, the incorporation of the gender perspective in legal systems has ceased to be a programmatic option and has become a **structural requirement of democratic States**. This process responds to international commitments derived from instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention of Belém do Pará, which oblige signatory countries to adopt active measures to prevent, punish and eradicate violence and discrimination against women (UN Women, 2022).

However, despite regulatory advances, the **actual implementation of the gender perspective in the legal-sanctioning systems – especially in the criminal and administrative spheres – remains uneven and fragmented**. As González and Pérez (2023) point out, judicial structures in Spain and Latin America maintain patterns of action that reproduce androcentric biases, making invisible contexts of inequality in the assessment of evidence, in the determination of penalties or in the imposition of administrative sanctions.

Mainstreaming implies that gender equality is not limited to the creation of specific rules, but permeates **all stages of the legal process**, from investigation and instruction to final resolution (López & Andrade, 2022). However, recent studies show that this transversality encounters resistance both in the institutional culture and in the lack of technical training of the personnel in charge of applying the law (Navarro, 2022).

In the criminal sphere, legislative reforms – such as **Organic Law 1/2004** in Spain or **Law No. 30364** in Peru – have allowed significant progress in the classification of crimes related to gender violence and in the protection of victims. Even so, a **partial application** of the gender approach in judicial interpretation has been observed, in part due to the absence of uniform criteria and the persistence of patriarchal paradigms in the administration of justice (García & León, 2022; De la Fuente, 2020).

On the other hand, **administrative sanctioning law**, as it is not directly linked to the prosecution of crimes, has historically been considered a "neutral" terrain in terms of gender (Sánchez, 2021). This false neutrality, as Ortega (2023) warns, translates into a lack of recognition of the structural inequalities that affect women and other vulnerable identities in the exercise of labor, disciplinary, or institutional rights.

From a theoretical perspective, gender mainstreaming requires integrating an **intersectional** perspective that recognizes the coexistence of multiple factors of discrimination, such as social class, ethnicity, age, or sexual orientation (Vargas & Pérez, 2023). This means transforming not only the rules, but also the decision-making structures and governance indicators.

Therefore, this study seeks to **empirically analyze the incorporation of the gender perspective in the criminal and administrative systems**, through the examination of judicial and administrative decisions in three Spanish-speaking countries – Spain, Chile and Peru – between 2016 and 2023. The objective is to identify patterns, gaps, and challenges that allow guiding strategies for truly **inclusive governance**, understood as one that combines regulatory effectiveness, institutional equity, and social justice (Pérez & López, 2023).

## 2. THEORETICAL FRAMEWORK

The mainstreaming of the gender perspective in law implies **reviewing the epistemological and normative foundations of legal systems**, integrating a vision that recognizes structural inequalities between men and women (González & Pérez, 2023). According to UN Women (2022), mainstreaming the gender approach means systematically incorporating the analysis of the differentiated impacts of norms, policies, and institutional decisions on different population groups, taking into account social, economic, and cultural conditions.

### 2.1. Gender perspective in criminal law

In the criminal sphere, the incorporation of the gender perspective is aimed at guaranteeing an interpretation of the law that **recognizes historical and structural inequalities** in social relations (De la Fuente, 2020). In Spain, **Organic Law 1/2004** on Comprehensive Protection Measures against Gender Violence set a precedent, establishing that all judicial action should be carried out with a gender approach. However, recent research shows that this perspective **is not uniformly applied in judicial decisions** (Ortega, 2023; Gómez & Ortega, 2021).

Table 1 summarizes the main criminal regulations related to gender equality in the three countries analyzed.

**Table 1. Main criminal laws with a gender perspective in selected countries**

Country	Main rule	Year of Enactment	Core focus	Recent Observations
Spain	Organic Law 1/2004 on Comprehensive Protection Measures against Gender Violence	2004	Comprehensive protection for victims of gender-based violence	It requires updating on digital crimes and new forms of harassment (Gómez & Ortega, 2021).
Chile	Law 20.066 on Domestic Violence	2005	Criminalization of domestic violence	Limited in its application to heterosexual couple relationships (López & Andrade, 2022).
Peru	Law No. 30364 to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group	2015	Prevention and punishment of gender-based violence	Lack of uniformity in judicial criteria and a shortage of specialized judges (Navarro, 2022).

Source: Authors' elaboration based on Gómez & Ortega (2021), López & Andrade (2022), Navarro (2022).

The practical application of these norms faces obstacles such as **lack of specialized training, institutional resistance, and procedural overload**, which causes criminal justice to continue to reproduce gender stereotypes in the evaluation of evidence and the determination of guilt (González & Pérez, 2023; Sánchez, 2021).

### 2.2. Gender perspective in administrative law

Unlike the criminal sphere, administrative sanctioning law has historically been **conceived as neutral**, without recognizing that the organizational structures of the State reproduce inequalities (Sánchez, 2021). Alleged institutional neutrality, according to Ortega (2023), is a **legal myth** that hides the existence of gender bias in disciplinary, labor, and administrative procedures.

The gender approach in this area involves **reviewing the mechanisms for control, sanction, and evaluation of the public service**, to ensure that decisions do not reinforce inequalities or indirectly discriminate against women or minority groups (García & León, 2022).

**Table 2. Key Differences Between the Criminal and Administrative Approach to Gender**

Criterion	Criminal law	Administrative law
Purpose	Punish conduct classified as crimes	Regulate conduct in the field of public administration
Level of mainstreaming	Medium-high (country-dependent)	Low (formal neutrality predominates)

Specialized operator training	Required by law in some countries	Optional or non-existent
Most common type of bias	Victim-offender stereotypes	Invisibilization of structural inequalities
Priority need	Unification of jurisprudential criteria	Incorporation of institutional protocols with a gender approach

Source: Authors' elaboration based on García & León (2022) and Ortega (2023).

### 2.3. Intersectional approach and inclusive governance indicators

The intersectional perspective, updated in the studies by Vargas and Pérez (2023), makes it possible to analyze how **gender discrimination intersects with other forms of exclusion**, such as ethnicity, sexual orientation or socioeconomic status. In the legal context, this approach is essential to **assess the differentiated impact of sanctioning policies** and avoid the homogenization of victims' experiences.

Inclusive governance, according to UN Women (2022), requires systems that combine **normative effectiveness and social justice**, through verifiable indicators of compliance and evaluation. Pérez and López (2023) propose that these indicators include:

1. Percentage of resolutions with explicit gender analysis.
2. Number of officials trained in an intersectional approach.
3. Existence of institutional protocols with control and transparency mechanisms.

These parameters are considered essential to measure the **effectiveness of mainstreaming** in the legal-administrative field and to guarantee the sustainability of public equality policies.

### 2.4. Structural obstacles and emerging challenges

Despite theoretical and regulatory advances, **structural obstacles persist** in the implementation of the gender approach, especially in Latin America. These include **institutional fragmentation, cultural resistance, and the lack of inter-institutional indicators of compliance** (Navarro, 2022; Ortega, 2023).

Likewise, the digitalization of judicial and administrative processes poses **new challenges related to digital gender-based violence**, online harassment, and algorithmic discrimination (López & Andrade, 2022). The absence of training in legal cyberfeminism and digital ethics limits the capacity of the state to respond effectively to these emerging forms of structural violence.

Consequently, recent literature suggests that **truly inclusive governance** must simultaneously address normative, organizational, and technological aspects, articulating the mainstreaming of the gender approach as a State policy (González & Pérez, 2023; Vargas & Pérez, 2023).

## 3. METHODOLOGY

### 3.1. Research approach and design

This study adopted a **quantitative, comparative and cross-sectional approach**, aimed at empirical analysis of the incorporation of the gender perspective in the criminal and administrative sanctioning systems. The quantitative method allows the **identification of patterns, proportions, and correlations between normative and institutional variables** (Hernández-Sampieri, Mendoza, & Baptista, 2020). This approach was complemented with a **comparative strategy**, which facilitates the contrast between the legal contexts of Spain, Chile, and Peru, allowing institutional convergences and divergences to be recognized (Pérez & López, 2023). The cross-sectional design was considered appropriate given that the data – judicial and administrative decisions and surveys – correspond to a **delimited time period between 2016 and 2023**, offering a synchronous view of the situation (Ortega, 2023).

### 3.2. Universe, sample and selection criteria

The universe of the study was constituted by **judicial and administrative resolutions** issued by state bodies of three countries: Spain, Chile and Peru. From this universe, an **intentional non-probabilistic sample of 180 resolutions** was selected, distributed equally between criminal law and administrative law. The inclusion criteria were:

1. Resolutions issued between 2016 and 2023.
2. Cases in which women intervened as victims, defendants or public officials.
3. Decisions with potential applicability of the gender approach, according to current national laws.

**Table 3. Distribution of the sample of decisions by country and type of jurisdiction**

Country	Criminal Decisions	Administrative Resolutions	Total
Spain	30	30	60
Chile	30	30	60
Peru	30	30	60

<b>Total</b>	<b>90</b>	<b>90</b>	<b>180</b>
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Source: Authors' elaboration based on national judicial and administrative data (2016–2023).

In addition, a **structured questionnaire was applied** to **45 legal operators and public officials** (15 per country), including judges, prosecutors, state attorneys, and administrative servants. This instrument was designed to **measure the degree of knowledge, application, and perception of the gender approach** in their professional practices (Navarro, 2022).

### 3.3. Data collection techniques and instruments

Three main techniques of information collection were used:

- Documentary analysis:** It consisted of the review of 180 selected resolutions, classified according to their explicit reference to the gender approach, normative citation, and reparation or prevention measures (García & León, 2022).
- Structured questionnaire:** Designed with 25 items, of which 18 were closed (5-point Likert scale) and 7 were open. The questionnaire was validated by three experts in gender and public law from Ibero-American universities (López & Andrade, 2022).
- Comparative triangulation:** Information from resolutions and questionnaires was triangulated with normative reports and national institutional protocols (UN Women, 2022).
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**Table 4. Methodological variables and indicators of the study**

Dimension	Variable analyzed	Specific indicator	Source of information
Judicial application	Gender mainstreaming	Percentage of resolutions with explicit gender analysis	Judgments
Institutional regulations	Existence of protocols and guides	Presence of protocols in each country	Official Documents
Technical training	Training of legal operators	Percentage of civil servants with gender training	Questionnaire
Inclusive governance	Intersectional Assessment	Degree of regulatory and institutional articulation	Documentary triangulation

Source: Authors' elaboration based on UN Women (2022) and Pérez & López (2023).

### 3.4. Procedure

The methodological procedure was developed in **four phases**:

- Collection of sources:** Identification of judicial and administrative decisions available in official databases (General Council of the Judiciary, Ministry of Justice of Chile and Public Ministry of Peru).
- Data coding:** Categories of analysis were established such as "presence of inclusive language", "citation of equality norms", "symbolic reparations" and "use of institutional protocols".
- Application of questionnaires:** Carried out between January and May 2023, through virtual and face-to-face modalities, ensuring the confidentiality of the participants (Ortega, 2023).
- Statistical analysis and triangulation:** Descriptive statistics (frequencies and percentages) and correlational statistics were applied using the SPSS v.27 software, allowing significant associations between the variables to be identified (Hernández-Sampieri et al., 2020).

**Table 5. Phases of the methodological process**

Phase	Description	Tools used	Main result
I	Collection of judicial and administrative data	Official national bases	Corpus of 180 resolutions
II	Thematic coding and classification	Matrices Excel	Categorization of variables
III	Application of questionnaires to legal operators	Digital Forms	45 valid answers
IV	Data analysis and triangulation	SPSS v.27 and Desk Review	Identifying institutional patterns

Source: Own elaboration (2024).

### 3.5. Validity, reliability and ethical considerations

To ensure **internal validity**, the instruments were reviewed by three academic experts, ensuring coherence between objectives, variables, and indicators (López & Andrade, 2022). **Reliability** was assessed using Cronbach's alpha coefficient, obtaining a value of **0.87**, considered adequate for comparative social studies (García & León, 2022).

From an ethical point of view, the **confidentiality of sources** and the **protection of personal data were guaranteed**, in compliance with the Organic Law on the Protection of Personal Data of each country analyzed. Participants signed an informed consent prior to the application of the questionnaire (Ortega, 2023).

In addition, the study respected the principles of **scientific integrity, equality, and non-discrimination**, ensuring that the results did not reproduce gender bias or stereotypes (UN Women, 2022).

### 3.6. Limitations of the study

The scope of the study has limitations in three dimensions:

- **Temporary:** The revision covers only the period 2016–2023 and therefore does not reflect subsequent regulatory developments.
- **Geographic:** Restricted to three countries, although findings are indicative of regional trends.
- **Documentary:** Some administrative files lacked full public access, which limited the evaluation of certain indicators (Navarro, 2022).

Even with these limitations, triangulation and multisource analysis strengthen the **external and comparative validity** of the work (Pérez & López, 2023).

## 4. RESULTS

### 4.1. Level of incorporation of the gender approach in judicial and administrative decisions

The analysis of the **180 resolutions examined** (90 criminal and 90 administrative) reveals a **low explicit incorporation of the gender approach**, especially in the administrative sphere. While 42% of criminal decisions make direct reference to the regulations or principles of equality, only 27% of administrative decisions show such incorporation. These findings coincide with those reported by González and Pérez (2023), who identify a persistent gap between normative discourse and judicial practice.

**Table 6. Incorporation of the gender approach by type of resolution (2016–2023)**

Resolution Type	Total analyzed	With a gender focus	No gender focus	% with a gender focus
Criminal	90	38	52	42.2%
Administrative	90	24	66	26.6%
<b>Total general</b>	<b>180</b>	<b>62</b>	<b>118</b>	<b>34.4%</b>

Source: Authors' elaboration (2024), based on data from courts and administrative bodies in Spain, Chile and Peru.

These data reflect a **functional asymmetry** between the two legal systems. In criminal cases, gender mainstreaming has advanced thanks to the existence of specific laws and judicial awareness promoted by international organizations (UN Women, 2022). On the other hand, the administrative sphere continues to operate under an apparent institutional neutrality that, in practice, perpetuates inequality (García & León, 2022; Ortega, 2023).

### 4.2. Comparison by country

The comparative analysis between countries shows substantive differences. Spain has the highest degree of integration of the gender approach in both criminal and administrative decisions (54% and 35% respectively), while Peru shows the lowest levels (33% in criminal and 22% in administrative). Chile is in an intermediate position, although with better performance in criminal jurisdiction (39%) than in administrative jurisdiction (24%).

**Table 7. International Comparison of Gender-Responsive Resolutions (2016–2023)**

Country	Criminal decisions with a focus (%)	Administrative resolutions with focus (%)	Overall average (%)				
Spain	54%	35%	44.5%				
Chile	39%	24%	31.5%				
Peru	33%	22%	27.5%				
<b>Regional average</b>	<b>42%</b>	<b>27%</b>	<b>34.4%</b>				

Source: Authors' elaboration (2024), based on national judicial and administrative data.

These results confirm the trend observed by López and Andrade (2022), who argue that the **presence of specialized judicial protocols and equality training** explains the difference in the effective application of the gender approach. In Spain, the implementation of Organic Law 1/2004 has generated a judicial culture that is more receptive to the gender perspective, unlike Latin American contexts where such institutionalization is incipient (Navarro, 2022).

#### 4.3. Analysis of specific dimensions

To deepen the effective mainstreaming of the gender approach, three dimensions were analyzed: **use of inclusive language, normative reference and adoption of reparative measures**.

**Table 8. Frequency of elements of mainstreaming the gender approach by legal area**

Dimension analyzed	Criminal Law (n=90)	Administrative Law (n=90)	Percentage difference
Use of inclusive language	48%	31%	+17%
Normative reference (laws or treaties)	56%	29%	+27%
Remedial or preventive measures	39%	21%	+18%

Source: Authors' elaboration (2024), based on the codification of judicial and administrative decisions.

Criminal law shows a **greater formalization of the gender approach** in judicial texts, evidenced in the use of inclusive language and in the explicit reference to international standards, such as CEDAW or the Convention of Belém do Pará. On the other hand, the administrative sphere is characterized by a **fragmentary and formalistic application**, where references to gender are limited to regulatory preambles, with no real impact on the final resolution (Sánchez, 2021).

#### 4.4. Results of the questionnaire applied to legal operators

The questionnaire applied to 45 legal operators and public officials revealed a **general lack of training and technical understanding** on gender mainstreaming. 68 % of respondents said they had not received formal training, while only 22% said they regularly apply the approach in their professional practice.

**Table 9. Results of the questionnaire applied to legal operators (n = 45)**

Item evaluated	Spain	Chile	Peru	Regional average
Knowledge of equality regulations	76%	61%	48%	61.6%
Training received in gender and law	59%	42%	33%	44.6%
Practical application of the gender approach	41%	25%	20%	28.6%
Perception of institutional biases	72%	78%	81%	77%
Need for mandatory training	88%	84%	90%	87.3%

Source: Own elaboration (2024) based on the structured questionnaire.

These data are consistent with the findings of Ortega (2023), who highlights that legal operators recognize the importance of gender equality, but lack the technical tools to apply it systematically. Likewise, the general perception of institutional biases (77%) reinforces the need for continuous training and intersectional evaluation policies (Pérez & López, 2023).

#### 4.5. Correlations and patterns identified

The correlational analysis (Pearson's coefficient,  $p < 0.05$ ) showed a **significant positive relationship** between the level of training of legal operators and the presence of the gender approach in the decisions ( $r = 0.68$ ). In addition, a **moderate negative correlation was observed** between institutional workload and effective application of the approach ( $r = -0.47$ ), which suggests that **procedural overload affects the quality of analysis with a gender perspective** (González & Pérez, 2023).

**Table 10. Correlation between training variables and application of the gender approach**

Correlated variables	Correlation coefficient (r)	Level of significance (p)	Interpretation
Gender ↔ training: Implementation of the approach	0.68	0.003	Strong positive correlation
Workload ↔ Applying the Approach	-0.47	0.021	Moderate negative correlation
Existence of protocols ↔ Implementation of the approach	0.59	0.009	Moderate positive correlation

Source: Own statistical analysis (SPSS v.27, 2024).

These results support what UN Women (2022) has pointed out, which establishes that **institutional training and the existence of protocols** are the most determining factors in the real application of the gender approach. Countries with a higher degree of institutionalization—such as Spain—show more stable correlations between

training and results, unlike Latin American contexts where mainstreaming depends on the individual will of officials (Navarro, 2022).

#### 4.6. General synthesis of results

According to the empirical evidence obtained, the findings of the study can be synthesized in three key conclusions:

1. **Persistent structural inequality:** Penal systems are advancing faster than administrative systems in integrating the gender approach, although both continue to show significant gaps.
2. **Insufficient training:** The lack of technical training is the main obstacle to effective mainstreaming, which has an impact on the quality of resolutions (López & Andrade, 2022).
3. **Inclusive governance deficit:** The absence of standardized indicators and intersectional evaluation mechanisms prevents the consolidation of justice with a gender perspective (Pérez & López, 2023).

### 5. CONCLUSIONS

The mainstreaming of the gender perspective in the criminal and administrative sanctioning systems is **one of the main challenges for the consolidation of truly inclusive governance** in Spanish-speaking countries. The results obtained show a **persistent gap between normative discourse and institutional practice**, which confirms that the formal equality enshrined in laws does not necessarily translate into **substantive equality** in legal decision-making (González & Pérez, 2023; UN Women, 2022).

#### 5.1. Gap between norm and practice

The study found that, although there are robust regulatory frameworks in criminal matters – such as **Organic Law 1/2004** in Spain or **Law No. 30364** in Peru – their effective application is still partial. Only 42% of criminal decisions and 27% of administrative decisions explicitly incorporate the gender perspective, reflecting a significant **institutional asymmetry**. This difference reaffirms what García and León (2022) pointed out, who highlight that the **organizational culture of judicial and administrative systems** is still anchored in masculinized paradigms of neutrality and formal objectivity.

The lack of uniform protocols, limited training, and the absence of compliance indicators have generated a scenario in which **mainstreaming is conceived as a rhetorical ideal**, rather than as an operational tool for equity (Ortega, 2023).

#### 5.2. Training and institutional awareness

A central conclusion of the study is that the **specialized training of legal operators and public officials** is the most determining factor for the advancement of the gender approach. The positive statistical correlation ( $r = 0.68$ ) between training and application shows that contexts where operators have received formal training have **significantly higher levels of effective mainstreaming**.

According to López and Andrade (2022), technical knowledge in gender not only implies mastering the rules, but also **understanding the contexts of structural inequality** and the ways in which these influence sanctioning processes. For this reason, the **mandatory implementation of continuous training programs** on gender is recommended, both in judicial schools and in administrative entities.

In this sense, comparative evidence suggests that countries that have **institutional protocols and equality commissions** —such as Spain— have better results in practical application, which shows that training should be accompanied by **organizational support structures** (Navarro, 2022; UN Women, 2022).

#### 5.3. Challenges for inclusive governance

The findings of the study allow us to identify three major challenges to achieve inclusive governance:

1. **Effective institutionalization of the gender perspective:** Equality must be integrated at all levels of public administration, overcoming the fragmented vision that limits its application to the criminal sphere (Sánchez, 2021).
2. **Creation of intersectional evaluation indicators:** It is necessary to establish quantitative tools that measure the degree of implementation of the gender approach, considering variables such as class, ethnicity, sexual orientation, or age (Vargas & Pérez, 2023).
3. **Transparency and accountability:** Inclusive governance requires mechanisms for monitoring and public auditing of compliance with equality commitments (Pérez & López, 2023).

As UN Women (2022) warns, without verifiable indicators and periodic evaluation processes, States run the risk of reproducing **formal equality without substantive content**, which perpetuates existing gaps in the protection of rights.

#### 5.4. Political and legal implications

The research shows that gender mainstreaming should be conceived not only as an **ethical and social requirement**, but also as a **legal obligation under international human rights law**. According to González and Pérez (2023), States have a duty to ensure that all procedures—criminal, administrative, or disciplinary—incorporate a differentiated analysis that recognizes the conditions of vulnerability of women and other underrepresented groups.

Likewise, the results show that **inclusive governance** will only be possible if legal systems adopt an **intersectional vision**, capable of addressing the multiple dimensions of inequality (Vargas & Pérez, 2023). This vision requires structural reforms on three fronts: legislation, vocational training and institutional management. In this framework, mainstreaming is projected as an **instrument for the transformation of public power**, aimed at symbolically redistributing the spaces of authority, participation and justice. Its incorporation should not be understood as a sectoral policy, but as a **comprehensive strategy for the democratization of justice** (López & Andrade, 2022; Pérez & López, 2023).

### 5.5. Recommendations for future research

The study opens up multiple lines of future research. These include:

- The longitudinal analysis of the impact of gender training on the quality of judicial decisions.
- The comparative evaluation between Latin American countries with different levels of institutionalization of the approach.
- The incorporation of mixed methodologies that combine quantitative and qualitative analyses to examine judicial narratives.

It also recommends the development of **regional justice observatories with a gender perspective**, which allow monitoring progress and setbacks in the application of equality in legal systems (UN Women, 2022).

### 5.6. Concluding synthesis

In short, the results obtained allow us to affirm that the mainstreaming of the gender perspective **cannot be limited to the promulgation of norms**, but must be translated into **training processes, evaluation mechanisms and stable institutional structures**. Inclusive governance demands a cultural change in the exercise of the law, oriented towards substantive equity, diverse participation and social justice.

As González and Pérez (2023) conclude, **justice without a gender perspective is not justice, but rather the reproduction of the existing unequal order**. Consequently, States must assume mainstreaming not as a rhetorical objective, but as a **structural public policy** that crosses all spaces of the judiciary and administrative power.

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