

# IT IS NOT JUSTICE

*An analysis of the country's judiciary sentences and resolutions.  
Report on the findings of the first citizen's judiciary audit.*







# Red por la Ciudadanización de la Justicia



~~IT IS NOT JUSTICE~~ *If it discriminates*

*If it does not protect. If it does not ensure reparation.*

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# Introduction

## **Who are we?**

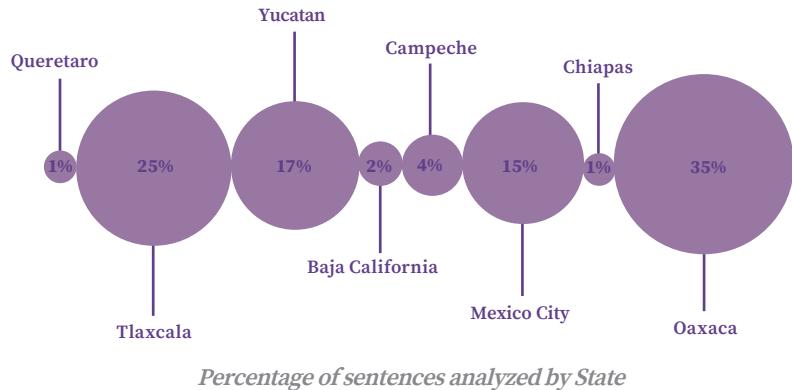
The Network for Justice for Citizens is a group made up by fourteen civil society organizations that is committed to ensuring access to justice under conditions of equality, without discrimination and with transparency; at the local and national levels, it seeks to contribute to the structural transformation of the judiciary powers in Mexico, in order to improve the administration of justice.

## **What do we do?**

- We monitor, we evaluate and we witness the performance of judiciary authorities.
- We open channels for dialog and collaboration with judges, in order to strengthen capacities and thus enable the administration of justice with a gender perspective and with transparency.
- We design strategies that facilitate access to justice under conditions of equality and non-discrimination.

## What do we analyze and how?

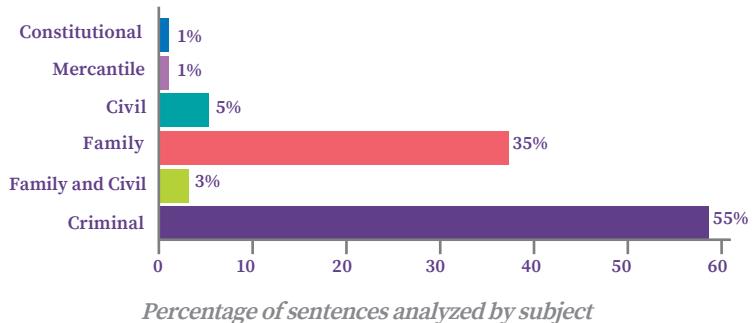
We have analyzed **110 resolutions and/or sentences** issued from the judiciary branches of **eight federal entities (States)**.



*Percentage of sentences analyzed by State*

**83% of sentences were issued in the last three years**, the sample included mostly first and second instance sentences.

Most sentences or resolutions were given within the family-civil<sup>1</sup> or criminal<sup>2</sup> realms, while 7% of all cases were from the civil, mercantile or constitutional realms.



*Percentage of sentences analyzed by subject*

In order to carry out this citizens' exercise, we used the **Methodology for analyzing sentences from a gender and human rights perspective<sup>3</sup>**, designed by **Equis Justicia para las Mujeres**, which reviews 8 elements—generally present in sentences given by the Judiciary Branch—, in order to quantitatively and qualitatively measure whether they incorporate a gender perspective (hereafter “PEG”) and how deep this goes<sup>4</sup>.

1. 38% were alimony applications; 15% were divorce cases; 32% were custody of children cases; while 7% of the cases involved persons with special needs.

10 2. 42% of cases involved sexual violence, such as rape, sex abuse, trafficking, etc.; 25% involved behaviors affecting the life or integrity of girls, women or teenagers, feminicides, homicides, family violence, injuries or theft.

## Why where, why now?

For judges, to administer justice with a gender perspective and under conditions of equality and non-discrimination **is not an option**: it is a conventionalized constitutional obligation that is even backed by jurisprudence from the Nation's Supreme Court of Justice.

Although 7 years have gone by since the human rights constitutional amendment, although protocols have been created to judge from various perspectives (gender, special capacities, interculturality, migration, etc.), although money and effort have been invested in judiciary training, and although political instruments have been created between judiciary authorities, so as to ensure that gender perspective becomes institutionalized, it is still very common today to hear about judiciary sentences that instead of protecting.

Instead of judging, they discriminate, instead of ensuring rights, they tolerate violence, especially against women.

All of the above in a context of impunity that reinforces discrimination and violence.

Against this outlook, it became urgent to create alliances between civil society organizations seeking to improve access to justice in the country, to strengthen our capacities and technical abilities jointly and collaboratively. Therefore, we decided to undertake a first **citizens' audit of the judiciary branch, by means of an analysis of its judiciary sentences and/or resolutions, by the name of: Network for Justice for Citizens.**

*It is still not unusual to learn about judiciary sentences which, instead of protecting, abandon; instead of judging, discriminate; instead of ensuring rights, tolerate violence, especially against women.*

Thanks to this initiative, we can document the situation of justice through its sentences".

In this executive summary, we share the main results of analyzing over 100 sentences and/or judiciary resolutions, and identifying in them the main technical-juridical deficiencies in the administration of justice. The purpose, both of the Network and of the report, is to contribute to detecting the main problems that we face as a society in order to gain access to justice, but also to contribute to designing strategies and solutions jointly and collaboratively with the judiciary branch.

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3. See: <http://equis.org.mx/wp-content/uploads/2018/02/Metodologia.pdf>

4. A basis with 28 indicators was put together which, after being individually evaluated (on a scale from 0 to 5), were then averaged to obtain the final evaluation (on a scale from 1 to 10) for each resolution (evaluation sheet).

# Findings

## Global Results

**The highest grade attained in the analysis of sentences and/or resolutions that were analyzed was 5.85 (on a 1-to-10 scale)**

Of 110 sentences, 100 would have required application of PEG in order to arrive at a solution that best protected the individuals involved (to compensate for inequality, to address asymmetrical relations of power, to take measures against gender violence, etc.).<sup>5</sup>



“there was no doubt...” about the need to incorporate this perspective, due to the type of rights and problems that were being solved (sexual violence, alimony, custody, etc.).

## Specific results

Hereafter, we will be showing the main results of each of the eight analytical elements included in the sentence analysis methodology—proposed by Equis Justicia para las Mujeres—, in order to determine whether a judiciary decision has indeed incorporated gender perspective.

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5. One of the sentences was analyzed by two organizations, each with a different expertise in the realm of human rights.

## Eight elements of analysis



### First element

Fact analysis



### Second element

Evaluation of tests



### Third element

Detection of risk situations and protection orders



### Fourth element

Identification of affected rights



### Fifth element

Identify the laws that apply to the case



### Sixth element

Arguments and/or rationale used for issuing a resolution



### Seventh element

Reparations



### Eighth element

Measures for providing follow-up for sentences issued



## First element

# Analysis of facts

### Why is it important?

Through fact analysis, we can identify the characteristics of individuals, their living conditions, the context of the conflict, as well as the behaviors, roles and everyday life practices that give rise to the facts leading to inequality, violence or discrimination against one of the parties (generally, women or groups that have been historically discriminated against by reason of some unevaluated or unacknowledged difference).

### What happens if this is not done?

The Judiciary Branch would be validating and perpetuating gender-based situations of inequality, violence and discrimination, instead of identifying, correcting and establishing penalties for them and mandating reparations for the damage they cause. This implies that, instead of protecting, it would generate institutional violence. If this element is not included when appraising a case, the State becomes a part of the problem instead of a part of its solution, thereby issuing a message of tolerance for inequality, discrimination and impunity.

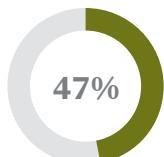
## What did we find?



85% of all sentences and/or judiciary resolutions did not consider the influence of gender stereotypes or of the identity characteristics of the individuals involved in each case, either on the facts themselves or on the generation of the conflict brought before the judge.



In 80% of all cases, judges analyzed situations of violence against women in an isolated manner and not as a part of a social problem based on gender-based discrimination.



In 47% of cases, judges did not evaluate the violence situations that were explicitly pointed out in the women's accounts.

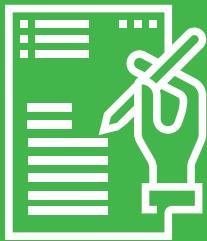


Sentence 46-2017 issued by Yucatan's Judiciary Branch allows us to illustrate the consequences of not incorporating this first level of analysis on the life and the rights of individuals at the time a resolution is issued.

The sentence regards a woman who was the victim of recurring violence exerted by her partner. In the latest episode (the one she reported), her partner hit her, tried to strangle her, stabbed her with a knife in the right-hand side of her ribcage, then in the stomach, chest and neck. She, in trying to defend herself, ended up cutting him in his left hand, between the wrist and the palm. As soon as he realizes that he is bleeding out, he asks for help.

Although the judge acknowledged there was violence, he/she did not take into consideration the context in which the facts happened (systematic/recurring gender violence, product of the power the man thought he had over her, because she is "her wife"). The sentence points out that it is a case of family violence and that serious (qualified) injuries were produced, but not what it really was: an attempted feminicide. The aggressor was sentenced to a little over 3 years of incarceration. What will happen when he is released? Will prison change what he thinks about women? By not incorporating PEG in analyzing the facts at the time of issuing a resolution, the sentence does not go after the root of the problem.





## Second element

# Evaluation of evidence

### Why is it important?

Evidence evaluation entails analysis and interpretation, which a judge carries out in connection with the information and evidence produced by a trial's parties (documents, testimony, videos, medical expert affidavits, psychological affidavits, etc.). In Mexico, judges have a certain liberty in interpreting the evidence. In the course of this analysis and interpretation, the evaluation of evidence from a gender perspective allows a judge to understand how roles, inequality and gender violence exert influence on a conflict.

### What happens if this is not done?

Without interpretation of evidence from a gender perspective, a judge runs the risk of granting or negating value to certain evidence, based on false beliefs that said judge may have in connection with a subject or the conflict. Such an evaluation would not be then based on objective facts, but on a biased interpretation, governed by the perceptions, generalizations and moral and religious ideas of the judge.

For example, in cases of sexual violence, the victim's testimony must have an all-important weight, because these are situations that occur mostly in the absence of witnesses. Nonetheless, a judge that has been formed in a male-dominated professional environment and culture—which thinks that women usually lie or are vengeful—, will probably mistrust a woman's testimony and will not give it its proper weight when determining whether there was sexual violence or not. Evidence, when analyzed with gender perspective, helps to make visible certain aspects that are important for understanding and solving problems, such as gender violence.

## What did we find?



In 70% of all analyzed resolutions, the evidence produced by the parties was not analyzed using a gender perspective.

## Case

In a case solved by the Hall for Justice for Adolescents in Mexico City<sup>6</sup> in November 2018, PEG was applied to the evidence and, based on that, it was possible to determine the presence of gender violence between a couple of teenagers (female and male) who lived as a couple in his grandparents' house. Their relationship, as was demonstrated, was characterized by violence exerted by him against her as a woman (by reason of "jealousy"), through acts such as: "kidnappings, continuous harassment, transportation, various sexual aggressions, deprivation of liberty, threats, injuries, captivity [...]" Had PEG not been incorporated, it is likely that the only thing that would have been considered would have been the last episode of violence, without really establishing that his pattern of behavior stems from gender stereotypes (the belief in and expectation of obedience from women).

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6. The public version of the sentence lacks the docket number and the date of its issuing.



## Third element

# Detection of risk situations and orders for protection

### Why is it important?

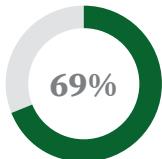
Detecting risk situations implies making visible and de-normalizing gender-based practices or behaviors that put the life or integrity of a person in danger. In exemplifying the importance of this element — without incurring in generalizations—, let's consider a woman who, against all expectations of her community (which perceives marriage as an indissoluble sacrament), decides to file for divorce. Because of this, she is threatened by her husband (who sees in the filing a challenge to his authority as a man) and pressured by her family to desist, because they don't wish to have to face such a "social shame". In this case, the latent risk is that she may become the object of his aggression if the divorce goes forward.

Let us consider also the case of a woman who devoted herself to her family. Her husband leaves the home and refuses to pay alimony to her and their daughters. In this case, she runs the risk of not having enough money to face basic everyday needs, such as food or eventual illness.

## **What happens if this is not done?**

Judges have the obligation to detect and act against possible risk situations in order to prevent the affectation of rights; otherwise they would be in non-compliance with their duty to protect and to act with due diligence.

## **What did we find?**



In 69% of all cases, judges omitted identification of possible situations or behaviors that put women at risk and, therefore, did not issue the necessary protection orders.

## **Case**

Sentence 182/2015, issued by the Trial Court for the Mixtec Region in Oaxaca, resolved the case of a hearing- and speech-impaired woman who was raped by two men in her community; nevertheless, even though one of her aggressors was free during the trial, no measures were issued for the protection of the victim



## Fourth element

# Identification of the rights affected

### Why is it important?

Judges are experts in the Law. Therefore, they have the obligation to identify the rights that are at stake in a conflict, both those that individuals (the parts to a trial) expressly ask the judge to pass judgment on and those that may affect or have an adverse effect on human rights (obligation to protect and ensure compliance with the Constitution's Article 1 and with international treaties).

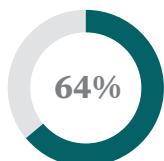
This obligation is especially important in cases of persons or groups in conditions of vulnerability or inequality, as is the case with women, girls and adolescents who, given their characteristics and gender roles, suffer from inequality in several aspects of her life: in education, in work, sexual, among others.

### What happens if this is not done?

Only when a judge adequately identifies the rights in conflict and the affection to other rights, may he/she make visible

the damage to the life of an individual and, as a consequence, propose comprehensive measures for reparation; otherwise, this last thing is not possible. PEG establishes that judges must be capable of identifying what affectations or conflicts are connected with the expectations or beliefs about the behavior and characteristics regarding men and women. Only when a judge analyzes rights from this perspective can he/she administer justice.

## What did we find?



64% of all analyzed sentences or resolutions did not identify the rights in conflict, because they did not incorporate gender perspective and much less the affectation of other human rights.

## Case

A case exemplifying the above is provided by sentence 68/2014, issued by the Trial

Court for the Mixtec Region, in Oaxaca. A teenager, who since age 12 was recurrently raped by her stepfather and, as a consequence, became pregnant.

*Even though judges did point out that her right to live a life free from violence as well as her sexual and reproductive rights were affected, they forgot to issue a resolution concerning her right to health (physical and psychological), her right to personal integrity or to her dignity.* They did not consider either how her age (as a young girl) and her gender (female) were detonating factors in the violence that she suffered. While they punished the man for rape, they did not issue a resolution on all rights affected.



## Fifth element

# Identify the laws that apply to the case

### Why is it important?

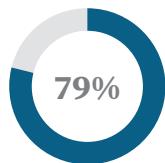
Judges, inasmuch as they are experts on the Law, must know, interpret and correctly apply Mexico's laws and legal standards, beginning with the Constitution and human rights international treaties (this is known as a constitutional regularity control parameter). When dealing with violence against women, gender identity or sexual preferences, there are specialized standards for combating violence and inequality, which contemplate reinforced obligations from judges and require a greater diligence from them.

### What happens if this is not done?

If judges rely solely on local codes when administering justice, they run the risk, when resolving on a case, of not considering the human rights of the individuals involved. This broader and more protective vision is known as: parameter of

constitutional regularity (human rights catalog). This implies that it is necessary to take into account other standard sources offering a greater protection spectrum. It must be underlined that local legal codes are not necessarily updated and even contain discriminatory standards that go against the human rights currently acknowledged in Mexico; therefore, it is indispensable to have fewer judges interpreting the law as per the codes and more judges making interpretations from a human rights perspective.

## What did we find?



In 79% of analyzed sentences, standards specializing in ensuring the protection of human rights were not applied.

## Case

Sentence 885/2017 of the First Family Court in the Cuauhtémoc Judiciary District, in the State of Tlaxcala, resolved in connection with the case of an 85-year old woman, who sued the son she had cared for in order to receive a pension from him. The resolution only cited an article of the Federal Constitution, some articles in the Civil Code and some articles of the State's Civil Procedures Code, ignoring all national and international standards regarding equality and gender perspective—among them, the American Convention on Human Rights, the CEDAW Convention or the Belém do Pará Convention—, which see to the protection of women's rights. In this sense, how could this woman know if the 20% pension that the judge ordered in her favor is fair or not? Is this what laws mandate? What did the judge base his/her determination on?



## Sixth element

# Arguing and/or rationale used for resolving

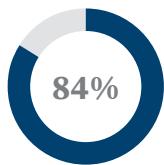
### **Why is it important?**

Arguing from a gender perspective allows explaining how the facts giving rise to the conflict are related with violence, inequality, stereotypes or gender roles. These arguments give the problem its correct dimensions, allowing the judge to identify and deactivate the practices that have resulted in inequality for women. Therefore, the arguments of judges must be rational and not emotional or speculative.

### **What happens if this is not done?**

Arguing from a gender perspective prevents biases when analyzing facts that may prevent judges from complying with their obligation to revert inequality and not to discriminate. If not done, there is the risk that the judge will issue a resolution based on his/her own values, ideas and prejudices and not based on human rights, thus opening the door to arbitrary decisions.

## What did we find?



84% of all sentences cannot explain their arguments and even when they maintain to have judged with a gender perspective, judges are not able to go deeper, nor to explain how gender is linked to a case.<sup>7</sup>

## Case

Sentence 77/2017 of the Supreme Court of Justice of the State of Yucatan incorporated concepts that have no juridical reference or grounding and which, even if their intention is to protect people, are based on the personal beliefs of the judges that issued it. It deals with a 17-year-old adolescent who was recurrently raped since she was 6 by a man known to her father and mother. This went on until 2015, when she was diagnosed with HIV (an illness that was diagnosed in her aggressor since 2010). The Court confirmed the sentence to the aggressor; nevertheless, in order to justify it, it certified the facts as being true because a girl “cannot have the genetic desire to voluntarily give herself.” What genetic desire is this referring to?

What research or law is the existence of such a desire based on?

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7. An example of this are sentences where, in order to argue the incorporation of PEG, it is said: “because there is a woman involved”, “because she is a woman”, “women are on an unequal footing”, “violence is exercised against women”, without any further explanation.



## Seventh element **Reparations**

### **Why is it important?**

In every legal conflict or problem, there are rights that have been affected or violated. Dealing with human rights, there are legal criteria that judges must apply in order to ensure reparation; that is, procedures allowing the affected individuals to again enjoy their rights fully. PEG explains that, when determining reparations, gender roles or characteristics of individuals must be taken into account, so that reparations are adequate to their needs, interests and context.

### **What happens if this is not done?**

A sentence that is limited to identifying and punishing a guilty party is incomplete justice. If a judge does not take into account the needs and justice expectations of individuals appearing at a court of law because their rights have been affected, said rights will hardly be reinstated and ensured by the State. If the victim does not

receive reparation of her patrimony, her integrity, feelings, affections, etc., true justice and social peace will hardly be achieved.

## What did we find?

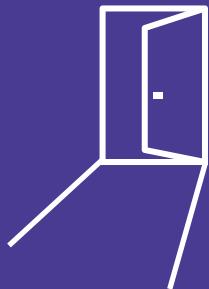


In 86% of all resolutions analyzed no reparation measures were issued that addressed situations involving discrimination and/or gender violence, because these were not detected either.

Nevertheless, in the few sentences where reparations were included, it is possible to see the first attempts to ensure exhaustive reparations.

## Case

The case of sentence 31-2014 by the Oral Trials Criminal Court at Puerto Escondido, Oaxaca, illustrates a worthy practice in this sense. It deals with a feminicide, a woman killed by her uncle because she refused to marry him. The Court established several reparations measures: rehabilitation, the mother of the victim was given access to the municipal DIF facilities—in this case, the district head facilities—, in order to be evaluated and possibly receive therapy; compensation: the amount of \$3,826.20 for funerary expenses was established and \$151,134.90 for the loss of a life; compliance: “compliance is attained through the oral, public explanation of the sentence”, so that the parties “clearly understand, through the use of simple language”, what the motives, reasons and basis were for sentencing the aggressor as he was; and, finally, measures to ensure non-recurrence: which conclude that this is complied with through the penalty imposed upon the defendant.



## Eighth element

# Measures for follow-up of sentences

### **Why is it important?**

Follow-up measures are innovative in justice procedures, they are measures that a Court takes for ensuring compliance of sentences it has issued. These may be petitions or reports to be rendered to other authorities or even the issuing of notices both to authorities and to private individuals.

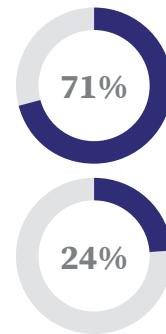
### **What happens if this is not done?**

This kind of measures are instrumental in making a right effective and ensuring it is not just words on paper. In practice, judges issue sentences without indicating how, who and in how much time they are to be complied with; that is, sentences become mere declarations of rights, which are not backed by the establishment of mechanisms to execute them and for the judge to be able to make sure that his/her resolution is complied with in a satisfactory manner and within a reasonable period.

In fact, in many cases, the issuing of these measures has made the difference, so that individuals in situations of vulnerability—such as a woman or a girl who are the victims of gender violence at home—that obtain favorable sentences can be sure about how and under which conditions will the solution given by the judge will be applied.

## What did we find?

In 71% of all cases no follow-up measures were dictated for ensuring compliance of the sentences or this kind of action was reserved for another trial/instance; nevertheless, 24% of all sentences did include some measure of this kind.



## Case

*Sentence 075, docket 12/2017-2018/JC, Trial Court of the Accusatory and Oral Criminal Justice System of the State of Campeche. FEMINICIDE (attempt).*

In the early hours of January 30, 2015, a woman arrived at her home, together with her partner. She refused to be vaginally inspected and to have sex with said partner and then waited until he fell asleep or became distracted, in order to be able to leave the house. While she was packing her clothes, the man attacked her with a knife from behind, stabbing her on the right shoulder blade and afterwards in the head, neck, arms and hands. Then, he attacked her with a stone and finally with another knife, in the same area of the neck that had already been injured in the first attack, causing her injuries that put her life at risk.

The man was sentenced to serving 13 years and 4 months in prison, plus payment of a fine and, among others, the following reparations were established: payment of \$209,777.00 to the victim for repairing the material and moral damage received; an order was issued to the Institute for Access to Justice for the State of Campeche (INDA-JUCAM) so that it could immediately offer free assistance to the victim, for the purpose of ensuring her physical and mental recovery at public health institutes and facilities. Nevertheless, no follow-up measures were dictated, in order to ensure that INDAJUCAM and the health institution complied with what was mandated.



# Conclusions

## **1. The traditional way in which justice is administered has not changed in Mexico**

Judging from a human rights, equality and non-discrimination perspective is far from being a reality in the administration of justice because, despite efforts by the State and abundant institutional speeches, a broad and deep comprehension of the implications of judging from such perspectives does not exist. It is necessary to take theory into practice, because sentences and/or judiciary resolutions continue to be the same as those issued 7 years ago—before the constitutional amendment for human rights.

## **2. It is necessary to reformulate judiciary training**

It is necessary to strengthen the training processes not only of judges, but also of drafting clerks and judiciary technicians. Training programs have to be reformulated so that they are exhaustive, continuous and permanent, to ensure they address the needs of judges and of those who implement follow-up and evaluation mechanisms in connection with the sentences and judiciary resolutions, in order to measure their impact.

## **3. Discriminatory language persists in resolutions**

The Network warns that many sentences continue to use a discriminatory, non-inclusive language, one that is based on gender, disability or sexual preference stereotypes. This, while appearing to be a question of form, often ends up being a question of content. Language reflects how a judge understands a problem and how he/she deals with it, something that affects his/her judiciary actions. It is also urgent that sentences display a logical sequence, that they become understandable, short and are issued in a language that can be understood by the general public, because this is the only way in which the parties affected by them will understand the rights being expressed in them.

## **4. Justice under conditions of equality and without discrimination continues to be an illusion**

Beyond pointing out the lack of incorporation of PEG to the judiciary function—which, as we have seen, must include an analysis of the context and the identification of the reproduction of gender stereotypes in sentences, as well as making violence and discrimination visible—, what is very serious is that this omission translates into social injustices. That is, a supposedly “neutral” justice becomes biased, blind, incomplete and slow; and does not solve problems of origin, such as gender violence.

## **5. Making justice accessible to the citizenry is crucial**

It is time for the country’s Judiciary Branch to reconsider the enormous social responsibility it has. Through the interpretations it makes, it modifies and broadens the scope of our rights every day. Not promoting these interpretations through publication and dissemination of its resolutions has led to a society that ignores its rights and the mechanisms for demanding their fulfillment before courts of law, as well as mistrust concerning the ethical performance of judges.

Confronted with a Judiciary Branch that has traditionally been opaque, inaccessible and closed to society, the Network for Justice for the Citizenry is an initiative that seeks to contribute to the democratization and legitimization of the actions of this Branch.

We are convinced that only through the participation of civil society organizations and of society in general can the administration of justice be improved; not only in connection with the monitoring of judiciary resolutions, but in connection with the acquisition of tools, information and knowledge transfer that is useful for society and government to jointly arrive at feasible solutions that are close to society against the inequality, discrimination and violence that is often evidenced in legal conflicts.

Beyond an open justice process, the Network aspires to establish a two-way street with the country’s Judiciary Authorities which, on the one hand, provides aperture and availability of useful judiciary data and self-criticism exercises in connection with their work and, on the other, a citizenry able to evaluate the Judicial Branch and to collaborate with it.

# ~~IT IS JUSTICE~~

*An analysis of the country's judiciary sentences and resolutions.*