

# Gender Stereotyping and the Judiciary



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## Session 6.

# Good practices and looking ahead

Good practice examples on eliminating judicial gender stereotyping  
Looking ahead



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# The positive role judiciaries can play

Addressing judicial stereotyping **is crucial to ensuring justice for women.** Human rights advocates can play a crucial role in preventing and challenging such stereotyping.

In identifying and addressing judicial stereotyping and ensuring that legislation, norms and practices conform to human rights and constitutional guarantees, judiciaries can make a significant contribution to **addressing the structural causes of discrimination and gender inequality** and make strides towards articulating the relevant state obligations and adopting appropriate, effective and meaningful remedies.



# How to address and dismantle wrongful gender stereotyping

- 1 Highlight the harms of judicial stereotyping through evidence-based research
- 2 Advocate legal and policy reforms that prohibit judicial stereotyping
- 3 Monitor and analyse judicial reasoning for evidence of stereotyping
- 4 Challenge judicial stereotyping through expert evidence
- 5 Highlight good practice examples of judges challenging stereotyping
- 6 Improve judicial capacity to address stereotyping
- 7 Advocate for diversity within the judiciary



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# 1. Highlight the harms of judicial stereotyping through evidence-based research

## Resource for Penang judiciary highlights the harms of stereotyping in sexual assault cases

Analysis of 439 sexual crime cases and articles from 3 Malaysian newspapers from 2000-2004. Most defenses relied on by accused persons referred **‘to established myths and stereotypes about female behaviour**, including what is acceptable sexual norms’

The paper also identified how the myths and stereotypes influenced judicial opinions on a range of topics, including **corroboration, witness credibility, false and late reporting and consent**

The paper **also sought to debunk myths and stereotypes**. For instance, it challenged myths and stereotypes related to late reporting by discussing research that identified various reasons why people may not report, or delay reporting, sexual crimes



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## 2. Advocate legal and policy reforms

<b>General protections</b>	Protect against all stereotyping (eg gender and racial stereotyping), including by judges	Eg <i>Bangalore Principles of Judicial Conduct</i>
<b>Subject matter protections</b>	Protect against stereotyping in particular areas, for example stereotyping related to gender-based violence	Eg <i>General Law on Women's Access to a Life Free of Violence</i> (Mexico)
<b>Group-based protections</b>	Protect against stereotyping of specific groups, such as women or people with disability	Eg CEDAW, CRPD
<b>Situational protections</b>	Protect against stereotyping in specific situations, such as rules of evidence that seek to prevent stereotyping in sexual assault cases	Eg Rules of Procedure and Evidence of the International Tribunals for Rwanda and the former Yugoslavia



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# Advocate legal and policy reforms

## Canadian Judicial Council's Ethical Principles for Judges

Provides guidance for federally appointed judges, seeks to protect against **stereotyping in general**, and includes a range of values and principles, including impartiality, that judges should adhere to in the performance of their duties. With respect to stereotyping, the principles indicate that,

*“Equality according to law is not only fundamental to justice, but is strongly linked to judicial impartiality. A judge who, for example, **reaches a correct result but engages in stereotyping does so at the expense of the judge’s impartiality, actual or perceived.**”*

*Judges should **not be influenced by attitudes based on stereotype, myth or prejudice.** They should, therefore, make every effort to recognize, demonstrate sensitivity to and correct such attitudes.”*



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### 3. Monitor and analyze judicial reasoning for evidence of stereotyping

Did the judge engage in stereotyping or fail to challenge stereotyping by lower courts?

What are the operative stereotypes?

How was the victim/survivor harmed as a result of judicial stereotyping?

Did the judge award remedies to debunk the stereotypes?



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### 3. Monitor and analyze judicial reasoning for evidence of stereotyping

**Stereotyping present in gender-based violence cases decided by Argentinian courts**

In 2010, Argentina's Defensoría General de la Nación published *Discriminación de Género en Las Decisiones Judiciales: Justicia Penal y Violencia de Género*. The monitoring report:

- **highlighted examples of judicial stereotyping** in gender-based violence cases
- **named the stereotypes and prejudices upon which judges had relied** (ie 'mujer honesta', 'mujer mendaz', 'mujer instrumental', 'mujer co-responsable', 'mujer fabuladora')
- identified how judicial stereotyping resulted in **discrimination and the denial of justice.**



## 4. Challenge judicial stereotyping through expert evidence

### *M.Z. v. Bolivia, Case 12.350 (IAComHR)*

in June 2002, Equality Now submitted an expert brief on stereotyping to the Inter-American Commission on Human Rights in support of M.Z.'s claim. In that brief, they:

- noted that the trial court determined that the evidence supported M.Z.'s claim that she had been raped
- claimed that the decision of the appellate courts to overturn the rape **conviction was based not on Bolivian law or the facts, as determined by the trial court, but on stereotypes and myths**
- identified a range of stereotypes and myths relied on by the appellate courts and explained how they influenced their reasoning & impacted their impartiality
- recalled that judicial stereotyping violates human rights, including the rights to non-discrimination and equal protection of the law.



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## 5. Highlight good practice examples of judges challenging stereotyping

Examples provide critical guidance on debunking stereotypes and give judges an important external perspective that can help judges identify and overcome stereotypes.

Good practice examples of addressing judicial stereotyping might include:

- laws and policies that prohibit and sanction judicial stereotyping
- rules of evidence and procedure that limit opportunities for stereotyping
- **judgments that challenge judicial stereotyping by lower courts**
- transformative remedies that tackle harmful stereotypes
- resources and trainings that build judicial capacity to address stereotyping.



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# Highlight good practice examples of judges challenging stereotyping

## *R. v. Ewanchuk [1999] (Canada, Supreme Court).*

Concerned the sexual assault of a 17 year-old girl by Ewanchuk. The trial judge acquitted Ewanchuk based on the defence of 'implied consent'. He did this even though he found the girl was a credible witness who gave reliable evidence she had been assaulted.

The Alberta Court of Appeal upheld the acquittal. However, it was later overturned by the Supreme Court of Canada, which held that 'implied consent' is not a defence to sexual assault under Canadian law.

In a concurring opinion, Justice Claire L'Heureux-Dubé determined that the lower courts had engaged in stereotyping and explained that the case was "not about consent, since none was given. It [was] about myths and stereotypes".



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## 6. Strengthen judicial capacity

Education, training and guidance is key to building capacity to address gender stereotyping and to ensure decision-making is not adversely affected by harmful stereotypes. In order to urgently address gender-based stereotypes, the UN Special Rapporteur on the independence of judges and lawyers has recognized that,

*“training on gender equality and women’s rights, ..., in particular the Convention on the Elimination of All Forms of Discrimination against Women, should be set up and made compulsory for judges, prosecutors and lawyers. The study of gender equality, women’s rights and relevant international standards should also form an integral part of the legal education.”*



# Strengthen judicial capacity

The **Gender Equality Unit of the Supreme Court in Mexico** conducted a **seminar** on gender stereotyping, attended by members of the Mexican judiciary as well as academics and women's human rights defenders.

- The seminar examined how stereotypes had hindered women's access to justice in several cases and judges could have challenged those stereotypes through their legal reasoning.

In 2013, the Gender Equality Unit published a **Protocol, entitled Judicial Decision-Making with a Gender Perspective**

- specific chapter on stereotyping

Building on the protocol, in 2014, the National Supreme Court of Justice in Mexico issued a binding **decision** – *Tesis Aislada XCIX/2014 (10<sup>a</sup>)* – that:

- recognises women's rights to live free of violence and discrimination and to equal access to justice
- requires judges to incorporate a gender perspective into their decision-making, including **by challenging gender stereotypes in laws**



## 7. Ensure diversity within the judiciary

UN Special Rapporteur on the independence of judges and lawyers: ensuring diversity among the judiciary by encouraging representation of women and other underrepresented groups like ethnic, racial or sexual minorities would bring,

*“different perspectives or approaches to adjudication, while fighting against gender stereotypes ... ensure a more balanced and impartial perspective on matters before the courts, eliminating barriers that have prevented some judges from addressing certain issues fairly,”* and *“improve public trust and confidence in its credibility, legitimacy and impartiality.”*



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# Looking ahead...



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