

"The two sexes are neither inferior nor superior to each other. They are, quite simply, different."

Gregorio Marañón / Spanish physician and writer



FEDERAL JUDICIARY COUNCIL

Igualdad

Indigenous women and Justice *_35*

The influence of academic feminism, gender equality and a feminine indigenous worldview when approaching Law *_06*

WOMEN'S ACCESS TO LEGAL PROCEEDINGS

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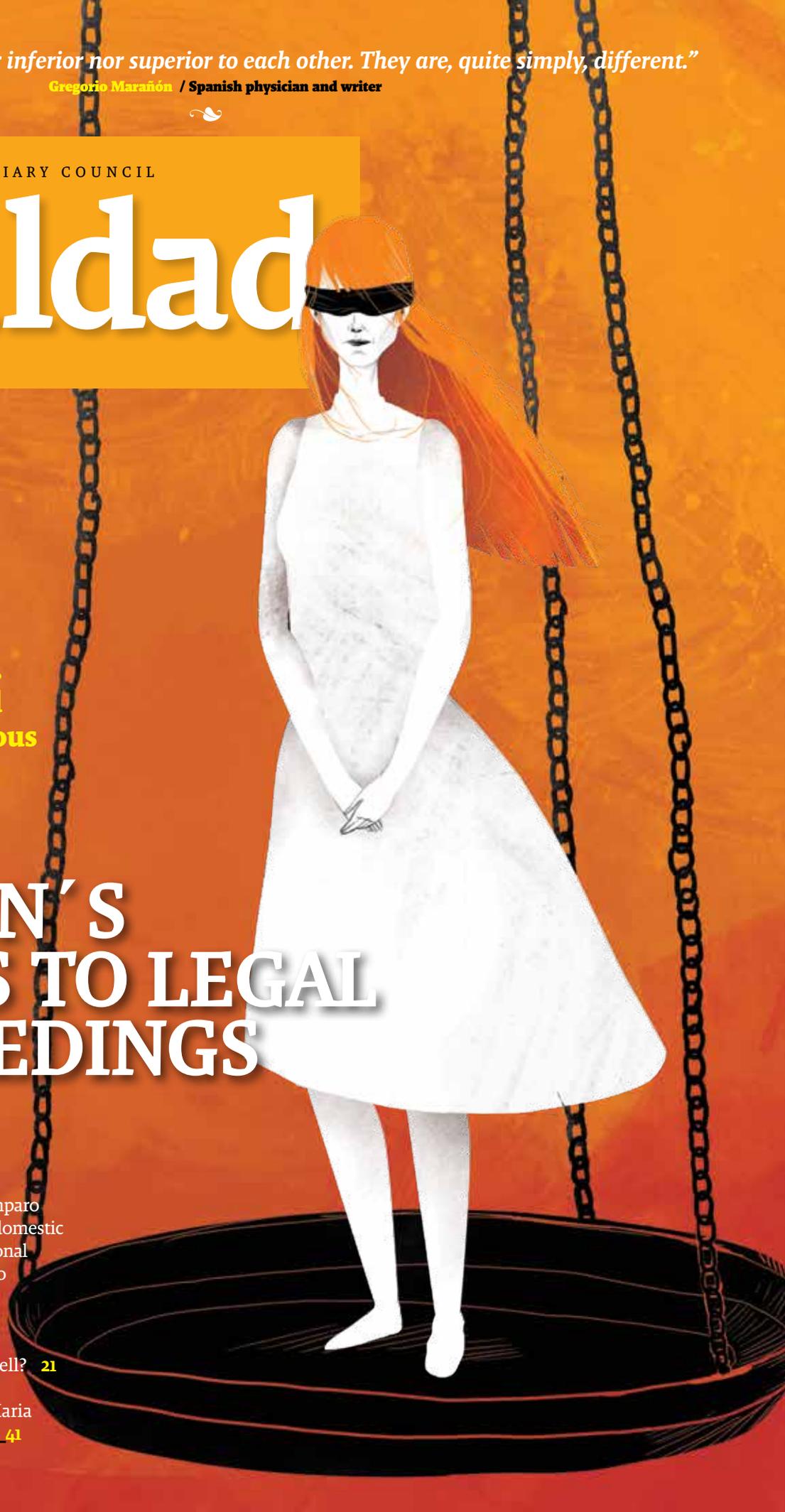




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Empowerment: a strategy against inequality

The very term “empowerment” may sometimes cause restlessness and intimidation. It relates, intuitively, with provocative or threatening actions. It has been linked to radical feminist movements. This word can also be perceived as intrusive and “foreign”. However, the terms “empowerment” and “empowering” are formally part of our language. The Real Academia Española de la Lengua’s dictionary defines the verb empower as “making an individual or disadvantaged social group powerful or strong.” Moreover, the concept and social phenomenon of empowerment has been studied from various disciplines in the social sciences: Anthropology, Psychology, Sociology, Political Science and Economy. Some of the authors who have discussed this topic are Pierre Bourdieu, Michel Foucault and Amartya Sen. Additionally, international and national institutions use this term as the basis of their proposals and public policies. Such is the case of the World Bank, UNICEF, UNPD or INMUJERES. The concept of empowerment has its origins in the Civil Rights movement that arose in America in the Sixties, related to disadvantaged population groups such as African Americans, the poor and, of course, women.

In general, empowerment was conceptualized as a modern strategy for socially developing disadvantaged or marginalized groups, focused on making them aware of their situation, improving their human capital (nutrition, health, education and employment-wise, among other factors), through social action, public policies, affirmative action and even legal changes in order to close the gaps that create inequality. Empowerment is a strategy to redress social inequalities, which in most cases are being revealed as discrimination. Actually, the very term empowerment is anchored in Law. According to the Women’s Access to a Life Free from Violence Act, empowerment is “the process thru which women journey from any situation of oppression, inequality, discrimination, exploitation or exclusion to a state of consciousness, self-determination and autonomy, which in turn manifest in the exercise of democratic power emanating from the full enjoyment of their rights and liberties.”

What does female empowerment depend on? Undoubtedly, on the information available to women, on their free will, their educational level, and abilities to organize themselves and communicate with each other. However, empowerment also depends on society’s receptivity and especially on public institutions and the decisions made inside them, as well as the State’s capacity to implement and regulate public policies and actions in efficient ways. This last concept is not a fabrication nor a threat; rather, it is created, developed and used in the face of the State’s responsibility for creating and maintaining the necessary conditions for an individual’s dignity to become a reality, thus allowing her or him to develop fully, in a context of liberty and personal responsibility.

**General Directorate of Human Rights,
Gender, Equality and International Affairs**



Illustrated by Jorge Lopez

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Right to Effective Processes against Domestic Violence Maria Da Penha Maia Fernandes vs. Brazil

Inter-American Commission on Human Rights, April 16th, 2013.

Inter-American Commission on Human Rights, April 16th, 2001.

On August 20, 1998, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a complaint filed by Mrs. Maria da Penha Maia Fernandes.

The complaint alleges tolerance by the (hereinafter “Brazil” or “the State”) Federative Republic of Brazil of violence perpetrated at her home in the city of Fortaleza, Ceara State, by Marco Antônio Heredia Viveiros in detriment of his then wife Maria da Penha Maia Fernandes during their years of marital cohabitation, culminating in attempted murder and further aggressions on May and June 1983.

As a result of these attacks, Maria da Penha suffers from irreversible paraplegia and other ailments since 1983. She is alleging State tolerance, since no effective measures to prosecute and punish the aggressor were taken for more than fifteen years, despite the complaints filed. The violation of Articles 1 (i) Obligation to Respect Rights; 8 (Right to Judicial Guarantees); 24 (Right to Equal Protection Under the Law) and 25 (Judicial Protection) of the American Convention is denounced, in relation to Articles II and XVIII of the American Declaration of the Rights and Duties of Man (the “Declaration”) and Articles 3 4 (a), (b), (c), (d), (e), (f) and (g); 5 and 7 of the Convention of Belém do Pará.

The Commission processed the request. Since the State did not offer any comments, despite repeated requests from the Commission, the petitioners requested that the facts presented in the petition applying Article 42 of Regulation Commission be presumed true. On the substance of the matter of the complaint, the Commission concludes in this report, drawn up in accordance with Article 51 of the Convention, that the State violated Mrs. Maria da Penha Maia Fernandes’ rights to judicial guarantees and protection by the Court guaranteed by Articles 8 and 25 of the American Convention, in conjunction with the general obligation to respect and ensure the rights set forth in Article 1 (i) of this instrument, Articles II and XVII of the Declaration and Article 7 of the Convention of Belém do Pará.

The Commission concluded that the violation created by ineffective prosecution occurs as part of a pattern of discrimination regarding tolerance of domestic violence against women in Brazil. The Commission also recommends that the State conduct a serious, impartial and thorough investigation to determine criminal responsibility in the murder attempt against Mrs. Fernandes and to determine if there are other events or actions of State agents that may have prevented the rapid and effective prosecution of the perpetrator. Prompt and effective compensation of the victim and national measures to eliminate State tolerance of domestic violence against women were also recommended. ■

Monica Carabantes Galleguillos vs. Chile

On August 18, 1998, the Inter-American Commission on Human Rights received a communication from the Center for Justice and International Law (CEJIL) in which the Republic of Chile is recognized as liable for its court’s refusal to punish abusive interference into the private life of Monica Carabantes Galleguillos, who sued a private school that expelled her for being pregnant. The petitioners allege that the State is intentionally responsible for the violation of the following rights guaranteed by the American Convention on Human Rights: the right to the protection of honor and dignity (Article 11) and equality before the law (Article 24). They also allege violation of the general obligation to respect and ensure the rights set out in Article 1 and the duty to adopt domestic right dispositions under Article 2 of that international instrument.

In March 1992, Monica Carabantes Galleguillos joined the 5th year of basic education in Andrés Bello school, a subsidized private institution in the city of Coquimbo, Chile. In February 1997, Carabantes’ doctor informed her she was pregnant; the following month, Carabantes began the student activities corresponding to the third year of secondary education in that school. Her parents personally informed the headmaster of the situation; he promised support and “any actions deemed necessary”. However, on July 15, 1997, the headmaster informed her parents that Monica Carabantes could finish the school year in Andres Bello, but that “internal regulations precluded a renewal of her enrollment for 1998-1999”.

The matter came to an amicable solution agreed to by all parties: The Government’s commitment to award Monica Carabantes Galleguillos a special scholarship while her enrollment in higher education continues. ■

INTERNATIONALLY RELEVANT

Angeles Gonzalez Carreño vs. Spain

This case, filed with the CEDAW Committee in 2012, tells the story of Angeles, who suffered physical and psychological violence from her husband. After three years together, she decided to leave him after he threatened her with a knife in front of his daughter Andrea, then three years old. Angeles filed a complaint with the authorities to obtain her daughter's custody and grant her father (FRC) visitation rights only. Between December 1999 and November 2001, FRC harassed, threatened and verbally assaulted Angeles repeatedly, also psychologically abusing his daughter Andrea. At the time, Angeles presented no less than 30 complaints.

The petitioner requested restraining orders from FRC for both herself and her daughter, strict vigilance during the father's visits with the child and alimony under par. Despite her many complaints, FRC was convicted only once, for harassment.

Restraining orders were issued in favor of Angeles. Only one included Andrea. FRC's appealed and the court annulled the order regarding Andrea, considering that it hindered court-ordered visitation rights and could damage the relationship between father and daughter. Other Court protection orders in Angeles favor were violated by FRC without any legal consequences.

Angeles reported that visits with her father affected Andrea's mental health. In Court, the girl said she did not like to be with her father because he mistreated her. In spite of continuous violent incidents involving FRC during a year of supervised visits, a court authorized unsupervised visits. Angeles unsuccessfully appealed this decision.

Upon leaving a hearing, FRC told Angeles he would take away what she loved the most. That same day Andrea had a scheduled visit with her father. When Angeles arrived in Social Services to pick up her child, neither FRC nor Andrea was there. Police found their two bodies in FRC's home. The father shot the girl before killing himself.

Angeles filed several complaints against the Spanish State, demanding compensation for damages suffered by its negligent actions.

The CEDAW Committee ruled in favor of Angeles, recommending, *inter alia*, appropriate and effective measures be utilized for taking into account any history of domestic violence when establishing custody and visitation rights concerning children, and when guaranteeing that the exercise of visitation or custody rights do not endanger the safety of victims of violence, including children. ■

Helados Freddo Case: gender discrimination

The case presented below relates to the Helados Freddo company, the largest ice cream store chain in Argentina. Despite being famous and having a great reputation in the market, all was not well for the company, which was hit with an unexpected lawsuit in 2000. This claim was conducted by a pro women foundation, driven by speculation that the company was discriminating by gender, i.e., hiring only male staff. The company was taken to court by the Mujeres en Igualdad Foundation, through a class action in favor of women on the grounds that the company hires only male staff and thus discriminates against females.

Until December 1999, the company staff was composed of 646 men and only 35 women. In addition, company notices that requested only male employees or alluded to positions referring only to the male gender were published. The company argued that it hired men because employees had to perform heavy physical tasks such as cleaning stores, loading 10 kilogram buckets or entering deep, extremely cold wells. Also, the positions offered demanded alternating shifts that ended well into the night. In that sense, Helados Freddo claimed that all they wanted was to protect women, not to discriminate against them. At first, the judge rejected this lawsuit. However, the foundation appealed to the National Civil Chamber, which was able to prove discrimination against women and considered the arguments made by the foundation, such as the accused company holding a prejudice about women being the "weaker sex". For this reason, Helados Freddo was found guilty.

The judge's final decision on the lawsuit was to order Freddo executives to hire female employees only until the staff achieved balance, i.e., the same number of employees per gender, since at the time Helados Freddo had 650 male employees and only 35 women.

In addition, part of the judgment demanded that the company submit annually to a Court report on staff recruitment. This was the first collective anti-discrimination case that was settled in the country in defense of gender equality and also the first case against a privately held company. ■

National Congress “The New Amparo Trial and the duty and power of domestic courts to directly apply international Human Rights laws. Challenges to the Mexican Judge ”

On October 9th and 10th, in Mexico City, the Federal Judiciary Council held its national “The New Amparo Trial and the duty and power of domestic courts to directly apply international Human Rights laws. Challenges of the Mexican Judge ” congress, where attendees participated in a work group scheme and exchanged views, proposals and solutions to new problems arising from the reforms in Criminal Matters, Human Rights and Amparo proceedings, which they now face in their judicial duties.

After the opening ceremony, attended by the Chief Justice of the Mexican Supreme Court and the Federal Judiciary Council, Juan Silva Meza, as well as Federal Judiciary Counselors, Hector Fix-Zamudio (Researcher Emeritus at UNAM) highlighted the new role of judges facing novel legal problems arising precisely from the current constitutional and legal order.

During this congress, participants were divided into four working groups. The first group, called “The new injunction” debated issues relating to the implementation of constitutional reform on “amparo” proceedings and the new regulatory law, which more than one year after coming into force continue to generate significant challenges in courts’ interpretive work dealing with constitutional rulings.

Participants of the second group “The New Paradigm of Human Rights” addressed issues related to the June 2011 reform, which (according to participants) represents a major change in both the legal system and the way justice is sought, since it demands studying legal institutions and procedures anew in order to verify their consistency with a Human Rights emphasis, in order to choose the approach that best suits each individual case.

Concerning the third group, “The duty and power of domestic courts to directly apply international Human





Rights laws and the new model of justice in Mexico”, Federal Judges expressed concern about properly exercising this new faculty entrusted to them not only by the Inter-American Court of Human Rights but also by the Mexican Supreme Court (dating from record number 912/2010), since it implies adequate management of international instruments and supranational court criteria.

Finally, the last group, “Adversarial criminal proceedings and the <<amp;amparo>>” reflected on the challenges presented by the new system of criminal justice on issues ranging from the choice of suitable profiles to operate the adversarial system to the development of hearings; participants also questioned the role the <<amp;amparo>> would play in criminal proceedings, since, far from being an obstacle, as noted by some rapporteurs, an <<amp;amparo>> would be the ideal means to articulate the new adversarial system through judicial interpretation.



WOMEN'S ACCESS TO JUSTICE

How do academic feminism, gender equality and alternative worldviews affect the way females approach legal entities?

By Magistrate
Carolina Isabel
Alcalá Valenzuela*

“No biological, physical or economic destination defines the female figure within human society; it is civilization as a whole that creates this intermediate assembly between male and the castrated individual which qualifies as feminine.”

Simone de Beauvoir

THE RISE OF PATRIARCHY

The story of mankind is written from a biased viewpoint, since most important studies on the subject have stemmed from the patriarchal system that Dr. Evangelina García Prince (2013) recognizes as some seven thousand years old: Viewing the historical experience of mankind as being dominated by the human male in the public sphere, or in social, economic and political transformations. This perspective has led to women and other groups being ignored; they could not be direct precursors of change processes, as they were kept far away from the centers of power.

In particular, the absence of women from historical studies is due, sustains Simone de Beauvoir, to the fact that women have lived a function of submission and obedience to men. While males had life projects, women acted in the service of the

patriarchy and constituted only a second subordinate sex.

However, this was not always so in all societies and at all times. During prehistoric times, both women and men assumed cultural roles; in particular, women almost always acted as collectors (especially gathering vegetables and roots), an activity which allowed them to develop a thorough understanding of Nature, to the extent that a stream of anthropologists notes that women became the first farmers and leaders who were in a position to lead ancient societies forward to the Neolithic. In addition, by taking charge of agriculture and harvesting, females were able to discover the medicinal properties of plants, which they learned to preserve by drying processes, storage and mixing; women also learned to work with clay and ceramic baking, thus enamels were developed and eventually mixed with cosmetic substances, giving rise to Chemistry.





In ancient Egypt, women were so free in their social activities that they could exert multiple trades. In Mesopotamia, thanks to the Hammurabi Code, women enjoyed important rights, such as the possibility of buying and selling, having legal representation or testifying freely, acting as scribes at the royal palace and even ruling as queens.

In Rome and Greece, the situation of women was diametrically different. Even Aristotle, whose work transcended with great influence into the Middle Ages and well into our time, considered women as incomplete and weak men. Conceptualized as such, woman was subjected to man, and her exclusion from public life was set.

WOMEN IN EARLY CHRISTIANITY

During the Roman Empire, Christianity arose in Judea, delimited by a first community of born Jews who imprinted their idiosyncrasies and Jewish theology on all subsequent Christians. That first community originated from lower social classes

(fishermen, peasants, artisans), which did not wield any kind of political power, and were characterized by the marginalization and social weakness in which they lived.

But above any distinctions, it was not a male dominated movement but was also made up of women who decided to follow Jesus, who considered them his peers and gave them an unconventional treatment that directly contradicted the rigid structures of the then prevailing patriarchy. Indeed, in that society, women, according to Jewish historian Josephus, were considered inferior to men in every aspect. As in other societies, (Rome and Greece, for example) females lived away from public life and were limited even in the religious sphere, as they were compared to slaves as to the fulfillment of their prayer obligations.

Contrary to these traditions, Jesus of Nazareth established clearly and categorically a natural relationship of respect and equality with women, not allowing them to be excluded nor showing contempt for them, addressing each female by name.

The women in Jesus' life were so important that a small group of them and their actions changed human history.

Firstly, we should consider Mary, his mother. She was the first woman to be considered a saint in the history of Christianity, a fact that is attributed to Bishop Cyril of Alexandria, later regarded as a Doctor of the Church.

Secondly, Veronica, a woman considered unclean for having bled for twelve consecutive years, secluded from society and prevented from participating in religious rituals or coming to the synagogue. At that time, a woman getting physically close to a man she did know, was considered improper; however, this woman committed an act of daring, approached Jesus and touched his clothes. According to some historians, this changed human history in terms of religion, because Jesus did not reject her, and instead called her "daughter", the first time this word was used to address a person saved by one of his miracles (for Veronica was actually healed). Later, when Jesus walked and was



Illustrations by Jorge Lopez for Daniel Esqueda Media

led to his crucifixion, apparently Veronica approached him and with a veil wiped his face. Today, this veil is considered a relic, (perhaps located in Manoppello, about two hundred kilometers from Rome), and is described as containing an image of the face of a man “who transmits a soothing beauty”.

The third important woman is Mary of Magdala or Mary Magdalene. She is the best example to prove that Jesus accepted women as equals.

Although not well documented, it is considered that women had a prominent and leading role in early Christianity, until a historical bias began with Pope Gregory the Great in the sixth century who is credited with the identification of Mary Magdalene as a prostitute.

In short, Mary Magdalene as portrayed in the life of Jesus transmits two visions of the position of women in the first century of our era: on the one hand, women were situated in a excluded part of society, next to the lepers and destitute (and especially of prostitutes), because they

had “broken the rules of society”; moreover, according to Jesus, every person, regardless of his or her sexual identity, could be eligible to enter the kingdom of heaven. So important is Mary Magdalene in history that she marks two crucial moments in Christian and Western history: Firstly by her presence at the Crucifixion, and secondly by being the first person to witness Jesus’ ascension. When she conveys these experiences to others in the group of Jesus’ followers, she is formally regarded as the initiator of Christianity.

FROM THE MIDDLE AGES TO THE FRENCH REVOLUTION

Much of the responsibility for the unequal position of women in the historical-social sphere, here in the West, is due to the patriarchal ideology of the Judeo-Christian tradition and Catholicism that emerged following the fall of the Roman Empire in 476 a.c. The emergence of the historical period known as the Middle Ages began an era distinguished in terms of the contextual inequality of women,

because men even came to discuss-among other issues-whether women had a soul (Council of 585). In short, women were considered to be among animal species different from man, since they existed only to serve males and procreate children.

With the invention of the printing press in 1450 began the modern age, or the Renaissance. In this period women were classified as mothers, daughters, widows, virgins, whores, saints or witches, and any human females living among the “relevant” classes only served to procreate and raise children.

In the seventeenth century, called The Golden Age, or Baroque Period, family honor was deposited in the attitude of women, and it was as precious as life, so that women were “protectively” watched over. Girls were educated to become good wives, without any other sort of training.

During the contemporary period, from the beginning of the French Revolution to today, women’s status began to change, although we have not yet achieved the

180 degree change of course needed to reach equality in an integral sense.

FEMINISM

However, the French Revolution is a milestone in the history of mankind, a watershed in the historical inequality of women; in short, it marks the beginning of feminism.

Estela Serret and Jessica Mendez Mercado point out: "... since its inception, feminism has been characterized as a school of thought which enables the production of knowledge to understand and explain the relationships between women and men in all areas of society. Over three centuries of existence, feminism has gone through various stages, and has taken different forms, each of which has a specific social and political impact. One of those stages is academic feminism, where the distinction between the concepts of sex and gender was conceived. "(Serret, E. Mendez Mercado, J., 2011.)

These authors allow us a brief but intensive "walking tour" of feminism. The first contributions of feminism hark back to the seventeenth century and are inscribed in the philosophical rationalism that would lead to the Enlightenment a hundred years later. Particularly, one of the two streams derived from rational discourse is natural law, which was characterized by raising the possibility of a universal approach to the idea of a national individual.

Feminism began as a protest against the Enlightenment. Women of the seventeenth century lived in a state of frank inferiority in Europe, and their condition was even worse in Spanish-dominated Mexico. Females lacked any rights at all, they were just not entitled to the rights now known in economic, legal, political and social spheres.

In New Spain, the Mexican nun Sor Juana Ines de la Cruz rebuked the men of her time for complaining about the nature of women. In the Europe of 1622, Marie de Gournay, in her Treatise on Equality between Men and Women, pointed out the inconsistency of a position based on the principle of natural inequality that

therefore justified subjecting women to men. Meanwhile, Olympia de Gouges, in 1791, wrote her famous document Declaration of the Rights of Woman and Citizen, to emphasize the pitfalls incurred when the term "man" is made synonymous to mankind and not just to males.

Soon after, in 1792, the English philosopher Mary Wollstonecraft published her book A Vindication of the Rights of Women, where she tried to prove that the characteristics considered feminine by nature, are actually the result of society. These are the main contributions to nascent feminism, three centuries ago.

PRESENT DAY SITUATION

In modern societies the influence of feminism is still little known, and in our country it is practically invisible, despite feminism being responsible for the emergence of truly important concepts. For example, it is now possible to speak of a real distinction between sex and gender, stating that the personal can be political; i.e., problems of a personal nature can translate, for example, into violence against women at home, because they are the result or outcome of social power relations, which in turn are the result of a historical and persistent patriarchy.

Also, now we discover that these power relations are embedded in romantic and parental relationships. It is also possible to understand than any starting point of study must stem from an interdisciplinary position which links elements of Anthropology, Ethnology, Ethnography, Ethno-psychology, Neurology, Sociology, Biochemistry, etc., to give theoretical support to different currents advocating for the destruction of the symbolic association of femininity with nature, an association which always involves social inferiority for females.

With feminism, new concepts have been established: The enlargement of citizenship to include women, universal suffrage, and equal economic rights as the basis for achieving real political rights. Feminism makes it possible to build a fundamental aspect: Gender perspective, which refers to the observation of a social

or political phenomenon, which is used to explain an object of scientific study using gender as a foundation. Gender perspective refers to a way of perceiving reality that considers men and women's unequal positions, positions socially constructed over hundreds or thousands of years.

"Plurality is the law of Earth".

Hannah Arendt

FEMINISM AND THE INDIGENOUS WORLDVIEW

Academic feminism should be the starting point towards recognizing one of its major modalities: A feminist, indigenous worldview, which currently must be a subject of study to be incorporated into judicial decisions guided by a gender perspective. Indeed, it is now essential to know the advances that indigenous women have accomplished in their struggle to claim their rights, as well as the strengths and opportunities in the conceptual, material, historical, social, economic, political and cultural areas that shape the feminist indigenous worldview.

"A worldview is an organizing structure for practices. The latter account for people's dealings with the world, with reality. And it is these concepts that permeate worldviews, and from which it is possible to account for the kind of reasoning and way of life practiced by indigenous peoples. In current debates about science, modernity and the need to articulate a philosophy that takes into account complex thought processes, indigenous cultures are an indispensable reference, which has proved its worth over millennia."(Gomez, M., 2013.)

"A certain worldview can be defined as a historical fact producing social thought, immersed in long term <cultural discourses>; a worldview is an integrated, complex act that is structured and made relatively consistent by the various ideological systems via which a social entity intends to "learn" the universe rationally. As a historical fact, a worldview is a human product that must be studied in its temporal evolution and within the context of the human society that produces

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In New Spain, the Mexican nun **Sor Juana Ines de la Cruz** rebuked men of her time for complaining about the nature of women.

The indigenous feminist struggle does not escape tensions and difficulties. Faced with the Zapatista movement, indigenous feminists proclaimed themselves as pacifists and anti-war, noting that war has always been a “male thing”.



it and bases its acts upon it. Its historical dialectic implies its link with the social whole and, therefore, also implies a permanent transformation. (Lopez, J. Mendez, JM T, 2006.)

When performing an analysis of the political roots, emergence and development of the indigenous women's movement, Gisela Espinosa Damián in her *Indigenous women. Struggles for Gender Equality and Citizenship*, takes a historical tour in connection with indigenous women's struggle to gain recognition of their rights.

During the 1980s, their fight started with a list of demands and requests; in the 1990s, it continued with the appropriation of existing rights, the "building up" of new ones and the requirement that such rights be respected, met and exercised. Along with these achievements, their struggle tries to build citizenship, seeking not only recognition for their peoples' self-determination and autonomy, but an end to their status as second class citizens in the eyes of both the State and their own indigenous communities.

This movement seeks to vindicate rights of equality, equity, freedom, respect and recognition, which in turn demands sociocultural change within their communities; indigenous women call for gender equality to participate in community decisions; to gain equal access to goods such as food, clothing, spending money, family assets, land and property in the event of divorce or separation; equality when their work capabilities are being assessed and equality regarding their economic, social and cultural participation. But this struggle to claim their right to be different and equal is framed within the context of a commu-

nity. While recognition is sought for all, it is especially important for those that are frowned upon in the community, such as single women, widows, single mothers... These women are fighting for their right to defend themselves verbally or physically should they be insulted or assaulted.

They also clamor for their land rights, for the rights of those who are marginalized by both the official authorities and the local community. This is an important struggle, since these kind of rights are a necessary prerequisite to access both public funds and communal acceptance in a society guided by traditional, local and ancestral rules ("usos y costumbres"). These women believe that conquering these rights will allow them to participate in their communities political life, also managing to give the concept of community a new meaning which will democratize it from a gender perspective.

Another slogan is their right to organize, manage and obtain funding for productive projects geared toward women's development. They call for the democratization of domestic work, so they can attend meetings and organizational tasks as well as collaborate on the activities and labors necessary for family subsistence.

They claim their reproductive rights, their right to decide the number of children they'll bear, their right to select and use methods of natural and artificial family planning and demand respect for these decisions; they also seek rights for pregnant women so that they are dispensed care, respect, consideration and help. Finally, they require that they not be mistreated when they give birth to girls

rather than boys. They aim to prove that their struggle for equality is not contrary to their struggle for the acknowledgment of differences and the need for special treatment when it's warranted.

In this struggle, indigenous women recognize the plurality, diverse identities and individual rights within communities, so they demand, on par with the recognition of autonomy and self-determination for their peoples, that the rights of women be acknowledged, especially their political rights, which will enable them to exercise their possibilities of speaking, deciding, choosing and participating in decision-making at every level.

INDIGENOUS FEMINISM

Given the hegemonic feminist discourse, indigenous feminism reformulates concepts. Thus, noting that the idea of seeking parity, equity and equality confuses many indigenous men and women with complicated terminology, indigenous women propose an alternative in talking about duality. The indigenous feminist struggle does not escape tensions and difficulties. Faced with the Zapatista movement, indigenous feminists proclaimed themselves as pacifists and anti-war, noting that war has always been a "male thing". However, some women were motivated to join the EZLN when faced with the opportunity of learning to read, speak Spanish, organize to form women's groups, contribute in collective labor or participating in study groups (to which they did not have access to in their own communities).

The struggle of indigenous women for recognition of their rights, from a gender equality perspective, represents the most radical challenge to a patriarchal, capitalist and racist culture. So, this fight not only radicalizes the indigenous movement's political project from a gender perspective, but also rises in traditional feminism the need to recognize diversity in order to overthrow the exclusions faced by women.

Eugenia Rodriguez Blanco, in her book *Indigenous Feminism and Cultural Change. Reflections on cultural change*

¹Tovar Gomez, M. (2014). *Los procesos de construccion de conocimientos en las cosmovisiones indigenas*. Retrieved June 2nd 2014 from <http://www.entrelugares.ufc.br/phocadownload/artigo-marcela22.pdf>.

²Lopez Hernandez, J. R. and Mendez, J. M. T. (2006) *Pp. 19 La cosmovision indigena Tzotzil y Tzeltal a traves de la relacion salud-enfermedad en el contexto de la medicina tradicional indigena*. Retrieved June 19th, 2014 from <http://www.redalyc.org/articulo.oa?id=46120102>.

³Espinosa Damian, G. (2010) Pág 96-105. "*Mujeres indigenas. Contendientes por la Equidad de Genero y la Ciudadania*". En *Relaciones de Genero. Los grandes problemas de Mexico*. Mexico, D.F.: El Colegio de Mexico.

in favor of gender equality in indigenous contexts, makes us reflect on the dynamics presented in indigenous contexts relating to cultural changes. This document shows how indigenous women, through their particular brand of feminism, propose a sort of “change-permanence”, i.e. an invitation to reconcile women’s and communities’ rights without prioritizing one over the other.

It points out how the dynamism cultures present (as in other social or economic areas), obeys and is subject to the powers and interests of particular groups, hence some changes can occur and others cannot. In the case of gender-related cultural changes, these do not necessarily mean that women have better conditions or positions, or that they reach better “rates” of gender equality, making it necessary to speak of the changes sought or promoted by equality, an equality which the author has baptized “pro-gender equality cultural changes”. Changes proposed by indigenous women fall in the area of gender equality, defined within their particular worldview (emphasizing complementarity and balance), which could be considered as pro-gender equality cultural changes. Opposing this claim are the voices of certain community sectors, usually formed by men with power and authority, who impede cultural change.

These men argue that the fight for equality, in the case of indigenous women, is totally alien to their communities, therefore branding it as a “colonizing spiel” to which they react with resistance; thus, they use the preservation of indigenous culture and traditions to deny any changes suggested by women which involve overcoming gender inequality. This

last point is important because it shows the dynamics of interests and power, which is used to stop particular cultural changes, and ignored when certain other changes are deemed desirable. We should stress that indigenous women, when seeking gender based cultural changes, do not forget their ethnicity; on the contrary, based on their identity as both women and members of an indigenous group, they propose changes in favor of gender equality without compromising their fight for cultural diversity and for the communities to which they belong.

When making reference to various academic activists working with indigenous women, Blanco writes about the creation of the term “indigenous feminism”, a concept given its content precisely by indigenous women. This theoretical concept is irremediably linked to particular social events. In Mexico’s case, the link is to the Zapatista movement that started in 1994. Blanco also comments that indigenous feminism is not only critical, but also purposeful, as can be concluded from the following aspects:

» **Indigenous feminism, contrary to hegemonic feminism, draws attention to the diverse identities of women while marking their various problems and demands. Therefore, it emphasizes, “the identity of any person consists of much more than a gender identity.”**

» **Indigenous feminists are not isolated from the national context in which indigenous communities are found, so that their struggle goes beyond advocating for women, combating ethnic oppression in order to defend their people’s rights.**

» **Within their communities, by proposing pro-gender equality cultural changes, indigenous feminists struggle to transform those elements they consider oppressive and exclusionary, those elements that subordinate and discriminate against women.**

» **Indigenous feminism contributes to the debate on multiculturalism and feminism, by reconciling, with its proposal of pro-gender cultural changes, women’s individual rights with the collective rights of the people in their communities.**

And it is in this proposal of indigenous feminism where “change-permanence” or the cultural negotiation of indigenous women can be appreciated, reflecting a dynamic and flexible concept of culture, which is not made visible in certain positions of hegemonic feminism.

Anthropologist, feminist thinker and pioneering worker with indigenous women Mercedes Olivera Bustamante highlighted the way indigenous women’s sexual and reproductive rights are addressed. From her work emerge the following conclusions: sexual and reproductive rights among indigenous women are linked to issues (such as the ways in which the body is seen, felt and even forbidden) introduced since time immemorial alongside Catholicism. This type of reasoning, that some anthropologists and indigenous groups called “circular thinking”, is rebaptized as “collective thinking” by anthropologist Olivera because the ‘I’ for indigenous women implies a very distant road, which must go first through the community, the family, their children and husband in order to finally reach their feminine identity. This kind of reasoning

⁴ **Rodriguez Blanco, E. (n/a)** Pp. 13-26 “Feminismo Indígena y Cambio Cultural. Reflexiones sobre el cambio cultural proigualdad de género en contextos indígenas”. In *Diversidad Cultural y Género*. Retrieved June 19th, 2014 from http://www.munitel.cl/file_admin/archivos_munitel/oportu/oportui.pdf.

⁵ Interview granted by anthropologist, feminist thinker and pioneer in working with indigenous women Mercedes Olivera Bustamante, on December 2013 to News Agency of Communication and Information for Women, Civil Association (Cimac). Consulted June 12th, 2014 from <http://www.cimacnoticias.com.mx/node/65278>.

brings about a very different type of feminism, for while this kind of work with women can usually begin with sexual and reproductive rights, abortion and sexual preferences, in the case of indigenous women the process must be completely reversed: the starting point must be systemic and perhaps economic violence and only gradually can individuality be approached.

This feminist indigenous worldview is not about annulling the individual, but it does imply recognizing that a community or group is made up of different people. 'Individuation' implies the collective recognition of the existence of the individual. You cannot do this if a community offers no recognition or respect for self-determination. The ultimate goal is reaching a kind of collective self-determination.

Indigenous feminism should be a "work in progress" based on these conceptions of the indigenous world and of collective identities, identities that sometimes must be transformed since some are in fact sexist, excluding and discriminating women. However, there are things within indigenous communities that the West would do well in emulating, such as solidarity and family support networks.

The paradigm shift of those exclusive, sexist and discriminatory collective identities must come from multiculturalism, and from a systematic normative basis of concepts gleaned from international legal instruments, national and international jurisprudence, and best practices respectful of due diligence, all of the former related to Human, indigenous and communities' rights. By the way, these kind of paradigm shifts should be disclosed nationwide as soon and as massively as possible to the general public, authorities and institutions without distinction, placing special emphasis on indigenous recipients themselves. ■

***Magistrada Carolina Isabel Alcalá Valenzuela:**
Seventh Panel Court of the First Assisting Center Region

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A, B, AND C V. IRELAND. (APPLICATION NUMBER 2557 9/05)²

Abortion issues reach the European Court of Human Rights

By Magistrate Guadalupe O. Mejia Sanchez*.

On December 16th, 2010, the European Court of Human Rights (ECHR) issued a final judgment in the case of A, B and C v. Ireland. The case is interesting in terms of procedure, facts and resolution.

Regarding the procedure, the case originated on the basis of Article 24 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”) for violation of provision 8 and others and was presented by 2 Irish citizens, Ms. A and Ms. B, as well as a Lithuanian citizen, Ms. C (“the applicants”).

A lawyer provided by the Irish Family Planning Association, a nongovernmental organization based in Dublin, represented the applicants. The Irish Government (“the Government”) was represented by its agents in the Department of Foreign Affairs in Dublin.

The first two applicants mainly complained about the violation of Article 8 of the Convention, which deals with prohibiting abortion for reasons of health and wellness in Ireland; the 3 applicants’ main complaint concerned the same article and the alleged infringement of the constitutional right to abortion in Ireland in the case of risk to the mother’s life.

¹Alfredo Islas Colin. UNAM scholar, SUA.

²European Court of Human Rights, Strasburg Trial, December 16th, 2010.

LEARN MORE

The European Court of Human Rights (ECHR) consists of 43 judges elected for 6 years (which may be renewed by its Assembly). Each judge is chosen from lists submitted by each Member State. The ECHR can operate either in full, committees, chambers or grand chambers.

Plenary: responsible for performing non-contentious functions, and choosing the ECHR’s president, vice presidents and “greffiers”.

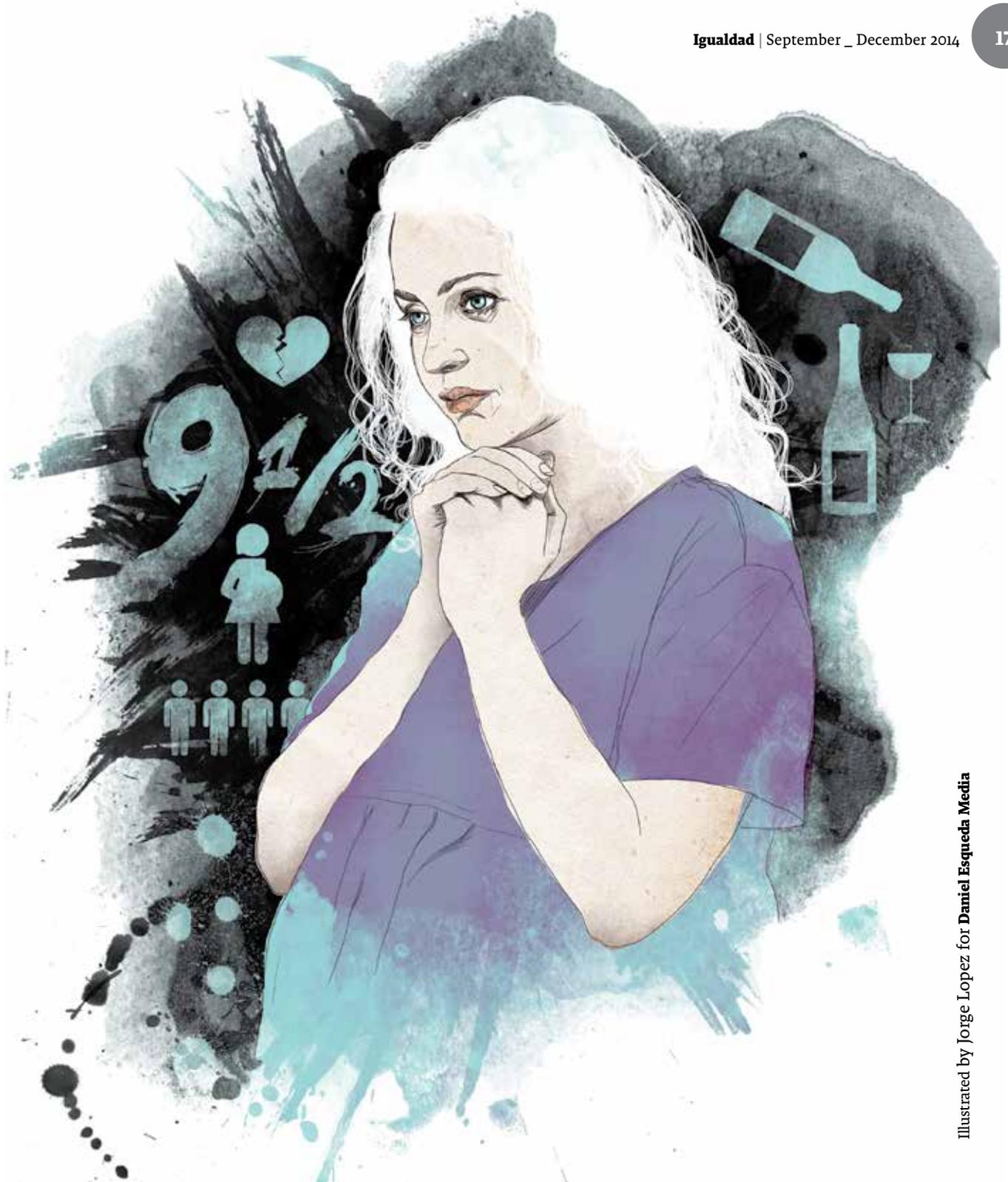
Committee: composed of three judges who “filter” lawsuits.

Chambers: made up of seven judges, can also be integrated by States which are party to the dispute.

Grand Chambers: composed of 17 judges, they are chaired by the ECHR President, chambers’ presidents and judges of States that are party to the lawsuit.

The case was assigned to the Third Chamber of the Court and its Secretary reported the case to the respondent Government. The applicants and the Government each filed written observations on the admissibility and merits. Comments from a third party, the Lithuanian Government, which had exercised its right to intervene, were also received.

After agreeing their intervention in the written procedure with the Speaker of the House, numerous presentations by third parties were also received: joint observations from the European Centre for Law and Justice in association with Kathy Sinnott (EPM), the Family Research Council (Washington, D.C.) and the Society for the Protection of Unborn Children (London); observations of the Pro-Life Campaign; joint observations from Doctors for Choice (Ireland) and the British Pregnancy Advisory Service, as well as joint observations from the Center for Reproductive Rights and the International Legal Program on Sexual and Reproductive Health.



Illustrated by Jorge Lopez for Daniel Esqueda Media

The Chamber relinquished jurisdiction in favor of the Grand Chamber and neither party objected to the waiver. The applicants and the Government filed a memorial on the admissibility and merits to the Grand Chamber. The Lithuanian government made no further comments.

A public hearing was held in Strasbourg's Human Rights building. Repre-

sentatives of the Irish Government and the applicants appeared before the Court.

CASE FACTS AND CIRCUMSTANCES

The applicants are residents of Ireland and are women over 18 years of age. The first applicant (A), traveled to England for an abortion because she felt she had no right to an abortion in Ireland. She was 9½ weeks pregnant.

She became pregnant unintentionally, believing her partner was infertile. At the time she was single, unemployed and living in poverty. She already had four children. The youngest was disabled and all the children were in foster care as a result of the alcoholism she had experienced. The applicant had a history of depression during her first four pregnancies and was fighting back against depression at the time of her fifth pregnancy. During the year prior to her fifth pregnancy, she remained sober and had been in constant contact with

social workers in order to regain custody of their children. She felt that one more child at this time of her life (with the risk of postpartum depression and relapse into alcohol addiction) would jeopardize her health and successful family reunification. She decided to travel to England for an abortion.

Delaying the abortion for three weeks, the first applicant borrowed the minimum amount of money needed (650 euros) for her journey to England and treatment at a private clinic from a loan shark at a high interest rate. She felt she had to travel to England alone and in secret, without alerting social workers and without missing a single contact visit with her children.

She flew to Ireland the day after the abortion for a contact visit with her youngest son. While she initially externalized that she was afraid to seek medical advice on returning to Ireland, she later clarified that, on the train back to Dublin, she began to bleed profusely. An ambulance met the train. In a nearby hospital, she underwent a dilation and curettage. She said that in the following weeks she experienced pain, nausea and bleeding but did not seek further medical advice.

Subsequently she became pregnant again and gave birth to her fifth child. She is struggling with depression, has custody of three of her children while two of them (including the disabled child) remain under State care. She argues that abortion was the right decision for her in 2005.

The second applicant (B), traveled to England for an abortion believing that she was not entitled to one in Ireland. She was 7 weeks pregnant; the pregnancy was unintended. She had taken the "morning after pill" and was advised by two different doctors that there was a substantial risk of ectopic pregnancy (a condition that can not be diagnosed until 6-10 weeks into a pregnancy). She was certain of her decision to travel to England for an abortion because she could not



care for a child on her own at that time of her life. She waited for several weeks until the counseling center in Dublin opened after Christmas. She struggled to cover travel expenses; not having a credit card, she used a friend's card to book flights. She acknowledged that, by the time she traveled to England, doctors had confirmed that there was no ectopic pregnancy.

Once in England she listed no close relatives nor gave out her Irish address in order to be sure that her family would not know about the abortion. She traveled alone and stayed in London the night before the procedure to avoid losing her appointment, and the following procedure. As she had returned to Dublin too late for public transport and unable to drive home due to sedation, the clinic advised her to inform Irish doctors that she had had a miscarriage.

On her return to Ireland she began expelling blood clots and two weeks later, still unsure of the legality of having traveled for an abortion, sought follow-up care at a clinic affiliated to the English ward where she had been operated in Dublin.

The third applicant (C) had an abortion in England believing that it could not establish her right to one in Ireland. She was in her first trimester of pregnancy at the time.

Before that, she had been treated for 3 years with chemotherapy for a rare form of cancer. The applicant had asked her doctor (before starting her treatment) about the implications of her illness on future offspring; the doctor said it was not possible to predict the effect of pregnancy on her cancer: If she got pregnant, chemotherapy would be dangerous to the fetus during the first trimester.

The cancer went into remission and the applicant inadvertently became pregnant. She was unaware of this fact when she underwent a series of tests for cancer, tests counterindicated during pregnancy. When she discovered she was pregnant, the applicant consulted her GP ("GP"), as well as several medical specialists. She alleged that as a result

of the dampening effect of the Irish legal framework, she received insufficient information on the impact of pregnancy on her health and life.

So she researched the risks on the Internet. Given the uncertainty about the risks, the third applicant traveled to England for an abortion. She maintained that she wanted a medical abortion (drugs to induce abortion) since her pregnancy was at an early stage, but could not find a clinic that would provide this treatment since she was not a resident and follow-up care was needed. Therefore she was supposed to wait 8 weeks until a surgical abortion became possible.

On her return to Ireland after the abortion, the third plaintiff suffered complications from an incomplete abortion, including prolonged bleeding and infection. She alleged that the doctors provided inadequate medical care. She consulted her own GP several months after the abortion; the GP made no reference to the fact that she obviously was not pregnant.

SENTENCING:

A comprehensive study in relation to the long, complex and delicate debates in Ireland in terms of the contents of its abortion laws was made.

The Court found that Irish law prohibits abortion in Ireland for health and wellness, but allows women in the position of the first and second applicants, who want an abortion for those reasons, the option of traveling legally to another State to do so. Consequently, given the legal right to travel abroad to practice abortion with access to appropriate information and medical care in Ireland, the Court considered that the contested ban in Ireland found the right balance between the right of the first and second applicants to respect for their private lives and the rights invoked on behalf of the unborn. Therefore, there was no violation of Article 8 of the Convention as regards the first and second applicants.

Regarding the third applicant, the Court found that provision 8 of the Convention was violated, since in her situation, she qualified for a legal abortion in Ireland; therefore, it ordered the State to compensate the applicant with 15 000 euros. ■

**Guadalupe O. Mejia Sanchez, Magistrate of the Ninth Criminal Matters Panel, First Circuit.*

JUDICIAL CAREER PATHS AND GENDER FROM CLERKS TO JUDGES: IS THERE STILL A GLASS CEILING?

Jorge Martinez Stack,
Alejandra Benitez
and Victor Morales Noble*

“Being a Judge is costly for women, where the problem does not end after the divorce, but continues with the grieving process, and the inner work each woman needs to do to talk herself into believing her decision to be a Judge was worth it, although its price was the loss of a partner and, perhaps, loneliness.”

-An anonymous female Federal Magistrate

FEMALE-MALE EQUALITY IN THE FEDERAL JUDICIARY CAREER PATH

According to recent Federal Judiciary Council information, the number of women in the Federal Judiciary’s highest positions still constitutes a minority (Table 1). Such imbalance is not unique to the Council: It is a common phenomenon in other public and private spheres. However, the presence of gender inequality in one of the institutions responsible for administering justice in our country deserves special attention.





Among Judges and Magistrates, 80% are male and only 20% are female. However, 42.6% of Clerks (i.e. potential judges) are women. Nonetheless, female response to opportunities of occupying Judgeship positions are less than what could be expected based on the above ratio, as only 24% of registered contestants are female Clerks.

This contradiction has led the FJC to conduct, in agreement with UNAM's School of Psychology, a study that will lead to a diagnosis identifying the factors that affect the mobility of female Tribunal and Court Clerks in their aspiration to reach Judgeship positions.

FEMALE PRESENCE

Table 1. Women and men in FJC Jurisdictional Bodies, 2013

Magistrates / Female Magistrates

82.16%  (617 male) | **17.84%**  (134 female)

Clerks / Female Clerks

57.42%  (3,648 male) | **42.58%**  (2,705 female)

Judges / Female Judges

75.68%  (277 male) | **24.32%**  (89 female)

Total

60.80%  (4,542 male) | **39.20%**  (2,928 female)

Source: DGDHEGAI, October 2013

STUDY RESULTS

The initial design proposal of this investigation strived to answer the following questions:

- a. Which factors are associated with women having only minimal presence as Judges?
- b. Which factors could explain that the proportion of women applying to the post of Judge is less than the extant proportion of female Clerks?
- c. Is it possible to identify a “glass ceiling”?
- d. What suggestions can be formulated to increase the number of female Judges?

Before explaining how the study was conducted, it should be noted that the term “glass ceiling” refers to a theoretical construct that attempts to describe the situation of exclusion, in terms of a metaphor that relies on the existence of a certain artificial “cap” in women’s careers, which makes it very difficult to rise beyond certain hierarchical levels. This term is employed in situations where there are no explicit rules or laws that limit female promotion, but there exist a number of factors which are difficult to detect since they are “invisible” and that actually constrain women’s advancement.

In order to search for answers to such questions, a part of the study involved a phase of qualitative fieldwork based on conducting focus groups (FG).

The FG were held in Mexico City, Guadalajara, Monterrey, Puebla and Toluca, with a total of 15 focus groups in which 90 Clerks (60 women and 30 men) participated (Tabla 2).

The findings presented correspond to the systematization of participating male and female Clerks opinions. Multiple factors explain low female participation in the race to fill Judges’ seats. These are the main results:

» **Both male and female Clerks do not consider female occupational segregation, which leads to women being a minority in relevant positions, as a problem that must be tackled immediately (i.e. this is not perceived as a serious problem). The daily reality in their workplaces leads them to consider other labor problems, such as excessive workload, long working hours and inflexible attendance controls, as more serious.**

» **From the perspective of both male and female Clerks, and even Judges or Magistrates, the long hours spent in the workplace and the high geographical mobility of Judges represent a disincentive for female Clerks to participate in the race for being selected and appointed as Judges. Judiciary members recognize and share the tension resulting from the triple role women must fulfill: mother, wife and Judge. This tension is seen as a result of the cultural pattern that prevails, in which childcare and running a household are seen as female**

CLERKS

Table 2. Number of Clerks who participated in FG, 2014

State: Mexico City
Counties / Demarcations: Álvaro Obregón and Venustiano Carranza
Number of FG participants*: 12 (7 women / 5 men)

State: State of México
Counties / Demarcations: Toluca
Number of FG participants*: 21 (14 women / 7 men)

State: Jalisco
Counties / Demarcations: Zapopan
Number of FG participants*: 24 (14 women / 10 men)

State: Nuevo León
Counties / Demarcations: Monterrey
Number of FG participants*: 12 (8 women / 4 men)

State: Puebla
Counties / Demarcations: San Andres Cholula
Number of FG participants*: 21 (13 women / 8 men)

responsibilities.

Female Court and Tribunal Clerks equal male performance and have similar training when aspiring to the seat of Judge. However, what does differentiate them from their male peers is that they do not have the same amount of time available to study and prepare for the contest, due to their responsibilities to family and home. This situation is undoubtedly one of the factors with



greater weight in explaining the low representation of women in power and decision-making Federal Judiciary positions.

Today it appears that the institutional environment Court Clerks endure is not entirely conducive to encouraging women to compete for judgeships. If gender perspective is applied, it becomes apparent that specific problems, usually institutionally invisible and little-known, do not

allow women equal access to Federal Judiciary activity.

The results of this study show, in general, that actions promoted so far are limited to advocacy and do not eradicate the substantially inequitable and discriminatory dynamic towards women, although women themselves may not realize it. A possible alternative to improve this situation could be finding an institutional framework that allows for sufficient preparation during working hours.

Illustrated by Jorge Lopez for Daniel Esqueda Media

Similarly, rather than speaking of a “glass ceiling” that prevents female Clerks from being promoted to Federal Judges, we should speak of a “maze” that women must go through in order to achieve personal and professional development in their Judiciary career path. Indeed, we might speak of a labyrinth, because becoming a Judge is an achievable goal for female Clerks. A labyrinth has an entrance and an exit, but the path between these two points is neither simple nor straightforward. Federal judiciary career paths are harder for women than for men. Also, all roads in this maze have unexpected obstacles: roundabouts, setbacks and cul de sacs where the only way out is through the entrance. Achieving the final goal requires conviction, persistence, awareness of both progress and potential setbacks and, above all, a special capacity to personally analyze any difficulties that arise. ■

**Researchers at UNAM’s School of Psychology, Continuing Education Division.*



10TH EPOCH FEMALE FEDERAL JUDGES

By Jacqueline Martinez Uriarte and Valeria Ramirez Esquinca*

In order to know more about the women who started their activity as Mexican Federal Justice operatives within a regulatory framework that strengthens the protection, promotion, respect and guarantee of Human Rights, 10 interviews with female Federal Judges who were appointed during the Federal Judicial Weekly's so-called Tenth Epoch (for those new to this term, it refers to a "new era" of the Federal Judicial Weekly published by the Mexican Supreme Court, which derived from a new and broader interpretation of individuals' rights).

ACADEMIC AND JUDICIAL CAREERS

"Tenth Epoch" Federal Judges studied at universities in various Mexican cities such as Chihuahua, Coahuila, Chilpancingo, Durango, Guadalajara, Guanajuato, Mexico City, Morelia and Tuxtla Gutierrez. Most are public university graduates.

On average it took them 15 years (after graduation) to earn an appointment as Federal Judges. Half of the respondents began their judicial career as judicial officers and deputy court clerks; the rest began their careers working directly as Clerks in a judicial body, be it a Court, Tribunal or even the Mexican Supreme Court.

Among these women, two training "patterns" predominate: either they accumulated professional experience in two courts or they did it in four. On average, all served as Court or Tribunal Clerks for a period of 12 years.

Most of these judges have participated in the "Judging with a gender perspective" congress organized by the Federal Judiciary Council (FJC), that are familiar with the "Judicial Decision-Making with a gender perspective: A Protocol. Making Rights Real" published by the Supreme Court and celebrate that the Federal Judiciary disseminates and promotes the administration of justice with a gender perspective as its corporate objective.

They are aware that the challenge to judge with gender perspective in our country is not only about mentioning the wealth of national and international standards that exist on the subject, but making them their own and applying them in the argumentation and resolution of cases coming to court. They also believe that justice adminis-

*The Federal Judicial Weekly is the means of dissemination where the relevant statements and theses issued by the Supreme Court of the Nation and various Panels, as well as agreements issued by the Supreme Court or the Federal Judiciary Council, are published.

tration is going through a stage of construction regarding gender equality and non-discrimination; some of them have already issued sentences with a gender perspective.

From their perspective, a Judge, either male or female, must be honest, honorable, independent, respectable, brave and mature. Judges of either sex must combat prejudice and build trust. Simplicity and accessibility are features that strengthen them in their labors.

ENCOURAGING PARTICIPATION IN COMPETITIONS FOR JUDGESHIP

True vocation, the opportunity to participate actively in the administration of justice to improve the situation and legitimacy of institutions, admiration for Judges as authority figures, respect for the Federal Judiciary (the institution where they have spent most of their working life) and the challenge this profession presents to women, are the main factors that led Tenth Epoch Judges to participate in this competitive selection and appointment process.

For this new generation, making the decision to become Judges was not easy, especially because of the time required to prepare for the contest. Workloads for Court and Tribunal Clerks are heavy and any time spent on preparation cut into time spent on family, household and leisure.

Several of the judges interviewed remembered their concern about making this decision. The reasons for this concern were, above all, the possibility of combining family and professional life, how the changes in allocation would impact family life and the security risks that exist for Judges in our country. However, support from peers and, especially, from Judges in their own workplaces, were instrumental in their decision to register in the competition for a Judge's seat.

WOMEN'S DISADVANTAGE IN THE PROCESS OF SELECTING AND APPOINTING JUDGES

Most Judges believe that there are no distinctly female disadvantages in the process of selection and appointment. However, Judges who have children said that preparing for the contest meant sacrificing time spent with them, especially on the weekends or when not on-call. It's interesting to write down some examples of answers to the question "In your experience, did your gender cause you any disadvantages in the process of being selected and appointed to a Judge's seat?" that was put to Tenth Epoch Judges. Responses include: "[We might have] equal opportunities yes, [but not the] same possibilities" and "the procedure is not biased, but our culture itself is."

PROPOSALS TO IMPROVE THE PROCESS OF SELECTING AND APPOINTING JUDGES

Tenth Epoch Judges recognize that there have been chang-

es that have improved the procedure for the selection and appointment of Judges. Some think that it is not necessary to modify this process. However, most respondents agreed that the first stage of the contest privileges memory over knowledge and the ability to reason, analyze and resolve jurisdictional problems, because it focuses on memorizing jurisprudence.

Newly appointed judges perceive that female Clerks who have children do not have enough time to attend training programs that would allow them to obtain the certificates and degrees required to make them eligible as Federal Judges.

From the interviews conducted emerged four proposals for improving this process:

- » Decentralize examination, at least in the first stage. Perform remote examinations with the proper controls. This would help candidates in terms of workload and even money, on account of transport and accommodation.
- » Prefer assessments solving specific cases. It is proposed that as part of the review two draft statements be resolved: one on the subject selected by the candidate, and another selected by the contest jury
- » Optimize the time allotted to answer the questionnaire and improve the syllabus offered to prepare for the exam.
- » Find schemes to provide time for Clerks to prepare for the competition, above all, in the case of those with offspring, as they are less able to find time for studying and memorizing.

Some people are in favor of introducing affirmative action for women in these competitions, but during interviews no concrete suggestions were made. The Judges' general opinion is that candidates are entitled to be judged by a capable person, regardless of whether this person is a man or woman.

ALLOCATION POLICY SECONDMENTS

From their perspective they propose that Clerks' specialization be taken more into account when assigning allocation. Moreover, the Judges considered that the regulatory framework should consider conditions that promote family stability, especially in the case of female Judges or Magistrates. In other words, mainstreaming gender into the FJC's allocation policy.

FEMALE JUDGES' EXPECTATIONS



Tenth Epoch Judges visualize the following objectives: serving with fairness and excellence, achieving an organized Court without lags, promoting a healthy working environment and continuing their training in order to be ready to thrive in their Federal Judiciary career path. The topics of organizational development, management and personnel management are relevant from their perspective and are clearly visualized, especially in the sense of leveraging technology to combat deficiencies and strengthen order in Court organization. However, they think that newly appointed Judges should have some training in these areas, especially as to managing personnel. Leadership and the ability to motivate staff are recognized as challenges and factors that facilitate efficient Court work.

They also express their interest in stimulating their employees to move up the Judiciary hierarchy and concern for improving the quality of their time at work.

CHALLENGES FOR JUDGES IN THE PERFORMANCE OF THEIR DUTIES

On the other hand, this group of Judges believes that, to

maximize performance, people must also maintain a balance between work and family life, ensure the safety of their family and have time for leisure.

TWENTY YEARS INTO THE FUTURE

When asked how they see themselves in 20 years time, most of the Tenth Epoch Judges visualize being experienced, proud providers of justice, moving forward in their Judiciary career path and even occupying an upper-echelon position in the FJC.

Most of these women see themselves maintaining a balance between their professional and family life, and even being able to engage in teaching and research activities. Finally, all of them feel that female Judges can make a difference in the way justice is administered, adding real perspective as to Human Rights, equality and non-discrimination. ■

** Federal Judiciary Counsel's General Directorate of Human Rights, Gender Equality and International Affairs.*

Sor Juana's Prophecy

By Carmen B. Lopez-Portillo R.

The reasons that lead us to the choices we make, those that wind up conforming our very self over time, that permeate what we do with intentionality and allow us to fulfill the promise of liberty, have always intrigued me.

Why are ideas necessary for our survival? Why do we produce and renovate, in an eminently human act, ideas on ourselves, on others, on the times we live in, on whatever it is that transcends us? Why do we even question all these concepts?

Why do we choose to be a certain way, even when we know that our being will change over time, even when aware that we are "time, dust, nothing" as Sor Juana put it? Maybe- I hope- this happens because we can actually hope to inhabit freedom through our words.

Each and every daily decision-even the smallest, most insignificant one- contributes to make your life what it is right now. Our choices shape what we will become over time. Our choices fill our very being with intentionality and allow us to break free. However, we may never be able to fully enumerate all the reasons needed to explain ourselves, or to really understand what we are, do, think, say and decide. We are thrown forward into time, we are time's very spearhead. We "become" just by "being", as we are never static, but forever running towards the future, walking toward our future selves.

People such as Sor Juana have discovered that the greatest advantages come from deep understanding and knowledge. Gratian (Roman emperor) coincides with the celebrated Mexican nun in his most famous statement "advantages in understanding are advantages in being itself".

This is how Sor Juana frames this thought:

En perseguirme, Mundo, ¿qué interesas?
¿En qué te ofendo, cuando sólo intento
poner bellezas en mi entendimiento
y no mi entendimiento en las bellezas?
Yo no estimo tesoros ni riquezas;
y así, siempre me causa más contento
poner riquezas en mi pensamiento
que no mi pensamiento en las riquezas.

Yo no estimo hermosura que, vencida,
es despojo civil de las edades,
ni riqueza me agrada fementida,
teniendo por mejor, en mis verdades,
consumir vanidades de la vida
que consumir la vida en vanidades.

We have already stated that our lives are about constantly making choices, but we must choose wisely or risk our very lives. How to discover if any choice is actually better than others, how to distinguish one choice from another? Is there a way to know which of our choices will make today or tomorrow worthy of living? One way of doing this is by learning to assess each of the possibilities of life or existence that are being offered.

Sor Juana's idiosyncrasy, life and example can teach us to live our lives better, to understand them. Her words, uttered so long ago, still question today's reality, the reality we have split into different pieces in order to lay claim to it, to understand it better, to manipulate it



Illustrated by Jorge Lopez for Daniel Esqueda Media

through reasoning (that very same reasoning we use to claim ownership over this world and any others beyond it) and love (used as a excuse to dominate others). That is why I think that Sor Juana's words are actually prophecies, meaning not the actual supernatural ability to foresee coming events, but simply words that are open to time, words thrown at the future.

The terms "prophesy", "prophetic" and "prophesize", come from the Greek "fem" or "phemi", which means talking, as does the Latin "fari". "Fem" is related to "fen" or "phainu" which means to shine or appear. The terms "fem" and "fen" share their linguistic root with "fa". Thus, fable, fame, fool, talking, fate, affable, confess, defame, profess, teacher and prophet all have common roots in "speak" and "shine".

It's wonderful to think that "prophesying" literally means words that are thrown forward in order to make the future shine and appear before our eyes, just like words make the world come into existence upon being uttered. It is only when we are talking about it that the world comes to make sense; talking is the only way available for us to share our very being, the way we experience things and the presence or absence of others.

There are as many ways of talking as there are of existing. It's a poet's prerogative to say things beautifully, in a way that allows us to recognize ourselves in the miraculous intimacy of words spoken by others. It's a privilege, that of looking not only with our eyes, but also through our spirit (as Octavio Paz put it). How to avoid being moved by as poem such as this one by Sor Juana?

Esta tarde, mi bien, cuando te hablaba,
como en tu rostro y tus acciones vía
que con palabras no te persuadía,
que el corazón me vieses deseaba;
y Amor, que mis intentos ayudaba,
venció lo que imposible parecía:
pues entre el llanto, que el dolor vertía,
el corazón deshecho destilaba.

Baste ya de rigores, mi bien, baste;
no te atormenten más celos tiranos,
ni el vil recelo tu quietud contraste
con sombras necias, con indicios vanos,
pues ya en líquido humor viste y tocaste
mi corazón deshecho entre tus manos.

Poetry ignited a verbal relationship -devoid of ulterior motives- with reality, allowing us to use our words merely to enjoy their beauty and sonority, saying yes simply because we feel like it, because we seek to seduce, not conquer. With poetry, the possibilities of gratuitous speech, honest knowledge and purity of intentions open up.

Just as there are ways of watching over words, of saying them beautifully, there are also ways of caring for what we are at our core. The best way to watch over our core and cultivate our very being is finding our own vocation; here vocation must be understood as something beyond our profession, a concept that goes straight to the underlying motives that led us to choose a certain profession and to keep at it. That choice above all involves assuming a certain way of living one's life, becoming responsible for one's own existence, responding to life by doing what we are called to do. Thus says Sor Juana:

Vivid, y vivid discreto,
que es sólo vivir felice:
que dura, y no vive, quien
no sabe apreciar que vive.
Si no sabe lo que tiene
ni goza lo que recibe,
en vano blasona el jaspe
el don de lo incorruptible.

Further along this poem, Sor Juana insists:

No sólo al viento la nave
es bien que su curso fíe,
si el ingenio de los remos
animadas velas finge.
Quien vive por vivir sólo
sin buscar más altos fines,
de lo viviente se precia.
De lo racional se exime;
y aun de la vida no goza:
pues si bien llega a advertirse,
el que vive lo que sabe,
sólo sabe lo que vive.
Quien llega necio a pisar
de la vejez los confines,
vergüenza peina y no canas;
no años, afrentas repite.

I think few human beings assumed their vocation as fully as Sor Juana. This is why she was exemplary, why learning about her life, philosophy and works is crucial. Sor Juana was a staunch champion of a way of life, a way of simply existing, based on freedom, respect, wonderment and love. Some "constants" manifested throughout her life: love of



Illustrated by Jorge Lopez for Daniel Esqueda Media

Sor Juana was a staunch champion of a way of life, a way of simply existing, based on freedom, respect, wonderment and love. Some “constants” manifested throughout her life: love of freedom and love of knowledge. Sor Juana’s reasoning is based on the gratuitous love that enables knowledge and life, a relationship with God, with others, with oneself, a commitment with becoming whomever one is destined to be.

freedom and love of knowledge. Sor Juana’s reasoning is based on the gratuitous love that enables knowledge and life, a relationship with God, with others, with oneself, a commitment with becoming whomever one is destined to be.

But what is meant by gratuitous love? It should be understood as selfless love, a love that does not use others, that respects and accepts them with no demands, judgments or ulterior motives, a love that recognizes the absolute “otherness” of the rest of humanity. A kind of indifferent divine love, which Sor Juana explains in the Carta Atenagórica, a sort of love that does not demand reciprocity. As described in her poetry, this is the “useless love” intuited in her work *El Sueño*.

Let’s explain this step by step: the

Carta Atenagórica answers an originally medieval query, which wonders which is the greatest possible good or favor that Christ could impart to humanity. Saint Augustine, Saint Thomas, St. John Chrysostom and even Jesuit Father Vieyra answered this query. The first claimed that Christ’s greatest gift lay in having died for us; the second, that His greatest boon was remaining in the Eucharist, while the third theologian emphasized Christ’s humility when washing his disciples’ feet.

Father Vieyra tries to refute these arguments while Sor Juana (in the Carta Atenagórica) destroys his opinion with undeniable, strong statements, finally concluding that God does not intend to do us any favors since His greatest gift has to be NOT doing humanity any favors -which she calls “negative” favors-, granting us freedom instead. Paz interprets Sor Juana’s words thus: “God has made us free- Sor Juana seems to affirm this with her paradoxes and witticisms- but His greatest gift is granting us freedom.” That is, we are blessed by his indifference,

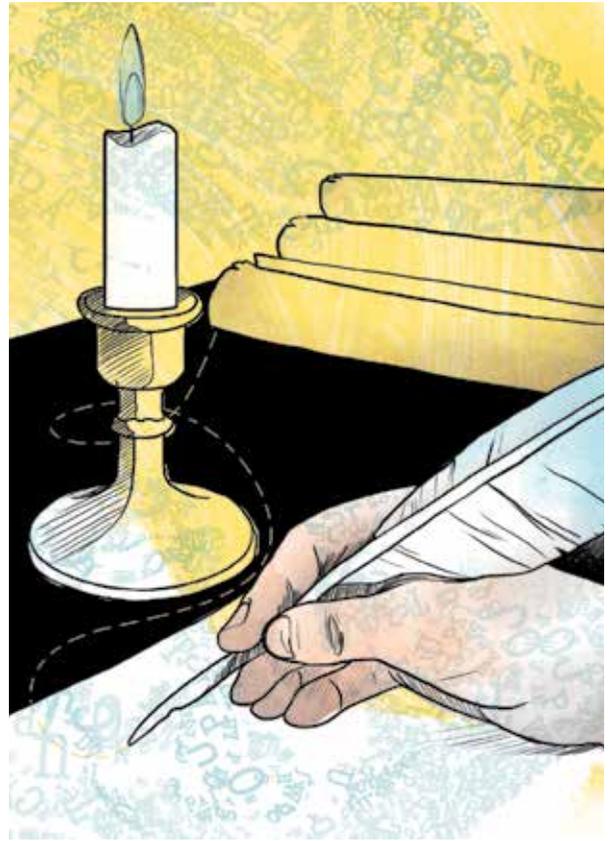
a divine attitude that proves the cornerstone of human freedom. However, this divine indifference is not a lack of interest, but an acknowledgement of the perfection of selfless love, which allows human beings to become whom they are meant to be in complete and absolute freedom, without any strings attached, needs or fears. The ultimate sense of freedom cannot be anything other than goodness and the justice of love.

If God's greatest possible favor lies in not doing us any favors, leaving us free to be whatever we are or desire to be, then mankind's corresponding attitude should be an intentional and absolute respect for freedom, for others' right to be wholly themselves, as shown in this poem by Sor Juana:

Él es libre para amarme,
aunque a otra su amor provoque;
¿y no tendré yo la misma
libertad en mis acciones?
Quererlo porque él me quiere,
no es justo que amor se nombre;
que no ama quien para amar
el ser amado supone.
No es amor correspondencia;
causas tiene superiores:
que lo concilian los Astros
no lo engendran perfecciones.
Quien ama porque es querida,
sin otro impulso más nombre,
desprecia al amante y ama
sus propias adoraciones.
Del humo del sacrificio
quiere los vanos honores,
sin mirar si al oferente
hay méritos que le adornen.

Obviously, to love without seeking reciprocity is heroism, it is not human but divine; according to Paz, nonreciprocity as the perfection of love amounts to an attempt at self-divinization. Divine selflessness, then, is exemplary for human behavior, because it demands a behavioral ethic that establishes respect for the loved one's "otherness", not as a barrier to the lover's freedom or as an obstacle to overcome, but as an acknowledgment of the loved one's freedom. This leads to a selfless love that is truly love because it asks nothing, demands nothing in return.

Love that is not reciprocated, says Sor Juana, is the perfect love. It is not a failed love, but one that recognizes the loved one as a free human being, instead of trying to transform her or him into an object to be dominated and possessed. This is a gracious, gratuitous, just, hopeful, unmotivated, adventuresome and incessant kind of love, not needing any reasons to come into existence, as Sor Juana writes:



Que dicha se ha de llamar
sola la que, a mi entender,
ni se puede merecer
ni se pretende alcanzar.
Y aqúeste favor excede
tanto a todos, al lograrse
que no sólo no pagarse,
más ni agradecerse puede...

This is the importance of the concept of love to Sor Juana: divine indifference, human nonreciprocity. This "perfect" love does not imply a lack of interest, but rather an opening up of possibilities, respect for others freedom and differences. Sor Juana states it like that in *Divino Narciso* when talking about the subservience demanded by Spanish conquerors of Mexican Indians:

Yo ya dije que me obliga
a rendirme a ti la fuerza
y en esto claro se explica
que no hay fuerza ni violencia
que a la voluntad impida
sus libres operaciones

y así, aunque cautivo gima
no me podrás impedir
que acá, en mi corazón diga
que venero al gran Dios de las semillas.

Indifference in the dimension of divine love and a love that does not require reciprocity in the human dimension are equivalent, in the field of knowledge, to “philia”, gracious love, selfless love, disinterested, gratuitous, capable of searching for truth, endlessly questioning (as in Sor Juana’s *Primero Sueño*). Sor Juana insists on her daring conclusions in other poems, such as the one praising her friend the Vicereine of New Spain:

En inaccesible blanco
no es el yerro vergonzoso
del tiro, si basta al triunfo
haber apuntado sólo.

Cegar por mirar al Sol,
es gloria del animoso;
y es vanidad de la vista
la ceguedad de los ojos.
Medir con Héctor las armas,
bastó de Ajax al elogio:
que el valor del vencedor
deja al vencido glorioso.
No conseguir lo imposible,
no desluce lo brioso,
si la dificultad misma
está honestando el mal logro.

Love of knowledge is something Sor Juana recognizes both in Saint Peter and herself:

Era afecto a la sabiduría,
llevábale el corazón,
andábase tras ella, preciábase
de seguidor y amoroso de la sabiduría;
y aunque era tan a longe que no
le comprendía ni alcanzaba,
bastó para incurrir sus tormentos.

In Sor Juana’s reasoning, the aspiration to seek out truth is worthy in and of itself, however uncertainly the quest may end. For her, reasoning is valuable by an act of faith:

Ya sabéis que soy la fe...
pues sobre mí de Virtudes
la fábrica toda carga
de tal modo, que cayera
si yo no la sustentara.

The importance of the *Carta Atenagórica*, the Charter of Monterrey, and the Response to Sor Philothea de la Cruz, as well as other works by Sor Juana, is that she used their conclusions to propose a way for humans to relate, in utter, absolute freedom, to themselves, to others, to the world and to whatever else transcends.

Her vision of herself, and of others, differs from the one commonly held in her own time, from the one held by the Church and from her confessor’s, which wanted to standardize human beings (as Octavio Paz so rightly pointed out).

It is when living in complete freedom that a human being can fulfill his or her vocation. Only those who are truly free can be responsible for their own actions, as Sor Juana pointed out in her Response to Sor Philothea, when she assures the reader that neither accomplishments nor guilt have any value in and of themselves when there is no freedom in choosing them. Freedom is only possible when one can choose, when there is self-determination. It is freedom as an inner conviction, as an experience- not simply as an idea to be attained through knowledge- that can link life and reasoning. Our human will wants to be free, to conquer reality by choosing a “personality”, to choose to be free in a conscious exercise. Without reason, freedom is nothing but a whim, arbitrariness.

For Sor Juana, knowledge represents freedom in its most extreme form; freedom is accomplished mainly in the quest for knowledge. Only knowledge gives us the necessary elements to make choices, therefore enabling us to opt to live in a certain way or to “cultivate” a specific personality.

And Sor Juana defends freedom, because only in freedom is human life fulfilled; only in freedom can humankind establish a relationship with others; only in a context of freedom do words make sense and human vocation become possible as incessant desire.

Knowledge opens up new possibilities of becoming someone different, of reaching our full potential. If we are “logos”, if the greatest measure of divine love is not granting us favors, then the right to speech, the right to knowledge, assures us –just as it did Sor Juana- the full exercise of our vocation as an ultimate expression of freedom. Life is worth living when you realize that you can’t have or hold freedom, because freedom just “is”. ■

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INDIGENOUS WOMEN AND THEIR ACCESS TO JUSTICE

Ensuring due legal process and safeguarding Human Rights for a group discriminated against on multiple fronts presents real challenges.

By Miguel Angel Aguilar Lopez*

Today, judging with a gender perspective and achieving the recognition of the Human Rights of substantive equality and non-discrimination on grounds of gender is a challenge for the Mexican State; in the proper function of law enforcement, one could question how the Court can achieve true protection of the fundamental right of access to justice, and what legal mechanisms should be implemented to ensure due process, in the factual and legal situation in which a woman belonging to an indigenous community is subjected to criminal proceedings.

This means giving effect and substance to her rights, through an interpretation that allows their full enjoyment and exercise, achieving protection in a social context that aims to change traditional roles.

I. THE PARADIGM OF EQUALITY

Pursuant to Article 2 of the Constitution, Mexico “has a

multicultural composition originally based on its indigenous peoples.” From this acknowledgment emerge a series of rights for indigenous people and communities whose justiciability is essential for the model of a law abiding, multicultural State to emerge. To effectively protect equality, specific actions must be taken in regard to different rights holders, thus justifying differential treatment by gender.

Women’s rights are considered less relevant than men’s, since females live in situations of discrimination that prevent them from enjoying and exercising their rights equally. This difference is further aggravated by reasons of age, social status and ethnicity. Thus, indigenous women are particularly vulnerable, suffering from the same discrimination and violence that ordinary women experience, coupled with economic inequality and poverty, restrictive cultural traditions and practices, as well as the perpetuation of ethnic domination.

However, their rights cannot be separated from the context in which they live. The goal, then, is to acknowledge and include them in the existing legal system, because although Article 14 of the Constitution allows the defendant access to the Courts in order to enforce his or her rights effectively, in procedural equality, to offer evidence in his or her defense and obtain a judicial resolution which addresses the issues discussed, it’s still necessary to reflect on whether those rights are actually being protected. This is especially true for women, who due to their gender suffer the negative effects of certain legal practices and discrimination by Judiciary authorities (from police to prosecutors, defenders and Judges), which makes them vulnerable to acts of arrest and conviction.

II. GENDER AND ACCESS TO JUSTICE

Access to justice implies the possibility of converting a circumstance that may or may not be initially perceived as a problem into questioning of a legal nature; thus, from the recognition of the rights to equality and non-discrimination on grounds of gender, it follows that every court must enforce the Law based on a gender perspective, even if the parties do not request it, and implement in any legal dispute a method to verify whether it presents a situation of violence or vulnerability due to gender biases, which prevents full and equal justice.

III. CHALLENGES IN THE FIELD OF JUSTICE

Indigenous women, “face triple discrimination because of their gender, ethnicity and socioeconomic marginalization”¹; they are among the poorest and most vulnerable sectors of society, being mostly segregated from educational and judicial systems.

Despite widespread recognition of individual and collective rights against inequality, contained in international instruments such as Convention 169 on Indigenous and Tribal Peoples in Independent Countries, and the Declaration of the Rights of Indigenous Peoples, there is still an arduous journey to achieve true effectiveness; the problem of the effective protection of indigenous women’s right to access justice lies essentially in the design of a legal system devoid of gender perspective, and which doesn’t take into account the context surrounding a woman (whether she is the victim or the perpetrator) involved in a judicial case. All of this leads to the issuance of unjust sentences.

Thus, one may question how indigenous women fare in relation to their access to justice in the Mexican State. In June 1998, Mexico ratified the Convention of Belém do Pará, forcing it to respect and ensure the recognition of women’s rights, particularly in jurisdictional spheres, with the specific mission of punishing violence against indigenous women. Mexico’s status as a signatory of the Convention involves understanding the right of accessing justice, not only as being able to access courts, but as to obtaining a thorough response from the judicial system in order to remove structural barriers that prevent access and having indigenous cultural differences taken seriously into account. It’s more than simply being aware of gender differences: Other vulnerabilities must be displayed and mainstreamed, such as the status of “self-identification” of a person with an indigenous community, which involves taking on as their own indigenous social traits and cultural patterns that characterize the members of these communities. In the same line of reasoning, the extreme poverty and illiteracy that characterizes said communities must be addressed, since they constitute primary barriers to accessing the legal system and demanding their rights, in a situation that results in unfair trials.

Facing a trial under these conditions prevents indigenous people from understanding the scope and consequences involved (and therefore, from demanding their rights). Their lack of an adequate defense, despite the State’s obligation to provide official legal counsel to those who can not bear the economic burden of a lawyer, must not be ignored either, since it points to the violation of the fundamental right of due process.

The case of Jacinta Francisco Marcial, a ñahnu-speaking Otomi from Santiago Mexquititlan, Queretaro, arrested in August 2006, accused and found guilty of the crimes of illegal deprivation of liberty (in the form of kidnapping



public officials), and crimes against public health (in the form of cocaine possession), made it necessary to question whether her process was conducted in a way that protected the right to equality and due process, based on her gender and ethnicity.

Jacinta was accused of kidnapping six AFI agents, during an operation to seize counterfeit merchandise in a flea market, where fully armed officers stormed in and seized the merchandise sold by indigenous individuals, which caused the angered sellers to attempt a brawl. As the situation escalated, the officers decided to talk inside one of the flea market stalls. However, tempers flared and the armed policemen were prevented from leaving the stall. Given this event, other agents rushed to the scene to rescue their fellow officers from the hands of indigenous women. The agents accused these women of kidnapping them. The accusation was enough for the judge to credit these crimes and condemn Jacinta to 21 years in prison.

It's difficult to imagine this frail-looking indigenous woman orchestrating a collective action in which police (trained in defense and combat techniques) were kidnapped, as stated in the indictment and first instance ruling. The issue is elucidating whether her gender and ethnicity were an obstacle in her access to justice.

While the Constitution (Article 1) enshrines the right of everyone to the enjoyment of Human Rights recognized in international treaties, the investigative and judicial authorities disregarded this provision and disregarded the essential formalities or minimum aspects that any legal process must fulfill, clearly ignoring Jacinta's vulnerability due to gender and ethnicity.

The fact that this woman could only speak the ñahnu dialect at the time of her arrest was ignored: She had no interpreter, making it difficult for her to understand her right to an adequate defense. Nonetheless, she was forced to sign documents that she could not read or understand due to her poor schooling. All this affected the procedure's legality.

However, Jacinta Francisca Marcial was deprived of her freedom for three years and was released only after the highest court took the case and warned of "serious irregularities" in the process (unequal assessment of the testimony and other means of conviction), as the Judge had not granted equal weight to charges and defense, and failed to meet the requirements of logical order to generate a fair law-abiding conviction.

It's evident that the aforementioned judicial ruling contains no elements related to the recognition of the rights to equality and non-discrimination based on gender, nor was it emitted with gender perspective. The pro-

cess showed that authorities lack the awareness necessary to dispense gender sensitive justice which takes into account the conditions of vulnerability an indigenous woman such as Jacinta faces, even though it was the authorities' obligation to verify whether there was any situation of vulnerability due to gender which prevented full and equal justice; according to the criteria handed down by the First Chamber of the Supreme Court, judicial authorities should have identified asymmetric power situations due to gender between the parties in dispute, questioned the facts and assessed the evidence discarding any stereotypes or gender biases, with the goals of visualizing any disadvantage attributable to sex or gender. If material evidence proved insufficient to clarify a situation of violence, vulnerability or gender discrimination, judicial authorities should have ordered any proof necessary to do so; if a true disadvantage due to such reasons had been detected, authorities could have questioned the law's neutrality and assessed the differential impact of the proposed solution to find a fair resolution adequate to the context of unequal gender conditions that existed; applied the standards of Human Rights to all persons involved; and considered that a gender perspective method requires avoiding the use of inclusive language in order to ensure access to justice without discrimination on grounds of gender.

Neglecting these canons contributed to the persistence of already severe disparities extant in the justice system, such as lack of access to a translator and denial of the accused person's right to the presumption of innocence. However, authorities had legal and material ability to provide the accused with a translator, to define her indigenous status and, if necessary, to request anthropological expert reports and other evidence that made it possible to recognize that quality, thus establishing her gender-based, social or cultural vulnerabilities.

IV. INTERCULTURAL JUSTICE

Law enforcement systems were not built in an ideological context that accounted for gender inequality; unfortunately, sexist points of views reinforced inequalities between men and women. Currently, gender perspective and multiculturalism have become useful tools for law enforcement agents in the identification of discriminatory practices.

Judicial reforms to promote gender equality and the effort made to improve indigenous women's access to justice, is one of the great achievements of the Judiciary's June 18th, 2008, reform; however, this achievement is still a limited one due to structural inequalities and continued gender based discrimination and violence.

The need to understand the reality of indigenous



It's difficult to imagine this frail-looking indigenous woman orchestrating a collective action in which police (trained in defense and combat techniques) were kidnapped, as stated in the indictment and first instance ruling. The issue is elucidating whether her gender and ethnicity were obstacles in her access to justice.

women within their own context in law enforcement, warrants that gender and cultural diversity be merged to understand their reality and identity; applying national or state law and considering gender and cultural specificities and indigenous standards where appropriate to avoid discrimination and stigma, is suggested.

In the field of law enforcement, as to the recognition of the Human Rights of equality and non-discrimination on grounds of gender, the Court should dispense justice based on gender. When dealing with indigenous women, courts shall:

Preserve a person's fundamental right to recognize her or himself as indigenous, from the initial phases of an investigation (when in doubt about origin or ethnicity, other mechanisms should be implemented, such as proof provided by Community authorities, expert anthropology reports and other testimonies); remove existing language barriers and give certainty to the contents of the interpretation, which means being assisted by interpreters and advocates who know the accused's language and culture from the preliminary investigations (this in order to rationalize the use of resources in the law enforcement system by harmonizing particular roles and needs of all parties intervening in a trial- assistance by a translator may even be implemented through video technology); train authorities, ombudsmen, investigative bodies and community controls in relation to women's rights; and ensure that every part of the judicial process will be handled in the accused's dialect. ■

*** Miguel Angel Lopez Aguilar:** Ninth Panel Criminal Court of the First Circuit Magistrate.



Interview | Martha Maria del Carmen Hernandez Alvarez
Magistrate and Federal Judiciary Council member

EQUALITY AS AN INSTITUTIONAL REALITY

Named Federal Judiciary Counselor by President Peña Nieto as of November 2014, Magistrate Hernandez Alvarez is one of the leading female figures in the Mexican Federal Judiciary.

Hernandez Alvarez is an UNAM Law School graduate who also has an MA in International Criminal Law, Constitution and Rights from the Autonomous University of Barcelona and holds various graduate degrees in many different criminal specialties. She is also a teacher and public speaker with a career spanning over two decades as an Electoral Tribunal Inspector, Notary Public, Attorney General of the State of Mexico, Circuit Magistrate, Judge and Court Clerk.

In broad strokes, how does female labor impact Mexico's development?

The female face of Mexican labor has changed considerably over the last years. Today, Mexican feminine talent is propelling the country forward in an unpre-

cedented way. At the end of the twentieth century, statistics pointed out that barely 17% of Mexican women were economically active. However, this percentage has certainly now reached over 35% in many economic sectors.

Both nationally and internationally, many Mexican women stand out as leaders in the Arts, the media and the corporate sphere, with the Federal Judiciary not being exempt. Many female Judges and Magistrates have started to contribute to emerging new ways of thinking about justice in Mexico, new ways that are both creative and well suited to the Mexican Supreme Court's Tenth Epoch.

Female executives head several successful Mexican entrepreneurial initiatives. Nowadays, women, including some females of indigenous heritage, run three out of five small and medium enterpris-

es. There can be absolutely no doubt that a female perspective leads to innovative business strategies. This is a clear example of the fact that feminine efforts and initiatives are currently key to the successful development of our country.

Do you perceive Mexican society as increasingly sensitive to gender equality?

Definitely. Current Mexican society is more aware of this issue and also more committed to equality in Human Rights. There is a quick and energetic reaction to any kind of violence against women or any other group that has been discriminated against on account of its beliefs or preferences. We can't ignore the fact that society itself has been transformed by the practice of gender equality. The line dividing male and female roles is increasingly blurry, with male participation in the home and family on the rise. We as women, on the other hand, are moving steadily forward on formerly exclusive male territory. Even more importantly, new gender-neutral discrimination and violence-free common spaces are being created. All these newer practices have led to the strengthening of Mexican democracy and institutions.

What are some of the obstacles women must overcome in the workplace?

While it's true that society itself must change to accommodate women, everything hinges on a change in female attitudes. We must rid ourselves of fear and stop thinking like victims. Society is not granting women permission to "belong", it's women themselves who are transforming society and worldwide culture. We must actively participate in this process, helping achieve consensus. This, of course, does not mean that harassment and gender-based violence will automatically vanish from the workplace, or that serious crime against females, such as human trafficking and forced prostitution, will just stop.

The bottom line is that we, as women, must understand that we can tackle any job we want and educate ourselves for it. We must understand once and for all

that we can "fit in" anywhere and we will not be prevented from doing so by any circumstance or social policy.

Do you think there is a difference between the workplace challenges faced by women yesterday and today?

We live in a different world from that inhabited by our mothers and grandmothers. Educational opportunities that can prepare us for any career we may choose are as close by as our home computer. The media has transformed the way we build our social relationships and labor dynamics are completely different now. It used to be that, if a woman worked outside the home, she'd come back at the end of an exhausting day at work to take care of her husband and children. Today, our families are as close by as the cellphone allows. Unfortunately, that doesn't mean that our workload has diminished. On the contrary, it has increased and now presents a newer, technologically sophisticated face. Women drive their own cars and tangle with increasingly complex financial transactions. Our daily agendas are as exhausting –or even more so– than men's, who haven't escaped technology either. Challenges remain so, but technology can accelerate solutions. And in this women hold a definite advantage, because it isn't just about having access to new media... you have to be capable of making innovative use of it.

In that sense, what roles do education and training in the workplace play in gender equality?

Education has also been transformed. Schools that were based on differentiated knowledge structures tend to disappear or change radically. Today, in any Mexican educational institution- whatever its ranking- significant sensibilization and knowledge about Human Rights and gender equality are shared. Equal learning opportunities abound and a concentrated effort to eliminate any sort of discrimination or violence towards female students is made.

What are the challenges to justice administration regarding gender equality?

Fundamentally, the need to consolidate these values as guiding principles in legal culture. That's the secret to incorporating gender perspective into justice. If we manage to accomplish this, individuals in charge of administering justice will be able to clearly identify, in any given case, the relevance of gender sensitivity.

Many think that gender perspective should only be applied in civil matters, when a woman is directly involved or when there are constitutional jurisdiction issues at stake. The greatest challenge lies in developing in judiciary operatives the habit of uniting a critical conscience with gender equality. That means judiciary operatives should be able to clearly detect discriminative and marginalizing biases if they happen to taint legal speech.

This is a job that involves, firstly, finding the asymmetrical power relationships and situations of structural inequality hidden inside judicial narrative. Then, the judicial operative must deconstruct that biased narrative and create a new equality-based language. This exercise is fundamental to Judiciary work, since its operatives are the actual agents of change in both the design and implementation of other people's life projects.

The Judicial Decision Making with a Gender Perspective Protocol created in 2013 by the Mexican Supreme Court is an excellent place to start this transformation. However, this tool isn't enough by itself: Judiciary operatives must develop both gender sensitive skills and the ingrained habit of using them in every aspect of their work. In other words, values should become legal principles.

With the amendment of Article 1 of the Mexican Constitution, what does the international Human Rights standard contribute to increasing access to gender sensitive justice?

On the basis of Article 1, it's the Judiciary who is responsible for the enforcement



“
**...Feminine efforts
 and initiatives
 are currently key
 to the successful
 development
 of our country.”**

of any rights recognized by the Mexican State as a signatory of international conventions and treaties. Thus, it is judicial operatives who can grasp such rights and “translate” them into effective justice administration tools. Does that actually contribute to equality? It does, since the inclusion of equality principles makes judicial resolutions more defined, firmer and binding.

International guidelines certainly contribute to and help in legal applications specifically aimed at protecting women against acts of discrimination or any form of violence. For example, the Convention of Belém do Pará forces judicial authorities to establish fair and effective legal procedures in cases of violence against women. Meanwhile, the CEDAW states that any arbitrary, disproportionate and unfair differences between men and women based on their gender must be removed.

How has the issue of gender equality been incorporated into judicial resolutions?

It was a similar process to that observed in communicating vessels. On one hand, gender equality appears in legislation as mandatory, but no instructions are handed down as to its application. On the other hand, society itself participated in the process of change by bringing conflicts in need of gender sensitive rulings to the Judiciary’s attention.

For the past decade, the Federal Judiciary has experienced a true shift in its paradigms. A number of rulings have showcased the need to modify legislation in order to ensure genuine equality between men and women.

Since the favorable ruling on Domestic Violence in Uncaused Divorce¹, handed down by the First Chamber of the Mexican Supreme Court, 51.6% percent of uncaused divorce lawsuits have been requested by women. This number reflects that, up until this ruling, there existed a true equity gap regarding Civil Matters.

On the other hand, it was this same First Chamber that determined that rape could occur between spouses. This ruling also had a tremendous effect on gender equality, since it firmly established sexual freedom for individuals within a marriage, and tore apart the traditional boundary between private and public spheres that limited State intervention. Now, justice can finally reach the “private” sphere, where women often experience the worst kind of gender-based violence.

Also, the “amparo” proceedings granted to Teresa Gonzalez and Alberta Alcantara, two indigenous women unjustly charged with kidnapping, should be kept in mind. These examples are just a small sample of what happens when gender equality is incorporated into Court rulings. Due to the fact that the national courts hand down the Constitution and constitutional precedents, judicial rulings have become a true means by which agents of change can impact Mexican society.

In your opinion as a member of the Gender Equality Inter-institutional Committee, what are the issues that need to be addressed?

Undeniably, the Federal Judiciary has actively promoted a culture of gender equality and non-discrimination within its own institutions. It must continue strengthening its ongoing programs to train and sensitize its officials and employees.

In this regard it is extremely important that the Federal Judiciary continue to incorporate equality, gender perspective and gender equality in a cross-sectional fashion into its jurisdictional, auxiliary and administrative bodies. Furthermore, conditions must be set in order to enhance female empowerment and governance so that women might share in decision-making and responsibility.

Undeniably, the Federal Judiciary has actively promoted a culture of gender equality and non-discrimination within its own institutions.

Finally the Judiciary must continue to build a discrimination and violence free environment by preventing discriminatory behaviors, harassment and bullying, under a “zero tolerance” framework.

Any parting thoughts you would like to share with female Judges and civil servants that are determined to contribute to justice being fairly administered?

Just that they should never forget that they are the agents of change. They bear great responsibility, since the stability of gender equality rests on their shoulders. That their vocation and dedication to serving others have vaster consequences than meets the eye. I want to tell them that their contributions will be recog-

nized, especially as it becomes evident that our daughters, our mothers or any other Mexican woman can confidently make her own decisions upon the basis of her fundamental rights.

In that sense, female Judges and civil servants should feel extremely proud of themselves, since thanks to their dedication, Mexicans of either sex will enjoy a well-administered justice that can guarantee that their Human Rights will be respected.

Finally, I wish to tell these women that, as a Federal Judiciary Counselor, I will listen carefully to their concerns and do my best to contribute to the real improvement of both genders’ statuses. ■

¹“Amparo” currently under review 656/2011.

²Supreme Court’s First Chamber application for amendment of jurisprudence 9/2005-PS.

³Currently under appeal 2/2010.

Licencia de Paternidad

Porque será de los momentos más importantes de tu vida... **El Consejo piensa en ti.**

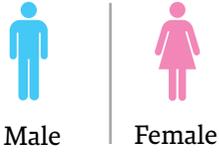
- ② Los servidores públicos tienen derecho a que se les otorgue una licencia de paternidad con goce de sueldo, por el periodo de cinco días hábiles, contados a partir del día del nacimiento de su hijo o hija.
- ② El servidor público adscrito a cualquier órgano jurisdiccional federal o área administrativa del CF, deberá presentar por escrito ante el titular de su adscripción, la petición respectiva, a la que tendrá que adjuntar el certificado médico de nacimiento del niño o niña, expedido por un centro de salud público o privado que acredite su paternidad, a fin de que el titular expida el aviso de licencia respectivo.
- ② En un plazo que no exceda de treinta días naturales, deberá presentar al área de adscripción, el acta de nacimiento correspondiente; los documentos mencionados quedarán bajo el resguardo del órgano jurisdiccional respectivo.



Gender Statistics

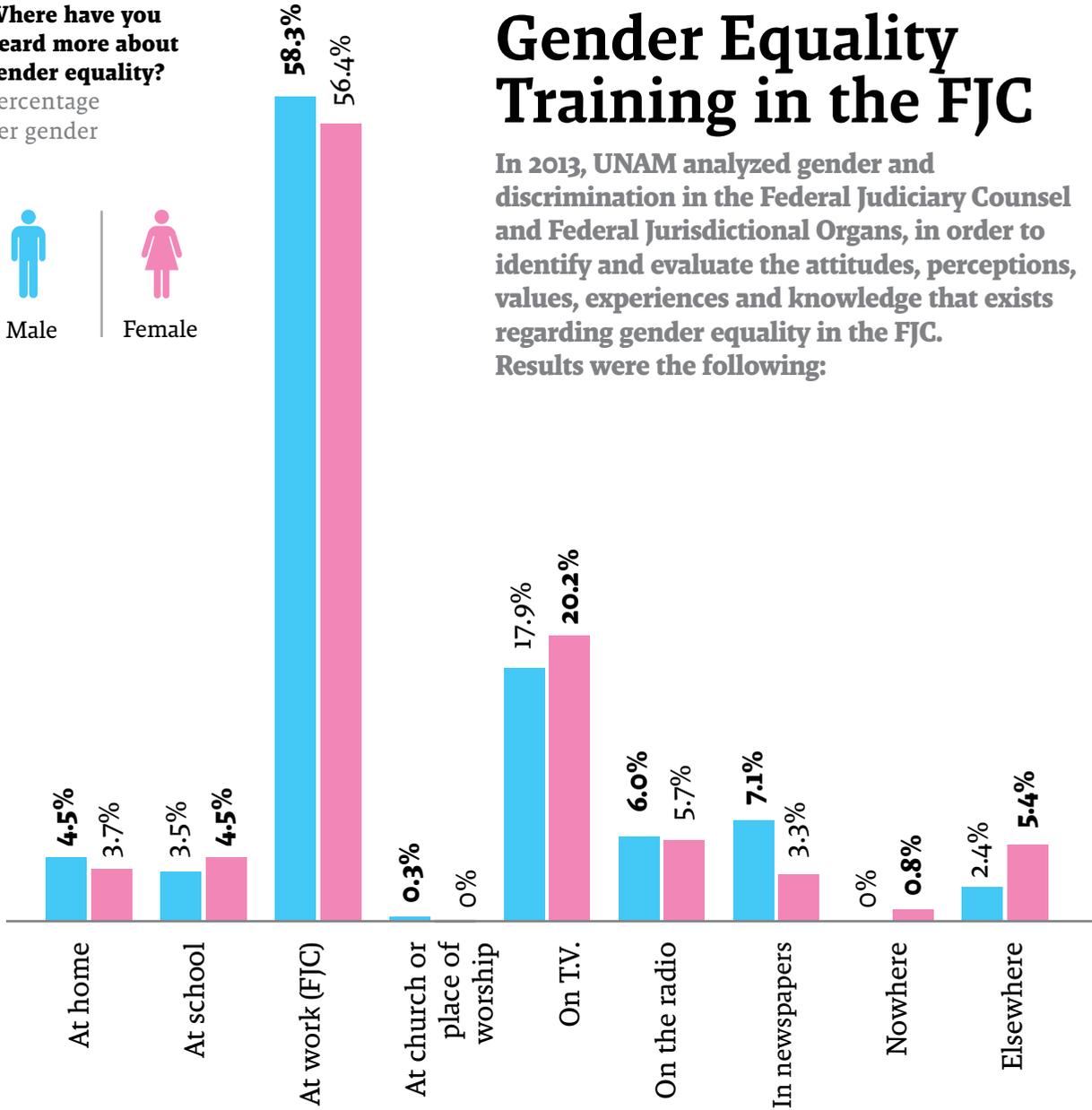
Where have you heard more about gender equality?

Percentage per gender



Gender Equality Training in the FJC

In 2013, UNAM analyzed gender and discrimination in the Federal Judiciary Council and Federal Jurisdictional Organs, in order to identify and evaluate the attitudes, perceptions, values, experiences and knowledge that exists regarding gender equality in the FJC. Results were the following:

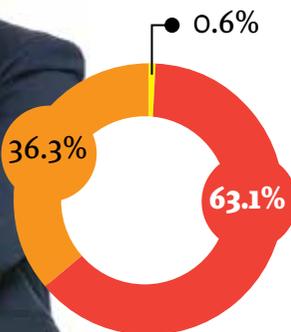


How much do you know about gender equality?

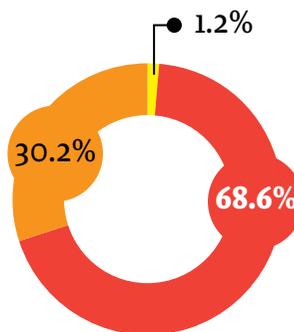
Percentage per job description



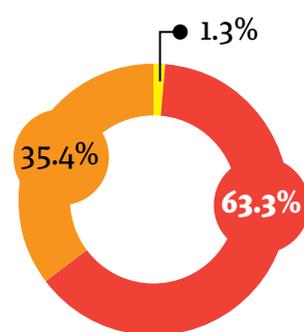
Judiciary Professionals



Administrative Staff



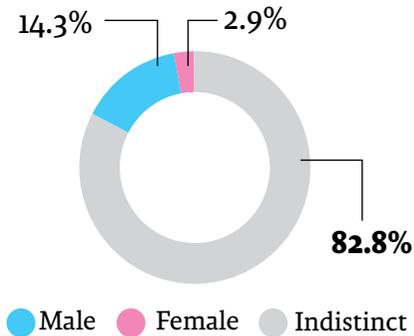
Public Advocates



- A little
- A lot
- Nothing at all

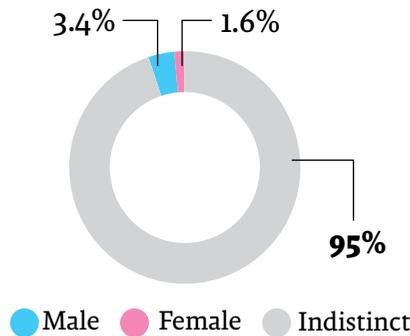
In your own experience, is it better to have a male or a female boss?

Percentages



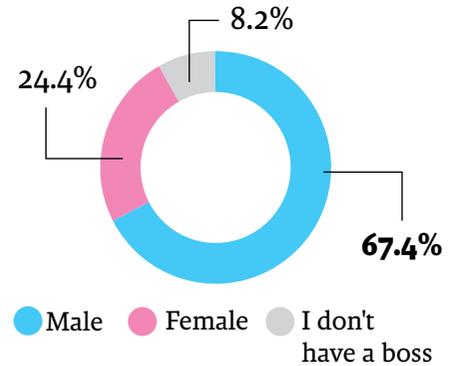
In general, who is more qualified to make important decisions, a man or a woman?

Percentages



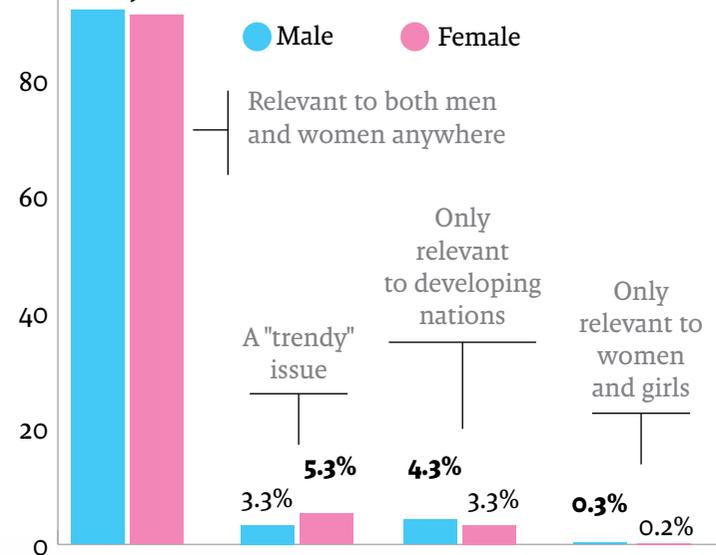
Is your immediate boss a man or a woman?

Percentages



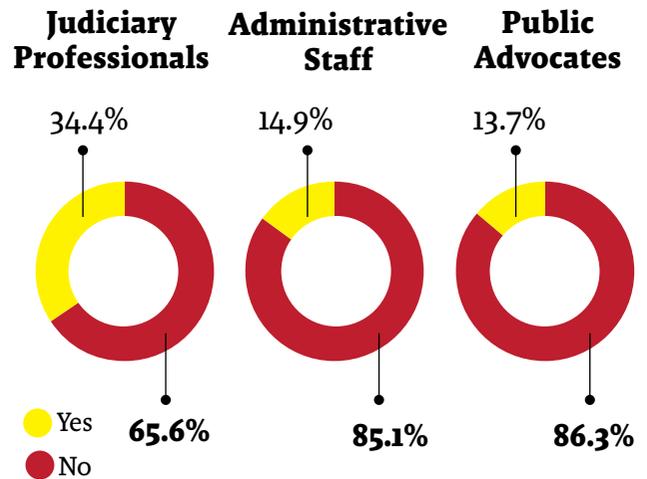
Gender equality is...

Percentage per gender



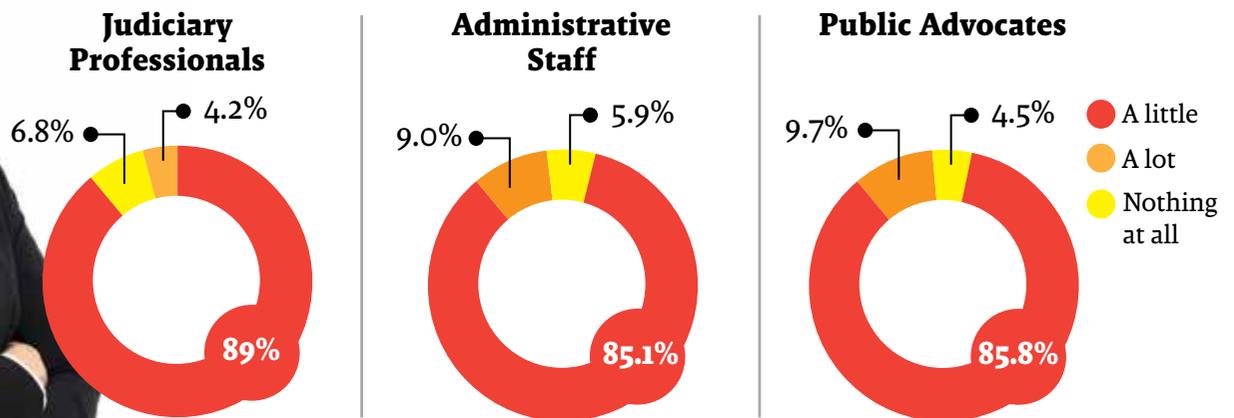
Has the FJC imparted any gender sensitivity training or gender equality workshops to you personally?

Percentage per job description



Is there gender equality in Mexico?

Percentage per job description



Current perspectives

Public Advocates and gender discrimination

There are 1762 female and 1848 male public advocates in Mexico.

In Mexico, 23 out of 32 State Public Advocate Offices (i.e. 72%) are led by a male. Only in the states of Aguascalientes, Jalisco, Mexico, Morelos, Nayarit, Oaxaca, Sinaloa, Tlaxcala and Yucatan are the bodies established for the purpose of providing Public Advocacy services to citizens run by a woman. Importantly, these nine Mexican Public Advocate Offices led by women belong to the Executive branch, rather than to the Federal Judiciary.

This shows a problem that has become known as the “glass ceiling” phenomenon, meaning the existence of a series of behaviors, practices and inertia which, although not written into any law, cause women to be excluded from reaching upper-echelon positions, despite active female participation at other organizational levels.

In contrast, there is a balance between the number of women and men who are public advocates in Mexican states, since 1,762 are women and 1,848 are men. Only the states of Aguascalientes, Durango and Tamaulipas have a higher proportion of male public advocates. Thus, remarkable progress has been made in the inclusion of women as public advocates in the states.

PUBLIC ADVOCATE OFFICE CLIENTS

When the first hearing of the criminal oral adversarial system was held in state located in central Mexico, two men and a woman, who had obtained the highest scores during initial training, were appointed as public advocates.



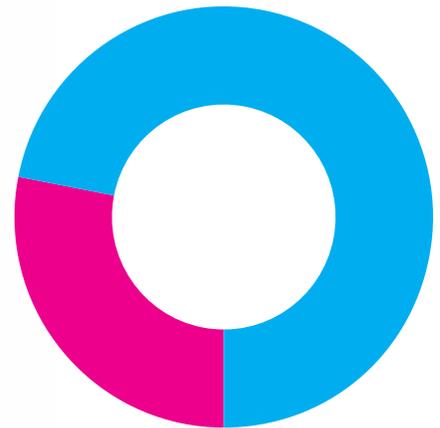
After the hearing, the accused came to bid goodbye to the three lawyers, thankfully shaking hands with each of them and saying: “Thank you so much, councilor” to both men, and “thank you very much, miss”, to the woman, wrongfully assuming she could only be a legal assistant of some sort to the males. Although all three public advocates had actively participated in the accused’s State-appointed defense, in his imagination representation had been borne exclusively by the two male advocates, immediately assuming a secondary role for the female public advocate.

The anecdote serves to show some of the common problems that female public advocates face in the course



UNEQUAL EQUALITY

In Mexico, 23 out of 32 State Public Advocate Offices (i.e. 72%) are led by a male.



28%

of State Public Advocate Offices are run by women



72%

of State Public Advocate Offices are run by men

of their work: a lack of recognition and trust from the very people benefitting from their services.

During a series of visits to various Public Advocate Offices we have done for UNAM's Legal Research Institute on the basis of a research project, we have collected testimonies from male and female public advocates, who express concern that there are frequently occasions in which users reject or disagree to being defended by a woman.

The problem describes an important reality regarding gender imbalance in our country. The problem of discrimination against women involves not only institutions; instead it covers the entire field of our society's legal culture: it is also rooted in many of the beliefs, customs and inertia of Judiciary operatives and users.

Counseling and advocacy are services that require expertise and constant training, especially due to the relevance such services entail. Quality public advocacy must be exercised by highly trained women and men. After

some time has gone by, and through experience, citizens in search of justice will find that female public advocates can carry out their work as well or even better than men.

Newly renovated Public Advocate Offices in all Mexican states represent an opportunity to eradicate discriminatory practices and inertia against women and start building gender equality in the workplace. We need public advocates who can provide quality service to citizens, guaranteeing the right to adequate defense and due process, especially with the implementation of the Penal Reform, passed in 2008. The advance to eradicate discrimination against women depends on institutional achievements made in the field, but also on fundamental changes to our country's legal culture. ■

**Alberto Abad Suarez Avila, Researcher for UNAM's Legal Research Institute.*



...de la igualdad

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