

*"To deny people their Human Rights is to challenge their very humanity."*

Nelson Mandela/ Civil Rights activist



FEDERAL JUDICIARY COUNCIL

# Igualdad

Child abduction  
and parental alienation

Paternity leaves in  
the Supreme Court

Challenges to parity  
democracy in Mexico

Human Trafficking:  
a social malady  
afflicting Mexico

## ALLOCATION AS AN AFFIRMATIVE ACTION TOOL

This new policy  
reflects respect  
for Human Rights,  
gender equality  
and personal  
and professional  
development **\_14**

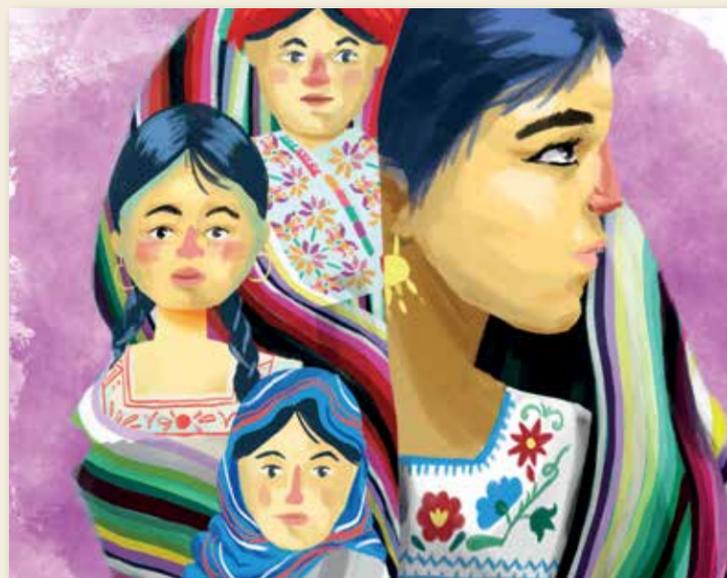
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## Editorial

# Equality in the legal framework

There is a broad national and international regulatory framework that requires the Mexican government to ensure equality (as well as non-discrimination) between women and men and, if needed, to implement the necessary measures, including affirmative action policy measures, to close inequality gaps. The most important human capital at the Federal Judiciary Council (FJC) is the staff involved in judicial activity. Inside the FJC, there is a marked difference between the percentage of women who are Judges or Magistrates (19% and 21% respectively), and the proportion of females (42%) who are currently Law Clerks.

In his Institutional Development Plan, Chief Justice Luis María Aguilar Morales suggests that in this situation "... it is indispensable to establish rules, regulations and legal conditions that encourage the participation of women in judicial tasks, not only as auxiliaries, but especially as incumbents in the bodies that deal with law enforcement...". Specifically, one of the strategic objectives of the Federal Judiciary Council's Institutional Development Plan for 2015-2018 is to "promote gender equality and respect for vulnerable groups in adherence to the judicial policy of protecting Human Rights." To achieve this goal, the general and specific actions proposed by the Chief Justice are the following:

- 1) The establishment of rules, regulations and legal conditions that encourage the participation of women in judicial tasks and their access to incumbency in courts.
- 2) The establishment of nurseries, medical care for children, educational support, kindergartens and other requirements that enable female incumbents to perform their work optimally.
- 3) Increasing women's access to the substantive work of the Federal Judiciary Council and the Mexican Supreme Court through a balanced distribution of men and women in lectures or expositions.

With these actions, the Federal Judiciary Council may advance from *de jure* to *de facto* equality, and thus respond to General Recommendation No. 234, proposed by the CEDAW Committee of the Convention on Elimination of All Forms of Discrimination against Women, which establishes that "the administration of justice is not only a public service that the State must provide men and women according to their needs, but one that must also be provided by both men and women. I.e., it is the duty of the State itself to seek non-discrimination when integrating its services."

Moreover, the Federal Judiciary continues to strengthen joint work on gender equality and non-discrimination between its governing bodies. Starting this year, the Mexican Supreme Court and the Federal Electoral Tribunal will be permanent contributors to *Igualdad* magazine. The Federal Judiciary Council welcomes this collaboration that will undoubtedly enrich the publication.

**General Directorate of Human Rights, Gender Equality and International Affairs of the Federal Judiciary Council**



Illustrated by Angel Sanchez

## Directory



**Federal Judiciary Council  
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## Gender parity in candidate formula integration

*SDF-JRC-17/2015, SDF-JRC-18/2015 and SDF-JRC-19/2015*

ACUMULATIVE: Ruling issued by the Electoral Court of Morelos related to the agreement issued by the Electoral State Council of Morelos' Institute of Electoral Processes and Citizen Participation, which approved the criterion for the application of gender parity when integrating candidate formulas sheets for Municipal President (Mayor), Proprietary Trustee and Alternate Trustees for the State of Morelos. In this case, the Regional Chamber amended the sentence issued by the Electoral Court of Morelos, by which it confirmed the agreement issued by Morelos' Institute of Electoral Processes and Citizen Participation, which approves the criterion for the application of gender parity in the creation of candidate formulas for Municipal President (Mayor), Proprietary Trustee and Alternate Trustees for the State of Morelos. The Regional Court explained that the legal rulings implemented by the legislator to promote gender equality in electoral-political participation -such as gender quotas or affirmative actions- are meant to be instrumental and therefore transient, consisting in generating or preparing the necessary conditions to firmly establish gender equality.

The fact that the application of a horizontal approach in the nomination of candidates for the thirty-three municipalities of the State of Morelos, by forcing political institutes to generate the conditions for registering both male and female Municipal President (Mayor) candidates in numbers as close as possible to fifty percent for each of the sexes (i.e., sixteen men and seventeen women or seventeen men and sixteen women) is consistent with the principle of gender parity.

The Regional Court also ruled that with the contested agreement, the pertinent authority established the criteria to be observed by any and all political institutes recognized by said authority as participants in this election in order to ensure respect for the application of the gender parity principle within internal selection processes and eventual nominations for registration. ■

## Mariana Lima Case

*Amparo No.554 / 2013 Review*

June 28th, 2010, was the last day Irinea Buendia Cortez saw her daughter, Mariana Lima Buendia, alive. Their meeting was revealing. After a year and a half of suffering domestic violence, threats, and sexual outrages, the 29-year-old woman, a lawyer by training, had decided to reshape her life and start planning for a more peaceful future, as she told her mother.

Her separation from Julio Cesar Hernandez Ballinas, the police officer she had fallen in love with and later married, was imminent. Her next steps were clearly defined by Mariana: share her plans with her mother; go back to her marital home in order to pack her bags; denounce her partner's abuse in Court; initiate divorce proceedings; and resume her professional practice.

The next day, everything collapsed. Marianita- the way Irinea still likes to call her daughter- was found dead on the bed she shared with her husband and executioner, in the municipality of Chimalhuacan, State of Mexico. A suicide by hanging, Julio Cesar told police. The man's say-so was enough to make suicide the cause of death in this case's court file.

The State of Mexico "swallowed" this version whole, but not Irinea. She had very good reasons to doubt her son-in-law's word. At least twice, Julio Caesar had attempted on Mariana's life: once by throwing her down the stairs and again by trying to run her over with a car. Julio Cesar himself had told Irinea he would kill her daughter and then throw her body into the water tank.

Irinea was one of the first people to see Mariana's dead body. The scenes from that day were excluded from the judicial record and from the description of the crime scene. Irinea, however, retained in her memory the bruises on her daughter's body, her packed bags, and the knives leaning on the bathroom walls...

The Mexican Supreme Court may order the reinstatement of the investigation. Irinea Buendia Cortez is just a few steps away from Mexico's highest judicial authority. Her tenacity and tireless march got her there. She has endured a marathon of almost five years on grooved roads: cobblestone streets and continuous potholes.

On March 25th, the First Chamber of the Supreme Court of Justice (SCJ) will hold a public hearing on the Amparo in Review 554/2013, which refers to the case of Mariana Lima Buendía. This is a historic moment for the victims of femicide in Mexico because, for the first time, the Court will decide how the violent deaths of women must be investigated. ■

## Gender and joint responsibility

Despite having initially granted immediate freedom for a woman involved in a homicide, the Judge later determined that there was evidence attesting to her participation in criminal acts, as she was present at the crime scene and, having the means to call for help at different times, did not give notice to the authorities or to any other person, and consented to the use of the deceased's car and other assets. She was formally charged and sentenced to jail for the crime of homicide, because, as her sentence attested, it was firmly established that the accused woman voluntarily cooperated in the execution of the crime in question, and that she was aware of the perpetrator's (who was her boyfriend) intentions, since when she insisted they leave the site of the murder, he told her he had to make sure that the victim was dead; that she observed all the criminal acts without trying to stop her boyfriend at any time, much less provide assistance to the dying man or seek help to preserve the victim's life.

In this case, the woman was punished and deprived of her freedom due to her involvement in a murder. The facts, according to the accused's statement, were these: she accompanied her boyfriend to the tortilla factory where he had worked for some time, and even greeted his employer. Since the men had started talking about their pending accounts, she left the establishment, not wanting to intrude on the conversation. Minutes later, she reentered the building and realized only that her boyfriend was hitting the deceased, but because of the fear she felt at that moment she didn't know what to do, so she turned away, without seeing exactly what her boyfriend was doing. Although he asked for her help, she flatly refu-



Illustrated by Angel Sanchez

sed him. As a result of the quarrel, the woman's boyfriend, after beating his former employer, stabbed him, took his wallet and, accompanied by her, escaped in the victim's car.

**When deprived of her freedom, the woman started "amparo" proceedings, stating that once she had entered the scene of the crime and discovered her boyfriend's behavior towards the dying man, she felt afraid (as she had said in many previous statements) and also nervous about the very real and reasonable possibility of the perpetrator turning on her, despite the intimate nature of their relationship. Thus, her own common sense warned her away from any action to help the victim in any way that could put her at risk.**

The Magistrate in charge of resolving the "amparo" proceedings pointed out that her being present at the spot while the victim's organs stopped, without helping in any way, did not in itself constitute criminal conduct. This means that the woman in question did not participate in the homicide.

On the other hand, the Magistrate argued that the perpetrator dominated the accused female, as they had a violent intimate relationship. Thus, the woman had a well-founded fear of being attacked if she dared to refuse her help, which effectively prevented her helping the victim or stopping the homicide.

## Sexual Harassment in the Workplace

A group of female teachers, who carried out their work in the Technological Industrial and Service High School located in Miahuatlan de Porfirio Diaz, Oaxaca, claimed before the Public Prosecutor's Office possibly criminal acts consisting of sexual harassment in the workplace. These teachers discovered a web camera located strategically in the staff's Ladies Room. The webcam was connected to a duct leading to the Men's Room. After realizing this, the teachers removed the camera from the bathroom wall and took it to a co-worker, who connected it to his laptop, which displayed images of the female teachers on the toilet.

Even before the camera's discovery, the teachers said in their statements, they had already noticed suspicious behavior from several male colleagues, such as the fact that the director, along with other male staff, shut himself for hours in the Physics Laboratory, and, upon opening the door, turned away the screen they were watching to prevent the female teachers from seeing any images.

The teachers presented the webcam images as evidence in the Public Prosecutors Office. However, when they were included in the record presented by the First District Judge in Oaxaca, said Judge refused to deliver summons against the accused, arguing that the crime of criminal harassment could not be corroborated according to the provisions of Article 259, Subparagraph 1, of the Federal Penal Code, since this framework clearly states the need to demonstrate: 1) repeated harassment with lewd purposes, 2) that this harassment be performed by a perpetrator with a higher hierarchical position (derived from employment or similar relationship) than the victim's; 3) that said conduct caused grievance or damage. Hence, the Judge argued that repeated acts of harassment with lewd purposes could not be proven, since the victims had not been sexually propositioned and the accused was not the teachers' hierarchical superior.

Given the accused's refusal to appear before it, the Public Prosecutors Office appealed to the Thirteenth Unitary Circuit Court, where the appealed order was confirmed under the same legal basis and motivation. The Appellate Court, which acknowledged that the acts giving rise to the complaint constitute violence against the teachers under the considerations of the Women's Access to a Life Free from Violence Act, ordered several administrative institutions to investigate such acts, so that from within their respective powers they could punish the facts through adequate mechanisms. The resolution confirmed the ruling issued by the First District Court of the State of Oaxaca (based in the entity's capital city), refused to deliver summons against the person accused of committing the crime of sexual harassment foreseen and sanctioned by Article 259, Subparagraph 1 of the Federal Criminal Code, and ordered compliance with the determinations made in the sixth paragraph in this resolution. ■

## The Lucero Case

*"Amparo" No. II-810/2013*

In the city of Guanajuato, Lucero was the victim of physical and sexual violence. Her attacker, an acquaintance who offered her a ride home, drove instead to a quiet road and asked her to have sex with him. When Lucero refused to do so, he beat her. In Supervisory Court, the confessed attacker was granted his freedom after only being sentenced on account of the misdemeanors injuries and erotic sexual abuse.

**In search of justice, civil organization Las Libres (in conjunction with a CIDE legal team), filed an "amparo" in federal court. The judicial ruling issued by the First District Court in Guanajuato noted that the Court did not judge with gender perspective and therefore did not classify the crimes adequately.**

After applying gender perspective, it was found that the aggressor also deprived Lucero of her liberty, and, since he had every intention of having sex with her, his actions fit the crime of attempted rape. The Judge also included an exclusive section on women's Human Rights, incorporating international treaties, research protocols, national laws, criminal laws and the Judicial Decision-Making with a Gender Perspective Protocol to analyze the case.

In its ruling the Judge noted that "the resolution should have been issued with a gender perspective, i.e. appreciating the events that happened, and from that viewpoint show that a concrete situation of inequality and violence against women occurred between victim and victimizer, with the female victim being submitted to physical and sexual abuse."

We can conclude that the Supervisory Court's ruling violated Lucero's Human Rights and "prevented her from knowing the truth of the facts and obtaining proper reparation" as well as "preventing the alleged guilty party from being judged for his actual actions against the victim."

This "amparo" statement provides Lucero with federal protection and orders the arrest of the perpetrator for the crimes of unlawful imprisonment and attempted rape, thus becoming a reference for law enforcement with a gender perspective and confirming that this is an exercise to be applied in accordance with the Mexican State's international responsibilities.

### NOTES AND EVENTS

## Women's Access to Justice Week

International Women's Day, celebrated each year on March 8th, commemorates women's struggle for equality (understood as giving all human beings, men and women, the possibility of developing their personal skills and making choices without being restricted by stereotypes, rigid gender roles, or prejudice).

In 1857, in New York, more and more women were joining factories, especially in the textile sector, where they were an absolute majority. But their exhausting workdays of over 12 hours for miserable wages led these women to claim their rights on March 8th, a date that became fateful when the demonstrators were attacked by police.

**Half a century later, on March 1908, 15,000 female workers marched in New York to demand better wages and working conditions. The following year, also in March, over 140 young women burned to death in the textile factory where they labored under inhuman conditions. Finally, in 1919, during the Socialist Women's International Congress, March 8th was proposed as International Women's Day.**

But it was not until 1993, at the Vienna Conference on Human Rights, that the human right to equality was finally recognized, acknowledging that women's rights are Human Rights. Women postulated that Human Right violations and discrimination against women were a devastating reality that needed as urgent a remedy as any other Human Rights violation.

Currently International Women's Day is a date that commemorates women around the world. When women on all continents, often divided by national boundaries and by ethnic, linguistic, cultural, economic and political differences, come together to celebrate their



day, a tradition of over a hundred years of struggle for equality, justice, peace and development can be admired.

### THE FEDERAL JUDICIARY COMMEMORATES WOMEN

As part of International Women's Day, and as an activity organized by the Federal Judiciary's Gender Equality Inter-institutional Committee (composed by the Mexican Supreme Court, the Federal Judiciary Council and the Electoral Tribunal of the Federal Judiciary Branch), Women's Access to Justice Week was held in collaboration with UN Women, the Superior Agrarian Court, the Federal

Tax and Administrative Court, the Conciliation and Arbitration Federal Board and UNAM's Legal Research Institute. Throughout the week, they held various panel discussions on the subject of women's access to justice in various fields: Administrative Justice, Family Justice, Agrarian Justice, Electoral Justice and Labor Justice.

The aim of this week's activities was to share with other group members any policies, affirmative actions, good practices and experiences that have facilitated and strengthened women's access to justice from an institutional point of view. ■

Gender sensitive protective orders

# CHILD ABDUCTION AND PARENTAL ALIENATION

By Magistrate Dalila Quero Juárez\*

## I. INTRODUCTION

Children are a blessing from God (Luke 1:42). When a couple decides to have a child, in principle, it is expected that they will love, respect, educate and protect said child. Currently, there is talk of expanding the concept of family to display a variety of them -monoparental, homosexual, single family units, assembled or reconstructed families, foster families, etc. and other family structures which might have the effect, precisely, of breaking the family up through separation / divorce.

It is worrying to note that some parents, using different strategies, transform their children's consciousness in order to prevent, hinder or destroy their links to their other parent, often causing the child to hate this other parent and refuse to see him or her. The Court cannot be a mere spectator of this social problem, which is increasingly recurrent in Family Court, often preventing resolutions on issues relating to the custody and safekeeping of minors.

Ilustraciones: Ángel Sánchez



## II. PARENTAL ALIENATION

Parental alienation involves certain behaviors by the custodial parent, who unjustifiably prevents the child from visiting the other parent. Thus, the child's very consciousness is altered, ranging from fear and rejection to hatred in certain cases.

The three levels of Parental Alienation Syndrome, according to research by Gardner, are (Gardner, RA, 2002b):

**Stage I (mild):** Parental visits usually have some difficulty at the exact moment children "change hands". Children still have strong emotional bonds to their alienated parent. Similarly, the emotional ties with the alienating parent are still strong, showing minimal pathological features.

**Stage II (moderate):** The alienating parent uses a variety of tactics to exclude the other parent.

**Stage III (acute):** Children are generally disturbed and fanatical. Their cries, panicked states and explosions of violence may be so intense that visiting the other parent becomes impossible. Links with the alienated parent break completely. Feelings of hatred and rejection of the alienated parent are extreme, without ambivalence, while the other parent is defended and loved irrationally.

Because of its importance, I would like to emphasize (as Jose Manuel Aguilar points out) that more than 350,000 children are abducted by a parent, a figure that increases when judicial rulings are violated and other forms of obstruction are practiced.

That is why Mexico has signed two international treaties on subtraction / restitution. The first treaty was conceived in the universal coding forum represented by the Hague Conference on Private International Law, namely the Hague Convention on Civil Aspects of International Child Abduction of October 25th, 1980. The other is a regional one: the American Convention on International Restitution of Children (July 15, 1989).

## III. JUDGING WITH GENDER PERSPECTIVE AND IN THE CHILD'S BEST INTERESTS

The First Chamber of the Mexican Supreme Court (ADR 745/2009), held that if a child has to be separated from a parent, the best interests of the child does not provide a fundamental principle that favors its permanence with its mother.



This occurs because, as explained by the Upper Court, although Civil Law originally granted preference to the mother in matters related to the custody of minors, this was based on a preconceived idea that women enjoyed a specific ability to care for children.

However, the Upper Court explains, today's trends set the course towards a family in which its founding members have the same rights and duties, so that they must participate and cooperate in order to perform house and childcare tasks. Women are no longer reduced to the mere role of housewife, but conversely, fully, freely and independently decide their life and their role in the family.

Currently, it is a notorious fact that the inner workings of families, in terms of distribution of roles between the father and the mother, have evolved into a greater male parental involvement in the task of caring for children. The father is becoming a figure that has also assumed a caretaker role. From such considerations emanated the separate opinion XCV / 2012 (10a.), First Chamber, Book VIII, May 2012, Volume 1, page 1112, under the heading: **"PRINCIPLE OF EQUALITY BETWEEN MEN AND WOMEN. THE GRANTING OF CUSTODY AND GUARDIANSHIP OF A MINOR SHOULD NOT BE BASED ON GENDER PREJUDICES."** This opinion argues that the sharing of family duties must be the subject of discussion, negotiation and

agreement between spouses, so that in the context of necessary and indispensable freedom and autonomy of the parties, any distribution is perfectly valid, effective and worthy of protection. This is exactly what judging with a gender perspective means.

The best interests of the child (provided for in article 4 of the Constitution of the United Mexican States as a criterion) must guide any decision on custody. Thus it was argued in thesis 31/2014 of the First Chamber of the Mexican Supreme Court, under the heading: **"BEST INTERESTS OF CHILDREN AND ALLOCATION OF custody"**. It provides that, ultimately, all measures on the care and upbringing of children should be adopted taking into account the interests of said children.

## IV. A MOTION FOR GENDER SENSITIVE PROTECTIVE ORDERS

Protective orders are established in the General Law on Women's Access to a Life Free of Violence and the corresponding state laws, which are designed to fully protect victims of violence, whether by preventing, disrupting or preventing the consummation of a crime or offense that constitutes violence against women. This measure takes some of its elements from similar provisions implemented in the U.S., Canada and Spain.

**To prevent a child from being taken from his home or, to return him home as soon as possible, I consider that a determination issued by the judicial or ministerial authority should be issued urgently and without guarantee of a hearing [to avoid possible "amparo" proceedings that unnecessarily delay the matter], which (on request) prohibits the other spouse or domestic partner from taking the child to an alternate dwelling, informing him or her that, otherwise, authorities will automatically proceed to enact the loss of parental authority, and notify the Public Prosecutors Office about the possible commission of a criminal offense.**

This measure should not be limited to 72 hours, but instead extend to the whole period when the child is at risk of being subtracted from his or her habitual home, and should apply to both parents. The goal would be to minimize social and familial affectations, since those affectations often kick start the process of parental alienation, which will undoubtedly create conflicts between both parents, but whose worst victim will be the child itself, who will generate feelings of hate, resentment, abandonment, etc., towards one of its parents.

Indeed, the measure requires efficiency and forcefulness that meets six basic principles of self protection order: the principle of protection of the victim, getting the latter to recover a sense of security against possible threats from the aggressor (which, moreover, it is essential to break the cycle of violence); and general application principle, namely, the proper authorities should always be able to apply this measure.

If this measure were implemented, it would largely prevent minors from being subjected to parental alienation, with the consequent damage to their healthy physical, social and emotional development.

*\*Dalila Quero Juárez: Circuit Magistrate for the Third Collegiate Court, Ninth Circuit*

<sup>1</sup> Aguilar, J.M. (2006) *Parental Alienation Syndrome*. Spain: Aluzara, pg. 154

<sup>2</sup> Jurisprudence Caselaw 31/2015, issued by the Mexican Supreme Court's First Chamber, which can be consulted in Book 5, Volume I, April 2014, Tenth Epoch of the Federal Judicial Weekly

<sup>3</sup> CNDH (National Human Rights Commission) Mexico.

(2015) N/A Retrieved from [http://www.cndh.org.mx/sites/all/fuentes/documentos/programas/igualdad/1\\_2\\_2\\_5new.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/programas/igualdad/1_2_2_5new.pdf)

# Defining equality and non-discrimination

By Judge Hortencia María Emilia Molina de la Puente\*

The right to equality and non-discrimination enshrined in international Human Rights and liberal constitutions has been understood in different ways and to different extents. From a position that we can identify as conservative, it has been argued that equality means treating equals as equals and unequals unequally. In that light, without an effort to identify equality's content, its meaning is all but nil.

A second opinion considers equality and non-discrimination synonymous. It is assumed that the State can treat individuals differently, provided that it acts based on a justified basis. However, since this view is quite individualistic, the non-discrimination principle is not sufficient to reach decisions in cases where factual differences between people arise from systematic exclusion or subjugation, because it does not provide us with all the tools required to address "structural inequality" or situations of "systematic exclusion" in disadvantaged groups.

The incorporation of the sociological aspect of equality justifies allowing affirmative action and reverse discrimination measures that seek to change situations of structural inequality in disadvantaged groups. Thus, to understand structural discrimination or inequality, one must grasp the situation some population groups find themselves in, understanding that, because of socio-cultural and institutional practices, they do not enjoy the same rights as the rest of society; we are talking about groups historically marginalized or subordinate due practices, prejudice and stereotypes.

The concept of structural equality does not refer exclusively to the idea of non-discrimination, but also to a segregationist and exclusive treatment aimed at consolidating the marginalization of a group. As Saba says, the idea of equality as non-submission is not opposed to the ideal of non-arbitrariness that underlies the idea of equality and non-discrimination; however, it does consider this approach insufficient or incomplete.



Following the conceptual framework provided by Fiss, it has been argued that the social position of women holds a particular place in the analysis of inequality, a place it does not have in the analysis of arbitrary differentiation. From this perspective, the prohibition of sex discrimination aims to eliminate the social superiority of one sex over another and to dismantle the social structure that holds a set of practices that accrue, in Fiss' terms, on disadvantaged women.

## "COTTON FIELD" CASE

In order to contextualize the problem of violence against women, the International Court of Justice and Human Rights, when judging the case of Gonzalez and others ("Cotton Field") vs. Mexico, made several important observations that the Court itself summarized as follows: "[...] the Court concludes that, since 1993, Ciudad Juarez has seen an increase of female murders, with at least 264 victims until the year 2001 and 379 until 2005. But beyond the numbers, on which the Court notes there is no guarantee, it is worrisome that some of these crimes appear to have higher grades of violence, including sexual violence, and generally have been influenced, as has been admitted by the State, by a culture of discrimination against women [...] (para. 164)."

According to the considerations of the International Court of Justice and Human Rights, impunity sends the message that violence against women is tolerated, thereby fueling the perpetuation and social acceptance of this phenomenon, as well as women's feeling of insecurity and their abiding mistrust of law enforcement. In this regard, the Court highlights what the International Court of Justice and Human Rights pointed out in its

thematic report *Female Victims' Access to Justice*, in the sense that the influence of discriminatory socio-cultural patterns may result in the victim's credibility being disqualified during criminal proceedings in cases of violence and a tacit assumption of said victim's responsibility for the crime, which translates into inaction by prosecutors, police and judges. It also stresses that this influence can adversely affect the investigation of cases and the subsequent weighing in of evidence, which can be marked by stereotypical notions about how women should behave in their interpersonal relationships. In similar fashion, the International Court of Justice and Human Rights considers that gender stereotyping refers to the preconception of the attributes, characteristics or roles that men and women should possess or perform, respectively. Given the statements made by the State, it is possible to associate the subordination of women to practices based on gender stereotypes and socially dominant, socially persistent traditions, conditions that are exacerbated when the stereotypes are reflected, implicitly or explicitly, in policy and practice, particularly in the reasoning and the language of Judicial Police authorities, as happened in this case.

Thus, the creation and use of stereotypes becomes one of the causes and consequences of gender violence against women. The approach taken by the International Court of Justice and Human Rights (ICJHR) is even more revolutionary than the one used by much of the international laws that deal with women's Human Rights, whose very foundation was putting women on par with men in the public sphere. In this regard, the international prohibition of discrimination based on sex promises equality to women seeking to adapt to a male model but offers little to those who do not wish to conform to this standard.

#### CASE PARTICULARITIES

In this particular case, the ICJHR considers that violence against women constituted a form of discrimination and declares that the State violated the obligation of non-discrimination to the detriment of the females involved (Gonzalez, Ramos and Herrera) and also failed to provide the victims' relatives fair access to law enforcement. The perspective adopted for the case also took into account the fact that women, a historically disadvantaged group, are involved, and thus departs from the traditional judicial resolutions, exchanging (according to Saba) the "veil of ignorance", for "a perspective sensitive to differences" so that it refrains from issuing a judgment based only on an individualistic view, instead adopting a contextual outlook, grounded on the premise of consistently exclusive treatment. This way of approaching problems can identify people not only as single individuals, but also as people defined by their important traits as members



of a certain group. In this fashion, events and social dynamics can be measured along with systematic practices of social exclusion and violence (which would otherwise be perceived as isolated and unconnected).

The ICJHR, without mentioning it by name, associates the idea of equality to non-submission, using it as an argumentative tool that allowed, firstly, the identification of a structural or systemic context of inequality that produces and perpetuates a situation of exclusion and subjugation for a disadvantaged group and, secondly, a demand for affirmative actions by the State to reverse that situation of exclusion and subjugation. All this would not have been possible with the idea of equality as non-discrimination. It therefore shows how the application of one or another conception of equality can yield very different results as to the obligations of the State and their scope.

It was only the proper use of the idea of equality as non-submission that made it possible to determine that violence perpetrated against victims is attributable to the State and that gender motivated murders involve Mexico's international responsibility as a country that violated the principle of equality and non-discrimination. The resolution of the International Court of Justice and Human Rights, as Cook notes, pays special attention to the stereotypical factors that were present in the case, in an androcentric world whose rules (and their enforcement) are largely determined by men, so that a gender sensitive perspective responsive to the experiences of injustice suffered by women is adopted, shifting the spotlight to females.

#### A BREAKTHROUGH RESOLUTION

The ICJHR demonstrates the subordination of women as a result of widespread social practices based on pervasive and

persistent gender stereotypes, a situation that worsens when that mentality is reflected, implicitly or explicitly, in the policies and practices of authorities responsible for law enforcement. Given this, it is essential that the Judiciary become sensitive to gender issues. The application by the ICJHR of a gender sensitive perspective allowed the analysis and understanding of the differential impact of models, standards, policies and programs on people, in order to prevent the generation or continued existence of situations of discrimination and exclusion, perpetuating the vulnerability of the group formed by women.

In my opinion, the breakthrough involving ICJHR's resolution stems from the fact that it faces two challenges: applying a gender sensitive perspective and defining equality as non-submission, making it possible to conclude that a sociological problem such as violence against women acquires an institutional dimension when State bodies incorporate into their processes stereotypical views on women and adopt practices that restrict or limit the exercise of their rights and freedom.

*\*Judge Hortencia María Emilia Molina de la Puente:  
Eighth District Judge of the Fifth Region's Auxiliary Center.*



NEW ALLOCATION POLICIES

# AFFIRMATIVE ACTIONS FOR GENDER EQUALITY

**Regarding allocation, we now have a new Institutional Development Plan designed by Minister Luis Maria Aguilar Morales. It is a novel concept in that it covers, and is scheduled to implement, a series of related guidelines in the spirit of respect for Human Rights, gender equality and personal and professional development of each and every one of our staff. Thus the Federal Judiciary Council provides institutional support for the rights of Federal Judges and Magistrates in their “core” tasks.**

**By Magistrate Martha Maria del Carmen Hernandez Alvarez\***

**T**he policies adopted for the allocation and reallocation of Judiciary incumbents, seek, of course, to meet the needs of said Judiciary, but also to protect, through affirmative action, the personal needs of Federal Judges. The Federal Judiciary Council is thereby seeking to address the situation of internal gender equality, through a policy of allocations

meant to allow the effective participation of women as judgeship holders in the Federal Judiciary, in an environment that recognizes the conditions justifiable in specific cases, without prejudice to the general principles governing the Judiciary. Through these actions, the “glass ceiling” that prevents the promotion of women to higher and better paid positions will continue breaking, until it is completely gone.

The new policies seeking to favor civil servants (be they female or male) include:

» Taking into account the preferences of public servants who request a change of allocation in order to stay close to their children or parents, on the grounds of family responsibility. During this past year a number of those requests have been granted. Also, as far as possible, Judges married to other Judges have been allocated to the same place or, at least, to locations nearby.

» Similarly, in the best interests of the child, in those cases where a female Judge is the primary breadwinner, the request for certain allocations has been addressed positively to assist whenever possible in a closer coexistence that enables her to address her children's and parents' (who in most cases, due to their age, require the presence of relatives and special medical and emotional attention) health issues.

Federal Judge allocations are determined based on the ideal profile required by the Judiciary body seeking to fill the position. The most important thing is that allocations, if kept in good order, can also be quite flexible and ductile.

**The development and fulfillment of Judiciary incumbents' personal life produces the stability required for the needs of public service, excellence and professionalism to be met. Ensuring stability assures good performance.**

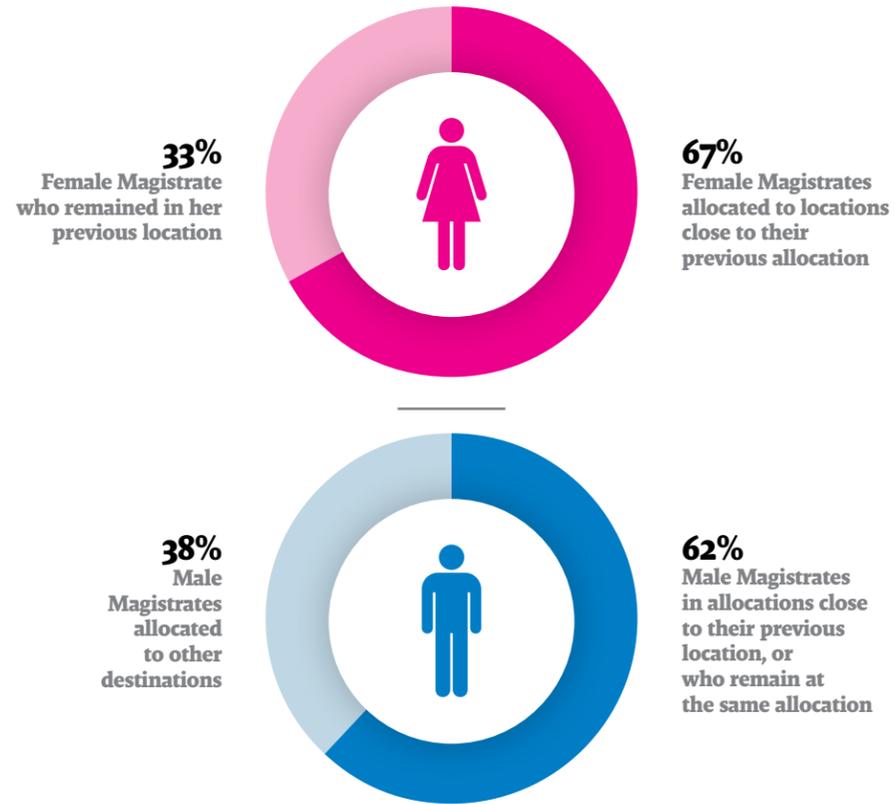
To summarize: among the actions that have been carried out, with the strong support of our Chief Justice, I want to mention the following:

**1. An effort has been made to conclude temporary allocations for Judges and Magistrates in order to return them to their previous locations.**

**2. Concerning first time allocations for both Judges and Magistrates, over 60% of them were allocated to places near their previous locations. In some cases, they were not relocated at all.**

## Judge and Magistrate Allocations

### First Allocations for the 26th Internal Competition for Mixed Competence Circuit Magistrate Appointments

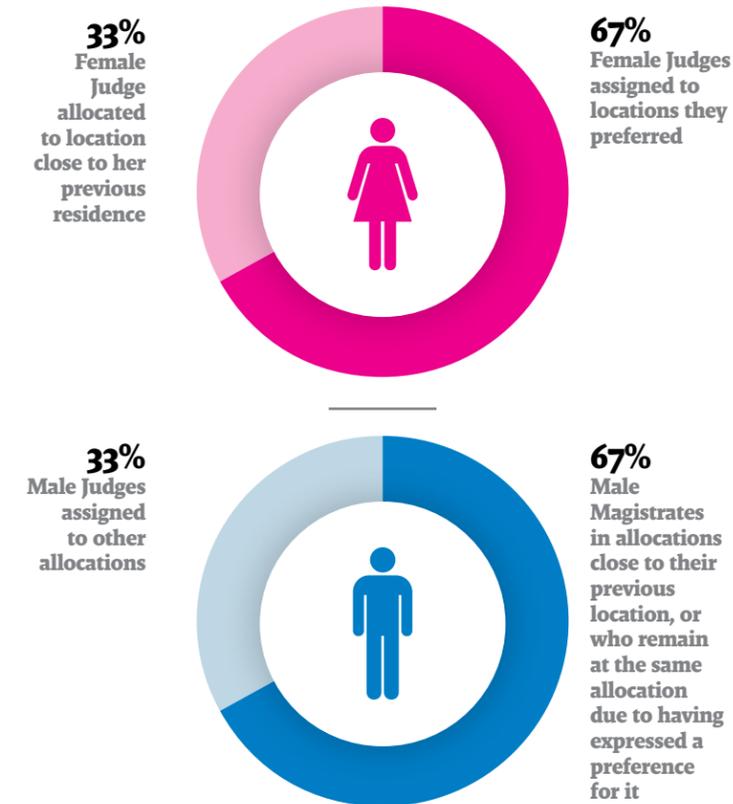


**3. During Minister Aguilar Morales' presidency, civil servants' preferences for allocation have been taken into account. Their opinion is considered valuable, and, if the needs of public service allow it, the Judiciary will go to great lengths in order to prioritize them.**

It should be mentioned that even very specific allocation preferences were honored, as long as certain requirements were met and provided that a vacancy existed in the chosen location.

This action represents, without a doubt, a measure that will motivate more women to participate in future competitions to become magistrates and judges, exactly as Minister Aguilar set forth in his Institutional Development Plan for the Federal Judiciary. In this context they need not fear sacrificing family care and married life in exchange for professional development. These are the kind of affirmative actions that the Chief Justice is committed to doing -and has done- to give female members of the Federal Judiciary more opportunities.

### First Allocations for the 21st Internal Competition for District Judge Appointments



**By assigning appointees to destinations of their choice or near their families from their very first allocations, continuous mobility is avoided, generating employment stability and appointees' trust.**

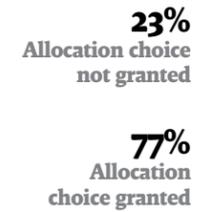
As you can see, progress regarding Human Rights has reached the Federal Judiciary Council's administrative bodies.

I do not want to miss this opportunity to point out, too, that there are no good or bad allocations. Opportunities across the country are important and varied. The prosperity reached by each individual member of the Judiciary depends on her or his hard work. Many different allocations require their talents, and exploring them is not to be feared, since rich rewards may be found everywhere.

Both the current Mexican Supreme Court presidency and the Federal Judiciary Council know that providing a better quality of life for its members generates better Judiciary services. These conditions help create, in each and every one of our civil servants, a true and legitimate sense of belonging. This makes us stronger and better and will, without a doubt, strengthen our institution. ■

**\*Martha Maria del Carmen Hernandez Alvarez:** Federal Judiciary Councilor

### Allocation-Magistrate Call January / 2015



### Allocation Movement Statistics (January 1st thru September 9th, 2015):

Allocations movements overview	Quantity
First allocations	72
Reallocations	112
Incumbents	21
Temporary commissions	43
Reincorporations	27
Relocations	29
<b>Total</b>	<b>304</b>

### Magistrates and Judges

Allocation movements	Magistrates	Judges
First allocations	20	52
Reallocations	62	50
Incumbents	19	2
Temporary commissions	36	7
Reincorporations	25	2
Relocations	14	15
<b>Total</b>	<b>176</b>	<b>128</b>

MARIANA LIMA SENTENCE

# First Supreme Court Femicide Precedent

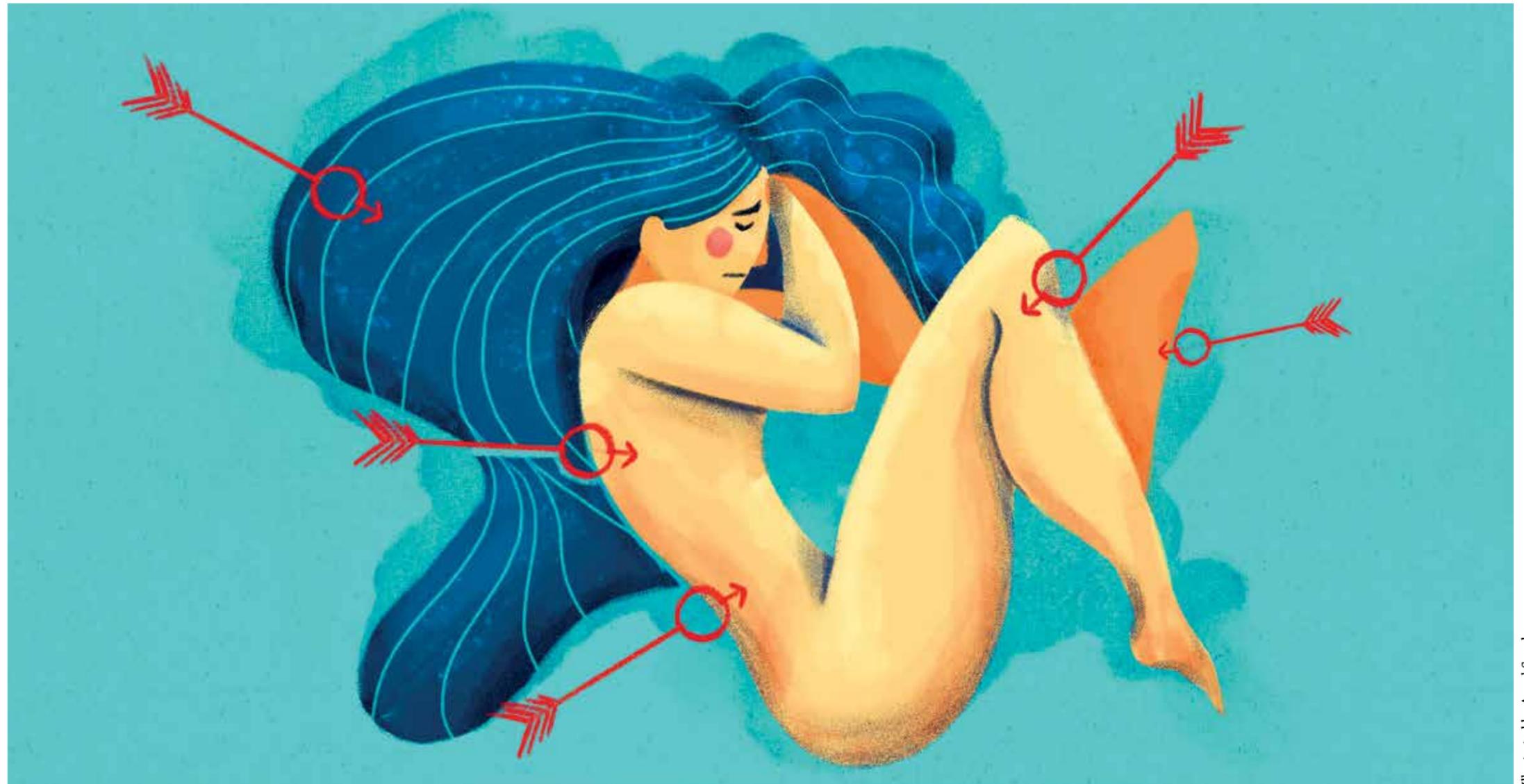
In March 2015, the First Chamber of the Mexican Supreme Court ruled on the Amparo in Review (an individual complaint for violations of constitutional rights, currently under appeal) 554/2013, which deals with the violent death of Mariana Lima and its investigation by the authorities of the State of Mexico. Mariana's mother, Mrs. Irinea Buendia, filed the appeal.

The ruling stresses authorities' obligation to investigate, with a gender perspective and without discrimination, the violent death of any woman to determine whether or not it constitutes femicide. Heeding international, national and local standards as well as women's right to equality and non-discrimination, it was established that in cases involving the violent death of women, the investigating authorities should explore all possible avenues in order to determine the historical truth of what happened. From this sentence arose criteria that deal with femicide, gender perspective and women's rights.

Minister Alfredo Gutiérrez Ortiz Mena was this ruling's proponent. The project's Study and Account Clerk was Karla Quintana Osuna, whom *Igualdad* magazine asked for this resolution's salient points.

## What is the significance of the judicial decision in the Amparo in Review 554/2013, Mariana Lima Sentence?

The ruling is relevant in two different ways: individually, for the case's victims; and structurally, in regard to the phenomenon of violence against women. As to its individual impact, this ruling represents a step forward in access to justice for the specific case of Mariana Lima and her mother Irinea Buendia, since Mariana's death will be investigated with a gender perspective and as a possible femicide. Structurally, I think the sentence is important because it represents the first precedent in Mexico's Su-



Illustrated by Angel Sanchez

preme Court concerning the issue of women's violent deaths, and an opportunity to apply a parameter of constitutional regularity which includes all inter-american international precedents, specifically the "Cotton Field" case against Mexico, and others against other countries, such as the case of Maria Isabel Veliz Franco against Guatemala.

International, regional and national research protocols of violent female deaths are also included. I think this is a good and necessary first step, albeit a long overdue one, in a country where violence against women is a worrying

phenomenon.

## How will this ruling help in cases involving femicide?

First off, it will help raise awareness of lethal violence against women, because we now know that this type of violence has different facets. Femicide is the most serious, the last step in violence against women. It is the intent of this ruling that the hypothesis of any woman's violent death being motivated by the victim's gender permeate investigations of any such death.

## What does paragraph 114 of this resolution -about women's right to a life free from discrimination and violence- mean in terms of all authorities' obligation to act with gender perspective?

It means just what it says: any authority MUST act with a

gender perspective. Indeed, while Mariana Lima's case is specifically limited to the research topic, this paragraph (and many other of the ruling's paragraphs), intends, following international precedents, to determine that in all the different stages of an investigation authorities are compelled to act with this perspective, establishing as a line of research, as a possibility, that a specific case was motivated by gender.

This is very complicated because it includes everyone involved in the case: from the first responders (which may be the police force), to the prosecution, the Judges ruling on the case... We know that



there are several studies on the stereotypes authorities carry irrespective of whether they are men or women: social mores and roles, stereotypes of how a woman should act... Often, that kind of stereotyping leads to certain lines of investigation or causes a complete lack of investigation. Sometimes what stands out are the classic examples of biases we are already familiar with: how the victim was dressed, if she was a prostitute, if the victim was walking alone at night, and so on. While that sort of bias is more obvious, I think it affects only a minority of cases; most cases are the ones that go unreported or are not even seen as a crime.

In Mariana Lima's case this was very clear: in the absence of an investigation that included gender perspective, authorities just determined that she committed suicide. Other research hypotheses were never even considered.

#### What does gender perspective mean to you, specifically?

I always like to illustrate this point as seeing reality using a different pair of glasses, as when one goes to a 3D movie or wants to see the world through rose-tinted lenses, because it does not mean seeing certain things thru a specific perspective, but changing the way you see and analyze reality. Moreover, it is not about specific cases, it doesn't mean saying to yourself "since we have a case concerning the death of a woman I'll put on my gender perspective glasses for a while". Gender perspective is a methodology for approaching a certain reality in a specific case.

**For those who work in the Judiciary, analyzing specific cases of violence against women means seeing the world thru different glasses, staying open to the possibility of gender specific violence in certain cases. One must begin with the idea that there might be a gender motivation and then discard this hypothesis if needed, and not vice versa. Also, one must not expect very "obvious" biases, as could happen in an apparent femicide, since the most complicated cases where gender perspective should apply may not be so evident: custody cases, child support or civil matters, which are not as obvious as a violent criminal case where**

#### the victim is a woman.

The way I see Judges' jobs, this lens should not be limited to gender: it is a vision, I would tell them, of visualizing the language of rights, because there may be a woman who at the same time is part of a racial minority or has a disability... For me, a Judge should approach such cases with a mindset that takes into account so-called "suspect categories", such as sexual preference, ethnicity, nationality, and so forth, that are "invisible".

Now, clearly, in our country it is a reality that domestic violence is worrying and that is why there is talk of a gender perspective, of judging from a gender perspective, but I think the correct term would be judging from a Human Rights perspective.

#### The version of the sentence made available to the public goes by the name of Mariana Lima. Is there a specific reason for this?

Yes, there is. She (Mariana's mother) asked for her daughter's name to appear in both the judicial process and the ruling itself, despite the fact that such data is usually kept private. Firstly, Irinea Buendia asked for this as a form of reparation, as a way of granting greater visibility to the phenom-

enon of gender-based violence against women. Secondly, as a form of reparation to herself, Irinea, and to Mariana. Thirdly, I think it was very important to Irinea to show her struggle and to show the world who her daughter was. So I think naming Mariana in the sentence is very important.

#### This is the first ruling to deal with femicide. Do you think it will actually contribute to a more effective judicial management of similar cases?

I think this is just the first step. It would be naive to think a single thesis or ruling will change the whole system, because we're talking about two areas: a general system for investigating cases or a general way of judging cases, and a specific way of judging certain cases.

In this specific case, the Court's judgment is clear in saying that there seemed to be obstruction of justice. However, this is not necessarily true in all cases, since we could be dealing with simple negligence or even a lack of knowledge.

This is an issue of education, and education is the bedrock, so I say this is only the first step. The Judge originally assigned to the case was fairly open and had, to some extent, gender perspective. He allowed the case to be opened, did not dismiss it and even highlighted a perceived wrong. He had Human Rights vision, which ultimately was not enough -that was why the review was presented to the Court- but there's an important step right there. We know that the phenomenon of violence against women is lethal; the specific issue of femicide in Mexico is unfortunately old news. In fact, it is worrying that a case of this nature had not already come before the

## Case history

Mariana Lima was found dead on the 29th of January, 2010. Her husband, a State of Mexico police officer, assured authorities that Mariana, for reasons unknown, had committed suicide in their bedroom.

Mariana's mother, Irinea Buendia, refutes his story, since the conditions in which her daughter's body was found preclude suicide. Also, Irinea witnessed her son-in-law's violent behavior towards Mariana.

Irinea disagreed with the resolution that endorsed suicide as Mariana's cause of death. She obtained a judicial ruling in which certain acts were suspended and an "amparo" (an individual complaint for violations of constitutional rights) was granted for another questioned act. Against this judicial decision, Irinea presented a review that was met in the First Chamber of the Mexican Supreme Court.

That Chamber granted Irinea Buendia the "amparo" needed to complete the investigation of her daughter's death in a timely, immediate, serious and impartial manner; carry out all necessary measures to investigate the case with gender perspective; remove all obstacles from the previous preliminary investigation and investigate possible obstruction of justice.

Court. It would be nice to say that was due to such cases having been resolved in previous judicial stages; but the reality is they do not reach the Supreme Court because they are not solved in previous instances; or worse, because the case does not even culminate in an investigation with gender perspective. Had it not been for Irinea challenging a non-exercise of criminal action determining that Mariana Lima had committed suicide, the case would have ended there, as many cases do.

*Supreme Court's Directorate General for Research, Development and Promotion of Human Rights*

# Paternity leave in the Mexican Supreme Court

**According to the International Labour Organization (ILO), paternity leave is a period of time that the father is given immediately after birth to care for his newborn child.**

**T**he ILO has no special rules on paternity leave. However, there is a resolution concerning gender equality that was adopted by the International Labour Conference at its 98th meeting, held in Geneva, Switzerland, in June 2009, which recognizes that “measures to reconcile work and family are not only directed at women but also at men”. In the same resolution, it is mentioned that in some countries parents make use of paternity leave and share family responsibilities, which shows a gradual change in attitudes and the elimination of gender stereotypes .

Granting parental leave was a trend that started in developed economies and in Africa, Eastern Europe and Central Asia. In Slovenia, Finland, Iceland, Lithuania and Portugal, periods exceeding two weeks are offered. In almost every country that grants said leave, the parent has the opportunity to decide whether or not to enjoy this right, except for Chile, Italy and Portugal .

In 1994, in 40 of the 141 countries for which the ILO had information, there were provisions concerning paternity leave. In 2013, out of the total number of countries for which we have information (167), 78 already had laws on paternity leave. Since 1994, the regions with the largest increase in granting paternity leave are Eastern Europe and Central



Asia, developed economies, Latin America and the Caribbean. Paternity leave is paid in 70 (89%) of the 78 countries where it already exists. In Mexico's case, in 2014 Congress approved granting paternity leave for five working days, as laid down in Article 132, Section XXVII of the Federal Labor Code: "it is mandatory to grant new fathers a paid paternity leave of five working days".

As part of its gender equality policy, the Federal Judiciary promoted the establishment of paternity leave in the Mexican Supreme Court, the Federal Judiciary Council and the Electoral Tribunal of the Federal Judiciary Branch. The first to take this step was the Electoral Tribunal of the Federal Judiciary Branch: through a General Agreement in 2010, its Administration Commission established criteria for granting maternity and paternity leave to its staff. The Tribunal stated that the father should have a paid parental leave of ten continuous working days with pay, starting from the birth of his child. The leave is thus broader than the minimum established in the Federal Labor Code. In 2012, the Federal Judiciary Council issued General Agreement 45/2011, which regulates paternity and adoption leaves, as well as additional criteria for granting licenses regarding maternal and paternal care to staff attached to Circuit Courts, District Courts and Federal Judiciary Council administrative areas. The agreement was published in the Official Journal of the Federation (DOF) on March 26, 2012 and establishes in its second article that public servants have the right to be granted paternity leave with pay for a period of five working days starting from the day of the birth of their child. This arrangement also establishes the possibility of extending this period in extraordinary cases, such as multiple births or complications in the infant or the mother. It also establishes paternity leave in cases of adoption.

<sup>1</sup> **ILO (2009)**. Resolutions adopted by the 98th International Labor Conference. Geneva: ILO. Retrieved August 2nd, 2015, from [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_113006.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_113006.pdf)

<sup>2</sup> **Ibid.**

<sup>3</sup> **ILO (2014)**. Maternity and Paternity in the Workplace: legislation and practices around the world. Geneva: ILO. Retrieved August 2nd, 2015 from [http://www.ilo.org/wcmsp5/groups/public/--dgreports/--dcomm/documents/publication/wcms\\_242618.pdf](http://www.ilo.org/wcmsp5/groups/public/--dgreports/--dcomm/documents/publication/wcms_242618.pdf)

<sup>4</sup> **Ibidem.**

<sup>5</sup> **Ley Federal del Trabajo (2015)**. México: Cámara de Diputados. Recuperado el 3 de agosto de 2015 de <http://www.diputados.gob.mx/LeyesBiblio/ref/lft.htm>

52

paternity leaves

have been granted by the Supreme Court from 2012 to 2015



89%

of countries

that grant paternity leave do so with a full salary



Technical and operational professionals

are the most likely to take paternity leave



Also in 2012, the Government and Administration Committee of the Mexican Supreme Court approved the Guidelines Project, grouping determinations regarding paternity leave and incorporating it to other Supreme Court employee benefits, in order to promote shared responsibility between men and women in caring for newborns and infants. The Project states that paternity leave is granted on the birth of a child or children and comprises five consecutive working days, starting from the day of birth. It should be noted that according to these guidelines, in the case of adoption leave, fathers do not suffer sex discrimination.

#### ONCE THE POSSIBILITY OF PATERNITY LEAVE IS OFFERED, HOW IS IT USED? IS IT EFFECTIVE?

To monitor and define the impact of paternity leave in the lives of the working men of the Supreme Court, the Gender Equality Unit, attached to the Supreme Court's Directorate General for Research, Development and Promotion of Human Rights, regularly monitors the leaves requested.

<sup>6</sup> March 30th, 2012, guidelines that establish the procedures to grant paid paternity, adoption and marriage leaves of absence, as well as additional criteria regarding paternal and maternal care, death of relatives and personal time off in favor of Supreme Court staff.

The Tribunal stated that the father should have a paid parental leave of ten continuous working days with pay, starting from the birth of his child. The leave is thus broader than the minimum established in the Federal Labor Code.



### Paternity Leaves by Post (2012-2015)

<b>15</b> for Technical Operatives	<b>2</b> for Common Service Officers
<b>15</b> for Professional Operatives	<b>1</b> for Administrative Coordinators (II)
<b>4</b> for Area Directors	<b>1</b> for Clerks
<b>4</b> for Actuaries	<b>1</b> Legal Auditors
<b>4</b> for Area Managers	<b>1</b> Not Specified
<b>4</b> for Department Heads	

### Paternity leave numbers in the Supreme Court (2012-2015)

<b>15</b> at Houses of Juridical Culture	<b>3</b> at the Directorate General of the Judiciary Channel	<b>2</b> at the Treasury Department
<b>7</b> at the Center for Documentation, Analysis, Archives and Law Compilation	<b>3</b> at the Directorate General of Communications and Social Engagement	<b>2</b> at the Office of the Coordinator, Compilation and Systematization of Theses
<b>6</b> at the General Directorate for Information Technologies	<b>3</b> at the Directorate General of Human Resources and Administrative Innovation	<b>1</b> at the Directorate General for Audits
<b>4</b> at the General Secretariat of Agreements	<b>2</b> at the Federal Judiciary's Single Substantiating Commission	<b>1</b> at the Directorate General of Budget and Accounting
		<b>1</b> at the Directorate General of Security

### BENEFICIARIES' PERCEPTIONS

In order to understand the perceptions on the provision and use of paternity leave, the Supreme Court's Gender Equality Unit conducted, in March 2014, a qualitative analysis consisting of telephone interviews with those who took paternity leave, in order to discover their views on this subject.

It was possible to contact 87% of beneficiaries for this survey, with the following results: the most frequent activity was the care of the newborn child, followed by caring for the spouse or partner and dealing with the paperwork resulting from the birth. These data demonstrate that the licenses are being mostly used for their original purpose: participating in the work of caring for newborn children. ■

*\*Directorate General for Research,  
Development and Promotion of  
Human Rights*

# Licencia de Paternidad

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

- ☑ 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.
- ☑ El servidor público adscrito a cualquier órgano jurisdiccional federal o área administrativa del CJF, 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, expedida por un centro de salud público o privado que acredite su paternidad, a fin de que el titular expida el aviso de licencia respectivo.
- ☑ 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.



FEMALE AND MALE STUDY AND ACCOUNT  
CLERKS IN THE SUPREME COURT

# A GLANCE AT THEIR CAREER PATHS

Creating conditions to ensure that both women and men have successful career paths is one of the strategies that the Federal Judiciary seeks to promote in the field of gender equality.

To achieve this, the three instances that comprise it (the Mexican Supreme Court, the Federal Judiciary Council and the Electoral Tribunal of the Federal Judiciary Branch), have conducted various studies and analysis in order to understand the barriers that affect men and women differentially and define labor policies to develop better career paths for its employees, regardless of their gender.

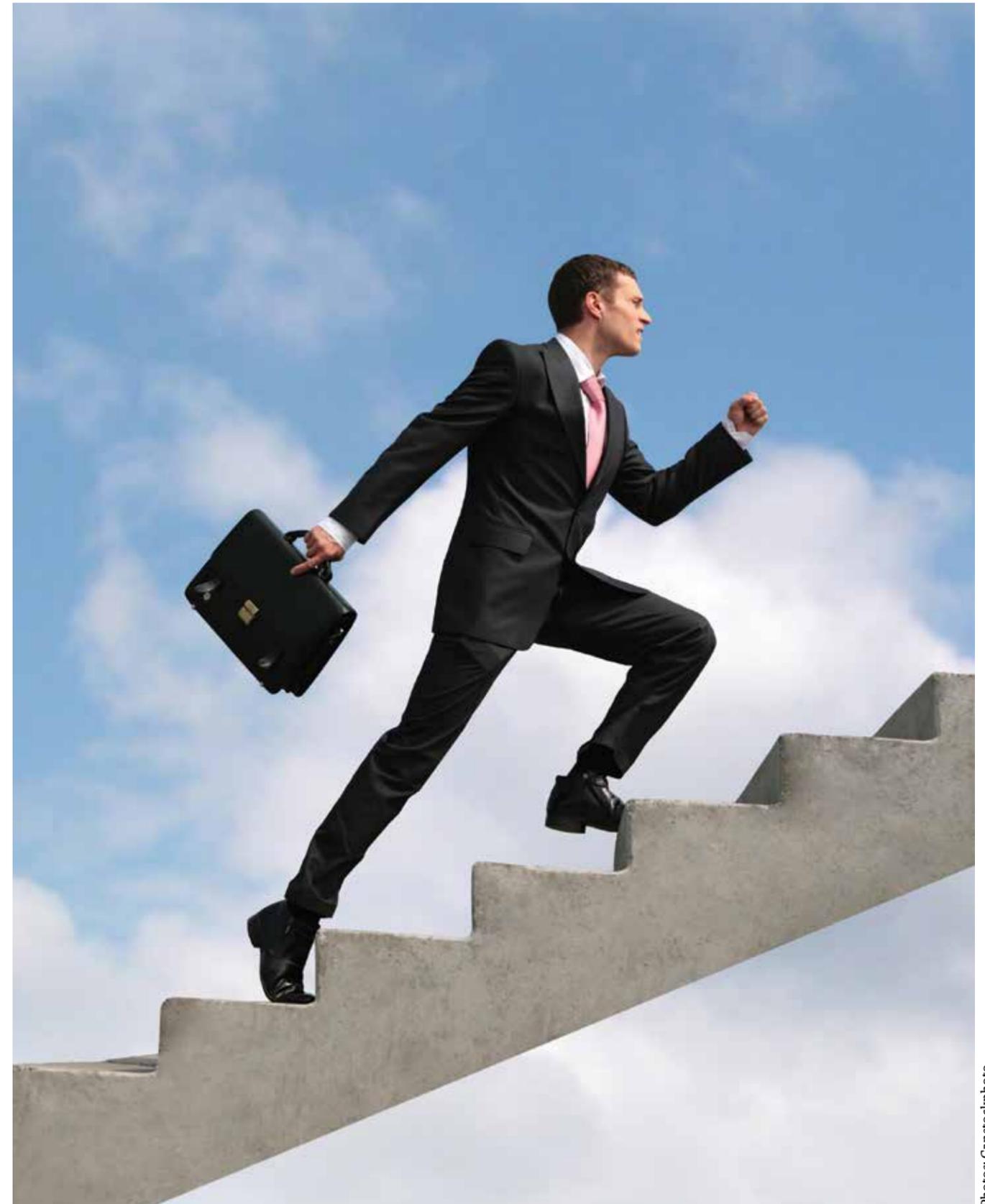
The infamous “glass ceiling”, that structural barrier that arises in legislation, traditional ways of operating, and the conditions for promotion in the Federal Judiciary, is an obstacle that prevents women from advancing in their careers. It is precisely the need to identify limiting factors such as these that has driven specialized studies.

**In 2012, the Supreme Court’s Gender Equality Program, in conjunction with the Study and Account Clerks Association, the Mexican Supreme Court and the Dr. Jose Maria Luis Mora Research Institute conducted the study on career paths Routes to Promotion and Obstacles Thereof of Study and Account Clerks in the Supreme Court. Thanks to this study, valuable information (which is presented below) was gathered on the careers of Supreme Court judicial staff.**

#### WHO ARE STUDY AND ACCOUNT CLERKS?

The Nation’s Supreme Court, as the highest constitutional court, seeks to defend the order established by the Constitution, achieve balance between different branches and levels of government and provide a final resolution on issues that are of great importance to society.

Justices of the Court are the ones responsible for these important tasks. In order to perform their duties, they are



backed by a presentation composed by male and female Study and Account Clerks, who are responsible for preparing sentencing projects for the cases resolved by the Mexican Supreme Court either in Full Court or Chambers.

Every Supreme Court Justice has her or her own team of Study and Account Clerks, who process and analyze the issues at hand and prepare a project proposal to be reviewed and approved by the Justice him or herself, who will in turn introduce said project proposal to other Supreme Court Justices, either in Full Court or in Chambers. For Study and Account Clerks, the next step up the career path is the post of Judge.

**DIAGNOSIS**

The study Routes to Promotion and Obstacles Thereof, of Study and Account Clerks in the Supreme Court took place in 2012 and consisted of two stages. The first stage was a survey of female and male Study and Account Clerks that helped develop a demographic profile and thus discover the context and structural situation. The second was to conduct in-depth interviews with this same group of people in which topics such as education and work history, family (and its relation to work), and the path to promotion were addressed.

**The results of this study were presented publicly to the Supreme Court’s College of Clerks in April 2013, and in May of that same year this diagnosis was presented to then Minister President Juan N. Silva Meza.**

The study aimed to analyze the reasons why both male and female Study and Account Clerks had to participate in contests to reach the position of Judge or District Judge and, also, to have empirical evidence in order to encourage greater feminine participation in the jurisdictional scope.

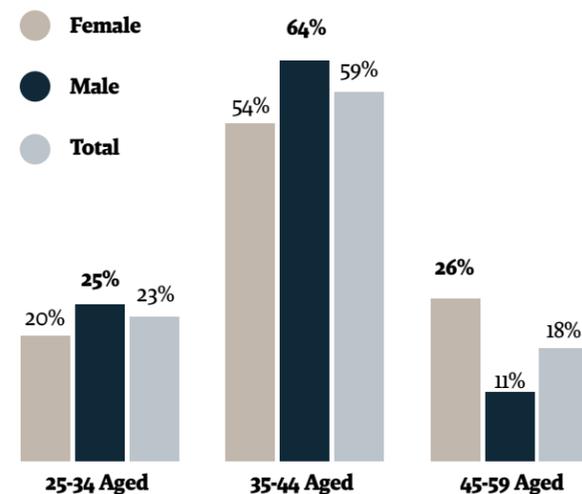
This article derives from the study Routes to Promotion and Obstacles Thereof, of Study and Account Clerks in the Supreme Court, Supreme Court Gender Equality Program, 2013. The entire document may be perused at the [www.equidad.scjn.gob.mx](http://www.equidad.scjn.gob.mx) website.

**RESULTS**

**Age**

A large percentage of Study and Account Clerks (59%) are between the ages of 35 and 44; 23% are between the ages of 25 and 34 and 18% are 45 to 59 years old. The median age of women is greater, which makes it easy to conclude that females tend to remain in the post of Study and Account Clerk for longer periods of time.

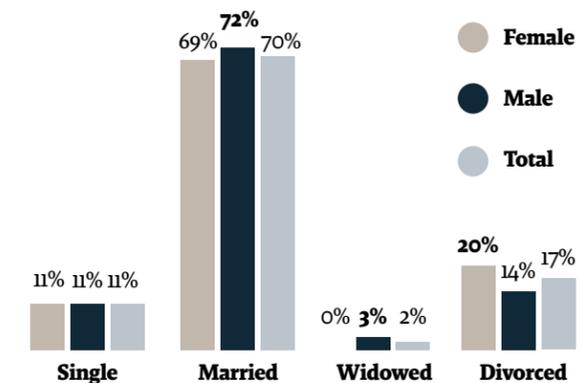
**Distribution of Study and Account clerks by sex and age supreme court, 2012**



**RESULTS**

**Family situation and marital status**

Most of those considered have family obligations (70% are married and 17% are divorced). A noticeably larger group of women is divorced, with a six-percentage point lead over men.

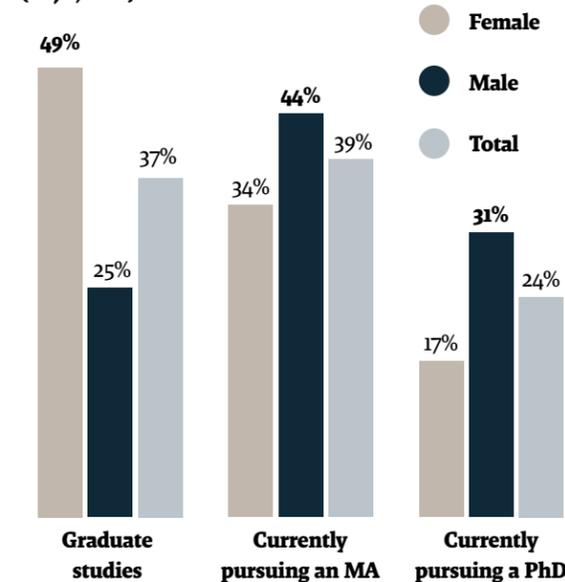


**RESULTS**

**Education**

63% of the population considered has postgraduate studies (MAs and PhDs). The data show that women do not attend or do not finish their Master’s or Doctoral Studies due to the double or triple workday their family responsibilities produce. Women focus their training on shorter and lower investment courses in order to combine family life with work.

**(SCJN, 2012)**



**Job perception**

Study and Account Clerks widely value their profession and position.

They recognize that they have excellent working conditions in terms of wages and working hours.

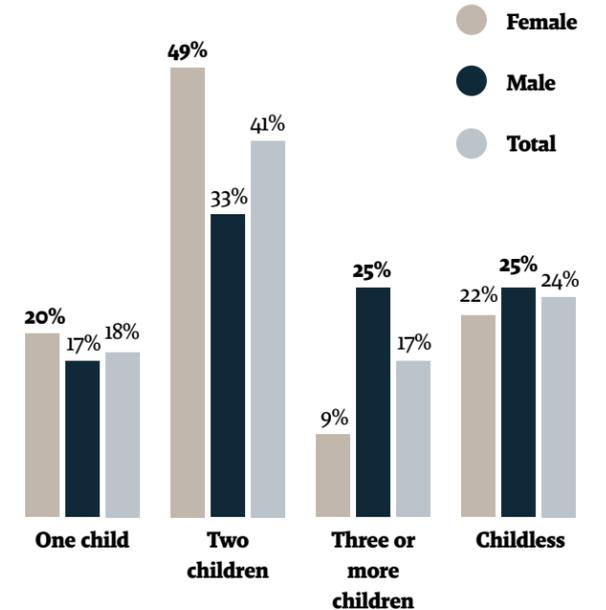
They build good working relationships with their hierarchical superiors, based on trust and professionalism.

They have a great sense of identity and belonging, resulting in high levels of satisfaction and productivity.

**RESULTS**

**Number of offspring**

76% of the population studied has children (18% have one child, 41% have two children, 17% have three or more children). The number of women with three or more children is reduced compared to men who have this number of children, which might indicate that women who already have three or more children do not continue working because they need to care for their family.



## Results by Gender Women

Consider the post of Study and Account Clerk a whole career by itself. In other words, this position is seen as the ideal working space when seeking specific ends, especially as it allows female Clerks to further their studies.

Feel that this workspace is friendly and that the post of Study and Account Clerk is the best professional option, since it allows for a good work-home life balance.

For women, entering the contest to become Judge is a decision to be carefully reflected on, both personally and as part of a family and even a couple.

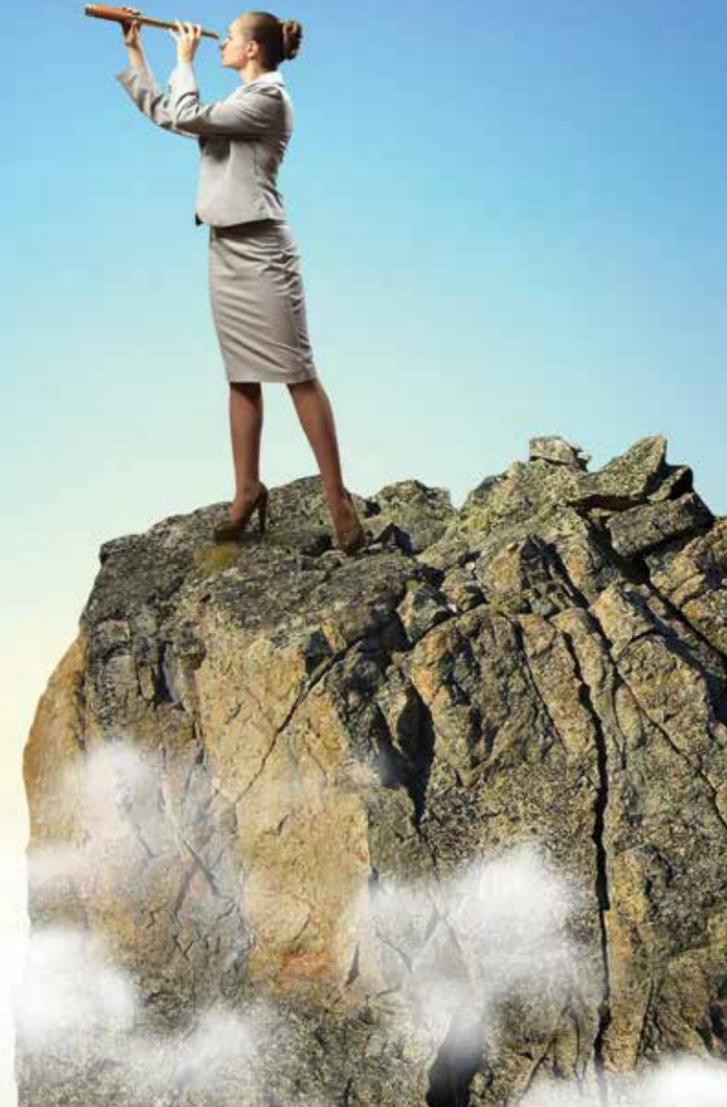
Furthermore, seeking promotion in their career path implies changing, negotiating, compromising and affecting their personal history and life trajectory, especially when they are responsible for the care of other family members (children, siblings, aging parents).

Mobility is a very difficult issue for women to resolve, as participating in a contest for Judgeship and getting the position represents the possibility of having to change their place of residence. This change involves adjustments for the whole family, like looking for new home, a new school for the children, a new job for the spouse, new support networks and so on.

Due to all of the above, deciding to make this change to advance their career can cause marital problems, because it implies changes both in the workplace and at home.

From these findings, it is clear that for women, the post of Study and Account Clerk is a “glass ceiling” because even though there are no restrictions or regulations which prevent them from competing for a Judgeship, they face the dilemma of staying in their original allocation and simply consolidating their career or of going forward and pursuing a promotion which will alter and impact their family’s life.

For women,  
competing to become  
a Judge is a decision to  
be carefully reflected on,  
both personally and  
as part of a family  
and even a couple.



## Men

Unlike women, men conceive the post of Study and Account Clerk as a stepping stone for specific purposes; that is, a transition space, allowing them to move on to the next position, higher up in the Judiciary.

Due to friendly conditions allowing the reconciliation of family and working lives, men can hold some responsibility for household chores, which is important because it fuels the cultural change that is underway. In this group, the responsibility for children does not fall exclusively on the mother anymore.

## How do we break the glass ceiling?

Generate policies that encourage the initiation and completion of graduate studies for women.

Institutionalize flexible hours.

Professionalize women whose interest it is to stay in the position of Study and Account Clerks.

Create conditions that allow Clerks in family caretaker roles to decide where they will reside.

Promote exclusively female competitions for the post of District Judge.

Develop skills and abilities: training, training in negotiation.

Mentoring programs and networking with mentors.

Provide internal care and modify ways of relating and policies.

## FJ EQUALITY POLICIES

The Gender Equality Inter-institutional Committee of the Federal Judiciary, the body charged with guiding policy on equality in the three bodies that make up the Federal Judiciary, are working to arrange a series of actions in favor of material equality so as to increase the promotion of women in the Judiciary. Among the actions to be promoted are:

1. Encouraging women’s participation in competitions for access to the Judiciary, either through reserving a percentage of places exclusively for females or organizing competitions for women only.
2. Insert flexible and objective criteria to define allocations, allowing people with intensive family care responsibilities to remain in their original place of residence, choose an allocation that facilitates that task, or present three allocation options, so that relocation occurs only if necessary conditions are present.

The Gender Equality Inter-institutional Committee is committed to achieving a discrimination free Judiciary that provides development opportunities for both men and women.



# Challenges of parity democracy in Mexico

Our country is still seeking full political equality regarding gender representation.

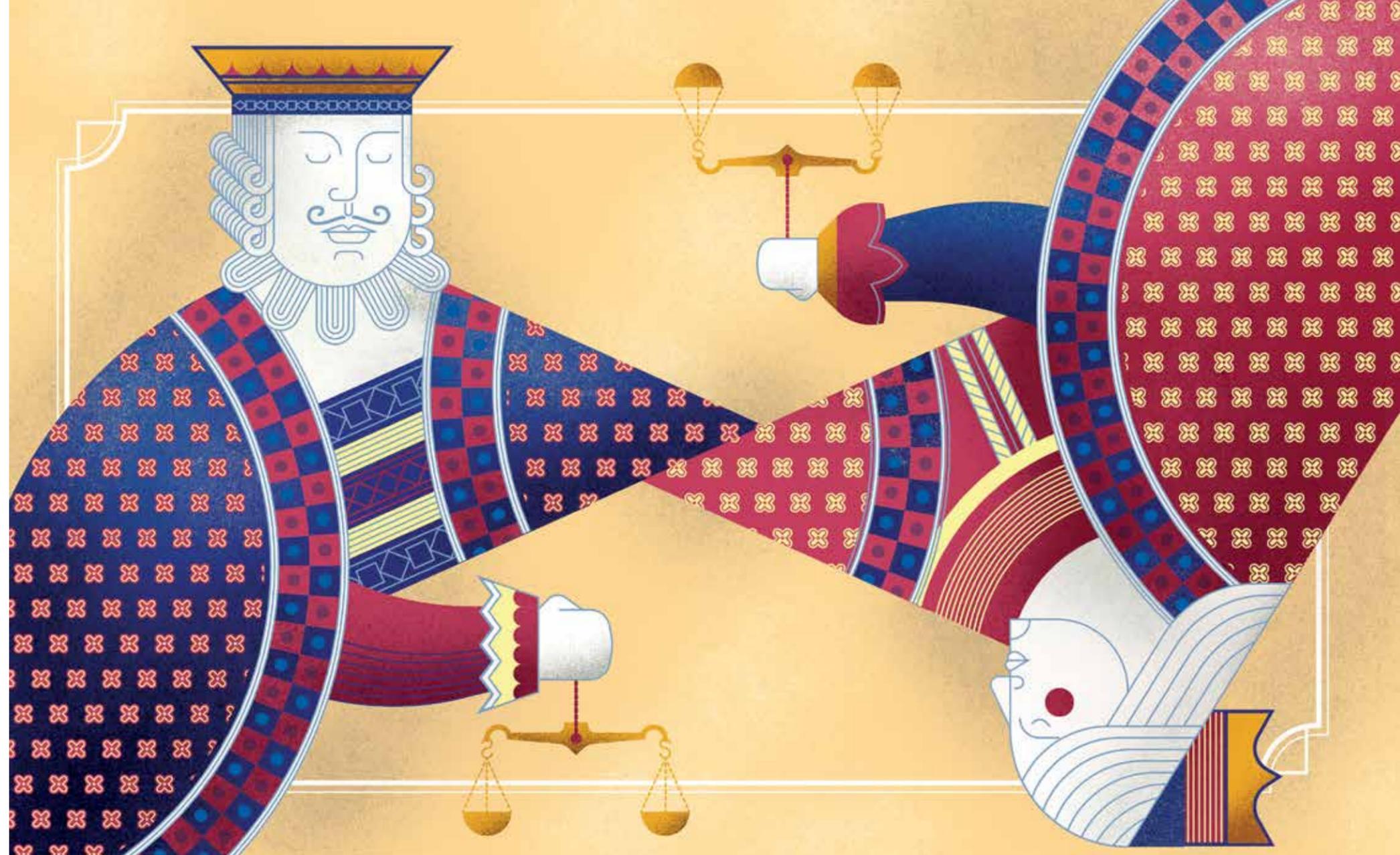
By Magistrate Manuel González Oropeza\*  
and Carlos Báez Silva\*\*

The female gender has been subjected to the constant violence inherent to discrimination, which has hampered women's emergence into public life and the field of political participation. That is why the pursuit of gender equality is an ethical and social justice target on which democracy stands. True equality should become a constitutional principle that goes beyond formal equality to become a principle of affirmative action government. Today, gender equality is about fundamental Human Rights that concern not only women but also men. The goal is achieving full equality between people.

Of course, the participation of women in politics helps promote gender equality policies. The level at which women participate is not as important as their effectiveness in public decision-making, because when females are elected to public office there is an immedi-

ate increase in the formulation of policies that emphasize quality of life and reflect the priorities of families, of women themselves and of ethnic and racial minorities. It is equally important that male candidates for public office be able to make decisions sensitive to gender equality and that they also contribute to democratic and social justice ideals.

**Between 1991 and 2008, twelve countries in Latin America implemented gender quotas that vary between 20% and 40%. Recent projections indicate that, were gender quotas not applied in the region, women would have to wait until 2025 to occupy only 40% of parliamentary seats.**



In general, the effectiveness of compensatory and temporary measures such as quotas do not result in the immediate equitable representation of women and men, as there are other factors that are crucial for this to happen: the electoral design of each state (the balance between majority and proportional representation in the formation of Congress), the existence of explicit penalties for breach of quotas, and the existence of appeal mechanisms in electoral justice for both women and the general public.

In Mexico's case, there is still a persistent underrepresentation of women in elected positions, in contrast to the number of women in the country. According to National Electoral Institute data, in 2014 women accounted for 52% of the total federal electoral census (39,714,251 men and 42,760,073 women). Although it is expected that at the local level women will have a more active partic-

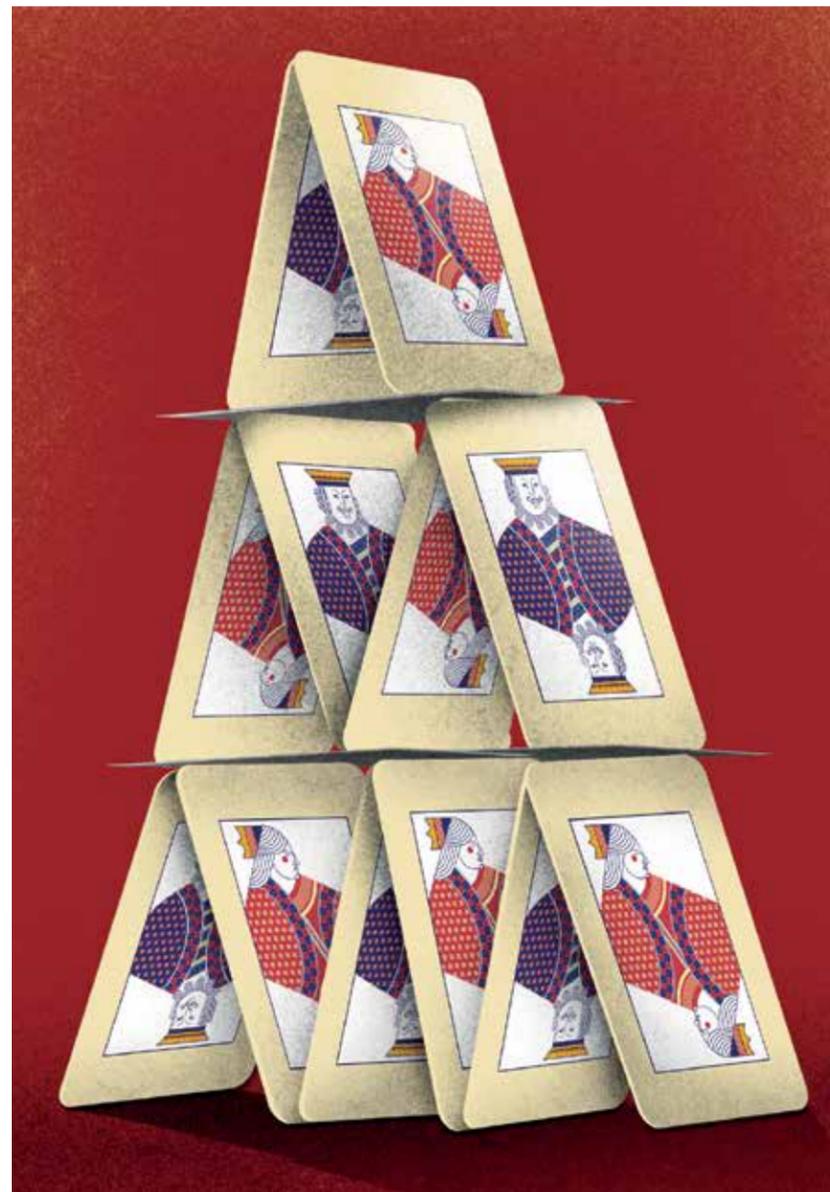
ipation, the number of elected positions they occupy is small. In 2012, of Mexico's 2,445 municipalities, only 175 were governed by women (7.16%). Of the total 1,142 seats in State Legislatures, only 313 were occupied by females, and only 7 women have ever been elected as governors or heads of government.

Mexico has signed several international commitments that prescribe greater access and participation in the exercise of public power for women. The harmonization of national legislation in accordance to international treaties and conventions on women's Human Rights includes the issuance of laws but also modifying regulations, civil, criminal and administrative codes and procedures to guarantee women's access to justice on equal terms. The Constitution of the United Mexican States established equality between men and women in Article 4 since 1991. Also since 2001, it prohibits gender dis-

crimination and recognizes indigenous peoples' right to self-organization in Articles 1 and 2 ; the 2014 reform to Article 41 incorporated the gender parity principle .

These constitutional provisions are specifically expressed in general legislation. The General Law on Political Parties (LGPP) states that they must ensure the effective participation of the two genders in both the integration of their bodies and the nomination of candidates (LGPP Articles 3.5, 33.3 , 4 and 5). 50% women and 50% men should integrate the lists of candidates to Congress at federal and local levels, while individual formulas must be the same gender (LEGIPE Arts. 14.4 and 232.3).

It is important to note the work of the Electoral Tribunal in obtaining these constitutional and legal changes, for example with sentence SUP-JDC-12624/2011. This sentence arose with the CG327 / 2011 IFE Agreement establishing an exception to the application of quotas for nominations by plurality (according to COFIPE Article 219.2, which was then in force); this agreement also recommended that parties should ensure that candidate formulas comprise persons of the same gender. The plaintiffs asked the Electoral Tribunal to amend the agreement in order to strengthen the implementation of quotas by requiring parties to field candidate formulas integrated by a single gender. Thus, the Superior Chamber issued important criteria to declare the rule contained in Article 219.2 of COFIPE unconstitutional and said the institute could not, in the exercise of regulatory power, modify or alter the content of a law to contain larger assumptions or create new limitations. Finally the Superior Chamber established that within the 40% of candidacies corresponding to the minority gender, the entire formula (official and alternate candidates) should be the same gender . This measure ensures that, should vacancies arise, positions would be filled by people of the same gender to maintain gender balance not only in candidacies, but also in the actual tenure.



<sup>1</sup> Literature points out that female legislators tend to behave differently and meet expectations: they support reproductive rights and gender role transformation legislation to a greater extent than males (Norton 1999); they encourage rehabilitation for criminals (Kathlene 1995); they dedicate more of their time to community service (Thomas 1992); they frequently take citizen opinion into account and worry about developing active ties to said citizens (Fox y Schuhmann 199); also, their governance style emphasizes coincidence and cooperation (Tolleson 1991) (See Lawless and Fox 2012). However, studies on Mexico have pointed out that gender sensitive activities are subordinated to mainstream political issues, such as education, health, poverty reduction, etcetera (Rodriguez 1998 and 2003).

<sup>2</sup> Retrieved from [http://www.ine.mx/archivos3/portal/historico/contenido/Estadisticas\\_Lista\\_Nominal\\_y\\_Padron\\_Electoral/](http://www.ine.mx/archivos3/portal/historico/contenido/Estadisticas_Lista_Nominal_y_Padron_Electoral/)

<sup>3</sup> **OPMM.** OPMM (2015) Mexican Women's Political Participation Observatory. Retrieved from <http://aplicaciones.inmujeres.gob.mx/observatorio/>

<sup>4</sup> **Griselda Alvarez in Colima (1979);** Beatriz Paredes in Tlaxcala (1987); Amalia Garcia in Zacatecas (2004), Ivonne Ortega Pacheco in Yucatan (2009), Rosario Robles in Mexico City (1997); Dulce Maria Sauri in Yucatan (1992) and Claudia Artemiza Pavlovich Arellano in Sonora (2015).

The 2012 election achieved for the first time a 37% female representation in the lower house of Congress, exceeding the minimum threshold for the presence of a group in a collegial body to reach the levels necessary to get actual influence in decision-making, which studies place at 30% (King, 2013, N/A). Thus, in less than twenty years, thanks to legislative changes and authorities' actions, the percentage of women represented in Congress increased from 15% to 37%.

The new parity rules were implemented for the first time during the 2014-2015 electoral process, and have been the subject of pronouncements by the Electoral Tribunal, among them the establishment of horizontal (relative majority) and vertical parity (proportional representation) at all levels of government, even if local legislation does not foresee it (SUP-REC-46/2015, SDF-JRC-17/2015).

It has also held that the principles of gender equality, substantive equality and non-discrimination are the basis for arguing that the quota provided for the nomination of candidates must transcend the allocation of deputies by the principle of proportional representation and full integration of Congress; however, an additional

step must be performed by checking if the election's result is close to parity. If this does not happen naturally, it suggests using the seats allocated to popular representation by way of adjustment, to achieve a result as close as possible to parity. (SUP-REC-936/2014, SM-JRC-14/2014).

As we can see, Electoral Tribunal Chambers have taken a firm stand in favor of gender parity, forcing politicians to fulfill this principle in the integration of the lists for elected office candidates, with special emphasis on municipal nominations. It is expected that, with the recent reforms, the firm actions by the electoral authorities anticipated this year, and the integration of the legislative and municipal authorities for the first time, gender balance will be within actual reach for the first time in history.

**\* Manuel Gonzalez Oropeza:**

*Superior Chamber Magistrate of the Federal Electoral Tribunal of the Federal Judiciary. Level III SNI member.*

**\*\*Carlos Baez Silva:** *Electoral Judicial Training Center of the Electoral Tribunal Director. Level I SNI member.*

<sup>5</sup> The most relevant are: the United Nations Convention on the Political Rights of Women;

Convention on the Elimination of All Forms of Discrimination against Women; International Covenant on Civil and Political Rights; ILO's Convention No. 169 on Indigenous and Tribal Peoples; the American Convention on Human Rights; Inter-American Convention on the Granting of Civil Rights to Women, and the Convention of Belem Do Pará. It also participated in the 1995 World Conference on Women, from which sprang the Beijing Declaration and Platform for Action which ascertains that "the concept of democracy will not acquire a real and dynamic sense until political orientations and national legislations are defined jointly by men and women", also considering that "power and decision-making" are two of twelve critical fields of intervention, and that practical measures and positive actions should be established by national and international bodies to ensure equal representation for women and men.

<sup>6</sup> As of August 2015, 28 Mexican States had incorporated the principle of equality between women and men into their State Constitutions. Furthermore, 30 had also incorporated the non-discrimination principle (data obtained by analyzing local Constitutions).

<sup>7</sup> In May 2015 Article 2 was reformed to establish that the right to self-organization must respect Human Rights and women's dignity and integrity.

<sup>8</sup> This reform seeks to eliminate inequality between women and men by demanding authentic (not simulated) parity as to conditions and resources in the race for elected positions. To ensure that the rules of this political and electoral reform were consistent with the changes to be operated, various laws were issued: the General Law on Electoral Offenses, General Law on Political Parties, General Law on Electoral Institutions and Procedures and certain changes to the General Law on the System for Contesting Electoral Matters, the Federal Judiciary's Organic Law and the Federal Law on Public Servants' Administrative Responsibilities, plus some institutions of the electoral arena itself, such as the INE (or National Electoral Institute, which replaced the IFE), and the creation of the Specialized Regional Chamber of the Electoral Tribunal of the Federal Judiciary, among other substantial modifications.

<sup>9</sup> To support this purpose the LGPP (General Law on Political Parties) also stipulates that political parties must dedicate at least 3% of the ordinary public funding they receive through the INE to train, promote and develop women's political leadership.

<sup>10</sup> At a later date, that criterion was incorporated into Jurisprudence 16/2012. GENDER QUOTAS. CANDIDACY FORMULAS FOR THE TWO HOUSES OF CONGRESS BY BOTH PRINCIPLES SHOULD BE COMPRISED OF INDIVIDUALS OF THE SAME SEX.

<sup>11</sup> Attention should be drawn to the registration of candidates in the Chiapas election, where only Morena met the principle of parity, so the Superior Chamber ordered the parties to make the necessary substitutions within 48 hours while suspending the campaigns until the violation of this principle was remedied. (SUP-REC-294/2015).

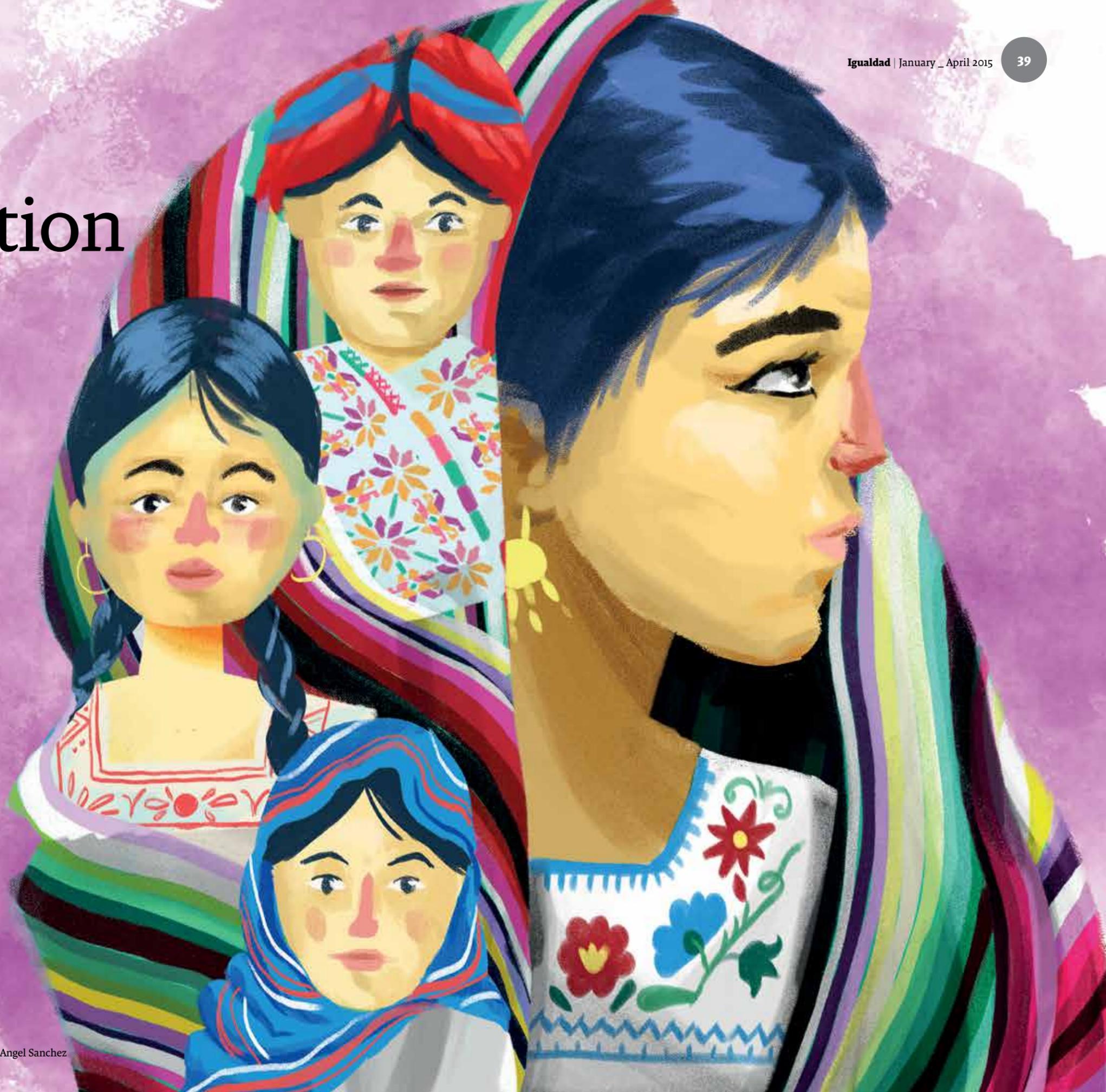
# Key elements in the implementation of gender and intercultural perspectives

By Attorney Marisol Aguilar Contreras\*

Granting international treaties and Human Rights standards the same status as the Mexican Constitution opened a gap for the application of Human Rights according to each particular case, based on the *pro personae* principle. It is therefore important to recognize the key concepts for the application of intercultural, gender and Human Rights perspectives in regard to women's political rights.

This has brought mixed results in the implementation of rights depending on which vulnerable group we are dealing with. When identifying differences between diverse cultures, we are faced with a so called "legal cosmopolitanism", whereas several rights frameworks coexist and interact with each other, as happens with the interaction of indigenous peoples and communities' legal frames of reference with the jurisdiction of a State, which is built under a different system of law. In this sense, when we use an intercultural perspective, we refer to the use -in most cases-, of indigenous peoples' and communities' rights, as if we ourselves were a lens sensitized on this matter to avoid imposing one system over another, in addition to promoting coexistence between systems.

Illustrated by Angel Sanchez



Throughout history, various vulnerable groups have been identified, coinciding with critical rights violations perpetuated for several years, on the basis of a certain category protected from discrimination. In this sense, the CEDAW Committee has noted with regard to women that they are a historically vulnerable group. That's why when we face the study of women's rights, we must not forget to use a gender perspective, which means, also, the knowledge and awareness of the various types of violence which women suffer from in order to grant them access to justice while respecting and guaranteeing their Human Rights.

In most cases, it also implies the intersectionality of categories, as when we speak of women who belong to an indigenous people, where two different systems must hold an intercultural dialogue in order not to infringe rights horizontally. Given this scenario, it is important to study and analyze several elements such as the duty of all courts to apply the Constitution and international treaties to which Mexico is party while being sensitive to gender perspective, equality and the principle of non-discrimination, the principle of parity as an affirmative action, and the mainstreaming of intercultural perspectives in different areas (such as women's political participation).

Constitutional reform brought several transverse axes into all civil servants' actions: the implementation of gender, Human Rights and multiculturalism perspectives, in addition to the duty of all courts to apply the Constitution and international treaties to which Mexico is party to, based on the conforming interpretation and the pro personae principle. This implies that all authorities, in their areas of competence, have an obligation to promote, respect, protect and guarantee Human Rights.

That is, every court must make use of various international treaties on Human Rights and implement international standards for people's benefit, in the fashion of ILO's Convention No. 169 on Indigenous and Tribal Peoples, which deals with autochthonous groups and communities; for different subject matters there exists a different corpus juris.

In order to enable courts to directly apply international Human Rights laws, some concepts, such as equality and non-discrimination, must be thoroughly grasped. The concept of equality would be easily understood, if we stayed with Ulpian's definition: "give everyone his due". However, since there is a different context for each person, we must depend on comparisons with others to decide whether the principle of equality was infringed.

<sup>1</sup> CEDAW. (1992) General Recommendation No. 21 Equality in marriage and family relations. 11th session, para. eleven; General Recommendation No. 23 (1997) Public life and private life. 16th session. Para. 8; and General Recommendation No. 3 (1987) 6th session. Para. 3.

For example, a woman who has been raped and wants access to justice may be discriminated against (due to the amount of cultural stereotypes that still permeate among us), while a violated male is unlikely to find his access to justice impeded because of stereotypes.

In this regard, the Court explained that the principle of non-discrimination does not mean treating men and women in the exact same way, but awarding them the same considerations in recognition of their differences. Faced with this new panorama of interpretation of the non-discrimination principle, several "types of equality" have been defined, adding features to their study as time passes. The Mexican Supreme Court's Judicial Decision-Making with a Gender Perspective Protocol points out the differences between formal, material and structural (a.k.a. substantive) equality. Formal equality would only refer to the legal acknowledgement of equality, whereas material equality would also include the recognition of categories protected against discrimination; substantive equality, which constitutes the most important type of equality, would take into account both context and the intersectionality of categories for each individual case.<sup>3</sup>

It is important to note that the concept of equality, as a principle and a right analyzed according to the categories to which it belongs, must also take into account each person's context in order to achieve as much real and substantive equality as possible.

However, to achieve substantive equality, certain measures are needed to reverse discriminatory attitudes. Among these measures, one of the most important at a constitutional level has been gender parity in electoral matters in order to include women in the public sphere. Previously, the principle of gender equality was implemented as a quota law, that is, it had the nature of an affirmative action or measure to promote women's inclusion into Mexican politics.

Thus, from its historical position as an affirmative action to correct certain social behaviors, gender equality has become a compulsory constitutional principle in order to ensure the political and public participation of women. However, its application will change according to each particular case. For example, within indigenous peoples and communities its application shall seek the

<sup>2</sup> Supreme Court (August 2009) Gender Equity Program in the Supreme Court. The principle of non-discrimination and judicial ethics. "Gender Justice" Newsletter, No. 2. N / A; and Supreme Court (2013) Judicial Decision-making with a Gender Perspective Protocol. Pp. 33.

<sup>3</sup> Supreme Court (2013) Judicial Decision-making with a Gender Perspective Protocol Pp.34.

<sup>4</sup> International Labor Organization (June 27th, 1989) Article 8.2. Convention No. 169 on Indigenous and Tribal Peoples. Geneva, Switzerland.



same result, but the method used to reach this result will change substantially as the framework itself changes: this is where interaction and dialogue must coexist horizontally between systems to achieve parity of genre.

**The prohibition of discrimination and the achievement of equality before the law for both men and women, as well as the need to preserve their own traditions and institutions, has led various courts to create mechanisms to resolve differences between systems of rights, where these are not incompatible with fundamental national and international rights<sup>4</sup>.**

Thus, prior consultation is a mechanism to resolve these differences, however, we must be careful because the very principles of law, such as non-discrimination, are often questioned when this mechanism is used. That makes no sense, because some principles like these are jus

cogens norms that should actually permeate the system and never be doubted, considering that they are guiding principles of gender parity.

It can be concluded, then, that we must ensure a full understanding of the basic concepts for the application of Human Rights, gender and multiculturalism standards, as they are the basis for the application of principles such as non-discrimination, equality before the law and gender parity. Male and female civil servants should be sensitized and made aware of this in order not to misrepresent meanings when clarifying gender stereotypes, whether in a traditional or a non-traditional regulatory system. These principles are not susceptible to ponderation, but should be mainstreamed because they are basic tools for accessing justice. ■

*\*Marisol Aguilar Contreras: Law Clerk, Federal District Regional Chamber, Electoral Tribunal of the Federal Judiciary Branch.*



# Building female citizenship through parity

By Magistrate Janine Otorla Malassis\*

Women's citizenship has been a work in progress for over half a century. The demands of civil society and citizens to achieve substantive equality, both in the private and the public spheres, have begun to make themselves visible thanks to the political will of the Powers of the Union and the implementation of measures to promote -not only de jure but de facto- equality between women and men.

First gender equality, then gender parity, have been hot topics in recent years, becoming part of political and social modernity, a palpable reality largely brought about by the performance of Judges.

One wonders whether the protection and promotion of the political participation of women is part of the logic of affirmative action or whether it is the exercise of a human right. Personally, I am of the opinion that this increased female participation is a human right.

Indeed, affirmative action is a measure that aims to protect the rights of minorities or vulnerable groups; groups women do not belong to as females account for over 50% of the population, i.e. more than half of society. It is within each gender that affirmative actions geared toward young, indigenous, migrant or any another disadvantaged group can be found.

I have argued that gender quotas, understood in a percentage of less than 50%, are actually unconstitutional, because they violate Article 4 of the Constitution, which proclaims equality between women and men.

Therefore, I believe that greater participation of women in political deci-

sion-making is part of the respect for the human right of equality between women and men.

**Laws grant rights and impose obligations. While all must respect legal rule, the fact is that in the field of women's electoral and political rights, Judges have had to intervene to give laws their full force, and thus guarantee the right to equality between women and men.**

In recent years, the Electoral Tribunal of the Federal Judiciary Branch has fully assumed this role, issuing various guaranteeing criteria, which have strengthened women's political participation. For example, it has determined that formulas of candidates for elected office must be composed of contenders of the same gender, so that access to these positions becomes a reality for women. The Tribunal also ruled that in the integration of electoral administration bodies, the principles of gender equality and alternation in the presidency should be respected. In the

field of political parties, it has concluded that their bodies should be integrated on the basis of gender parity.

With these decisions this federal electoral court has strengthened, in the political sphere, respect for the human right to equality, and achieved a better balance in our society's political representation.

In this sense, political life has consummated several substantial changes, so that equality is not only met formally and materially but, as far as possible, has been geared to help women's political participation find special formulas for real and substantial integration. By "substantial changes" I refer to those Electoral Tribunal judgments that struck our political life transcendently on the first application of the so-called gender quotas, with the now familiar "antjuanitas" ruling following the constitutional reform of the principle of parity in 2014.

During 2013, in the Federal District Regional Chamber of the Electoral Tribunal, we also handled a gender issue in the state of Tlaxcala, which led us to set criteria for the election of Congressmen, Town Halls and Community Presidencies.

In the case of candidates for Congress by both principles, the initial problem was that their final number was uneven. The solution implemented in order to achieve real arithmetic parity was to integrate the last formula with candidates of different gender.

It bears mentioning that in this matter there was much debate as to whether our decision implied not applying the existing case-law to create electoral formulas integrat-

ed with gender parity in mind. On the contrary, our determination sought a way to achieve real parity. If we had indeed applied the existing law, this would have automatically meant that one gender would be overrepresented.

For the election of local councils, it was estimated that in choosing proportional representation and relative majority candidates (Municipal Presidents-Mayors- and Trustees) the gender quota must be adhered to, with the gender of Municipal President candidates as an acceptable starting point. After that, the modus operandi would be to proceed alternately.

Indeed it was even decided that gender parity should not only be vertically determined in every formula, but also engineered horizontally as to guarantee that half of Tlaxcala's elected positions should be contended by a formula that included candidates of the same gender.

With all these legal criteria, not only has progress been made on gender parity, but we have also gained constitutional and legislative reform by introducing new rules that favor women.

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**The electoral reform of 2014 established the constitutional principle of gender parity in the nominations for federal and local legislators. Local legislatures adapted their rules to this reform, but none extended this principle to the nominations for local council posts.**

The first application of the parity rule at both federal and local levels was the 2014-2015 electoral process. The first federal entity to extend the principle of vertical and horizontal parity to the selection of Municipal President candidates was the state of Morelos, under consent of the administrative authority. The Federal District Regional Chamber confirmed the irremissible quality of this rule, also determining that there was no room for any exception in compliance. The Superior Electoral Court subsequently upheld this ruling.

The analysis conducted by the Chambers studying international standards on equality and non-discrimination and the defense of the rule of alternation (based on the principle of parity, but that would not make sense if only parity were considered). In fact, it has never been in doubt which principle is more important, because both could be reconciled.

These judicial resolutions were the beachhead that allowed gender parity to become both a vertical and a horizontal reality in the sphere of Town Halls. From these

historical resolutions, other States, "hit" by legal sentences, applied parity to municipal position nominations in this electoral process, thereby allowing women equal access to all elected posts.

This intervention of the electoral Judges brings us closer to the concept of democracy, and will have a permanent effect when men and women share political decision-making and when the interests of both genders are equally taken into account (1997, CEDAW).

Thus we can consider that the Mexican government has made great strides forward as to women's political rights, removing barriers so that women can fully participate in the country's public sphere. Let us recall that the CEDAW Committee had previously criticized Mexico on the gender parity of its electoral formulas regarding the political participation of women after the reforms of 2008, calling for other Mexican states to adopt these constitutional provisions. However, the Committee also stressed that these reforms could have large gaps that could cause non-compliance with gender quotas and therefore, with the principle of parity in women's political participation (CEDAW, 2012).

It is in this regard that the political will on the implementation of international standards has its peak in the latter decisions that impact on women's fundamental rights, such as the right to political participation. The right to be elected into office takes place through processes that are fundamental to achieve equality between men and women. Given a vacuum of the law, only a Judge can restore the full exercise of Human Rights to citizens.

Equal representation of both genders in decision-making bodies brings us much closer to an egalitarian democracy where all voices are heard and all are equally represented. In fact, it is only this way of representation that can lead to the construction of a society in which everybody's rights are reflected.

Legal criteria and case-law have advanced not only the concept of women's political participation, but, and this is extremely important, the content of the norm; in a way, we could say that it is the individual Judge that creates rights.

In sum, I would like to conclude by saying that the various criteria on gender that the Electoral Tribunal has held have contributed to increasing female access to elected office; there has been an evolution

in our country as to gender; and that we must continue to question the intensity of that evolution.

Obviously, much remains to be done to achieve equality, but the objectives already attained belong to us all and must therefore be fully included into our political and legal practice.

Certainly, it is pitiful that fully into the 21st century, more than 60 years after Mexican women were given the right to vote, courts are still debating their right to participate in political life on an equal footing with men. Nevertheless, we must recognize that without this judicial work, women's political rights would not have moved forward towards the achievement of real equality.

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**\*Janine Otalora Malassis:** *Magistrate President, Federal District Regional Chamber, Electoral Tribunal of the Federal Judiciary Branch*



# WHY DO WE NEED MORE FEMALE JUDGES?

We live in a time when the value of equality is becoming more and more important, particularly as regards the participation of women in every sphere of social life.

By Héctor Fix-Fierro\*

The Federal Judiciary, however, is a place where the presence of women has advanced towards equality at a very leisurely pace. The reflections of those who have examined this question lead us to three main arguments on the reasons there should be more women in the Judiciary:

- **Numerical equality:** society consists almost equally of men and women, so the Federal Judiciary should reflect this social composition in all its bodies and levels.

- **Differences in case judgment:** women address jurisdictional issues differently and provide a “different voice”, generally more advanced, in judicial resolutions, particularly when it comes to cases involving gender.

- **Diversity:** we live in increasingly pluralistic societies, so that the presence of women and other groups traditionally excluded from the responsibilities of government is a necessary recognition of this diversity, helping maintain and enrich it.

These three arguments do not necessarily coincide with each other. For example, if the second argument is true, perhaps there should be more women than men in the Federal Judiciary. The third argument seems to rule out the possible superiority of women in the Judiciary, but the gender parity required by the first argument doesn't necessarily follow. The question that arises, then, has to do with the validity of these arguments.

Our society uses specialized research to settle questions such as these. Social sciences have developed the methods and tools of observation required to determine (with any degree of confidence), if the claims put forward in a discussion are grounded in social reality. Unfortunately, sometimes the

results are contradictory or inconclusive, and there is always space for ideological or evaluative judgments. In addition, this research is based on assumptions that are not always explicit and have an impact on the scope and the acceptance of its results.

However, social research is indispensable for well-informed and grounded public policy debates. Given the limited length of this article, we shall now mention the premises and the overall results of some studies, merely as exemplary values, which can support the arguments noted above.

The first argument springs from the premise that a society made up of nearly equal numbers of men and women should be reflected thus in all social spaces. Therefore, research should explore whether parity has been achieved in public institutions (for instance, the Federal Judiciary) and even in private enterprise (such as company bodies), the reasons why this has not happened and therefore, what public policy measures could remedy inequality. Studies on this issue typically gather and analyze information on the presence of women in judicial positions, while also examining the factors that favor or impede parity.

An example of such a study is Anne Boigeol's (2013) on the composition of the French Judiciary. Boigeol shows that



the French Judiciary is one of the most feminized in Europe: in 2009, women held 61% of judicial positions. Of course, this global ratio should be carefully differentiated: women occupied 74% of lower court positions and 76% of juvenile court posts, but only 34% of Court of Cassation positions. The “glass ceiling” still persists: the appointment of President of the Court does not reflect the numerical majority of women, but remains firmly in male hands. Why is there a female majority? Boigeol attributes it to several factors: currently, over 60% of law graduates are women and the open competitive examinations for admission to the Judiciary have leveled the playing field for females. However, it should be noted that the feminization of judicial office reflects its unattractiveness in relation to other ways of practicing law (as prosecutors, lawyers, Notaries Public and even legal scholars, where men predominate). In other words: increasing feminization corresponds to lower hierarchical levels of the profession in question, so that gender parity or even the numerical superiority of women still does not imply true social equality.

The second argument takes equal rights and opportunities for men and women for granted, but accepts that gender differences are real and have significant impact, which can be seen in the Judiciary. A premise such as this requires sophisticated studies to measure and explain the differential effect of the incorporation of women into Courts. An example of this type of study is Belleau and Johnson’s paper (2005) on the first women in the Canadian Supreme Court. For example, between 1982 and 1999, the first three female Judges on the Court, who made up only 11% percent of Magistrates, drafted almost 40% of the dissenting opinions. While denying that this reveals a female “essence”, the authors believe that this can be explained by the characteristics and experiences shared by these women, but, above all, by the need to assume a different position to other Judges’ and the discursive practice of the decisions that form the core of judicial function.

Peresie’s (2005) is another sophisticated study on the behavior of women in American Federal Appellate Courts. The author shows that at least in two types of cases (those concerning discrimination or sexual harassment), there is a significant correlation between gender and a Judge’s individual vote. Not only is there a greater likelihood that women will vote in favor of the applicant, but also the mere presence of female Judges increased the likelihood that male Judges would vote similarly in the cases analyzed.

The third argument is the newest, the most complex and perhaps the most convincing, since it clarifies the idea of women being different or better in some judicial

## The second argument takes equal rights and opportunities for men and women for granted, but accepts that gender differences are real and have significant impact, which can be seen in the Judiciary.

function areas, and instead highlights how important it is for the Judiciary, in settling and pacifying social conflicts, to reflect the plurality and diversity of society as a way to increase its effectiveness and legitimacy. The idea is not to merely incorporate women for being female, but to include them as people who share characteristics with other groups (race, religion, geographic origin), thus contributing to reflect actual social diversity. In other words, the arguments of “parity” and “difference” are no longer sufficient to underpin the need for more female Judges, but must more deeply address the structural and symbolic discrimination against women in the Judiciary. An example of this interpretation is Feenan’s study (2008) on female Judges in Northern Ireland, which was conducted via surveys through questionnaires and interviews.



The studies mentioned do not provide a complete and compelling vision of our subject, but could serve as important examples of problems that are studied elsewhere. Unfortunately, in Mexico there seems to be a lack of academic studies on the performance of women in judicial positions, although there have been some efforts to investigate some of the problems that affect their relationship to the law enforcement apparatus (Saucedo / Melgar, 2011). Hopefully, this summary will at least stimulate a willingness to study the many unexplored aspects of Mexico’s judicial sphere.

*\*Hector Fix-Fierro: National System of Researchers member and full time researcher at UNAM’s Legal Institute.*

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# Human Trafficking: a social malady affecting Mexico

Human trafficking is rooted historically, and is closely linked to wars and slavery. Women and girls have been its main victims, bought and sold for sexual exploitation and forced labor. Today, this crime also includes organ trafficking and illegal biomedical experimentation. A common practice for the recruitment of victims is developing emotional bonds with them, in order to facilitate control and domination.

This criminal offense involves various actions, such as the recruitment, harboring or receipt of persons through various means: use of force, deception or misfeasance. Trafficking occurs nationally and internationally, and it can be connected to other international crimes such as drug or weapons trafficking. Human trafficking operates through criminal networks and financial flows which hinder effective answers by the State. Mexico is a country of origin, transit and destination for trafficking victims. ■

**Source:** Created by the Directorate General of Human Rights, Gender Equality and International Affairs on data provided by the Federal Judiciary Council's Directorate General of Judicial Statistics and its Integrated Dossier Follow-up System (2007-2015). We also appreciate the support of Social Service workers Serrat Barrios Rosa and Adriana Sosa Solis.

## FEDERAL SENTENCES ON HUMAN TRAFFICKING (2007-2015)

From 2007 to 2015, 18 judgments and 1 Writ of Constitutional term have been issued by Judges and Federal Judges dealing with Human Trafficking. 10 of these judicial resolutions were passed based on the 2007 Law to Prevent and Punish Human Trafficking and 9 on the basis of the new General Law to Prevent, Punish and Eradicate Human Trafficking and Protect and Assist its Victims (2012).

**20 months** was the average time lapse between consignment and sentencing in Human Trafficking cases from 2007 to 2015

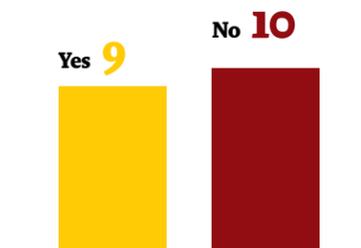


\* Time lapsed from consignment to sentencing.

1 This sentence does not specify the date of consignment as it is a criminal proceeding without any arrests to date. Thus, time lapse begins upon completion of the warrant.

2 The Yucatan resolution is actually a Writ of Constitutional Term. That means it is not a final decision but an intermediate one, which establishes the existence of a crime.

## FEDERAL SENTENCES ON HUMAN TRAFFICKING WITH CONVICTIONS TO DAMAGE REPARATION (2007-2015)



## REPARATIONS IN FEDERAL SENTENCING FOR HUMAN TRAFFICKING (2007-2015)

Almost half of Federal sentences for the crime of human trafficking included payment of reparations to the victim. In 6 out of 9 sentences, the trial Judge only provided for reparations for the victim or offended party ("quantifiable upon execution of judgment"), without specifying an amount. This means that the Judge in charge leaves this decision to the Public Prosecutors' Office, the victim and the defendant's defense. In the sentences in which the defendant is condemned to pay reparations

the payment of psychological treatment sessions for the victims must be highlighted. The above becomes even more relevant when dealing with a crime such as child pornography, which according to the Law does not affect property or assets (since it does not generate a material outcome), thus precluding the Judge from ordering monetary compensation.

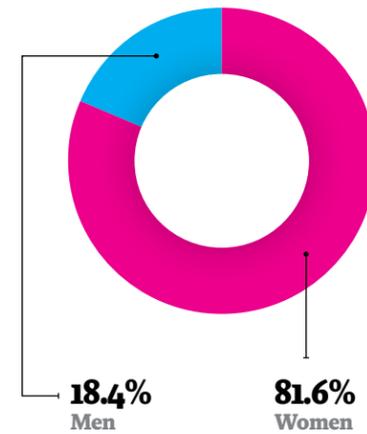
However, in order to achieve maximum protection of the fundamental rights of children and adolescents, the trial Judge recognized the existence of psychological harm and demanded that the perpetrator pay for the corresponding specialized treatment.

## SENTENCES ISSUED BY FEDERAL COURTS (2007-2015) IN CRIMES INVOLVING HUMAN TRAFFICKING

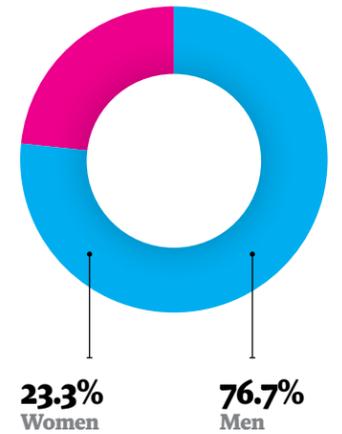
Crimes	Recorded crimes	Sentenced crimes
Sexual exploitation	13	12
Forced labor	4	4
Child pornography	5	4
Organized crime	6	4
Possession of cartridges / weapons for the exclusive use of the Army, Navy and Air Force	2	2
Pandering	1	0
Drug-related crimes	2	2
Corruption of minors	2	0
Aggravated deprivation of liberty	1	1
Rape	1	0
<b>TOTALS</b>	<b>37</b>	<b>29</b>

## PERSONS INVOLVED IN HUMAN TRAFFICKING FEDERAL SENTENCES (2007-2015)

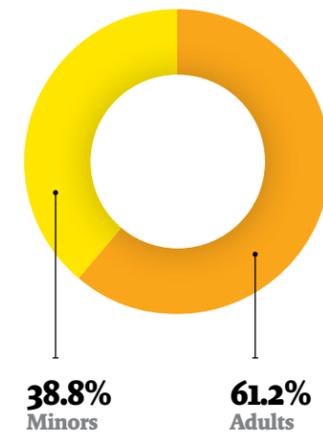
### VICTIMS' GENDER



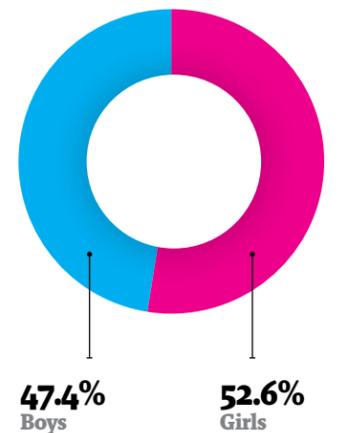
### ACCUSED PERSONS' GENDER



### VICTIMS BY AGE BRACKET



### VICTIMS BY GENDER



### VICTIM'S NATIONALITY



**Interview | Luis María Aguilar Morales**  
*Chief Justice of The Mexican Supreme Court  
and Head of the Federal Judiciary Council*

# A HERITAGE OF STRUGGLE AND EQUALITY

Born in Mexico City in 1949, he graduated from UNAM's Law School. His career has spanned both the judicial and administrative arenas of the Federal Judiciary. He has been a Supreme Court Justice since December 1st, 2009. As of January 2nd, 2015, he became Chief Justice of the Mexican Supreme Court and Head of the Federal Judiciary Council.

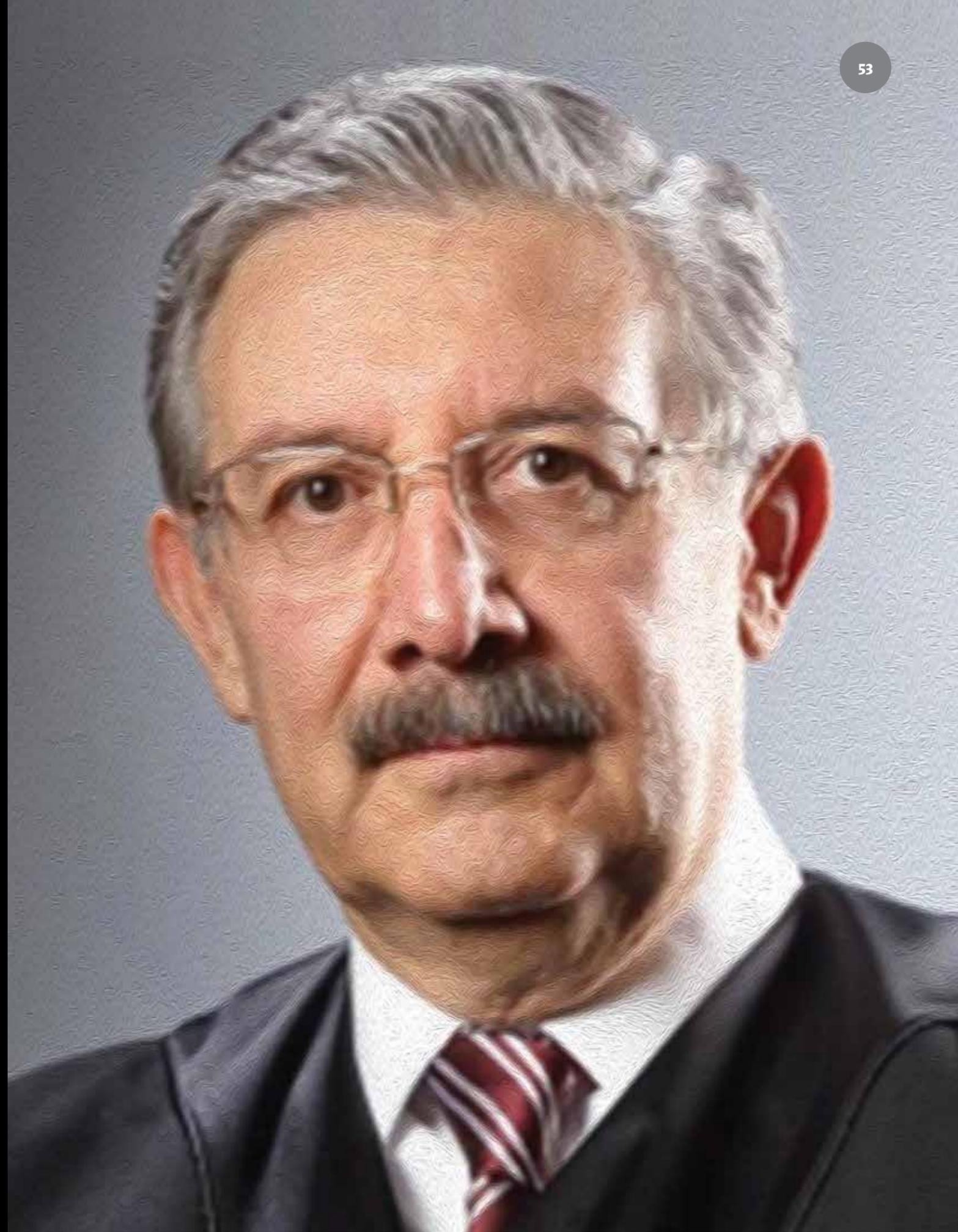
**Throughout your career in the Judiciary, what has been your vision and perspective on women's incorporation into this public service?**

I started out as an administrative officer, also known then as a shorthand typist. We had many female staffers, as traditionally there were many women doing support work. From there on, I began to interact with a large number of women. However, this number decreased when I started working professionally as a Clerk. Eventually I got acquainted with a couple of female coworkers in this area. Thanks to them, I discovered a different way of looking

at this job, a way of perceiving it as a whole, without centering only on the resolution of issues. Men in this area have a radically different point of view.

As I progressed in the Judiciary and became a District Judge, I looked to female coworkers for support. Most of the women I worked with then are already Circuit Judges, including some who started as Actuaries at the same time I did; indeed, some of them are Magistrates. At that time, there was a figure in court, the First Clerk, who could replace the Judge in his/her absence. [This person] was responsible for coordinating the court in lieu of the Judge, to receive claims and see if they merited admission.

Photoart: Daniel Esqueda Media / Photographs: Courtesy of the Supreme Court



My first Clerk was a woman: Altai Soledad Monsoy Vazquez, who unfortunately passed away too soon. I did have several fellow Clerks who were also women. Several made their careers in the Judiciary, such as Rosa Elena Rivera, now a Judge in Colima.

Subsequently, as Circuit Judge, although incumbents do not have as large a number of Clerks assigned to them, I promoted several women who were accompanying me in this task. Some still work here at the Office of the President of the Supreme Court, as does Lety Guzman, an excellent Clerk.

When I became a Supreme Court Justice and a member of the Federal Judiciary Council, I got to know Ursula Hernandez, who is now the President of the Substantiating Commission (and a valuable asset), in presentations. Specifically as Justice, I have fifty percent of women and fifty percent of men in presentations.

I have tried to get women in charge when dealing with issues that require more analysis and care, because they have a very rational mind. In reaching a goal, they are mindful of everything that surrounds a case. In female co-workers I have found a different perspective, which perfectly complements my masculine point of view. Without this feminine viewpoint, my vision would not be sufficient to grasp and resolve an issue.

In my administrative tasks as Chief Administrative Officer and Federal Judiciary Councilor, women have been instrumental in my work, because I have had female coworkers at the most important positions, such as Rosita Vizconde, who is now in the Executive Secretariat for Administration. She worked with me at that time at the Federal Judiciary Council. Also, when I was the Chief Administrative Officer, she practically held my hand on everything related to budgeting, she taught me everything I needed to know about that area.

**When counting the proportion of female and male Judges and Magistrates, there is still a very large difference. Since the natural incorporation of more women seems to take longer than implementing concrete actions to promote inclusion, exactly what actions should be undertaken?**

I proposed exactly that in my working plan for the Presidency - which I offered to the Full Court. One of the most important actions is that we must recognize that there are social roles which are difficult to modify... conditions, shall we say, that have been historically assigned to women and that limit them even without meaning to. But to counterbalance these obstacles or at least provide women with an equal footing, we must give them elements, for example, without forcing them to abandon their role of family caretakers (a role that actually corresponds to both men and women). The idea is not to relieve them of the responsibilities of motherhood, but instead to give them tools that can compensate for these differences that society or social roles have established, and also promote new caretaking roles for men.

How can we, as an institution, favor these actions? Helping women actually access Judiciary posts and granting them favorable conditions as to contests, contest locations and allocations assigned, acknowledging the difficulties that women have with their particular family problems, trying as far as possible - which is always hard - to convince childcare centers to help working mothers meet family needs.

In a way, all this also involves changing men's behavior, men's consciousness (both in male coworkers and in spouses or couples who work in the Judiciary) to make them understand that women in the Judiciary are playing a professional function as human beings. Men must understand that they also have to play a different role and contribute as individuals, and not just as members of our institution.



**Luis María Aguilar Morales,**  
Chief Justice of The Mexican  
Supreme Court and Head of  
the Federal Judiciary Council

“  
**I have tried to get women in charge when dealing with issues that require analysis and care, because they have a very rational mind.**  
”

I am committed to all of the above, but also to making men realize that this is a matter of conscience. In relation to their female Clerks and co-workers, male Judges and Magistrates need to understand the particular situation of women and the social obstacles they face, so that, without affecting their job, women are granted the conditions they require. These are compensatory measures to break that socially generated imbalance in the status of women. I am convinced of the aforementioned elements and I think this is one way we can promote greater access for women.

**On a more personal note, what could you tell us about your grandmother's influence on your life?**

I have had the opportunity to talk about this at different times, especially in an event with farmers where a commitment was signed between Mexico's Secretariat of the Interior, the Attorney General's Office and the Federal Judiciary, because I am very, very proud to know that my family has played at least a small part in the advancement of Mexican women, thanks to my grandmother, Amalia.

Of indigenous origin, a native of the town of Ticul in Yucatan, she made something of herself with the help of family friends. My grandmother asked them to take her on as a maid so she could study. Thus my grandmother helped with housework and also worked as a nanny for a well-off family. With her friends' support she went to Merida and was able to finish her education in the Teachers' Training College. With that she reached her full potential and became, in a way, the leader of her family, her cousins, her nephews, her

siblings. As the only family member with a college degree, she always helped everyone.

She met my grandfather, Luis Maria Aguilar, who was a lawyer and a Notary Public. They formed a family, but unfortunately my grandfather died young, and my grandmother was left all alone with three little children... However, being a teacher, she had the opportunity to become the principal of the Andres Quintana Roo school in Merida. Thanks to this school she managed to survive both economically and physically: she and her three children (my father, my aunt and my uncle) lived in a small room in the garden, next to the patio.

Personally, my grandmother grew as a person, and surely she recognized the limitations faced by women during the early twentieth century. As soon as she had a chance to turn her principles into actions, my grandmother joined the Socialist Women of Yucatan Society as Prosecretary. From that point on, she started fighting for women's right to vote and female emancipation (incredible as it might sound, during that time women could not even sue someone without their husband's permission)... my grandmother was a pioneer.

Sometime later, she moved to Mexico City and, with my father's help (by then he was already a lawyer) created a new school, also called Andres Quintana Roo. This was a private, not a public, school, so years later it was sold to a former student, teacher Agustín, who has now passed away. But the school is still there, in the Los Alamos neighborhood.

It is very, very gratifying to know that a part of my family, my native Mayan grandmother, succeeded at wanting to pursue a higher education and improve both her life and other women's (which she did by joining that socialist women's society).

I have a commitment to her and also to my maternal grandfather of doing whatever I can for Mexico and its society. I love to do so with the best possible attitude.

GUANAJUATO

# Against sexual orientation discrimination

The Eleventh District Court of the State of Guanajuato, via its incumbent Judge Flores Muñoz, recently ruled on sexual orientation discrimination and the suspension of same-sex marriage prohibition.

By Judge Mario César Flores Muñoz\*

**Issuing Court:** Eleventh District Court of the State of Guanajuato

**Incumbent:** Mario Cesar Flores Muñoz

**File:** "Amparo" Trial 202/2015

### THE SENTENCE

On March 23rd, 2015, Mario Cesar Flores Muñoz, head of the Eleventh District Court in the State of Guanajuato, located in Leon, Guanajuato, conceded an immediate suspension of certain acts of authority that allegedly violated rights protected under the Mexican Constitution in "amparo" trial 202/2015. In this case the "amparo" was promoted by two male persons who went against the Civil Registry's refusal to unite them in marriage, and against the rule of Guanajuato's Civil Code that established that marriage might only occur between a man and a woman. Flores Muñoz granted the necessary measures to immediately cease the acts of discrimination suffered by the plaintiffs on account of their sexual orientation: Judge Flores Muñoz ordered the authority to issue a new ruling on the plaintiff's marriage application but without limiting itself to the rule which stated that marriage was only possible between a man and a woman, not between people of the same sex.

### BACKGROUND

In the Eleventh District Court of the State of Guanajuato, "amparo" proceedings were filed by two male persons who appealed Articles 144 of the Civil Code and Rule 72 of the Civil Registry, both legal regulations of this state, due to their application in a file by an officer of the 15th Civil Registry Marriage Hall, in Leon, Guanajuato, which

denied the petitioners' request for marriage on the basis that in those provisions that legal figure was defined as a union between a man and a woman; that is, the petitioners could not be married as they were the same sex.

### TRIAL

The incumbent Judge of the Eleventh District in the State of Guanajuato granted an immediate suspension to two males who promoted an "amparo" against the file in which an officer of the 15th Civil Registry Marriage Hall, in Leon, Guanajuato, denied the marriage application of the complainants based on Article 144 of the Civil Code and Rule 72 of the Civil Registry of this federal entity; the officer considered that these provisions defined marriage as a union between a man and a woman.

The head of this court said that on several theses, the Mexican Supreme Court's First Chamber has established that the limitation to same-sex marriage is founded on criteria that violate the principles of equality and non-discrimination contained in Article 1 of the Mexican Constitution.

The Judge believes that, as with the acts referred to in Article 22 of the Constitution, discrimination on grounds of sexual orientation is expressly prohibited in paragraph 1 of the Mexican Constitution, so that against such discrimination immediate suspension in the amparo operates as for the acts provided for in Article 22, since that measure seeks to prevent and avoid the consummation of acts which, by their unlawful object, are by themselves null and upsetting to the order established by the Mexican Constitution.

The Judge pointed out that the order to cease the alleged discriminatory acts should not wait for the "amparo" proceedings to conclude, since that would provoke (without any rational justification) that during the period of time necessary to process and resolve the trial, acts of discrimination expressly forbidden in the Mexican Constitution and cataloged as such by the Nation's Supreme Court would continue.

He stressed that the mere existence of the substantive right to non-discrimination on grounds of sexual orientation, made immediate suspension the appropriate



Illustrated by Angel Sanchez

measure according to the pro persona principle and the progressive protection of existing fundamental rights, so that the bodies of constitutional control should avoid formalities and attend not only to those cases expressly provided for in the "amparo" proceedings as the origin of the suspension, but extend the use of this instrument to other acts also prohibited in Mexico's Magna Carta, as happened with those listed in Article 1.

### EFFECT OF THE RULING

In the order of admission under demand, the federal Judge highlighted that, pursuant to the immediate suspension, the Civil Registry officer had to reconsider the complainants' marriage application without regarding the limitations of the rules that stipulate that marriage is only possible between a man and a woman, not between people of the same sex. In essence, the Judge found that the current constitutional scheme forced a pronouncement compatible with the constitutional rule of law that seeks to deal with all citizens with equal consideration and respect.

### RELEVANCE

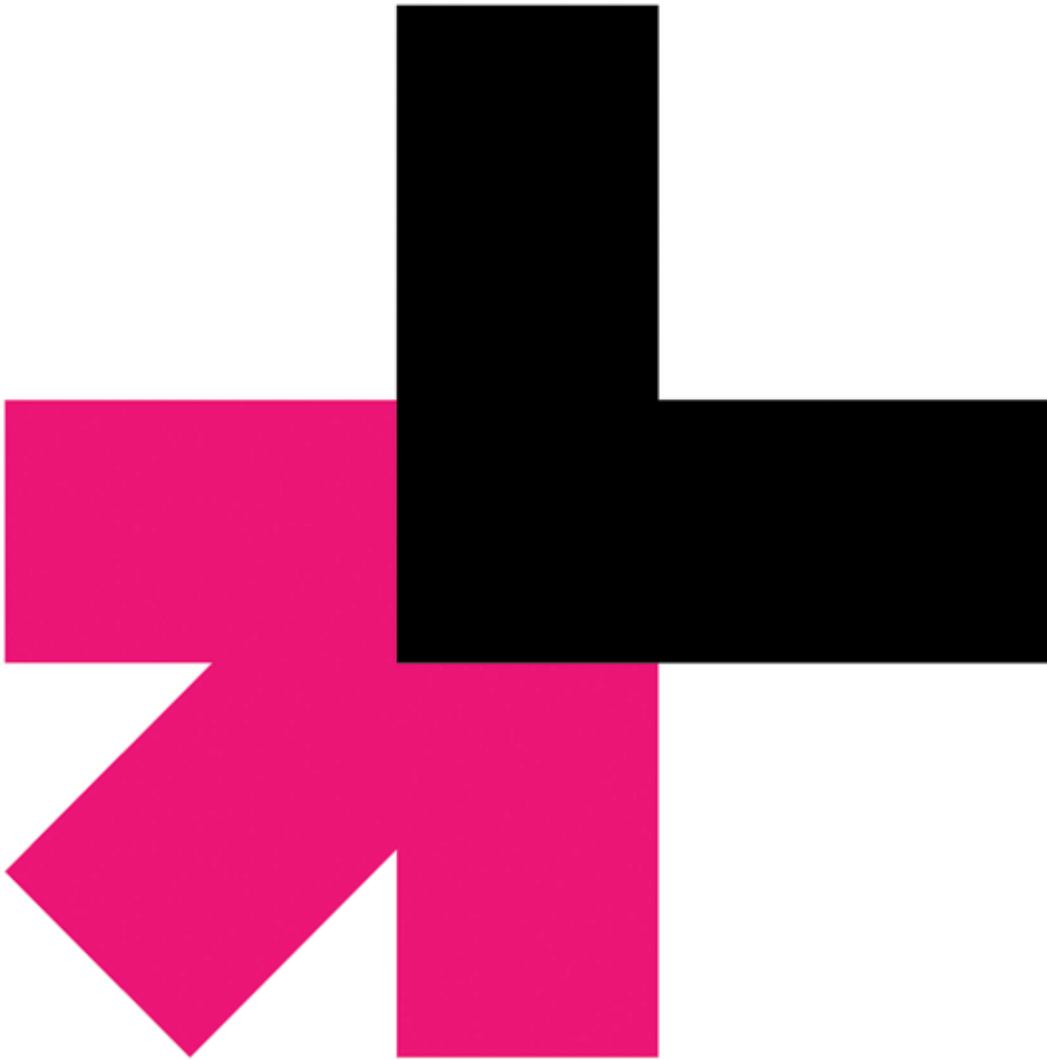
The immediate suspension sought to avoid the continuation of discriminatory acts (due to their sexual orientation) that affected the plaintiffs, which are expressly forbidden by Article 1 of the Mexican Constitution. In this way, immediate suspension becomes an agile instrument within "amparo" proceedings, to safeguard the right to not be discriminated against on account of sexual orientation, which has already been amply acknowledged by the Mexican Supreme Court.

### INNOVATIVE CRITERIA

An extensive interpretation of immediate suspension, not only against acts foreseen in Article 22 of the Mexican Constitution and Article 15 of the "Amparo" Law but also against acts prohibited by Article 1 of the Mexican Constitution (especially regarding discrimination due to sexual orientation), nimbly responds to the need to safeguard the fundamental rights that the "amparo" is designed to protect.

1) The "amparo" is a trial, whereby a person asks for the Federal Judiciary's protection against an act of authority (unilateral, imperative and coercible) that violates rights protected under the Mexican Constitution.

**\*Mario Cesar Flores Muñoz:**  
Eleventh District Court of the State of Guanajuato Judge



# HeForShe

Movimiento solidario de ONU Mujeres  
para la igualdad de género