"It is time that we all see gender as a spectrum instead of two sets of opposing ideals."
Emma Watson / Actress and UN Goodwill Ambassador on Gender Equality

FEDERAL JUDICIARY COUNCIL

Igualdad

MAY-AUGUST 2015 | YEAR 02 | NUMBER 06

Gender Equality Principle: an analytical sample of national and international criteria.

DOMESTIC LABORERS' WORKDAY

According to INEGI, this kind of labor is on the rise, and already accounts for 2.3 million Mexican workers, most of them female._14

Transforming policy: gender parity in access and permanence in elected office

Table of contents

Equity or Equality?

In this issue, we approach the subject that gives our magazine *Igualdad* its name. When and why do we advance from "equity" to "equality"? In Gloria Ramirez's article, this author reminds us about the recommendation made by the committee of experts of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, for its English acronym in English) to the Mexican government in 2006:

>> The Committee notes with concern that although the Convention refers to the concept of equality, State plans and programs use the term "equity". Said Committee is also concerned that the Mexican State might understand equity as a preliminary step to achieving equality. >>

<< The Committee requests the Mexican State to note that the terms "equity" and "equality" convey different messages and that their simultaneous use can lead to conceptual confusion: the Convention's aim is to eliminate discrimination against women and ensure factual and legal equality (in form and substance) between women and men: the Committee recommends that the Mexican State, in its plans and programs, consistently use the term "equality" >>.

Clearly, according to the opinion of the CEDAW Committee experts, as well as internationally, equity can be used as an excuse not to recognize and guarantee the right of all people (not just women) to equality. For his part, Magistrate Juan Carlos Silva Adaya goes one step further by proposing that this transition towards equality between women and men is a task in which those responsible for enforcing the law can and should participate actively in. Thus, he argues that Judges of either gender have the authority to establish the conditions necessary for de jure equality to become de facto equality.

In this issue, we journey through the judicial discussion about equality with an essay contributed by the Mexican Supreme Court, which tells the story of its collaboration with Women's Link Worldwide for the preparation of a very special document, The principle of equality in compared jurisprudence: an analytical sample of international and national standards.

But equality is sought not only between women and men. The contributions of Magistrates Elba Sanchez Pozos and Alejandro Sosa Ortiz to this issue address a particular group of women who are many times forgotten and discriminated against: domestic workers.

Equality is a "key" right, meaning that it grants access to other rights. Hopefully this magazine, named precisely for such an important Human Right, can contribute to equality becoming a reality rather than remaining a right or principle.

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

Ilustrated by: Christopher Cisneros

Directory

PODER JUDICIAL DE LA FEDERACIÓN
Consejo de la Judicatura

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

Edited by | DGDHEGAI

Igualdad is a free quarterly publication of the Federal Judiciary Council through its General Directorate of Human Rights, Gender Equality and International Affairs, located in Carretera Picacho-Ajusco, Number 200, Jardines de la Montaña, Tlalpan 14210, Mexico City.
Email: dgdhegai@correo.cjf.gob.mx

Gender perspective in vulnerable women

CRIMINAL FILE 61/2011

SUMMARY

The case's background is that the accused female was caught carrying drugs in the socks she was wearing inside a cubicle in a men's prison, as she was about to visit one of the inmates. However, the accused woman argued that just a few moments before, in the area surrounding the prison, a group of men addressed her and told her they were holding her husband, who was deprived of his liberty at the detention center. She was forced to smuggle the drugs that were discovered on her person into this prison under threat that failure to do so would result in the murder of her husband. Thus, she was taken to a toilet, where the aggressors tried to force her to place wrapped narcotics inside her vagina. The accused placed them in her socks instead but told the aggressors that she had complied with their order.

The assailants told her that a female member of their group would wait inside the prison in ladies' room number three, to receive the drugs the accused would hand over. However, upon being frisked by security personnel,the accused woman burst into tears and told a female custodian what had happened, voluntarily handing over the drugs. Subsequently, the accused woman was arrested, having no news of her husband during the period she spent at the Public Prosecutors' disposition. Due to these facts, the woman was sentenced to four years, nine months and ten days in prison.

JUSTIFICATION

For its part, the resolution of the matter was prepared based on gender perspective, since the accused female's acquittal was due to, apart from the expert reports on her personality which identified her situation as vulnerable because of her gender, the duly noted fact that a discriminative phenomenon that confirms the absence of conduct underlies the whole case. It is undeniable that there has been an increase in the female incidence of drug related crimes, derived from a dependency relationship with a family member addicted to these substances and thus requiring access them despite of being an intern at a prison.

Given the above, one cannot ignore that depriving a person of freedom involves damaging the habits of their family, a family that with human solidarity comes to visit and comfort them through gifts of clothing, food, appliances, media devices, and so on. Thus, women are at a disadvantage compared to male visitors, who do not always lend themselves to this type of "collaboration", since females are still facing a prevailing traditionally male system that oppresses them, an oppression derived, many times, from the power exerted over them to put them at the orders and under the control of others, even if this "others" are women themselves (women who make use of this eminently masculine stereotype -and who are sometimes victims of their own male partners, or act in self-interest-) who use this system in their favor, achieving their ends at the expense of another female or vulnerable individual. ■

Women´s greater vulnerability (in relation to men's), makes it more likely that they will be forced to commit crimes which they would not undertake of their own accord.

Application of gender parity principles in town hall conformation

LEGISLATIVE BACKGROUND

On June 27th, 2014, Tierra y Libertad, Morelos' official State gazette, published decree number 1498, which reformed, derogated and added several new dispositions to the Political Constitution of the State of Morelos.

On June 30th, 2014, official gazette Tierra y Libertad published the new local Electoral Code, which went into effect annulling the previous Electoral Code for the State of Morelos.

BACKGROUND ON THE CONTESTED ACT

On January 16th, 2015, Morelos' Electoral State Council issued an agreement identified with the code IMPEPAC/CEE/0005/2015, through which it established the criterion for the application of gender parity in the creation of candidate lists for the elected offices of [Town] Mayor, Proprietary and Alternate Trustees.

Unhappy with its contents, Partido Accion Nacional (National Action Party), Partido de la Revolucion Democratica (Democratic Revolution Party) and Partido Socialdemocrata de Morelos (Social democratic Party of Morelos) promoted appeals, an action that caused the local Electoral Tribunal to confirm the contested act, arguing that, in favor of gender parity, alternating between members formulas in a candidate list should include not only the list of candidates for City Councilors, but also the formulas for Mayor and Trustees.

Against this decision Partido Accion Nacional, Partido Socialdemocrata de Morelos and Partido de la Revolucion Democratica, started diverse constitutional electoral review lawsuits, which were turned over to the Distrito Federal Regional Chamber, who in turn decided to modify the contested sentence.

REGIONAL CHAMBER CONSIDERATIONS

The Regional Chamber in charge addressed in its analysis what it called the misapplication of the gender parity principle to the lists of candidates for City Councillors and in that context considered whether such a postulate was observable with regard to that list of candidates. It also analyzed whether it should also de considered applicable to the candidate formulas for Mayor and Trustees.

In the relevant part of its analysis, the Regional Chamber held the following: "In keeping with public authorities' described obligations in electoral matters, Article 41 of the local Constitution establishes gender parity as a guiding principle; i.e. equal treatment in access to and exercise of elected office is a principle applicable to the entire electoral process in the State of Morelos and, as has been said, interpretations that tend to exclude any elected position from that principle will not be admitted."

This ended in the determination that the criterion of parity had not been misapplied, either vertical or horizontally, in the criteria for the integration of Town Hall candidate lists for the State of Morelos, a fact due to the desire to align criteria to that established by the Mexican Supreme Court in ruling on actions of unconstitutionality 39/2014 (and their accumulated).

SUPERIOR CHAMBER´S ANALYSIS OF THE CONTROVERSY

The Superior Chamber confirmed the sentence issued by the Distrito Federal Regional Chamber, which modified the agreement issued by the State Electoral Commission of Morelos' Institute of Electoral Processes and Citizen Participation by virtue of which it approved the criterion for the application of gender parity in the creation of Mayor, Proprietary Trustee and Alternate Trustee candidate lists for the State of Morelos.

In this case, the acting political party alleged that the authority in charge misapplied the principle of gender parity in the integration of town halls, both horizontally (by including all thirty-three state town halls) and vertically (in the Mayor, City Councillor and Trustee formulas).

Essentially, its argument was that Article 41, section I, second paragraph of the Political Constitution of the United Mexican States, only meant that parity should be ensured between the genders in federal and local legislator candidate formulas.

In this context, the Superior Chamber considered that the implementation of positive measures to ensure gender parity in the nomination of candidates for any elective office, favors the principle of non-discrimination against women, to potentiate their Human Right to be elected to public office and on an equal footing with men.

In accordance with the above, after analyzing the vertical and horizontal criteria, the Superior Chamber established that the applicability of integrating gender into the list of Mayor, Proprietary and Alternate Trustee candidates did not disagree with the provisions of Article 41, section I, second paragraph of the Mexican Constitution.

This, in assessing as correct what had been argued by the corresponding authority, which determined that although this constitutional provision refers to gender parity in legislative bodies and does not mention town halls, this was an omission which did not imply excluding town halls from complying with the principle, as restrictions on Human Rights cannot be implied and no express provision orders such exclusion.

Therefore, it established that the Regional Court's resolution was in line with the progressive and effective gender balance sought in the selection of all candidates for elected office at the town hall level. In this argumentative sense, the Superior Chamber concluded that if gender equality was a measure that favored equal opportunities for men and women (for example, in the performance of public office), and that equality was consolidated under the auspices of the universal principle of non-discrimination on grounds of gender, then it felt the Electoral Tribunal was obligated to give practical effect to the principle of gender parity implemented in electoral legislation, and focus it into a reality in the enrollment of candidates for the state´s town halls.

Judging with a gender perspective Fourth National Congress

In 2011, at the behest of a group of Federal Magistrates and with the support of the Federal Judiciary Council, the first *Judging with a Gender Perspective National* Congress was held in order to "promote dissemination, reflection and analysis on the issue of gender equality and women's Human Rights, through the participation of those responsible for law enforcement in the Federal Judicial Branch, and collaborating with the Federal Judiciary Council's administrative areas and bodies to collect proposals and good practices ."

In 2013 and 2014, the experience was repeated with the enthusiastic participation of Federal Judges, showing that this was a useful and relevant space. In 2015, unlike what happened in previous editions (whose aim was to position and promote the theme), the event focused on jurisdictional tasks. In this fourth edition a new methodology, consisting of the analysis of national and international decisions, was proposed. All this in order to strengthen the policy of equality and non-discrimination in the jurisdictional tasks of Federal Judges and Magistrates.

130
male and female Judges took part in this event, made up by 66% men and 34% women.

The objectives of the Fourth National *Judging with a Gender Perspective* Congress, held on August 20th and 21st, were "identifying good practices and methodological approaches to argumentation and interpretation with a gender perspective and non-discrimination in the issuance of judicial sentences."

In order to privilege analysis and discussion between participants, only 130 law enforcers attended this event. Participants were split between 34% (44) women, and 66% (86) men.

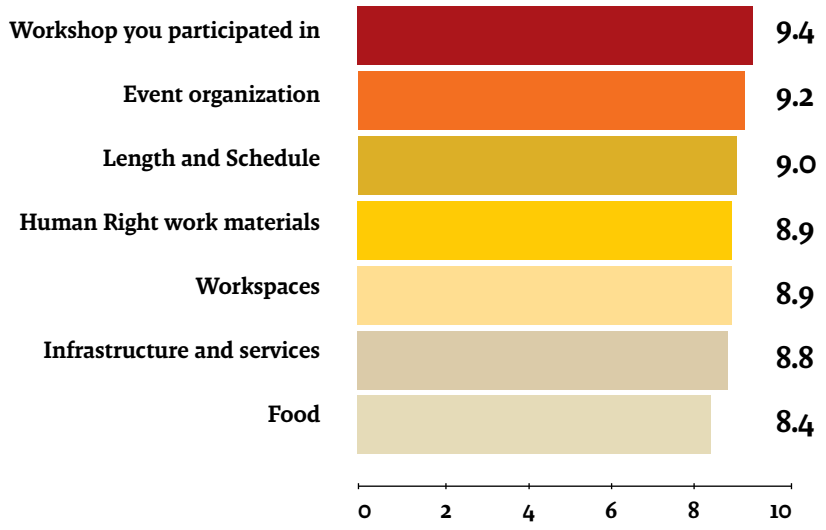
During this congress, the Keynote Address *Why judge with gender perspective, and how to judge with gender perspective?* was delivered by Argentine Judge Graciela Medina. In her Address, Medina stressed how important jurisdictional work with a gender perspective is to making legislative provisions a reality aimed at promoting equality and non-discrimination, as well as its role in conveying to society that violence against women will not be tolerated or go unpunished.

The work of the Fourth National *Judging with a Gender Perspective* Congress unfolded in four simultaneous workshops in different fields of Law: criminal, family, labor and Human Rights. Each workshop had four separate working sessions, two on Thursday and two on Friday.

The aim of each session was to discuss and analyze each sentence, seeking

Participants' assessment of event

Participants' Assessment of Event SCALE: 1 (very unsuccessful) to 10 (very successful)



to identify good practices and methodological approaches to argumentation and interpretation with a gender perspective in order to consolidate the policy of equality and non-discrimination in the jurisdictional work of Federal Judges.

According to the opinion of the Judges and Magistrates who participated in this event, this methodology was appropriate for moving forward on the issue of judging with gender perspective. Federal Judges that participated in the event were asked whether the analysis and discussion of sentences helped them better understand how to incorporate gender perspective into their judicial resolutions, a question to which 98% of them answered affirmatively, especially since the focus was placed on jurisdictional tasks.

It is also important to note that both female and male Federal Judges recognized the relevance of taking into account the context of the facts surrounding a case when judging it, as well as the importance of not forcing the introduction of gender perspective into cases that do not warrant it. They also acknowledged the need to ensure the visibility, measurement and dissemination of the responsibility borne by Judges and Magistrates in applying gender perspective when judging a case, in order to help close the inequality gap and prevent discrimination.

They expressed their satisfaction at having a forum to hear the views and constructive criticism of other Federal Judges and Magistrates and to freely express their opinion on the issues of equality and non-discrimination. Finally, they suggested that it would be advantageous, not only for Judges and Magistrates, but also for Law Clerks, to have the opportunity to attend judicial decision-making with gender perspective workshops.

Overall, assessments on major items of content and organization were very positive. With regard to compliance with the objectives of this Fourth National Congress (identifying good practices and methodological approaches to argumentation and interpretation with a gender perspective and non-discrimination in judicial decision-making), participant Judges and Magistrates, basing their evaluation on a scale of 1 (meaning no success at all) to 10 (complete success), concluded that the event served its purpose with an average rating of 9.3 ■

Workshop Results

The following were some of the most relevant workshop achievements:

a) Knowledge and skills to identify cases of inequality and discrimination were strengthened
b) Joint reflection on stereotypes as suspect classes
c) Methodological (technical) knowledge on the implementation of national and international standards in jurisdictional tasks in order to close inequality gaps and prevent discrimination was obtained and reinforced
d) Case comparison was adopted as a tool to adjust and improve the methodology used to judge with gender perspective and in a non-discriminatory way
e) The differences between merely applying a norm and the interpretation of such a norm (an act that favors equality and non-discrimination) in jurisdictional tasks were made visible. Participants coincided in their opinions on the fact that a gender equality perspective is not a traditionally analyzed outlook and that it requires a factual (as opposed to a legal) starting point
f) Careful deliberation as a way to solve formal and material inequalities was discussed
g) Analysis and discussion of the sentences presented strengthened jurisdictional argumentation as a tool to avoid inequality and discrimination.
h) The issue of the need to introduce gender perspective and non-discrimination into all procedural steps and not only into the judicial resolution that ends a process was discussed
i) Judges and Magistrates recognized the usefulness of using the analyzed sentences as precedents
j) The need to sensitize and train Federal tribunal and court Legal Clerks in the field of equality and non-discrimination with the aim of strengthening Federal judicial work was identified

DOMESTIC WORKERS

Discrimination and Social Security

The purpose of this essay is to reflect on the stereotypes, prejudices and gender discrimination contained in Articles 12 and 13 related to Chapter I of Title II ("Regarding the Statutory Scheme") and 222 to 233, comprising Chapter IX ("Voluntary incorporation to the mandatory regime") of the Law on Social Security and Services for State Workers, proving that, in Mexico, domestic workers-who are mostly women-, are completely marginalized due to the denial of their Human Rights.

By Elba Sanchez Pozos*

It is true that among these domestic workers are a number of men who often play a role as gardeners, drivers or stewards; however, over 80% of domestic employees are women, according to recent ILO figures . Hence, improving working conditions in this sector will have repercussions that would favor gender equality.

OUR REALITY

The Federal Labor Code contemplates domestic work in its chapter on "special tasks". In turn, the Law on Social Security and Services for State Workers states that domestic workers are not subject to the compulsory insurance scheme, comprising work risk insurance, health and maternity, disability and life insurance, retirement, unemployment at an advanced age and old age, daycare and social benefits; nevertheless, the code ascertains that domestic workers can be voluntarily insured on those bases, by prior agreement with IMSS (Mexican Institute for Social Security), in a scheme comprising the same services, with the exception of daycare and social benefits.

As shown, the country's legislation relieves the employer from the obligation of enrolling domestic worker and making contributions for Social Security on their behalf .

Indeed, in the case of this particular type of work, the Factory Labor Code in its Articles 331 to 343 establishes domestic workers' minimum rights. However, for example, it does not even allude to time off or to the payment of overtime; hence it is undeniable that this type of labor relations are based more on tradition than on the provisions of the Law.

Nowadays, despite the evolution of Human Rights in the country, domestic workers continue to receive very low wages, work for excessive hours and be exposed to physical, mental and even sexual abuse. Hence the exploitation to which the workers are subjected to can largely be attributed to the deficits in national labor laws that reflect gender discrimination.

It is undeniable that domestic workers constitute a significant proportion of the informal labor force and are among the most vulnerable workers: they are routinely dis-

Ilustrated by Martha Rivera Juárez

criminated against due to their socioeconomic status, their female gender and, sometimes, their indigenous ethnicity.

In most cases, their working conditions are deplorable; they are subject to exploitation and Human Rights abuses. In this regard it should be emphasized that the perpetuation of the stereotypes that surround these workers is not attributable solely to men but also to the women who offer them employment and who routinely discriminate them, even referring to them dismissively as "girls", "cats" or "servants".

Data obtained in 2010 thanks to the Conapred (National Council to Prevent Discrimination in Mexico), clearly reflects this situation, as 8 out of 10 domestic workers are uninsured, 6 out of 10 do not enjoy days off and almost half do not receive year-end bonuses ("aguinaldo") or have fixed working hours.

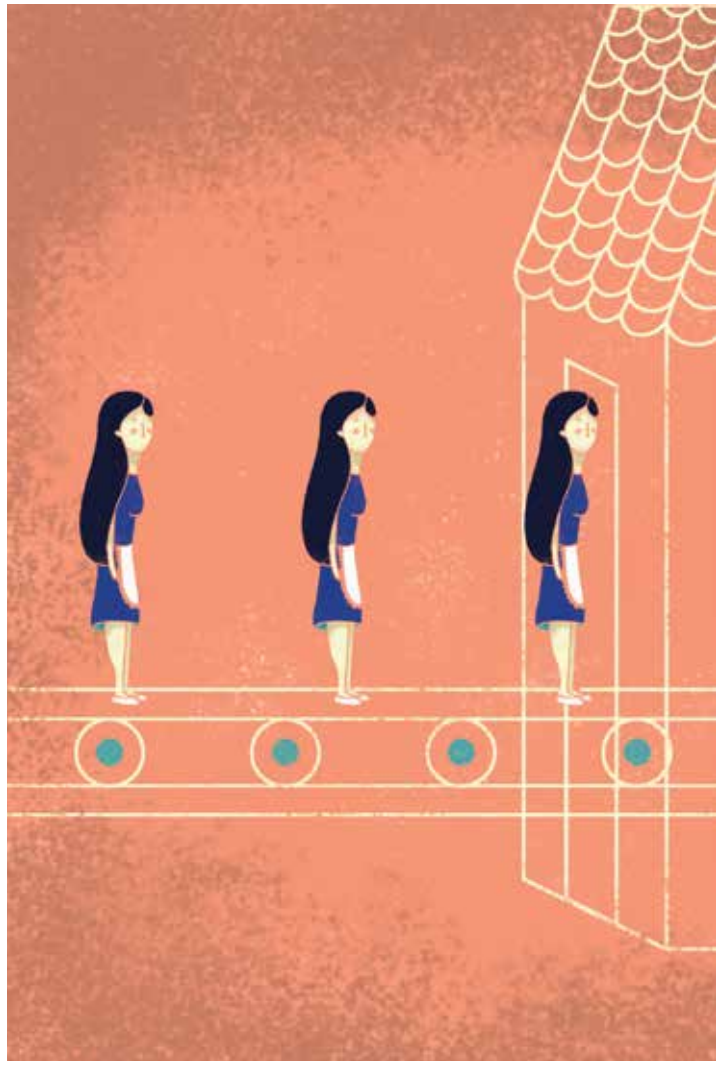
In sum, for these employees, the provisions in the Federal Labor Code are useless because the whole scheme of this profession is regulated according to tradition.

RIGHT TO DIGNITY, EQUALITY AND NON-DISCRIMINATION

These three rights are acknowledged in Article 1 of the Political Constitution of the Mexican United States.

This article, in its first paragraph, establishes the right to equality, stating that everyone shall enjoy the Human Rights established in the Constitution itself, as well as those contained in the treaties to which the Mexican State is a party. Its last paragraph prohibits discrimination based on certain explicitly listed grounds, or any other basis that violates human dignity and is intended to nullify or undermine the rights and freedoms of individuals.

[1] Data obtained from ILO's website. Domestic workers.
[2] Al least two Collegiate Circuit Courts have pronunced themselves regarding this issue with the theses: "DOMESTIC WORKERS. THEIR EMPLOYER HAS NO OBLIGATION TO ENROLL THEM IN THE MEXICAN INSTITUTE OF SOCIAL SECURITY OR THE RETIRMENT SAVINGS SYSTEM ", and " DOMESTIC WORKERS. THE BOARD OF CONCILIATION AND ARBITRATION IS PREVENTED FROM CONDEMNING THEIR EMPLOYERS TO ENROLL THEM IN THE MEXICAN INSTITUTE FOR SOCIAL SECURITY RETROACTIVELY BECAUSE THEY CAN ONLY BE SUBJECTS OF VOLUNTARY INSURANCE. "



This catalog of prohibited grounds (a.k.a. suspect categories) for discrimination includes ethnicity or national origin, gender, age, disabilities, social, health or religious conditions, opinions, sexual preferences and marital status.

Domestically, the right to non-discrimination is made explicit at length in the Federal Law to Prevent and Eliminate Discrimination, enacted on June 11th, 2003, which at the time regulated the third paragraph of Article 1 of the Mexican Constitution that in turn gave rise to the Conapred, whose mission is coordinating the national anti-discrimination policy in the face of problems encountered by indigenous people, women, the elderly and children, among other vulnerable groups .

Regarding the issuance of this law, Miguel Carbonell says that according to Rodriguez Piñero and Fernandez Lopez, there are three elements that are commonly found in all legal concepts of discrimination: 1) the existence of an inequality of treatment, consisting of a distinction, exclusion or preference; 2) that this unequal treatment be based precisely on one of the reasons or criteria that the Law itself identifies as prohibited, and 3) that its effect nullifies either equal treatment or equal opportunities .

These concepts are exactly those contained in Article 4 of the aforementioned law, when defining the discriminatory act as follows: "For the purposes of this law discrimination means any distinction, exclusion or restriction based on ethnic or national origin, sex, age, disability, social or economic status, health, pregnancy, language, religion, opinion, sexual orientation, marital or any other status, that has the effect of impairing or nullifying the recognition or exercise of rights and real equality of opportunity for individuals. Discrimination can also be understood as xenophobia and anti-Semitism in all its manifestations. "

For its part, Article 9 of that body of law, which is one of the most important provisions because it specifies the behaviors that must be regarded as discriminatory, establishes as such in Section IV, "Creating differences in pay, benefits and working conditions for equal work"; in Section XIII "Applying any custom and usage which violates human dignity or integrity"; and in Section XXIII "Exploiting or proffering abusive or degrading treatment".

However, in its Section XX, by establishing that one of these discriminatory behaviors is preventing access to Social Security and its benefits or limiting the acquisition of health insurance, with the proviso that it be so, as long as "the law so provides," permits one to come to the conclusion that, in the light of domestic law, the exclusion of domestic workers from the statutory scheme should not be considered discriminatory.

However, in order to demonstrate that this conclusion is contrary to the fundamental rights of dignity, equality and non-discrimination contained in the Constitution, we should look to international law. Of course, in the international arena, we can find several treaties and instruments that recognize those rights, including the following: 1. Universal Declaration of Human Rights 2. International Covenant on Civil and Political Rights 3. International Covenant on Economic, Social and Cultural Rights 4. International Convention on the Elimination of All Forms of Racial Discrimination 5. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 6. U.N. Convention against Transnational Organized Crime, particularly its Protocol to Prevent, Suppress and Punish trafficking especially women and children, as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air 7. Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 8. American Declaration of the Rights and Duties of Man 9. American Convention on Human Rights as well as Convention 189 and its annexed Recommendation 201.

Regarding the type of workers subject of this essay, specifically Convention 189, which unfortunately for domestic workers has not yet been ratified by our country (even as Colombia, Paraguay, Argentina, Ecuador, Bolivia and Italy, among other countries, have already done so) establishes a framework of minimum standards concerning Social Security.

This instrument and its Recommendation were structured, as noted earlier, on the fundamental premise that

[3] Article 17. The Conapred has the following objectives:
I. Contributing to Mexico's cultural, social and democratic development;
II. Carrying out the necessary actions to prevent and eliminate discrimination;
III. Formulating and promoting public policies in favor of equal opportunity and treatment for people who are in Mexico, and Coordinating the actions of the Federal Executive agencies and bodies in relation to the prevention and elimination of discrimination. "

[4] Conapred (2008). Federal Law to Prevent and Eliminate Discrimination. Mexico: Conapred. 2nd Edition. Pg. 14.

domestic workers are neither "servants" nor "family members" or second-class workers.

The Convention states that its goal is to improve conditions for everyone as well as the lives of tens of millions of people employed in an occupation that has always been undervalued and traditionally done by women who are mostly migrants or members of disadvantaged communities; and that the legal bases contained in it, will ensure that domestic workers enjoy the respect and rights that workers in the formal economy have conquered.

Thus, while the Convention guarantees the minimum labor protection that must be granted to domestic workers (on a par with other kinds of laborers) and leaves room for considerable flexibility in its application, Recommendation 201 provides practical and useful guidance on how to give effect to the obligations established in Convention 189, which it supplements.

Articles 3.1 and 3.2.d) of the Convention state that each Member should take measures to ensure the effective protection of domestic workers' Human Rights in accordance with the provisions of the Convention itself, and that all Members shall adopt, regarding the same employees, the elimination of discrimination in matters of employment. Article 14 also establishes that

"1. Any Member, acting in accordance with national law and with due regard to 'the specific characteristics of domestic work', shall take appropriate measures to ensure that domestic workers enjoy conditions not less favorable that the conditions applicable to workers in general with regard to the protection of Social Security, including maternity leave.

2. The measures referred to in the preceding paragraph may be applied 'progressively' in consultation with the most representative employers' and workers' organizations as well as those representing domestic workers and their employers, whenever they exist. "

As for the specific characteristics of domestic work referred to in Article 14, in the "Guide to Designing Labor Law," issued by the ILO in 2012, Section 1.2. establishes what elements should be considered upon legislating this issue, since the vast majority of domestic workers are women; the reform of labor legislation to address the lack of decent positions in this sector should be geared in particular to the problems and difficulties with which female domestic workers are confronted.

It also states that among the areas that require special attention are the protection against abuse, harassment and violence; wage discrimination based on gender; protection of motherhood; and measures to enhance the balance between work and family responsibilities.

In Section 4.4 on "Elimination of discrimination in employment and occupation", Section 4.4.1. "Integrative laws against discrimination and for equality" and Section 4.4.3. "Pregnancy Discrimination", this "Guide" states that domestic workers, mostly women, are particularly vulnerable to discrimination regarding working conditions because of their sex, race or social origin, among other reasons; that to ensure that labor laws effectively promote decent positions for domestic workers, they should include provisions on equal pay for work of equal value, and generally avoid their exclusion from labor legislation.

Among several causes of discrimination against domestic workers, pregnancy is included, since without any reason other than simple prejudice, it can lead even to the termination of the employment relationship. For example, in South Africa, from April 1, 2003 onward, domestic workers are covered by the Unemployment Insurance Act of 2001 and female workers are entitled to claim maternity benefits under the law.

Also, in Sections 7.6.3 and 7.6.4, concerning sick and maternity leave, it establishes that temporary absence from work because of illness or injury should not constitute cause for termination of said employment; and that Social Security mechanisms that preserve earnings during sick leave, including related benefits, should gradually be extended to domestic workers. In Austria, for example, Article 10 of the Federal Act on domestic service and employees of private households, provides further entitlement to remuneration due to illness or accident, in periods of six, eight or twelve weeks, among other particularities; and prohibits the dismissal of workers on these grounds.

Likewise, labor legislation should extend maternity leave to domestic workers, and offer the same protection as that provided to workers in other sectors. For example, in France, Zimbabwe, and South Africa there are regulations regarding maternity rights for domestic workers.

For its part, Article 5, paragraph a) of CEDAW acknowledges (as does Article 8 of the Convention of Belem Dó Pará), that part of the problem of discrimination against women is structural, produced by social conceptions and prejudices, by conducts rooted in culture and perpetuated from generation to generation by the force of gender stereotypes, and in the case of domestic workers, also by class and ethnicity.

[5] International Labour Office (2012). Effective Protection for Domestic Workers: A Guide to Designing Labour Law. (N/A). First edition.

On the other hand, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights recognizes the right to Social Security in its ninth article, declaring that "every person has the right to a Social Security that will protect him or her against the consequences of aging and any disability that makes it physically or mentally impossible to have the means to make an honest and decorous living..." In its second point, this article establishes that if workers are actively employed, Social Security should at least cover their medical attention and compensation or retirement due to work-related accidents, professional illnesses or maternity leave, for females.

Comparative and International Law, the experience of countries like Brazil, which displays the inclusion of domestic workers in the Social Security system, can be highlighted. That country has the Domestic Workers Act, a legislation that extends the rights of domestic workers, as it dictates that they have maximum workday of eight hours and 44 hours of work per week; that any overtime receive compensation and, among other rights, ensures the payment of Social Security for employees, a stipend for domestic workers' children under five that enables them to attend kindergartens and preschool education, and insurance against industrial accidents.

A NECESSARY FOCUS ON GENDER PERSPECTIVE

This panorama leads to the conclusion that the national legislation in relation to domestic work labor (that is, the Federal Labor Code and the Law on Social Security and Services for State Workers), is not harmonized with the constitutional reform on Human Rights, and therefore these provisions are discriminatory, since they limit the rights of domestic workers and do not guarantee authentic equality of opportunity and treatment in comparison with other kinds of workers.

For that reason, domestic workers' labor rights pertaining jurisdictional cases must necessarily be addressed from a gender perspective, especially in the light of the unconstitutionality of the provisions of labor and Social Security, for they can be estimated to violate the Human Rights of equality, dignity and non-discrimination, and in that light will hardly withstand the test of equality, because the differential treatment given to domestic workers, compared to other employees, is unlikely to be justified by any valid arguments.

Finally, it should be noted that when it comes to Social Security, there are several factors to be taken into account to solve the outstanding issues, such as the difficulty involved in forcing all employers to enroll their domestic workers into Social Security (in practice, it is companies that usually register their workers with IMSS), since the system is designed so that it requires a different infrastructure to meet the expectation of equality and non-discrimination for domestic workers.

Hence, also, in an intersectional approach (understood as a strategy involving all stakeholders in the pursuit of gender equality), it is necessary prima facie to simplify the regime of enrollment into Social Security for employers as well as the procedure for the enrollment itself and the payment of the respective monetary contributions. ■

***Elba Sanchez Pozos:** Circuit Magistrate*

Women and their sociocultural context

By Dr. Laura Xochitl Hernandez Vargas*

Existing social conditions in each period and the role assigned to women have been discussed over the years. Still, each and every time we have managed to get into various social, economic, legal, political or working spaces despite the countless barriers created by a society predominantly led by males.

Social and cultural trends such as feminism, equality between men and women, protection of women against violence and public policies that offer greater coverage of women's rights, are realities that can be seen especially in recent decades.

Today, talking about gender is of fundamental importance because of its impact on the development of men and women in the construction of a fairer society that respects human dignity.

Nowadays, the set of functions that women play within the family and in society by being a daughter, mother, wife, grandmother, professional, etcetera, are finally being acknowledged. What is certain is that women have been present throughout history; thanks to their constant efforts to be heard they have been able to break into very different areas and forever leave their mark.

A good life or a person's well-being is not defined by external or preset criteria emanating from a human essence, morality, laws, a pattern of consumption or social customs, because only to the extent that those values are shared, chosen and performed by the person or by society itself will we be on the path to genuine development.

Changes modify society but not every change can be integrated; some are rejected as incompatible with the existing structure, so that they are discarded, and any modifications are more quantitative than qualitative in nature.

Mexico has echoed the international outcry and has adapted its legal framework accordingly to give way to change; however, in fact, we can still find aspects that require adjustments to the times and circumstances.

The international vision of women's social roles is daunting, because of discriminatory and inequitable treatment and the wave of abuses that a large number of females must face every day simply by being considered a minor and "voice-

less" member of the family. This is due to the beliefs and customs of the place of origin: examples of such practices come mainly from countries with deeply rooted tendencies, as is the case of Muslim States, some nations in Africa and, in general, Middle Eastern countries.

The ability to be fair, equitable and appropriate in the treatment of men and women, means access to resources which represent respect for our rights as human beings. Tolerance also represents equal opportunities; it is therefore necessary for women to assert their rightful place, their knowledge, their voice and their vote. This is vital in order to achieve gender equality.

It is in this sense that the history of women cannot be understood outside of the general historical process of which she has been a part. Moreover, women should be an essential element of society because their work is very important in directing the paths an organized community must take.

That said, it is essential that the Law fully recognize and guarantee the fulfillment of the objectives of identity in order to achieve gradual but effective change on gender equality, a change which will significantly reduce the rates of still existing inequality through mechanisms that demonstrate that such rules do not meet the expectations that society demands, because even if they actually were the closest thing to what we now know as individual rights, it has become necessary to create specific laws to promote gender equality, in addition to using international laws or treaties as alternatives that contribute to the formation of a more useful legal framework, a framework appropriate to a society that requires, every day, the existence of fair systems that promote the active participation of women without any of the subjugation or violence (of any kind) which they must confront due to their vulnerable condition.

This much-touted modernization should not only include economic structures and political proposes; we must consider that the historical background leads us to a moment of great opportunity.

The change in the cultural perception of women and their equal social status will still be a constant in times to come, under the conviction, of course, that "tomorrow" will soon be transformed into "now". ■

Dr. Laura Xochitl Hernandez Vargas: Sixth Regional Chamber of the Contentious-Administrative Tribunal of the State of Mexico Magistrate

Ilustrated by Christopher Cisneros

Domestic workers' workday

According To INEGI's National Survey On Occupation And Employment Of The First Quarter Of 2015, In Mexico 2.3 Million People Are Paid Domestic Workers; In Addition, 95 Out Of 100 Employees In This Activity Are Women.

By Alejandro Sosa Ortiz*

The growth in this sector is steadily rising. Demand for its services, demographic changes (such as the aging of the population, with older adults needing assistance), the increasing participation of women in the workforce and the challenges of harmonizing work and family life in urban areas and developed countries are identified as triggering factors of its explosion. In contrast, the supply of domestic workers is driven by rural poverty, gender discrimination in the labor market and limited employment opportunities in rural communities and countries of origin .

Document 2/2010, entitled On our way to decent positions for domestic workers: an ILO survey of labor, argues that: "Domestic service is characterized by long working hours, up to 16 hours a day, seven days a week, in the case of some resident workers. It is quite common that the employee has to be available and awaiting employers' orders at any time of day or night. In many cases, the hours are so long that these women are completely devoid of time off " .

Domestic workers, says the President of the National Council to Prevent Discrimination (CONAPRED), are considered an unprotected sector in Mexico, working hours that exceed the provisions of the law with no extra pay .

The serious problems of this sector, which makes it vulnerable to abuse and exploitation (sometimes having among its main victims children and migrants), have been repeatedly denounced. There are also several factors

of a different nature that contribute to its permanence and expansion, despite the incessant talk about respecting and protecting Human Rights. Among these factors, we must focus first and foremost on culture, since it is society itself that undervalues these workers, for this occupation actually replaces the non-remunerated labor of women at home, and also pay attention to the myth that no special training or qualification is required for this kind of labor, and remember that the majority of its workers are of either indigenous or rural origin; all of the above causes domestic workers to be relegated to the lowest social class.

Hence, to the extent that society notices the disadvantageous and discriminatory treatment that encourages the growth of this sector, a real change by way of belief and awareness, that dignifies and reassess this type of work, will be generated.

The current legal regulation of domestic work, that somehow reflects the prejudiced and discriminatory perception that we as a society have of housework, is another factor that has a significant impact on the problems outlined

LEGAL FRAMEWORK BEFORE FEDERAL LABOR CODE REFORM

GENERAL CONSIDERATIONS

Domestic work is a type of labor with particular characteristics, such as not producing a profit or gain for the employer; the worker being paid in cash and / or in kind; the fact that the work is done inside a private home; the worker and the rest of the household he/she serves coexist intensively; the worker being obligated to take orders from every household member; and the fact that domestic labor is hardly overseen by authorities.

All these features explain, but in no way justify, the sector's express exclusion from legal labor regulation in some countries. In other nations, as in the case of Mexico, certain rules that allow domestic workers to establish a legal employment relationship with their employers also reduce the rights of this sector compared to other kinds of workers . Recently, a few nations have conferred on these workers the same kind of explicit legal protection offered to other sectors.

Paragraph 333 of the Federal Labor Code (henceforth, FLC), before its amendment published in the Official Gazette on November 30th, 2012, stated: "Domestic workers should enjoy sufficient time off to have three meals a day and rest overnight."

This vague provision was interpreted by many Collegiate Circuit Courts, before domestic workers' claim to payment of overtime, in the sense that the sector was not subject to any maximum workday, as working hours were conditional to the needs of the household where they labored, with the sole obligation of the employer to provide enough rest (in their opinion), to permit three meals a day and overnight rest. Therefore, domestic workers had no right to demand payment of overtime.

In this sense the following area theses should be quoted:

DOMESTIC WORKERS.
GIVEN THE NATURE OF THEIR WORK THERE IS NO LEGAL BASIS FOR CLAIMS OF OVERTIME. **Thesis I.130.T.124 L. Visible in Volume XXII, July 2005, pg. 1560 of the SJF and its Gazette.**

[1] Statistics made relevant by Domestic Workers' International Day. INEGI, July 20th, 2015.
[2] D´Souza, A. (N/A). Camino del trabajo decente para el personal del servicio doméstico: panorama de labor de la OIT. Preface pg. V. (N/A).
[3] Op.cit. pg.22
[4] Notimex, March 30th, 2015
[5] Notimex, March 30th, 2015
[6] According to articles 146 of the Federal Labor Code and 12 and 13 of the Law on Social Security and Services for State Workers, respectively, the employer is not obligated to enroll domestic workers in Social Security or contribute on their behalf to INFONAVIT (Mexican federal housing program).

Ilustrated by Christopher Cisneros

DOMESTIC WORKERS' LEGAL WORKDAY.

Visible in Volume 97-102, Sixth Circuit of the TCC, Part VI, pg. 91 of SJF.

The First Collegiate Tribunal on Employment Matters of the Second Circuit, in resolving on direct "amparo" DT. 71/2011, on May 11th of that same year, considered that this "special" norm did not necessarily lead to the legal conclusion that domestic workers should be excluded from the eight-hour workday and the one day off for every six working days laws formally established in the Mexican Constitution, on the basis of these arguments:

a) The paragraph in question only regulates cases in which the domestic worker is a resident in the household where he/she labors (i.e., the worker spends the night in the house of the family for which he/she works, because otherwise it would not make sense for the employer to be compelled to let the domestic workers enjoy enough overnight rest and the time off to have three meals a day)

b) The quoted article 333 is a special disposition that prevails over other, more general dispositions . It does not exclude the application of article 61 of the same legal framework, which establishes the maximum workday foreseen in Article 123 of the Political Constitution of the Mexican United States

c) The only general rules excluded are those contained in the various paragraphs 63 and 64 of the FLC, which state: "During the continuous working day the workers will be granted at least a half-hour period of rest. And when the worker cannot leave the place of his/her employment during the time off needed to partake of meals, the corresponding time will be counted as an effective, remunerated part of the working day. " The legislator only estimated that in the case of "resident" domestic workers, for the convenience of both the employer and the domestic worker inside the house, and apart from those periods that can be understood as moments of de facto availability, intermediate rest times during the day, the time off to partake three meals and the overnight rest, no time off can be considered as effective work time or, if added to regular working hours, overtime.

d) This exclusion is justified by the particular nature of domestic workers' labor, especially since without it their workday could be construed as a 24-hour period. However, this justification does not exempt domestic workers from the maximum eight-hour workday and a weekly day off, especially when not dealing with "resident" domestic workers.

e) A different interpretation would lead us to disrespect this important constitutional limit, which allows no exceptions, and conclude that a resident domestic worker is obligated to comply with twelve-hours workdays without enjoyment of a seventh day off, since it could be argued that this complies with the special disposition, for the 12 hours remaining in a day would be distributed into three hours for meals, eight hours for overnight rest and one hour off for rest, which in any case would be inhuman and abusive.

f) This contrary interpretation is not endorsed by the fact that housework wages can be exchanged for room and board, up to the equivalent of 50% of its value, or by the employer not obtaining a profit from such work. Firstly, because this provision only aims to prevent the non-payment or practical non-payment of wages in cash with the excuse of domestic workers being provided with room and board. However, this does not allow for the assumption that any overtime worked be remunerated by the regular wage. Second, Article 21 of the FLC does not require that the "provision of subordinate staff service" have the purpose of obtaining a profit for the employer.

This led to the thesis II.1º. T.381 L, under the heading:

DOMESTIC WORKERS. THE MAXIMUM EIGHT-HOUR DAY APPLIES TO THEM.

Direct Amparo 71/2011. Maria de Lourdes Gonzalez Salazar and another. May 13th, 2011 Unanimous vote. Speaker: Alejandro Sosa Ortiz. Clerk: Leonor Lara Heras. Visible in Volume XXXIV, July 2011, pg. 2273 of SJF and its Gazette.

THESIS 250/2011 SS CONTRADICTION

The First Collegiate Tribunal on Employment Matters, Second Circuit, denounced to the Honorable Second Chamber of the Mexican Supreme Court the contradiction between the criterion sustained by itself and the criteria held by two diverse Collegiate Circuit Tribunals.

From a careful reading of the resolving execution, it becomes clear that the Honorable Second Chamber coincided with the First Collegiate Tribunal on Employment Matters, Second Circuit, in the sense that the special disposition on domestic workers, by failing to provide any rule specifically defining the length of the workday, grants that non-resident domestic workers should be governed by the general provisions and therefore, when working extra time and exceeding the normal length of the workday, they should be paid overtime.

It departs from the criterion established by that collegiate tribunal, in the section in which it states that Article 333 is only applicable to resident domestic workers, as the Honorable Second Chamber argues that it is also applicable to the "resting" times of non-resident workers and thus implicitly asserts that these periods do not have to be calculated as effective "work time", but that they can be computed as overtime if they are subtracted. The resolution of this contradiction generated case law 2ª. /J.3/2011:

NON-RESIDENT DOMESTIC WORKERS. ORIGIN OF OVERTIME PAYMENT.

Visible in Book IV, January 2012, Volume 4, pg. 3745 of SJF and its Gazette.

Although case law is silent about the working hours of resident domestic workers, talking only about that of non-resident workers, it is estimated that the argument which states that the absence of special rules that go against the general rules regulating the maximum length of the workday signifies that general rules should be observed; before the amendment to Article 333 it was removable by analogy to the former and therefore also applied the constitutional maximum working day of eight hours to resident domestic workers. And, according to this argument, the general rules governing weekly rest day, holidays, vacation pay and holidays apply to all domestic workers, as the law does not provide a different option .

OIT CONVENTION 189 ON DOMESTIC WORK

The document was adopted at the 100th Session of the International Labor Conference held in June 2011, marking the first time that the ILO created an ordinance on international labor standards particularly devoted to housework. Article 10 of this Convention states the following:

1. Each Member shall adopt measures to ensure equal treatment between domestic workers and workers in general in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national legislation or collective agreements, taking into account the special characteristics of domestic work

2. The weekly rest period must be of at least 24 consecutive hours

3. The periods during which domestic workers may not freely dispose of their time and must remain available to the household to respond to any requirements of their services should be considered as working hours, to the extent that this is determined in national legislation, collective agreements or under any other mechanism in line with national practice

Recommendation 201 establishes the following:

"... especially those who reside in the household for which they work, are likely to be asked to ensure immediate availability periods, i.e. those 'domestic workers' periods during which they may not freely dispose of their time and must remain available to the household to respond to any requirements of their services' (Article 10, 3). According to the convention, it is for each country to determine in its legislation or collective agreements the extent to which such periods shall be considered as working hours, in particular the methods and criteria governing the immediate availability and the type and amount of compensation.

Recommendation: advocates keeping records of hours worked and the regulation of immediate availability periods and night work, rest during the working day, weekly rest, compensatory rest and annual leave (paragraphs 8-13) ".

The Senate has not approved this agreement to date. We hope that will happen very soon.

[6] According to the FLC's diverse 181, which establishes: Special types of labor are ruled by this disposition and by other, more general dispositions (as long as they are not in conflict with this special disposition).

[7] In regard to this matter, please consult the author's "La aplicación analógica de la jurisprudencia y la jurisprudencia temática" in La Jurisprudencia en la Nueva Ley de Amparo. Chapter V, Section 5.

[8] As done by the The First Collegiate Tribunal on Employment Matters, Second Circuit, in resolving direct "amparo" 71/2011.

[10] Regarding this new precept, Nestor de Buen Lozano comments: "As tends to happen in laws dealing with employment, rights are established to conceal either the actual disminution of labor rights or the imposition of new obligations, such as the length of the workday (New Annotated Federal Labor Code, pg. 125).

NOVEMBER 2012 REFORM TO THE FLC

The reform of merit, which went into force the day after its publication, in the part that interests us, involved the amendment of Articles 333 and 336, to read as follows:

Article 333. Domestic workers who live in the home where they work should enjoy a nightly minimum rest of nine hours, and also a daily three-hour minimum rest between their morning and afternoon activities.

Article 336. Domestic workers are entitled to a weekly rest of an uninterrupted day and a half, preferably on Saturday and Sunday.

By agreement between the parties, they may decide that half days may be accumulated in two week periods, however a full day of rest each week must be enjoyed.

In the explanatory memorandum on the matter, it lists among its objectives: "19. Improve the working conditions of domestic workers. Intent to regulate more precisely the length of their working day and therefore expressly establish periods of daily and weekly rest that those conducting such activities must enjoy. "

As noted, the change in paragraph 333 merely specifies:

a) That rest periods and night rest, alluded to in the previous text, apply only to workers who live in the home they serve in.

b) That the daily rest must consist of nine consecutive hours, and that between activities in the morning and the afternoon a minimum rest period of three hours should be enjoyed.

For its part, the text of 336 is entirely new, establishing as a bonus, compared to other types of workers, an extra half-day of weekly rest.

CONCLUSIONS

According to the above, we believe that case law 2nd. / J3 / 2011, no matter its origin in the content of paragraph quoted above 333, which has already been renovated to specify the number of hours of night rest and rest periods, and which only applies to resident domestic workers (contrary to what the H. Second Chamber resolved), is supported by the following key reasoning: since the FLC does not contain any precept for non-resident domestic workers that imposes any different legal maximum workday, this group must be governed by the aforementioned regulations, which continues to exist without an explicit or implied workday length.

Concerning resident workers, we believe that the new regulation worsens their lot. Now, when specifying a renovated standard of nine hours for nighttime rest and 3 more for intermediate rest between night and morning, we can no longer argue that this standard is intended only to apply to meal and rest periods (although they still take place inside the house where they labor); as such they are not considered effective work times, but even that does not warrant the non-application of the maximum daily 8-hour workday .

Nor will jurisprudence 2nd. / J3 / 2011 apply to them by analogy. This, on the grounds that if the aforementioned maximum workday went into effect, they would have been given16 hours (of the remaining 24) for rest and meals, and not just 12. In such a way it can be inferred that for them, according to the reformed precept, the daily maximum workday reaches 12 hours with half a day of weekly rest, which would make a total of a working week of 76 hours, a situation that is directly contrary to the maximum number of working hours enshrined in Article 123 of the Political Constitution of the United Mexican States and the guidelines of Convention 189 ■

***Alejandro Sosa Ortíz:** First Collegiate Tribunal on Labor Matters, Second Circuit Magistrate*

BIBLIOGRAPHY

ILO International Labor Office (2011). C 189 y R 201 en pocas palabras. (N/A)

D´SOUZA, A. (2010) Camino del trabajo decente para el personal del servicio domestico: panorama de labor de la OIT. (N/A) ILO Office for Gender Equality, First Edition; Working document 2/2010.

ILO (2011). "El trabajo domestico remunerado en America Latina y el Caribe. Una jornada de trabajo decente para las trabajadoras domesticas remuneradas". Note Series No. 5. (N/A).

INEGI (July 20th, 2015). Estadisticas a proposito del Dia Internacional del Trabajador Domestico. Mexico: Instituto Nacional de Geografia y Estadistica.

DE BUEN LOZANO, N. (2014) Nueva Ley Federal del Trabajo Comentada. Mexico: Editorial Porrua.

Notimex (June 6th, 2011). (N/A)

Notimex (March 30th, 2015). (N/A)

SOSA ORTIZ, A. (2015). La Jurisprudencia en la Nueva Ley de Amparo. Mexico: Editorial Porrua.

SUPREMA CORTE DE JUSTICIA DE LA NACIÓN

AN ANALYTICAL SAMPLE OF NATIONAL AND INTERNATIONAL CRITERIA

GENDER EQUALITY PRINCIPLE

Law enforcement in Mexico has had paradigm shifts in Human Rights over the past decade. Following the constitutional reforms of June 10, 2011, the national Judiciary has questioned afresh how to ensure the realization of Human Rights and the protection of vulnerable sectors.

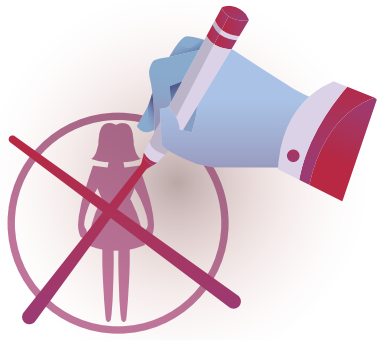
This restructuring of law enforcement has created an application of justice in accordance with the protection of people's rights and has caused Judges to become greatly interested in how it is that national courts and international courts and committees are interpreting international rights from a gender equality perspective.

Thus, the Mexican Supreme Court's Gender Equality Program, in partnership with the international organization Women's Link Worldwide, prepared the document The Principle of Equality in Comparative Jurisprudence: Analytical Sample of international and national criteria, which presents pronouncements and decisions issued by national and international courts, as well as Human Rights monitoring bodies that guarantee and promote gender equality.

This compilation is a tool for those involved in the judicial process and aims to facilitate the application of the principles of pro persona interpretation and conformity interpretation (harmonized between Human Rights standards and the blocks of constitutionality and conventionality), established in the Constitution, and the duty and power of domestic courts to directly apply international Human Rights laws.

The document shows how different courts have developed and implemented international standards on gender and sexual orientation discrimination; violence based on gender; sexual and reproductive rights, and remedies for Human Rights violations, advancing the current understanding of these matters.

Each chapter examines one of these issues. It presents a summary highlighting the main ideas and a model case, which serves as a reference decision. This model case includes a summary of the facts and an explanation of how a certain court integrates gender perspective into its rulings. Subsequently, the current position of international Human Rights law is set forth, drawing on the comments and observations made by the various monitoring bodies of relevant international and inter-American legal instruments for the field in question. The third and last part presents the case law on the issue in two parts: international jurisdictions and national courts. The contents of this publication are available in **www.equidad.scjn.gob.mx.**



GENDER BASED DISCRIMINATION

General concepts:

» International Human Rights treaties commit States to ensuring equality and no gender-based discrimination.

» Discrimination is any distinction, exclusion, restriction or preference based on any grounds such as race, color, sex, gender, language, religion, political or other opinions, national or social origin, economic status, birth or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the Human Rights and fundamental freedoms of all people.

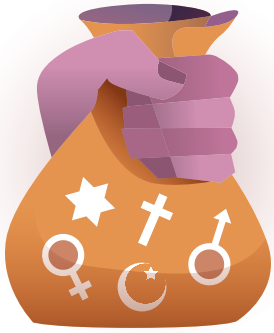
» The strict proportionality test determines whether a distinction based on a suspect category, is discriminatory:

- Does the measure in question pursue a legitimate aim in a democratic State?
- Are the means employed suitable for this purpose?
- Does the measure have a proportional impact (that is, do its benefits outweigh its costs)?

» Discrimination can be direct or indirect, one must determine if an apparently neutral rule, policy or practice is actually gender-discriminatory.

» The guarantee of equality and non-discrimination is an immediate and not a progressive obligation.

Ilustrated by Teodoro Argüelles



MULTIPLE DISCRIMINATION

General concepts:

» International Human Rights law recognizes that people may belong to different simultaneously protected suspect categories and therefore face multiple forms of discrimination, whose effect is modified by the intertwining of these categories.

» Applying an intersectional or contextual approach to examining these cases allows courts to reach solutions in these complex discrimination cases.

» The intersectional or contextual approach to discrimination acknowledges that people do not experience discrimination in a vacuum but rather in a particular social, economic and cultural context, where privileges and disadvantages are constructed and reproduced.

» In these cases, applying the strict proportionality test, courts must additionally:

1. Analyze the context in which discrimination occurs and how the person places him/herself and is placed socially within that particular context.
2. Understand the complexity of the experience of discrimination as the victim experiences it.
3. Appreciate evidence elements of discrimination of both an objective (statistical reports on inequality), and subjective (role of stereotypes present in the case, social response to the person as a result of the confluence of motivations) nature.
4. Recognize the fact that discrimination tends to take more subtle, systematic and institutionalized forms.

GENDER BASED VIOLENCE

General concepts:

» Gender-based violence is that which is directed toward certain people or groups of people because of their gender, or violence directed against persons or groups of persons who do not fall within socially acceptable gender roles.

» Violence against women is any act or conduct, based on gender, which causes death or physical, sexual or psychological suffering to women, both in public and in private.

» While violence is a phenomenon that affects everyone, the norms, beliefs, prejudices and negative gender stereotypes prevalent in society tend to subordinate and devalue women and girls.

» Violence against women constitutes a form of discrimination.

» Both male and female law enforcement officers have an obligation to ensure that judicial procedures conform to international standards and do not re-victimize people who have witnessed or denounced an intimate partner or sexual violence.

» Likewise, they should not use gender stereotypes or myths as a basis for judicial decisions.

» Courts should establish control mechanisms to monitor that this obligation is met throughout law enforcement bodies and procedures.

» International jurisprudence has established specifically that States are required to use the principle of due diligence to prevent, punish and eradicate violence against women.

SEXUAL ORIENTATION AND SEXUAL IDENTITY DISCRIMINATION

» Human Rights jurisprudence, both universal and regional, has recognized and affirmed that “sexual orientation” and “gender identity” are part of the prohibited grounds of discrimination or suspect categories.

» As protected categories, any distinction based on sexual orientation and gender identity should be subject to strict scrutiny by the courts.

» In the application of the strict proportionality test, it is important to recognize the different types of discrimination that different groups in the LGBT community are subjected to and the situations where one more ground of discrimination is added: the type of discrimination experienced and suffered by a transgender person, a lesbian woman or an African-American and gay man, is different.

» The courts should take into account that gay and transgender people can be discriminated against both in the exercise of their civil and their political rights-freedom of association as well as in the exercise of their economic, social and cultural rights to housing, health or education.

» Sexual orientation and gender identity are an essentially private manifestation of human personality; arbitrary interference by the State or private persons constitute an infringement of the rights to private and family life and the right to the free development of personality.

SEXUAL AND REPRODUCTIVE RIGHTS

» Sexual and reproductive rights (SRRs) include the right of each person to decide autonomously how to live their own sexuality and reproduction, as well as the right to access all health services.
» They are based on Human Rights such as the rights to life, physical integrity, health, autonomy, dignity, information, equality and freedom from discrimination.
» The right to health, and therefore the right to sexual and reproductive health, includes freedoms such as the right not to be subjected to medical treatment without consent; right to be offered all scientific, legal and objective information and the right not to be subjected to torture or other cruel, inhuman or degrading punishments.
» The right to information on reproductive health requires States to refrain from censoring, administratively or judicially, any information on reproductive health that is consistent with existing legislation on the subject (such as the impact and effectiveness of family planning methods).
» Regarding women, SSRs involve the right to be treated as an integral, dignified person and not only as a reproductive being, and to exercise sexuality pleasantly without it necessarily involving pregnancy.
» In particular, international Human Rights law has interpreted that respecting, protecting and guaranteeing women's SRRs involves taking into account gender prejudices and stereotypes that hinder access to any information about sex, sexuality or reproduction and the medical services related to these areas.
» International jurisprudence states that it is the duty of States to ensure women's right to safe motherhood and emergency obstetric services.
» International and national jurisprudence widely acknowledges that rules that absolutely prohibit women's access to abortion violate Human Rights and undermine the dignity of women.
» International jurisprudence has established that the medical information obtained by male and female doctors in the exercise of their profession is privileged by professional secrecy.
» International and national jurisprudence has also established that health care professionals have the freedom to exercise their right to conscientious objection. However, such freedom may collide with the patient's own freedom. Consequently, the balance between the rights of health professionals and patients' rights is maintained through reference. That is, a health care professional can refuse to care for a patient, but must transfer that patient without delay or objection to another health professional who can provide what the patient requests.

REPARATIONS WITH GENDER PERSPECTIVE

» Any Human Rights violation produces an injury that imposes a duty to properly and fully make reparations for it.
» Reparation refers to a set of measures-pecuniary and non-pecuniary aimed at restoring the rights and improving the situation of victims. It comprises five dimensions:

1. Restitution (restoring the status of the victim to the one extant prior to the violation)
2. Compensation (reparations for physical or mental damages, expenses incurred, loss of income)
3. Rehabilitation (psychosocial and medical care required)
4. Satisfaction (public and symbolic recognition)
5. Guarantees of non-repetition (adoption of structural measures seeking to prevent recurrence of violations)

» Reparations must not only face the damage that was caused by the victimization processes, but also the conditions of exclusion the victims lived in and that allowed or facilitated their victimization.
» The obligations of the State, through its judicial officials, include putting an end to the violation of rights; offering appropriate assurances and guarantees of non-repetition, including transformative measures of the situation that gave rise to the violation of rights; and full reparation for the injuries caused, which includes any damages, whether material or moral, caused by the fact.
» To prove effective and accurate, reparations monitoring must:

- Establish clear deadlines for the implementation of remedial measures
- Determine criteria for defining when the "reasonable" period of compliance has been exceeded
- Articulate and coordinate implementation between the different agencies responsible for complying with the order
- Include the victim's participation in the design of the strategy to achieve compliance
- Identify performance indicators depending on the type of measure
- Provide tools that allow the feasibility of complying with the measures

Supreme Court's General Directorate for the Study, Promotion and Development of Human Rights.

[1] LGBT is an acronym for "lesbian, gay, bisexual and transgender." For more information on the cultural and historical significance of these concepts please see: Roseman, M.J. and Miller, A. M. (2001). "Normalizing sex and its discontents: Establishing sexual rights in International in Law" in Harvard Journal of Law & Gender, Vol. 34, pgs. 313- 375. Available at: www.law.harvard.edu/students/orgs/jlg/vol342/313-376.pdf

SUPREMA CORTE
DE JUSTICIA DE LA NACIÓN

GENDER EQUALITY AND NON-DISCRIMINATION WORKSHOP

Five years of institutional gender perspective

During 2015, the Mexican Association of Justice Administrators (AMJ) celebrated two sessions of the Committee for Monitoring and Evaluating the Covenant to Introduce Gender Perspective into Mexican Law Enforcement bodies, thus reaching five years of uninterrupted labor.

This Committee's ninth session was celebrated on June 27 in Mexico City, and its tenth took place on October 9 in Tuxtla Gutierrez, Chiapas. Both events were presided by Mexican Supreme Court Justices Margarita Beatriz Luna Ramos and Jorge Mario Pardo Rebolledo, who were joined by Federal Judiciary Councillors Martha Maria del Carmen Hernandez Alvarez and Rosa Elena Gonzalez Tirado, as well as Magistrate Janine Otalora Malassis of the Electoral Tribunal of the Federal Judiciary Branch, and the always valuable presence of Magistrate Armando Maitret Hernandez, member of the TEPJF's Federal District Regional Chamber and Executive Secretary of AMJ.

Both sessions congregated 200 female and male law enforcement specialists from all over Mexico, a fact that corroborates the great interest the Federal Judiciary has in promoting this issue from diverse viewpoints and institutions and in keeping itself abreast of new developments in this matter.

As part of these celebrations, it was decided that different AMJ Sections be provided with the space necessary to disseminate the activities they have accomplished in order to comply with the Covenant to Introduce Gender Perspective into Mexican Law Enforcement bodies (henceforth mentioned as the Covenant) during the last two years, with the aim of creating a forum for the exchange of ideas, experiences and best practices that could be helpful to the audience.

200
male and female law enforcement professionals gathered during two sessions.

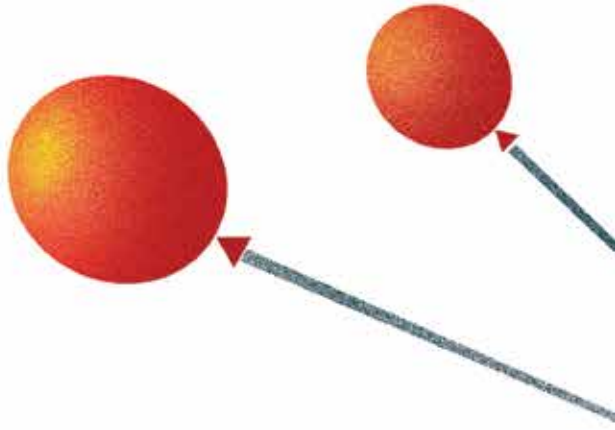
The submitted reports showed that among the most relevant actions implemented were the incorporation of gender perspective into institutional projects, as well as outreach and training in the application of international Human Rights treaties and gender perspective based legal argumentation, promotion of the shared exercise of family responsibilities and sensitizing activities, and the creation of tools to address labor and sexual harassment.

In addition, to obtain concrete results in the implementation of gender perspective during the Tenth Ordinary Session, sentence analysis workshops on the topics of sex discrimination, gender stereotypes, violence against women, parity and democracy were included.

The future for the Monitoring and Evaluating Committee of the Covenant is promising, since the growing interest of law enforcers in this matter is palpable and a greater sensitivity to dealing with issues of equality and non-discrimination in resolutions dictated can be confirmed. ■

Supreme Court's General Directorate for the Study, Promotion and Development of Human Rights.

Working sessions. The meetings were held in Mexico City and Tuxtla Gutierrez, Chiapas, on separate dates.



"GENDER AND JUSTICE" CONTEST

A SPACE OF EXPRESSION TO ACCESS JUSTICE

In 2009, the Mexican Supreme Court promoted the creation of the "Gender and Justice" contest in collaboration with the Office in Mexico of the United Nations High Commissioner for Human Rights, in order to create a forum where essays relating to the intersection of access to justice, gender and Human Rights in Mexico could be acknowledged.

In subsequent editions, from 2010 onward, the competition grew with two new categories: features and filmed documentaries. Also, new actors became hosts: the United Nations Entity for Gender Equality and Empowerment of Women-UN Women; Ambulante International Film Festival; the organization Periodistas de a Pie and the Civil Association of Women in Film and Television.

Each year, a competition notice is issued. Increasing participation is a sign of the acceptance and positioning of Human Rights in female and male citizens that reaffirm their interest in having these rights constantly recognized.

In the six years the "Gender and Justice" contest has been held, projects that have creatively and realistically portrayed people's (especially women's) problems in accessing justice are rewarded. The selected works provoke reflection on the adjustments and institutional policies to be adopted in order to guarantee the Human Rights of all Mexicans.

Among the topics that have been addressed are gender violence, the double victimization of children, femicide, masculinity, intersectionality, violence against women, rape between spouses, and access to justice for indigenous persons or communities, the figure of deposit in court proceedings, child marriage, and violence.

The winning creations (essays, features and documentaries) of all contest editions can be downloaded at: http://equidad.scjn.gob.mx/concursos/.

In this recount, the protagonists of these wining projects deserve special mention. Throughout the years, victims have found in this contest a forum to present their cases that became concrete and palpable in the contest's awards ceremony; a space of credibility and vindication; a space for a form of reparation. In each of the ceremonies, the victims presented their testimonies -they spoke- through the winning entries, and were welcomed by the highest court of the country.

These awards ceremonies have been attended by Valentina Rosendo Cantu, protagonist of "Ines and Valentina: Dignity and Justice" (2010), activist Rosalba Bartolo Joaquin and Ilma Hernandez Bartolo, indigenous mixes and central players in the essay "The sad and naive story of Ilma and her heartless father. Rape within marriage in Ayutla, Oaxaca" (2012); eight women activists from Veracruz featured in the documentary "Xalapa's activist mothers"; activist Maricela Escobedo (who was killed

months later in Chihuahua, when protesting the murder of her daughter) protagonist of the feature "Maricela" (2010); Adriana Manzanares, protagonist of the documentary "Justice for Adriana Manzanares" (2014); and, among many others, Yakiri Rubio, protagonist of "If you're raped, fight back... but only a little. The Yakiri Rubio case."

Each year, we seek to integrate the jury, responsible for choosing the winners, with renowned professionals in filmmaking, journalism and academia as well as Human Rights and gender specialists. Personalities such as Jose de Jesus Orozco Henriquez, Ana Cecilia Terrazas, Adriana Castillo, Monica Gonzalez Contro, Cecilia Medina, Mercedes Barquet, Lucia Lagunes Huerta, Jose Luis Caballero Ochoa, Michael Rowe, Macarena Saez, Gerardo Sauri Suarez, Claudia Martin, Paula Astorga, Pedro Salazar and Maria Isabel Belausteguigoitia Rius, among others, have been part of the jury.

In 2015, the entry call for the "Gender and Justice" Contest was launched in June and closed on October 5th. The list of winning competitors was published in January 2016 on the hosts' websites:
» equidad.scjn.gob.mx
» hchr.org.mx
» periodistasdeapie.org.mx
» mujerescineytv.org.

For this edition it is expected that contestants will address stories that allow both society and those who enforce the Law, to obtain visibility for the issues and areas where further work is required to transform the right to equality and non-discrimination into a reality.

The invitation to participate and also disseminate the contents of past editions' winning contestants (essays, documentaries and features) in order to generate, among spectators, a greater awareness of existing rights, and among law enforcers, consciousness of the different ways in which individuals' access to justice is violated, is open. ■

Supreme Court`s General Directorate for the Study, Promotion and Development of Human Rights.

Disseminating justice

In order to encourage the dissemination of the award-winning entries, here are some of the winners and a brief overview of them:

ESSAYS

"Prevalence of Inaccessible Justice for Female Victims of Violence: Gender and Disability"
Author: Emily Samantha Colli Sulu

The problems experienced by women with disabilities when trying to access justice is analyzed, to illustrate the double discrimination they suffer by being subject to the legal figure of interdiction, a status that discriminates and places them in a vulnerable position by precluding them from obtaining adequate reparation, a phenomenon that leads to impunity and consequently to the perpetuation of violence.

"Collaboration and gender perspective, tools to improve access to justice?"
Author: Laura Aragon Castro

Article presenting two cases of female victims of domestic violence that were litigated in the adversarial system of Chihuahua, Mexico. Both cases show how a small group of women was able to reverse legal, social and cultural patterns.

"Child marriage in Mexico and its implications in girls and teenagers"
Author: Nancy Carmona Arellano

The essay deals with the way child marriage affects girls and teenagers, not only because it is mostly them who are involved in these unions, but because they suffer the consequences more intensely. From the Human Rights perspective, this essay examines the health, education and employment implications of child marriage. Its starting point is the conception that child marriage is a practice whose root cause is related to discrimination against women, which can be considered akin to slavery when it violates the need for child protection and is not based on free consent.

"Child care: a gender perspective in the family"
Author: Ramses Samael Montoya Camarena

This article aims to show that the legal rules governing the allocation of childcare in Mexico are discriminatory. To accomplish this, the concept of family is approached through ethnomethodology, a theoretical approach that has points of intersection with Law, Anthropology, Psychology and Sociology.

DOCUMENTARIES

"Justice for Gaby"
Director: Eloisa Diez

The documentary presents the story of Gaby, a girl who went missing and was later murdered in the state of Veracruz, where authorities did not follow due process to locate her. The story centers on Gaby's mother, Barbara Ybarra, who reported the disappearance of her daughter to the proper authorities, without receiving any support or results. Gaby's body was found two years later.

"The scars of injustice. Grettel case"
Directors: Erica Mora Garduño and Luis Antonio Garcia Olmedo

A project that addresses the case of Grettel Rodriguez, who tells the story of the aggressions she suffered at her ex-boyfriend's hands and the judicial procedure she followed to obtain justice.

"4 Women"
Director: Alejandro Alarcon Zapata
This production portrays the vision of four generations of women native to Tsontehuits, municipality of San Juan Chamula, Chiapas, who reflect on childhood, customs, tradition and violence.

FEATURES

"Erika was killed by indifference"
Author: Daniela Edith Rea Gomez
It presents the story of two deaths that could have been avoided. It is also a story that reveals a health system ill with indifference: Erika was examined by nine doctors in less than a week, but none of them detected that her life and that of her son were in danger. Like her, thousands of pregnant women die each year in Mexico due to the lack of proper medical care.

"How much does it cost to kill a girl?"
Author: Carrion Lydiette
A feature denouncing the impunity that exists regarding the murder of women and girls in the state of Mexico. It portrays the case of Esmeralda, a six-year-old girl murdered by her teenage neighbor.

"Imelda: flower in life, oak after death"
Author: Jade Ramirez Cuevas Villanueva
This report presents the story of Imelda, who suffered domestic violence and whose husband ordered her rape and murder. A year after Imelda's death, her family continues the process of fighting against impunity and getting Jalisco authorities to recognize this case as a femicide.

"The children of organized crime"
Author: Paris Martinez Alcaraz
This feature addresses the growing phenomenon of the inclusion of children into organized crime in Mexico.

Ilustrated by Christopher Cisneros

TRIBUNAL ELECTORAL
del Poder Judicial de la Federación

Transforming po

Gender parity in access and permanence in public office

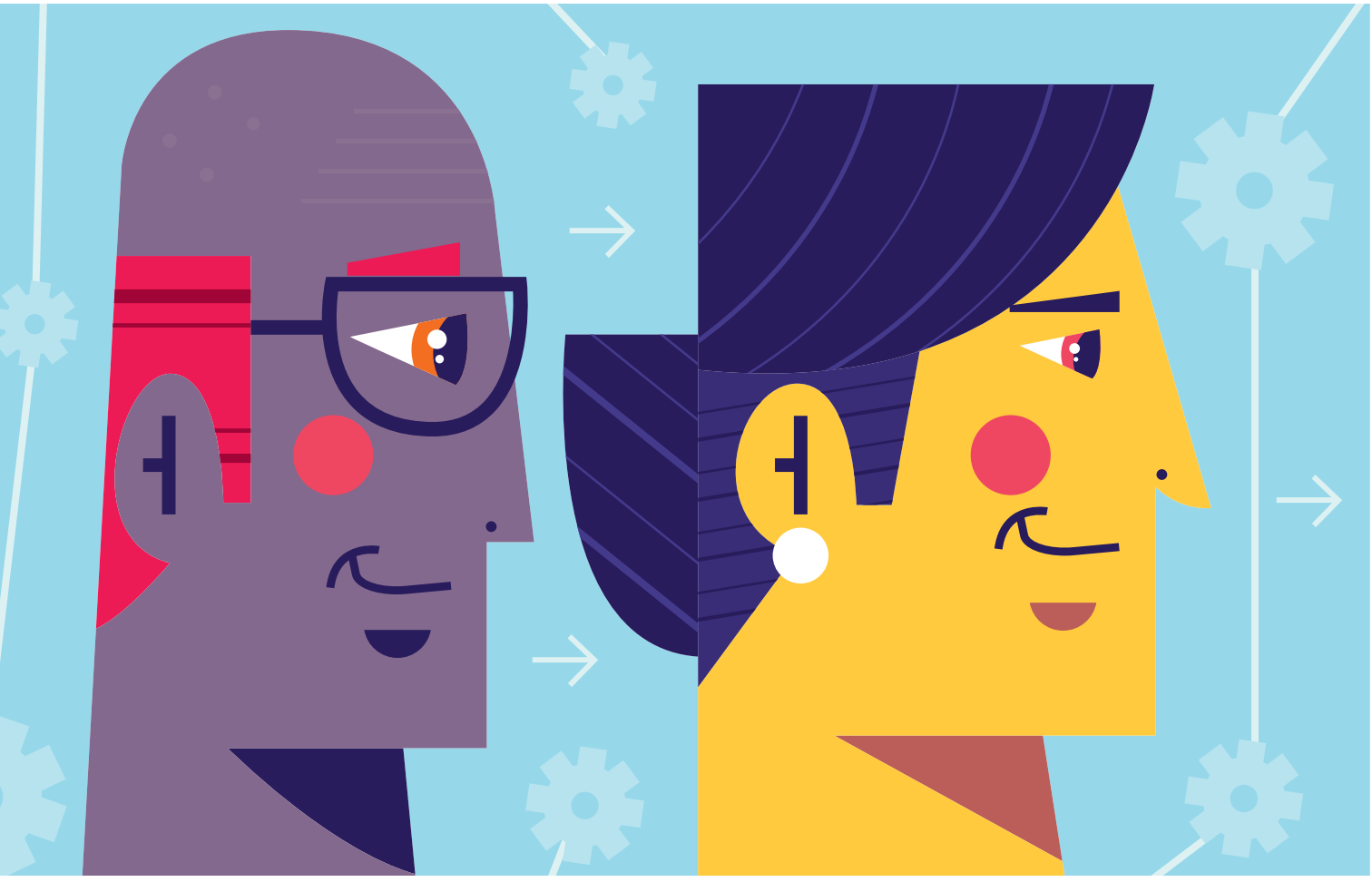
By Dr. Alejandra Montoya Mexia

BACKGROUND

The feminist movement opened the debate on rights with a gender perspective and showed that gender builds social institutions such as Law, religion or family, creating different social positions with unequal allocation of rights and responsibilities between the sexes by placing women in occupations centered on private life and men in their roles as politicians and economic providers.

Thus, Anglo-Saxon academic feminism fueled the use of the concept of gender in the 70s to indicate that inequalities between men and women are socially constructed, not biological, on the grounds that the different behaviors, activities and roles of women and men were culturally constructed and not biologically determined.

Later, in the 80s, the concept of gender began to be used by various Social Sciences because it proved to be a handy tool to define more precisely how the biological difference between the sexes became economic, social and political inequality, putting women at a disadvantage in relation to men.



Ilustrated by: Christopher Cisneros

licies

PARITY AND THE INTERNATIONAL COMMMUNITY

The four world conferences on women convened by the United Nations (UN), have helped to bring the cause of gender equality forth and united the international community around common goals, with an action plan for the advancement of women in the public scope and in private life.

The Beijing World Conference on Women (2000) and five new measures approved in the frame of the 23rd UN General Assembly extraordinary period of sessions (celebrated in New York on June 5-9, 2000), with the theme "Women in 2000: Gender Equality, Development and Peace in the Twenty-first Century" allowed for the renewal of previously made commitments and the examination of obstacles to the application of the Beijing Platform for Action to accomplish the empowerment of women and gender equality.

As a result of this conference, on November 16th, 2000, the United Nations General Assembly adopted Resolution S-23/3, Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action. In section IV, "Measures and initiatives to overcome obstacles and to achieve the full and accelerated implementation of the Beijing Platform for Action", number 52, the resolution states:

52.

To achieve gender equality and the empowerment of women requires redressing inequalities between women and men and girls and boys, and ensuring their equal rights, responsibilities, opportunities and possibilities. Gender equality means that the needs, interests, concerns, experiences and priorities of women and men are an integral dimension of the design, implementation, national monitoring, evaluation and follow-up (even at an international level), of the measures taken in all areas.

Number 60 also states:

60.

Women play an essential role within the family. The family is the basic unit of society and a strong force of social cohesion and integration, so it should be strengthened. The lack of support for women and insufficient protection and assistance to the family affect all of society and undermine efforts to achieve gender equality. In different cultural, political and social systems exist different types of family, whose members have rights, capabilities and responsibilities that must be respected. The economic and social contribution of women to the welfare of the family and the social significance of maternity and paternity continue to be inadequately recognized. The role of both parents and legal guardians is also essential in the family and in the upbringing of children, as well as in the contribution of all family members to family welfare, so it should not be grounds for discrimination. In addition, women bear a disproportionate share of domestic responsibilities and the care of children, the sick and the elderly. We must fight against this imbalance systematically through appropriate policies and programs, particularly with education, legislating where appropriate. To achieve the full participation of men and women in the public and private spheres, they must be enabled to reconcile and share equally in work and family responsibilities.

At the tenth session of the Regional Conference on Women in Latin America and the Caribbean, also known as the Quito Consensus, it was recognized that parity is one of the key drivers of democracy, whose aim is achieving equality in the exercise of power in decision-making, and States Parties agreed:

» **To take positive action and all the necessary mechanisms, including legislative reforms and budget allocations, to ensure the full participation of women in public office in order to achieve parity in state institutions (legislative, Judiciary, special regimes and autonomous).**

» **To adopt measures of joint responsibility for family and working life that apply equally to women and men .**

PARITY AND EMPLOYMENT

Governments meeting at the 54th session of the Commission on the Status of Women in New York to mark the fifteenth anniversary of the Fourth World Conference on Women held in Beijing in 1995, in the context of the review of the final documents of the Conference and the twenty-third special session of the General Assembly (entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-first century"), and its contribution to the 2010 annual ministerial review of the Economic and Social Council (on implementation of the internationally agreed goals and commitments regarding gender equality and the empowerment of women), recognized that the implementation of the Declaration and Platform for Action of Beijing and the fulfillment of the obligations assumed under the Convention on the Elimination of all Forms of Discrimination against Women, mutually reinforce each other in the achievement of gender equality and the empowerment of women.

The ILO's Covenant 100 provides for equal remuneration for men and women workers for work of equal value, while Covenant 111 states that all people, regardless of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

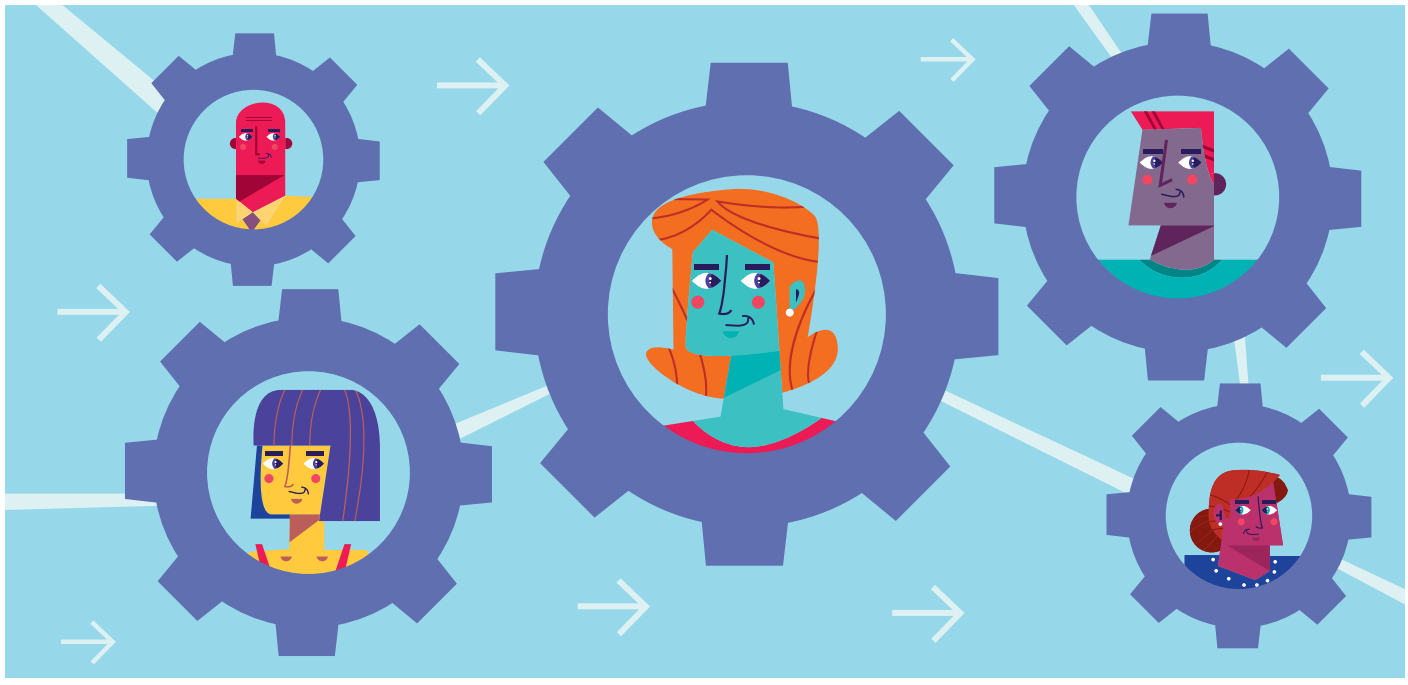
The International Covenant on Economic, Social and Cultural Rights establishes that States Parties shall ensure to women and men equal rights to the enjoyment of just and favorable conditions of work in terms of wages, health and safety, opportunities for advancement, breaks, holidays and compensation, among others.

The Covenant on the Rights of Handicapped Persons states in Article 27 that the States Parties recognize the right of persons with disabilities to work on an equal basis with others, with equal opportunities and equal remuneration for work of equal value.

The General Law of Persons with Disabilities in force in Mexico states in paragraph 9 that people with disabilities have the right to work and training, in terms of equal opportunity and fairness. For this purpose the competent authorities shall, inter alia, establish policies for the employment of persons with disabilities; and in no case will disability be grounds for discrimination in the provision of employment.

[1] Retrieved from http://cidemac.org/PDFs/bibliovirtual/INFORMES%20RELATORAS/Nuevas%20medidas%20e%20iniciativas%20para%20la%20aplicacion%20de%20la.pdf

[2] CEPAL (August 1-9, 2007). Tenth session of the Regional Conference on Women in Latin America and the Caribbean DSC/, numeral 17 1(i) (ii) (Xiii), Retrieved from http://udo.mx/igualdadgenero/images/bibliotecavirtual/Quito2007.pdf



Mexico's General Law Regarding Equality Between Women and Men establishes that authorities should ensure the principle of substantive equality between women and men in the field of employment, vocational training and promotion and promote access to employment of women into decision-making positions.

Parity as a political strategy aims to ensure a balanced participation of women and men in all areas of society, particularly in decision-making.

In this context, the Electoral Tribunal of the Federal Judiciary Branch established in its Internal Regulations that the Judiciary shall have the principle of parity as a guiding light and will be designed with a gender perspective, a principle that will begin to be applied to its administrative career´s civil service. Indeed, Articles 62 and 64 of the Internal Regulations, in their corresponding part, state the following:

Article 62

The administrative career civil service shall be governed by the principles of gender equality and the Judiciary, as may be applicable. General Agreements will determine the bases, guidelines and implementation modalities, depending on the nature of the administrative area concerned.

Article 64

The Judiciary will have parity as a guiding principle and will be designed with a gender perspective. To ensure this, the necessary measures will be defined and implemented.

CONCLUSIONS

Undoubtedly, the parity measure implemented by the Electoral Tribunal of the Federal Judiciary Branch with training in skills and abilities will ensure men and women equal access to and permanence in Judiciary public office positions and administrative areas. To achieve this it will be necessary, in addition to training, to adopt measures of joint responsibility for family and laboral life that apply equally to women and men who work in this Electoral Tribunal.

This will enforce an equality with gender perspective in the access and advancement of the civil service men and women who work in the Electoral Tribunal, under the provisions of the Mexican Constitution, international Human Rights treaties signed by the Mexican State and the institution's Internal Regulations. ■

Dr. Alejandra Montoya Mexia:
Head of Gender Unit, Coordination of Equal Rights and Gender Equity, TEPJF

TRIBUNAL ELECTORAL
del Poder Judicial de la Federación

Illustrated by Christopher Cisneros

NO ROOM FOR CONFUSION

Equality as right and principle

Gloria Ramirez*

Equality is a human right and therefore is a legal obligation that States cannot subtract themselves from. U.N. Women notes that gender equality springs from the historical recognition of discrimination against women, making it necessary to take action to eliminate inequality and shorten the gaps between women and men, so as to lay the foundations for effective gender equality, taking into account that the de facto inequality suffered by women may be exacerbated depending on age, ethnicity, sexual orientation and socioeconomic status, among others .

Maria Luisa Balaguer says that democracy is the kingdom of equality. Kate Millet first mentioned the term "patriarchy" in the 60s, to demonstrate the power of men over women in society; thereafter, this concept is used generically to refer to the possibility of the submission suffered by women .

For Butler, other speeches and resources must be considered, such as the fact that language has a "performative" character. This means that speech is conceived as a form of action through which concrete consequences can arise, which can strengthen or weaken others. However, since language is not a closed system, but on the contrary, it is open to reappropriation, reinterpretation and redefinition of the names, the effects of language should not be considered automatic, one-way or even less, obvious.

A strategy aimed at reversing the situation of structural discrimination is to promote a greater political participation for women, as well as their access to institutions and services that enable a positive influence on the public sphere. This participation should encourage the empowerment of women in order to ocuppy their place in the public arena, where women still lack an equal footing.

Empowerment is a process of self-affirmation through which women develop capabilities, opportunities, resources, assets, rights and powers to make decisions about their lives and control and transform its course, despite opposition from other people or institutions. It is the exercise of positive powers, the ability to satisfy themselves, to decide on their own lives, their bodies, the ability to recognize their own skills and knowledge.

It is imperative then to empower women in every aspect of life in society. The gender perspective has as one of its aims to contribute to the social and subjective building of a new configuration based on the redefinition of history, society, culture and politics from women and with women.

However, up to the middle of the twentieth century, little more than half a century ago, she was confined to the closed spaces of the home, private and family centered. This division between the public and private sectors would be unquestionable and unshakable for a long time, not only by political powers that be, but also by leading thinkers and founders of modern politics. It is this

division of labor, since the emergence of the modern State until the mid-twentieth century, that became the greatest ideological and cultural obstacle to women's participation in the public and social spheres "[...] It has been said that the fact that women were the dominated sex was a design of nature, an unchangeable order, a pre-political condition [for which even at one time] it proved also useful to impede women's access to education and the exercise of any profession."

Thus emerge, from the end of the last century, a number of concepts that are essential to know and manage clearly to avoid confusions that could mean setbacks in the struggle for equality for women, such as a gender, gender perspective and gender mainstreaming, etc.

In this context the concept of equality will be relevant to distinguish clearly and without confusion, as stated in the CEDAW Committee's recommendations numbers 18 and 19, sent to the Mexican State:

18. The Committee notes with concern that, while the Convention refers to the concept of equality in the plans and programs of the State party, the Mexican State uses the term "equity" instead. It is also concerned that the Mexican State might understand equity as a preliminary step to achieving equality.

19. The Committee requests the Mexican State to note that the terms "equity" and "equality" convey different messages and their simultaneous use can lead to conceptual confusion: the Convention aims to eliminate discrimination against women and ensure equality in fact and in law (in form and substance) between men and women. The Committee recommends that the State in its plans and programs consistently use the term "equality".

The formulation of public policies from a gender perspective became binding for States in the Beijing Conference of 1995, since this is an effective instrument to change customs and gender stereotypes: the essence of justice is to treat equals and unequals equivalently (which is not to say identically).

Therefore, on the basis of the way in which human beings' equality is conceptualized, the steps leading to a change in the status of women will be defined. This recommendation, which dates from 2006, thus clearly states that equality is a right and a principle, with no room left for confusion. ■

Gloria Ramírez: *Coordinadora de la Cátedra UNESCO de Derechos Humanos de la UNAM.*

BIBLIOGRAPHY

Balaguer, M. L.(2005.) *Mujer y constitucion. La construccion juridica del genero. Spain: Universidad de Valencia*

C. Molina, P. (1994) *Dialectica feminista de la Ilustracion. Barcelona: Anthropos*

Lagarde, M. (1996) *"El genero" and "La perspectiva de genero", in Genero y feminismo.*
Desarrollo humano y democracia. Spain: horas y HORAS Publishing. Retrieved from http://www.iberopuebla.edu.mx/tmp/cviolencia/genero/consulta/lagarde.pdf

Millet, K. (1995) *Sexual politcs. Madrid: Catedra.*

SCJN (October 2010) *"La critica a la nocion de 'patriarcado' desde el feminismo posmoderno", in Genero y Justicia Newsletter. Mexico: SCJN. Number 16 (N/A)*

Meentzen, A. and Gomariz, E. (Comp.) (2003) *Democracia de genero, una propuesta inclusiva. El Salvador: Heinrich Böll Foundation. Pg. 56*

[1] U.N. Women and INMUJERES (2015) La igualdad de genero. Mexico: U.N. Women and INMUJERES

[2] Balaguer M. L. (2005, p.23) quotes C. Molina P.(1994), pg.175, who in turn credits Kate Millet with the invention of the term in her book Sexual politics.

[3] SCJN (October 2010) "La critica a la nocion de 'patriarcado' desde el feminismo posmoderno", in Genero y Justicia Newsletter. Mexico: SCJN. Number 16 (N/A)

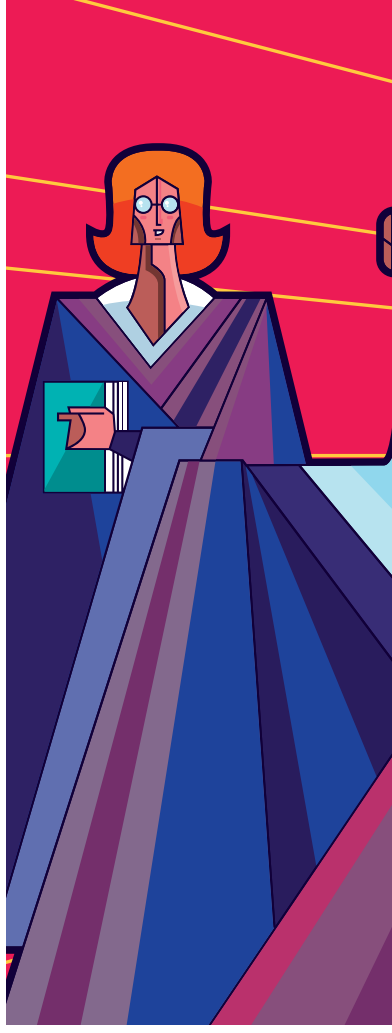
[4] Lagarde, M. (1996, N/A)

[5] Just to mention a few, Rousseau, Hegel, Schopenhauer, Kierkegaard, Nietzsche, etc. (See Valcarcel, A. Op. Cit.)

[6] Valcarcel, A. Ibid.pg.21

[7] CEDAW (August 2-25, 2011). Final observations by the Committee for the Elimination of Discrimination against Women. Mexico: CEDAW/C/MEX/CO/6, paragraphs 18 and 19.

TRIBUNAL ELECTORAL
del Poder Judicial de la Federación



Equality between men and women A task for courageous male and female judges

By Juan Carlos Silva Adaya*

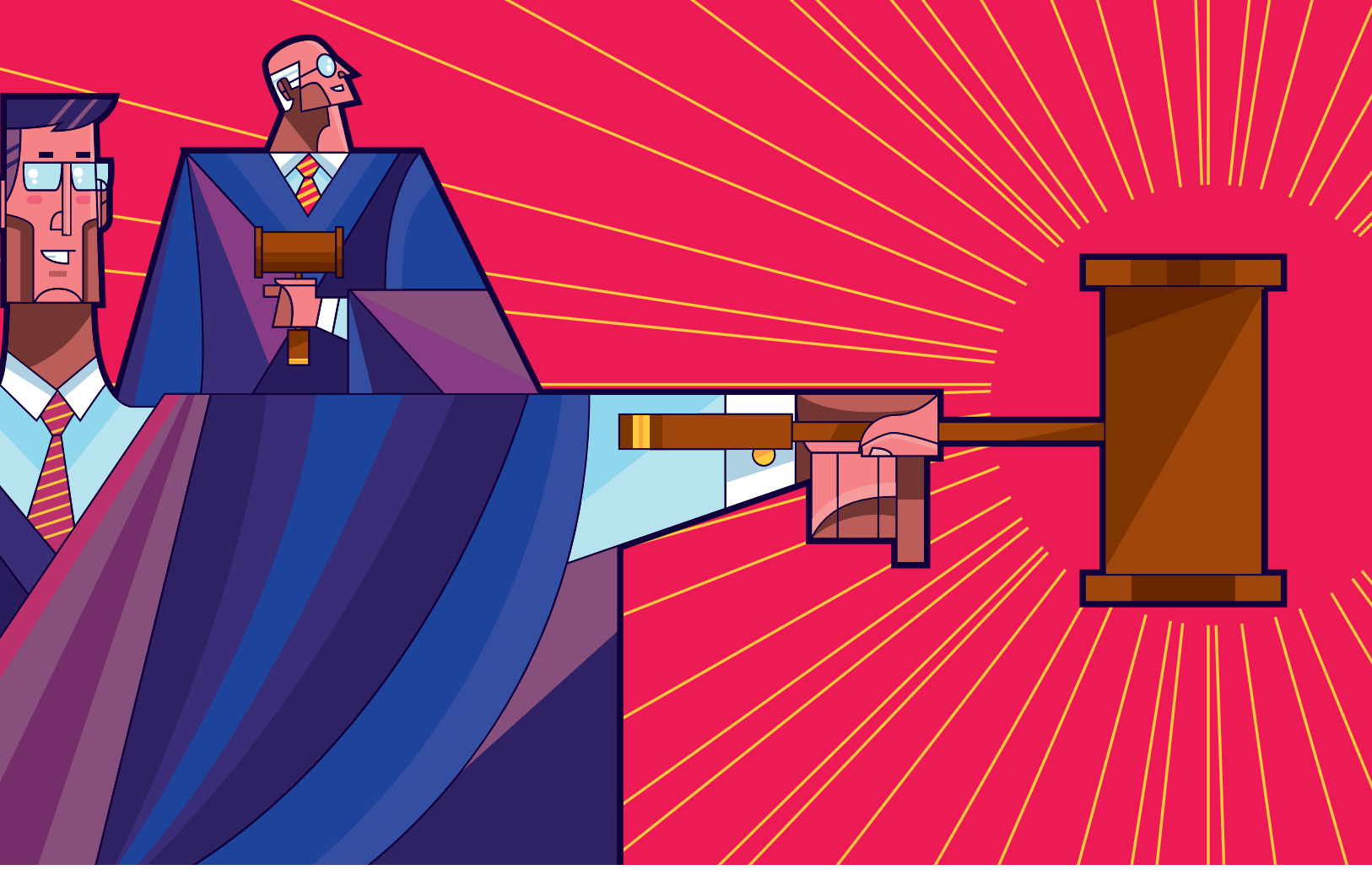
With the characterization of judicial work coined by Luis Recasens Siches1 and the reformulation of the conclusions contributed by Francisco Laporta2, I begin this discussion, in order to warn that the main challenge in terms of equal rights between men and women in electoral matters is the loss of the legal formalism that favors the deductive justification of judicial decisions or weighting subsumption before ponderation as well as the opposition of "normativism" against "decisionism"; rules against principles; law against "Constitutional Bloc"; positivism against constitutionalism and literal performance against pro persona ("pro femina") interpretation.

Inequality and discrimination against women remain intact, when there is a partisan manipulation of the Constitution (which is reflected in secondary rules intended to make it more efficient3), under which the only sense that remains is what prevailing political actors give it in the absence of a jurisdictional control that effectively protects and guarantees Human Rights. Undoubtedly, the remedy lies in the clear determination of male and female Judges to implement the system or legal framework that favors substantive equality for women and to issue compensatory sentences.

In the Mexican legal system, modulation by means of an administrative decision or sentence serves the provisions of Articles 1, first to third paragraphs, and 4, first paragraph, of the Political Constitution of the United Mexican States; article 2, paragraph 1 of the International Covenant on Civil and Political Rights; article 1, paragraph 1 of the American Convention on Human Rights; articles 1, 3 and 4, paragraph 1 and 7, clause a) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); article 4, paragraph j of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women or Convention of Belém do Pará; articles 1, 2 and 5 sections four, five, six and seven, as well as article 36, section V of the General Law regarding Equality between Women and Men; article 1, section VI and articles 2 and 7 of the Federal Law to Prevent and Eliminate Discrimination, as well as article 5, section X and article 18 of the Women's Access to a Life Free from Violence Act.

According to the above, in the interpretation of the right to equality between men and women and, specifically, the right to be elected in conditions of equity and gender parity, there should be an exercise in balancing rights that could be in conflict, always ensuring the protection and safeguard of the most disadvantaged groups' rights.

A judicial determination encourages, respects, protects and guarantees the principle of legal equality, especially in a material or substantive way, which benefits women. That is, equal treatment, opportunities between men and women and gender equality are respected through the implementation of measures or reasonable adjustments that allow the empowerment of women. That is, the aim is to help women advance from a situation of inequality to a state of consciousness,



self-determination and autonomy, to be manifested in the exercise of democratic power emanating from the full enjoyment of their rights and political and electoral freedoms. A judicial decision is properly justified when one considers the context (of inequality and discrimination) that women find themselves in and the necessary measures to remedy this situation are foreseen as the effect.

There are no conditions of equality when the lists of candidates to the House of Representatives, as well as female and male members of the Senate, both of Congress and of local legislatures, as well as town halls, are mostly led or initiated by male candidates or formulas (out of the fifty lists for the 2014-2015 electoral process registered at the lower house of Congress, only seven out of ten were led by a woman. For example, at the Colima Legislature, of ten lists, only two were headed by women).

Equality does not exist when the composition of Congress, for example, has no equality as to its composition, since in the House of Representatives the correlation is 211 women (42.4%) compared to 287 men (57.6%) and in the Senate, 44 women (34%) against 84 men (66%).

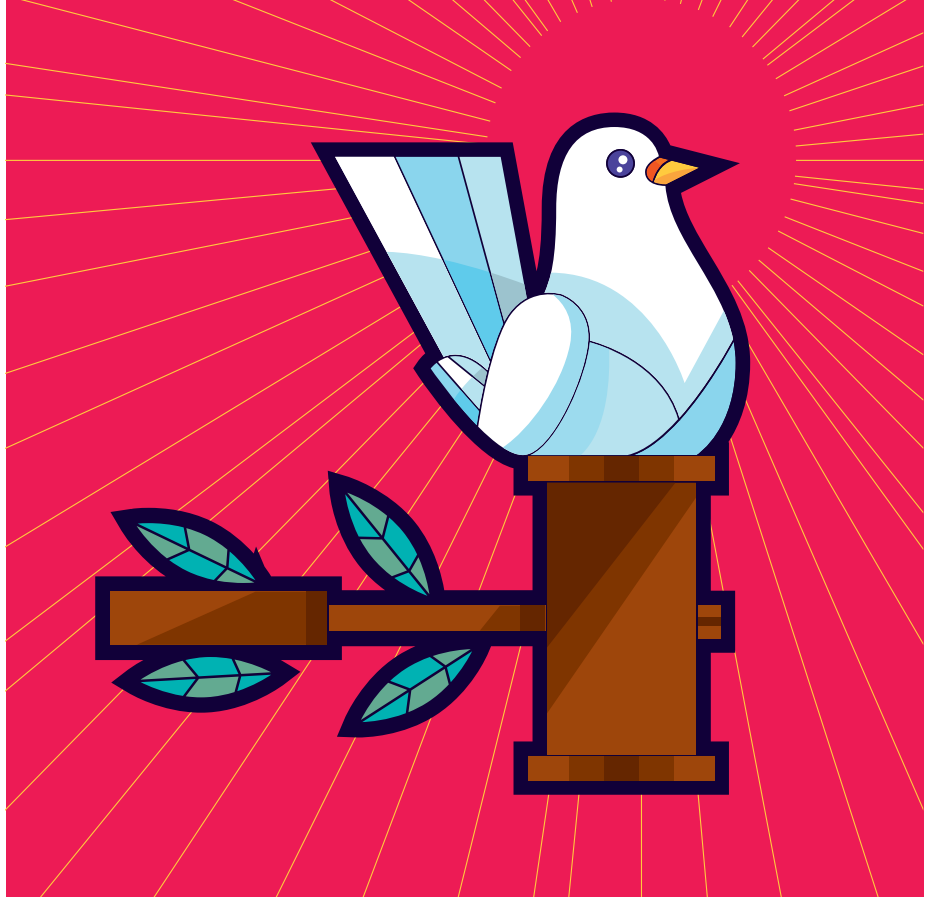
The laws that exist to protect electoral equality between women and men have not resulted in a substantive equality that empowers and reverses a situation of inequality sheltered by clear institutional violence. Many measures are insufficient: the provision of a constitutional principle of parity for the integration of federal and local legislative bodies (Article 41, section I, first paragraph of the General Law on Political Parties); the obligation of political parties to seek the effective participation of both genders in the nomination of candidates (article 3, paragraph 3, of the General Law on Political Parties); the obligation of political parties to identify and make public true and equal criteria to ensure gender parity in the nominations for federal and local legislators (article 3, paragraph 4 of the General Law on Political Parties); a ban on the allocation of districts with lower percentages of voting in previous processes exclusively for one gender (article 3, paragraph 5, of the General Law on Political Parties); the composition of formulas and alternate candidate formulas of the same gender (articles 232, paragraph 2, and 234 of the General Law on Electoral Institutions and Procedures); promoting and ensuring the gender parity

[1] Quoted by Lopez Medina Diego Eduardo. Siches L.R. (2004) "Teoría impura del Derecho" in Derecho Bogota: Coedited by Universidad de los Andes, Legis, Universidad Nacional de Colombia, pg. 428-434. Alejandro Nieto calls them "Judges of heroic stature" and "race of giants", vid., Beltran de Felipe, M. and Gonzalez Garcia, J. V. (2005) Las sentencias basicas del Tribunal Supremo de los Estados Unidos de America, Madrid: Centro de Estudios Politicos y Constitucionales and Official State Gazette. pg. 41, note 70.

[2] Laporta, F. (2007.) El imperio de la ley. Una vision actual. Madrid: Trotta, pg. 172 and ss.

[3] Garcia de Enterria, E. (N/A), La Constitucion como norma y el Tribunal Constitucional. Madrid: Civitas, Third Edition, pg. 186.

Illustrated by Christopher Cisneros



controlled by political parties in the nomination of candidates for elected office for the integration of Congress and state legislatures (Article 232, paragraphs 3 and 4, and 233 , paragraph 1 of the General Law on Electoral Institutions and Procedures), and the integration of the proportional representation lists of Representatives and Senators to Congress by the alternation of different formulas to ensure the gender parity principle until each list is exhausted (article 234, paragraph 1 of the General Law on Electoral Institutions and Procedures).

This principle of gender balance and related rules do not ensure substantive equality, especially in regard to the balanced or equal composition of collegiate government bodies (legislatures and town halls), as candidates within them are elected by the public through a direct vote with double effect, as this vote counts for the candidate with the majority of votes and the members of the closed and blocked list; i.e. the majority vote is simultaneously computed on the basis of proportional representation for political parties or coalitions, in order to conform voting percentages that could lead, eventually, to winning seats by applying allocation rules. This is a characteristic of the mixed or segmented electoral system that exists in Mexico for the conformation, especially, of collegiate legislative bodies.

As described above this in no way ensures that the parity imposed on the lists is reflected in the integration of government collegiate bodies, since no explicit rules are provided for the lists to begin with different genres and it is not certain that all the votes obtained by political parties or coalitions will become seats for candidates of both sexes (a question which is not explicitly defined by the will of the voters, as it depends on the application of the allocation rules based on the parties entitled to vote on it). This, combined with the results obtained by the candidates elected by the relative majority system (whose parity in the registration of candidates does not guarantee a balance in the establishment of collegiate bodies -legislatures and town halls), eventually leading to an unbalanced composition of the elected body in relation to gender, a circumstance that is discordant with the provisions of the Political Constitution of the United Mexican States and the block of constitutional review which Mexico belongs to.

Remedial action, such as when the authority dictates additive sentences3 so that the effective exercise of the right of access to public elected office for the benefit of gender equality is recognized and enabled, is fully justified-and this measure gives effect to a constitutional and democratic State of law-because there is a real context of discrimination that is historical, systematic and institutional and those who are mostly responsible for correcting it have instead answered to oligarchic politics.

A systematic and functional interpretation will allow the inclusion of a gender perspective to be secured and ensured, for a balanced gender composition, or one close to it, of federal and local legislative bodies and town halls, allows for the views and decisions of female and male Representatives, Senators and Town Hall Trustees to impact the faculties and activities of legislative and governmental powers through a genuine, equitable and inclusive dialogue.

The reason, motive or purpose for which the rule of parity on nomination was created must be understood under a progressive, broad or pro persona concept, so that it responds to a genuine sense of equal justice, in which procedur-

[4] Articles 17, second paragraph and 99, first and second of the Political Constitution of the Mexican United States, as well as article 84, paragraph 1, clause b), and 93, paragraph 1, clause b), of the General Law on the System for Contesting Electoral Matters. Cfr., Diaz Revorio, F.J. (2001). Las sentencias interpretativas del Tribunal Constitucional, Madrid: Lex Nova, pg. 146 and ss.

[5] Artículos 41, fracción I, párrafo primero, de la Constitución federal; 25, inciso c), del Pacto Internacional de Derechos Civiles y Políticos; 23, párrafo 1, inciso b), de la Convención Americana sobre Derechos Humanos, y 7°, párrafo 2, de la Ley General de Instituciones y Procedimientos Electorales.

al, instrumental or formal values do not prevail, while the comprehensive nature of democracy become the center of attention.

Indeed, through the implementation of parity integration (or a situation very close to it), of the collegiate representative bodies (including any decision-making public collegiate body), the principles and rules of the Mexican system of democracy are respected in Mexico, as prescribed in constitutional law. Certainly, this occurs because it respects and guarantees the following:

a) Active vote: constitutional principles relating to direct, equal, personal and not transferable character of votes. Through the implementation of affirmative action the directness of votes is respected, because the citizens exercise their right to vote by choosing a box on the electoral ballot, in which a formula of candidates or candidates appear, made up of a proprietary and an alternate candidate and the emblem of the political party which applied for registration for the majority election, as well as the female and male candidates appearing on the back of the same ballot and that conform the list of candidates by the principle of proportional representation (articles 23, paragraph 1; 266, paragraph 3 of the General Law of Institutions and Electoral Procedures, and 257 to 260 of the Electoral Code of the State of Colima). That is, the vote has a double effect, because it has implications for relative majority (the selection of the formula and emblem) and proportional representation (all the names of the women and men who make up the proportional representation list).

This double effect is recognized equally by all female and male voters and has the same specific value without being altered by the need to guarantee equal access via gender perspective. The vote that receives the specified effect, in an immediate and direct way, obeys to the male or female citizen's free determination, since, as anticipated, one votes for the relative majority formula and the list registered by each political party. There is absolutely no manipulation.

The fact that a corrective measure is applied through an additive sentence that protects the principle of substantive or material equality between men and women, does not constitute an action that injures the inalienable nature of votes, since it is still the citizen's determination.

It is necessary to note that the Mexican electoral system, on the principle of proportional representation, is closed and locked. Also these aspects are seen because the aforementioned protective action to give effect to gender perspective does not include "candidates" whose names do not appear on the list. Likewise, the locked nature of the list is guaranteed or attended to, as the originally determined priority and its solicited application are respected.

Determining the identity of the formula to be assigned attends to the order that appears in the registered list, only via the guarantee that access will respect gender parity.

b) Access to elected office: Parity in the register and the corresponding access also respects, protects and guarantees the Human Right of accessing elected office, because finally the seat is assigned to a person taken from the list according to the set order, but ascertaining gender perspective through affirmative action. That is, female and male candidates all together, are voted. Thus, the passive right to vote is respected, when the proportional representation list is included on the back of the ballot and all citizens exercise the right to an active vote.

The passive right to vote is exercised when the name is included in the list, registered and voted, but always within the closed and blocked list. When the technical rules for the conversion of votes into seats, seats or elected positions in a legislature are defined, the conditions to give effect to that right, in the form of access to the elected office post, are established. Thus, the provision of one or more plurinominal constituencies; the minimum threshold; quantification of votes (total issued, valid, effective or rectified votes, among other categories); the ratio (natural, rectified or adjusted); the largest reminder; and the limits on over- or under-representation, are conditions concerning access to elected office, as is the rule of parity.

The fact of the inclusion of male and female candidates on the lists, regardless of their location in these, involves the mere acquisition of an expected allocation dependent on the configuration and articulation of the elements of procedures and allocation formulas, including the percentage of votes obtained by the entities that postulated them and the content these entities provided to the application of allocation rules; however, it cannot be argued that certain female or male candidates possess a vested right in a particular seat by virtue of the will of the electorate, a phenomenon which does occur in relation to representatives elected by the principle of plurality. In this case, access to elected office, for both women and men, is exercised in two stages, the first one upon joining the list of candidates, and the second one with the integration of the popular representation body; in the first stage, gender parity is met with the equitable application of men and women, and in the second stage, to establish suitable, necessary and proportionate criteria for allocation, such as the modulation on the priority list to ensure the balanced integration of the popular representation body regardless of whether the reflected parity is at first instance conducive to such an outcome.

c) Certainty: The application of the rules and procedures for the allocation of applications with a gender perspective in integrating all collegiate body respects and guarantees the validity of the principle of certainty, because ultimately they occur or are updated in relation to the identity of the female and male candidates registered on the list. That is, both citizenship and people listed as political candidates and parties are absolutely certain about

the specific individuals who can access elected office.

Also, neither legal certainty nor due process are violated because, as I have previously explained, it is a list for which there is an expectation and it is not an acquired right (firm and final) until the moment when allocation and granting of the respective certificate are verified. Similarly, it is considered true and certain that the lists are final and this same condition is observed by applying allocation formulas. We must also consider that the Mexican legal framework admits the possibility that, even after electoral ballots are printed out, and the name of candidates which coincide with a political party`s register can no longer be included due to the imminent election and the impossibility of reprinting ballots, votes are credited to the female or male candidate that should be credited according to a judicial resolution. In this rather dramatic case, it cannot be concluded that judicial reparation violates the principle of certainty. That is so plain to see, that this situation in expressly foreseen at the national level (article 267 of the General Law on Electoral Institutions and Procedures).

That is, the principles of certainty and juridical certainty are respected, since this determination attends to the constitutional mandate which, besides being fully known to contending political parties and their candidates, must prevail through the adequate interpretation of the legal framework defined before the electoral process, seeking to make its application to public life concrete and tangible.

Such an approach is also consistent with the principle of due process, since the seats for Representatives, Senators and town hall positions are assigned following procedures and allocation proportional representation formulas, within which parity and others which pre-date allocation are characterized by being suitable, necessary and proportionate. In that sense, we must take into account the fact that being on the first spot on the list does not guarantee a seat to a female or male candidate, since the political party they belong to might not obtain the necessary votes according to allocation rules, and in any case, there is a possibility that the lists register a candidate of a certain gender and another of the other gender immediately after, as the party might only be assigned one position.

Hence the candidates (male) that -if the order they were postulated in prevailed - were appointed, must abide by the result of the allocation to ensure parity in the integration of the bodies representing the legislative and town halls, for there exists no possibility to oppose, in this case, the prevalence of an individual right (specifically, an expectation of assignment), to the supremacy of express constitutional mandate.

In this regard, irrespective of the existence, at the appropriate time, of disputes over priority or alternation of the various lists of proportional representation candidates, or if these existed, they (and the order of the lists) would have already been resolved by competent, firm authorities. Hence, this does not translate into an impediment to ensure gender parity in the allocation, because the provisions of the constitutional and conventional framework (federal and local) form part of the rules in the allocation of seats, in addition to the fact that this circumstance does not translate into immobility of the order of the lists, especially when it comes to the same candidates registered before the electoral authority.

The latter is intimately related to the democratic principle strictly recognized in the Mexican Constitution in Articles 39, 40 and 41, for example, the prevalence of the will of citizens expressed through the issuance of voting, since it must be remembered that citizens directly expressed a preference regarding the various political forces for the election of Representatives, Senators or town hall Trustees by the principle of proportional representation, without the individual's sense of his/her vote having determined, in any way, the total number of seats to which each political party or coalition is entitled to during allocation, or whether a particular set must be assigned to a candidate, because, although this allocation is implemented based on the results of the vote, it must not be forgotten that the latter are the product of the sum of the various individual wills of voters in favor of one or another political option, which are fully guaranteed as long as these votes are used during the allocation in favor of the political parties and coalition that received them.

d) Self-determination and self-organization. In regard to the principles of self-determination and self-organization of political parties, they are observed in the allocation with gender paritarian perspective, in response to the constitutional mandate set down in Article 41, section I, second paragraph, of the Mexican Constitution, as each one of the political forces during the period of nomination of candidates, sets the priority and alternation in the lists of proportional representation candidate formulas presented to the electoral authority for registration. Thereof neither are they, nor any of rights acquired by citizens listed as members (that is, the only vested interest, strictly speaking, is to be listed in a certain order that does not predetermine anything), affected by the fact that during the allocation of seats, the responsible authority strives for a parity integration of the collegiate bodies, since it is clear that the parity reflected in the application, does not transcend to the configuration of the elected body in question; in that sense, the latter is not effective for obtaining the desired result with its implementation in that preliminary stage.

The above reflection can be stated because, despite the observation both of prelation and the alternating list of candidates from each political party during the allocation of seats or town hall positions which should respect, firstly, self-determination and politicians, and also the rights of citizens nominated under such a scheme, the final configuration of the elected body does not reflect the effectiveness of the constitutional mandate

of gender parity, justifying, in a second moment, the disregarding of this order in order to help the constitutional provisions prevail, this being the only rational way to accomplish this, since it is not possible to vary triumphs decided by the majority system. But this does not imply in any way neglecting the terms of reference. Instead, it seeks to demonstrate that despite being attended to, its prevalence is not effective for obtaining the purpose meant for this specific case, namely, real equality between men and women.

The truth is that it also depends on the self-organizing ability of political parties, it being possible to only be able to choose between all- male candidate formulas in a district, a fact which is possible despite the fact that different political forces are obliged to respect the constitutional principle of parity for the integration of federal and local legislative bodies; look for the effective participation of both genders when nominating candidates; determine certain and equal criteria to ensure gender parity in the nominations to federal and local legislatures; not to assign districts that obtained lower voting percentages in the previous electoral vote only to one gender; integrate proprietary and alternate candidate formulas with the same gender; promote and ensure gender parity in seats held by political parties (in the nomination of candidates for elected office for Congress and state legislatures), and integrating the proportional representation lists for Congress Representatives and Senators through the alternation of different formulas to ensure the principle of gender parity until each list is exhausted.

In this sense, there is only the express intent of the voter regarding his/her constituency, but not in relation to the results of the remaining single-member districts, on which the voters, considered in their individuality, cannot of course affect the parity configuration of the elected body based on the results of the relative majority election held in single-member electoral districts.

Similarly, individually, the voter does not exercise control over the final outcome of the allocation of seats or town hall posts by the proportional representation system, since when voting he/she cannot known the configuration percentages that will thereafter serve as the basis for the allocation, within which an individual vote shall be included as an unspecified part, being unable to isolate any decisive element of will on whether the citizen decided or not, at the time of voting, for gender parity, because the governing body is formed looking for balance between men and women. This, in fact, should be the result of the interpretation and operation of the applicable legal system.

Hence we cannot talk of a violation to the will of the voter, since, in principle, at no point the results obtained by the majority system are violated, but from them and the relationship they keep regarding the total configuration of the governing or collegiate legislative bodies in terms of gender parity, the allocation rules are interpreted by the principle of proportional representation in a manner consistent with constitutional law and applicable conventionality, specifically, with regard to the priority and alternation in the use of the candidate lists, in order to provide the seats or town hall posts to the political party entitled to them (which ensures respect for the sum of individual citizen wills -votes- in the terms listed, i.e., a collective will that does not contain a determining factor with regard to the final configuration of the elected body, but that must be translated into seats for the political party or coalition that won that vote) as well as guarantee equality between women and men in the integration of town hall or legislative bodies. ■

Juan Carlos Silva Adaya: *Electoral Tribunal of the Federal Judiciary Branch Toluca Regional Chamber Magistrate*

Interview | **Justice Margarita Beatriz Luna Ramos**
Supreme Court member and Gender Equality Inter-institutional Committee President

A LIFELONG COMMITMMENT TO LAW ENFORCEMENT

Supreme Court Justice Margarita Beatriz Luna Ramos was born in the city of San Cristobal de las Casas, Chiapas, where she spent her childhood and adolescence. In this city she finished her basic education and started a B.A. in Law, which she concluded in UNAM. She finished her graduate studies, Master's and PhD in this same institution.

She has developed an outstanding judicial career, in which she has held positions as Law Clerk, Study and Account Clerk, Magistrate and Judge, among other positions. In 2003, she was appointed Federal Judiciary Councilor and since February 2004 is a Supreme Court Justice. In 2008, she became a member of the Mexican Supreme Court's Commission for Gender Equality. In 2015, she also became the Federal Judiciary's Gender Equality Inter-institutional Committee President.

Madam Justice, could you please tell us what motivated you to approach law enforcement?
When I was a child, I thought my vocation might lay in Medicine, a choice of career that would force me to leave my natal San Cristobal de las Casas, Chiapas, in order to attend university. However, my father passed away when I turned 15, and I was forced to stay. The only two career choices offered in San Cristobal were Teaching or Law. I chose Law.

Three years later, my mother and I decided to emigrate to Mexico City, where I had the opportunity to become a part of

the Federal Judiciary since the Fourth District Administrative Matters Court had just opened. I presented the necessary examination and was accepted by then District Judge Mr. Juan Diaz Romero, a genuine teacher who helped me learn about the jurisdictional task. Then, I never imagined that our paths would cross again many years later, in Full Court.

That was how my career in the Judiciary started; upon being assigned to a procedure desk I learned to integrate a file, from the very first "amparo" proceedings to the diverse processes and sentences. All of this allowed me to become more and more intrigued by "amparo" proceedings-not to mention the fascinating process of appeals-. I learned more and more. I became passionate about knowing, studying and understanding the varying points of view held by the accused, by Judges and by Magistrates...

I was lucky, since life generously placed me under hierarchical superiors who were authentic teachers, with broad judicial criteria and a vocation that taught me to formulate sentences with patience and dedication.

Step by step I became a woman in love with the judicial task. Today, I consider it a genuine privilege to be able to work as Justice; I am deeply convinced of the high level of responsibility I bear as a Supreme Court Justice, a duty that I face each day with great passion and conviction, investing all my efforts into doing an excellent job, always in congruence and in accordance with the provisions of our Constitution.

What it is needed for the full recognition of women's rights in the twenty-first century?

The problem is complex. Centuries of a culture that has relegated the role of women, which has not accommodated recognition of their rights, impeding women's ability to interact in different areas of public (and even domestic) life, subjecting females to the power of men. The struggle for the recognition of these rights becomes stronger from the nineteenth century on. However, even in this XXI century, we see that achievements are not yet sufficient for women to reach a leading and truly significant role in public life. We still require compensatory measures to alleviate this inequality, measures which of course do not reach all areas in which women develop, barely scratching the surface by improving certain aspects of their political representation.

> **"Equal participation of women in the Judiciary is, to me, a fundamental goal."**

The formal equality of women, which our legal framework proclaims since 1975, is not yet reflected in real, substantive equality, as endless statistics point out. In fact, women continue to suffer situations of violence or vulnerability that in many cases are invisible, embedded in cultural patterns that permeate into gender stereotypes or prejudices that even transcend to Law itself.

Much progress has been made in the recognition of women's rights at the legislative level, as more than a dozen laws protect their rights, recognizing their vulnerability. However, this is insufficient, hence in my view a cultural change is necessary. This must come from women ourselves, from within the family, where we should foster, together with men, the eradication of stereotypes that stand as an obstacle to this change.

We cannot imagine the world today without the active participation of women, especially considering that more than half the world's population is comprised of women. Of course, the role of those of us 1 who have been fortunate enough to grow professionally and reach positions of greater responsibility in the field of public life of our country is relevant. Our performance should reflect the ability and attributes that women possess and also the fact that on equal footing and responsibility we can grow as much as men. It's about ability, not gender.

Moreover, although legislative work is important, judicial work can also contribute to the recognition and enforcement of the rights of women, not only to solve a concrete case, but through the impact it can have on the social field and the action of Law (in its development and implementation) as a factor of change.

The recognition of women's right to a life free from violence and discrimination and the possibility of accessing justice on equal terms, requires jurisdictional bodies to introduce gender perspective into law enforcement as a method that aims to detect and remove all barriers and obstacles that discriminate against people based on sex or gender (that is, enforce the law while considering disadvantageous situations that, due to gender, discriminate and prevent equality). In other words, we must consider the real disadvantages of

Justice Margarita Beatriz Luna Ramos, Supreme Court member and Gender Equality Inter-institutional Committee President.

those facing judicial prosecution, adopting compensatory measures that contribute to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of their interests.

What meaning should law enforcers give to equality and gender?

Our constitutional system clearly establishes that all authorities, in their respective areas of competence, must respect, protect, promote and guarantee Human Rights. It also states that all people should enjoy these rights without discrimination. This includes a mandate that all people regardless of sex or gender must be able to access their rights and their effective guarantee.

As a result of this, Judges, in order to effect the rights to equality and non-discrimination and full access to justice, must question preconceived stereotypes in laws regarding the roles of either gender, as well as act with neutrality in the application of legal standards in every situation, since the State must ensure that any jurisdictional dispute where a situation of violence, discrimination or vulnerability by gender is noticed, it be taken into account, in order to clearly visualize the problem and ensure effective and equal access to justice.

Herein lies gender perspective when enforcing the law, in noticing all the facts in a way suitable to each case's circumstances, in not giving in to an inordinate

desire to rule in favor of women for the simple fact of their being female, in not thinking that simply invoking the principle of equality signifies that women will ipso facto be favored, because by doing that we would disregard the essence of our judicial work.

Have you seen substantial progress in law enforcement and the exercise of the rights of women?

Certainly, we see progress. Although as I noted in the beginning much still remains to be done. Right now, I remember a fact that was unveiled during the event Women in Power and Decision Making: Building a Different World, held in Santiago, Chile, in February 2015. The introduction to the document of the Call to Action generated during the conference reads: "At the current rate of progress, it will take 81 years to achieve gender parity in the workplace, more than 75 years to achieve equal pay between men and women for the same work, and more than 30 years to achieve a balance between women and men in decision-making positions. "

Nevertheless, we must recognize the biggest boost to the recognition of women's rights has been achieved in recent decades. This year, for example, we saw the fruits of the principle of gender parity in the composition of the lower house of the Mexican Congress and many State legislatures [a phenomenon] that extended to the town hall level, an issue that was favored by the High Court's interpretation and the criteria of specialized courts.

Internationally, the work that has been done to achieve the full realization of the rights of women is apparent. Internally, in recent decades, Mexico has worked for the rights of women to be fully guaranteed, our country has issued specific laws on equality, violence against women, discrimination; the Institute for Women was created, and we defined public policies aimed to benefit and empower women, in addition to establishing budgets earmarked for boosting gender perspective.

In the Federal Judiciary, a great effort has been made to achieve more and more progress in terms of gender equality. In recent years there have been significant achievements; one example is the widespread awareness of this issue and the more active involvement of Federal Judiciary staff in the various activities planned around this matter.

Specifically, at the Supreme Court we have promoted a more egalitarian and gender-sensitive vision in both resolutions and administrative matters. Since 2008, we created the Supreme Court's Commission for Gender Equality (of which I was a founding member), an instance that was entrusted with the promotion and introduction of gender perspective into the High Court through the Supreme Court Gender Equality Program, which aims to provide law enforcers with the theoretical and practical tools needed to judge with gender perspective, on the one hand, and to promote violence and discrimination free workplace environments, on the other.

During this year, thanks to the kind instructions of Chief Justice Luis Maria Aguilar Morales, I was appointed to chair the Gender Equality Inter-institutional Committee, a body responsible for unifying the criteria for institutionalizing gender perspective in the Federal Judiciary. I undertook this commitment convinced of the need to redouble efforts and continue working and promoting the issue of gender [both] in law enforcement, and in institutional policies that favor and provide greater opportunities for women working within the Federal Judiciary branch.

The issue of gender parity in the Federal Judiciary is one of your goals?

Equal participation of women in the Judiciary is a fundamental goal for me. Precisely from the platform offered by the Gender Equality Inter-institutional Committee, I have committed myself to a work plan that, without neglecting the programs being successfully operated, offers a broader dimension for the benefit of women who work in the Judiciary, proactively involving our own female officers (women supporting women, with a comprehensive vision), which would provide them with their own tools to access new opportunities and reduce barriers which they have faced so far.

The work plan I desire to promote has women within the Judiciary as the cornerstone, and promotes making this a suitable jumping off platform to project its greater presence into all Judiciary positions, creating more and better opportunities for females to foster their professional and personal development on an equal footing. All this through measures aimed at strengthening the implementation of a judicial public policy on gender equity and equality, both within the Judiciary and outside it, in the field of law enforcement, consistent with what was stated by our Chief Justice in his own work plan.

It is necessary to encourage the participation of women in promotions and the advance of their career paths in the various Judiciary categories. According to recent statistics, the number of women working in the Judiciary is not noticeably inferior to that of men; however, females are present mostly at a lesser hierarchical ranks, and that we must work on. It is necessary to increase and encourage female participation through training, either with courses, specialized programs, or any other [resource] that allows them to prepare to be in a position to compete and obtain upward mobility.

I am convinced that our country requires well-prepared female and male Judges, deeply knowledgeable of the Law, and always open to listen to everyone involved in a judicial process, Judges who have a Human Rights and gender perspective when issuing their judicial sentences.

How to give women in the Judiciary greater opportunities for advancement?
I have the institutional commitment to promote greater female participation in the higher hierarchical ranks of the Judiciary's administrative and judicial environments.

Achieving a Judiciary free from discrimination, that provides development opportunities for both men and women, and ensuring that females have greater opportunities for advancement, is transcendental.

At present, both jurisdictionally and administratively, women are well represented; i.e., quantitatively, women are already inserted into the Federal Judiciary. Now, the priority is to create mechanisms to ensure females are qualitatively present in decision-making. It is therefore imperative to improve the parameters of equality in the Judiciary and incorporate elements for reconciling family-personal life and career, so important for the effective equality between women and men.

According to 2015 statistics, the gender gap widens dramatically when the proportion of female Judges and Magistrates is considered. There are 308 males Judges and only 84 females. As Magistrates, there are 148 women per 640 men. The difference in participation by gender is very large and we need to work on reversing these figures.

From the Gender Equality Inter-institutional Committee we are working to finalize a number of actions to achieve material equality and increase the promotion of women in the Judiciary.

Among the actions to be promoted are:
1. To encourage the participation of women in contests for accessing Judiciary positions, either by reserving a percentage of places exclusively for women or by creating female only contests.
2. Inserting flexible and objective criteria to define allocations, allowing people with intensive family care responsibilities to remain assigned to their present place of residence, opt for an allocation which would facilitate that task, or be given the chance to select between three options, so that they can access reallocation if necessary conditions are present.
Moreover, it is worth noting that measures such as paternity leave have been implemented, measures conceived not only as a convenience for parents, but also in order to get males involved in the care and responsibility for children.

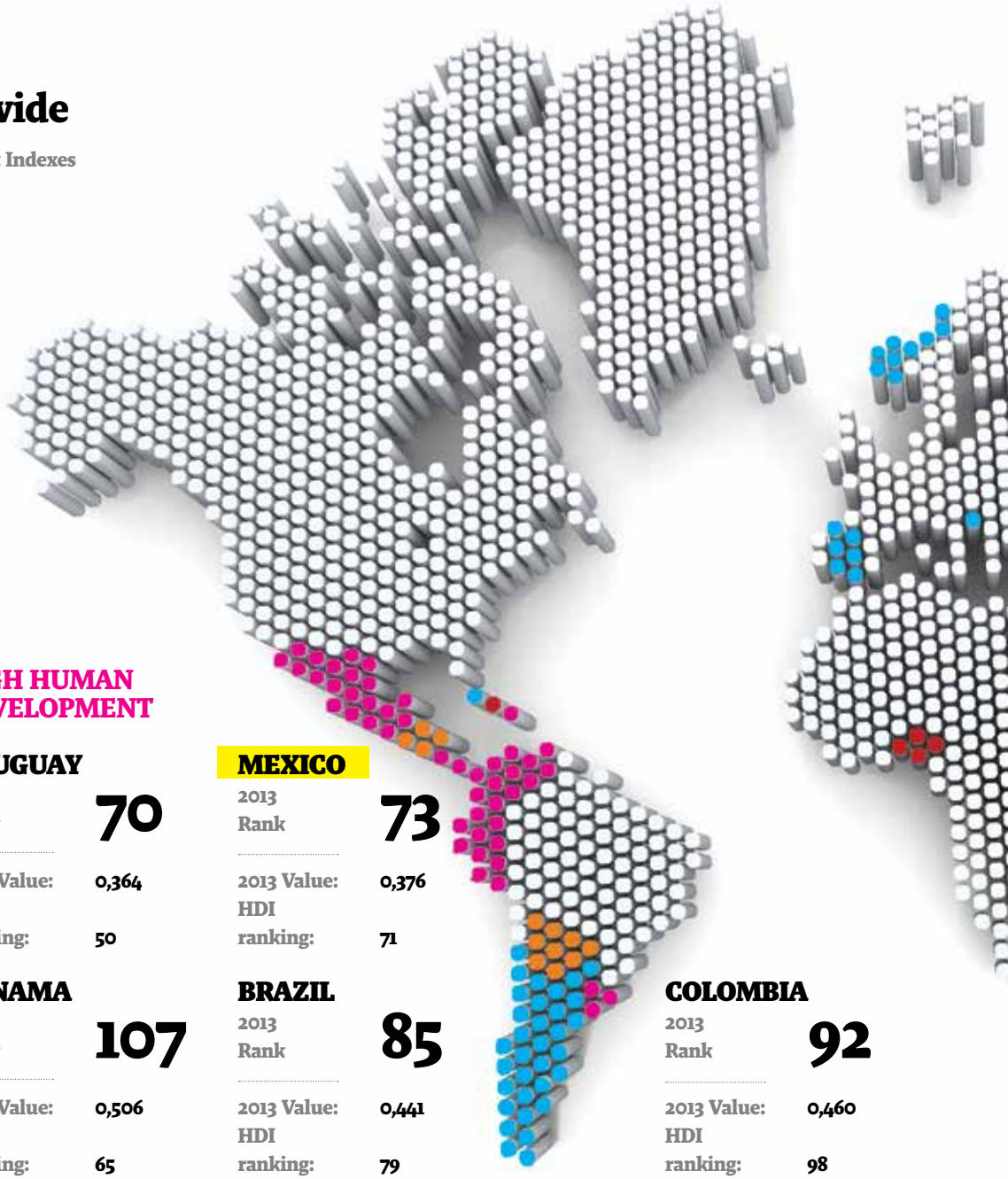
What message would you give to women working in the Judiciary in order to mainstream gender perspective into their daily activities?
[I would] Remind them that they have a fundamental institutional commitment to do our judicial work with authentic vocation, to enforce the principles emanated from our Constitution and to ensure due respect for the rights of all people, and that the principles of equality and non-discrimination should be imperatives.

Encourage them to continue working from the privileged space of the judicial function, bearing in mind that success does not come by itself, but instead requires dedication, effort and constant preparation in order to prove that we women have the ability to successfully fill any position.

Gender equality should not stay a figure of speech; it does not end with a change of language or even laws. These are factors that certainly contribute to progress; however, change should be deeper, it should come from the foundations of our own idiosyncrasies and traditions. Leaders of our own cause, [women can] overcome the resistance that the social environment still presents, and establish ourselves as agents of change ■

Inequality Worldwide

Inequality and Human Development Indexes according to 2013 data.



VERY HIGH HUMAN DEVELOPMENT

NORWAY
2013 Rank **9**

2013 Value: HDI ranking: 0,068 / 9

SLOVENIA
2013 Rank **1**

2013 Value: HDI ranking: 0,021 / 25

SPAIN
2013 Rank **16**

2013 Value: HDI ranking: 0,100 / 27

SLOVAKIA
2013 Rank **32**

2013 Value: HDI ranking: 0,164 / 37

CHILE
2013 Rank **68**

2013 Value: HDI ranking: 0,355 / 41

CUBA
2013 Rank **66**

2013 Value: HDI ranking: 0,350 / 44

HIGH HUMAN DEVELOPMENT

URUGUAY
2013 Rank **70**

2013 Value: HDI ranking: 0,364 / 50

PANAMA
2013 Rank **107**

2013 Value: HDI ranking: 0,506 / 65

VENEZUELA
2013 Rank **96**

2013 Value: HDI ranking: 0,464 / 67

COSTA RICA
2013 Rank **63**

2013 Value: HDI ranking: 0,344 / 68

MEXICO
2013 Rank **73**

2013 Value: HDI ranking: 0,376 / 71

BRAZIL
2013 Rank **85**

2013 Value: HDI ranking: 0,441 / 79

PERU
2013 Rank **77**

2013 Value: HDI ranking: 0,387 / 82

BELIZE
2013 Rank **84**

2013 Value:: HDI ranking: 0,435 / 84

COLOMBIA
2013 Rank **92**

2013 Value: HDI ranking: 0,460 / 98

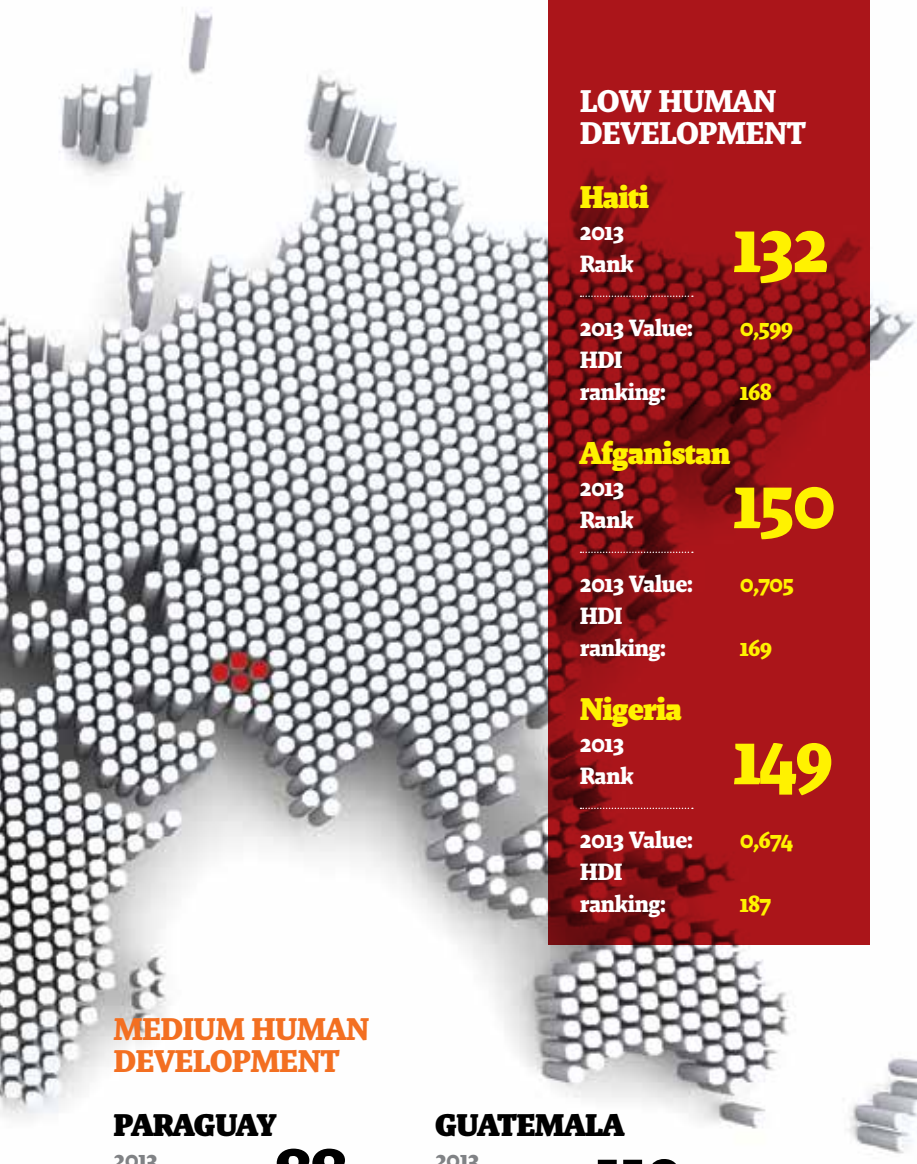
ECUADOR
2013 Rank **82**

2013 Value: HDI ranking: 0,460 / 98

DOMINICAN REPUBLIC
2013 Rank **105**

2013 Value: HDI ranking: 0,505 / 102

Source: 2014 Human Development Reports for the United Nations Development Programme



LOW HUMAN DEVELOPMENT

Haiti
2013 Rank **132**
2013 Value: HDI ranking: 0,599 / 168

Afganistan
2013 Rank **150**
2013 Value: HDI ranking: 0,705 / 169

Nigeria
2013 Rank **149**
2013 Value: HDI ranking: 0,674 / 187

MEDIUM HUMAN DEVELOPMENT

PARAGUAY
2013 Rank **88**
2013 Value: HDI ranking: 0,457 / 111

GUATEMALA
2013 Rank **112**
2013 Value: HDI ranking: 0,523 / 125

BOLIVIA
2013 Rank **97**
2013 Value: HDI ranking: 0,472 / 113

HONDURAS
2013 Rank **99**
2013 Value: HDI ranking: 0,482 / 129

EL SALVADOR
2013 Rank **85**
2013 Value: HDI ranking: 0,441 / 115

NICARAGUA
2013 Rank **90**
2013 Value: HDI ranking: 0,458 / 132

Gender Inequality Index

The Human Development Index (HDI) is an indicator developed by the United Nations Development Program (UNDP) for each country. It is built as a statistical social indicator consisting of three parameters: a long and healthy life, education and a decorous living standard.

Among the variables measured by the HDI, a parameter called Gender Inequality Index is included. It is a composite measure reflecting inequality in achievements between women and men in three dimensions: reproductive health, empowerment and labor market.

For its part, the Gender Development Index is a composite measure reflecting disparities in human development gains for women and men in three dimensions: health, education and living standards.

Both indexes reflect the gender gap that still exists around the world, from Slovakia, where the Gender Development Index is 1 - absolute equality- to Afghanistan, where it reaches is 0.602.

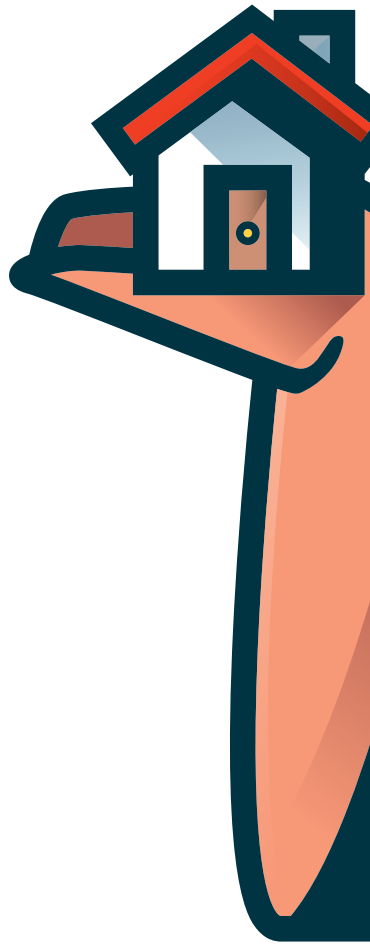
UNDP brings together countries in 5 HDI ranges: very high, high, medium, low and very low. In Latin America, only Chile, Cuba and Argentina are in the "very high" range. Notably, Argentina, which has a 49 score in the Human Development Index, is number 2 in the world in gender development, only one hundredth behind Slovakia.

Mexico, meanwhile, is among the countries with high human development, but its gender development index of 0.940 places it in the 85 worldwide range, far short of the Bolivarian Republic of Venezuela, for example, which with an index of 0.999 is at worldwide level 2 (like Argentina).

As for the gender inequality index, the country with less inequality in the world is Slovenia with an index of 0.021, and again the country with the greatest gender inequality is Afghanistan, with an index of 0.705.

Mexico, with an index of 0.376 gender inequality ranks 73rd worldwide, below Thailand. ■

Paternity leave and active fatherhood Gender equality measures



A Comparative Law analysis in Mexico, Colombia, Chile and Argentina leads to interesting reflections on this issue.

By Alejandra Vargas Constantini*

Nowadays, despite the changes in society's family structures inequalities between women and men in the workplace are still prevalent. A major gender gap is that women are working more hours than men if one takes into consideration the time they invest in their jobs, domestic tasks and childcare.

A mechanism that promotes the sharing of family responsibilities, which compensates employment inequalities between men and women and facilitates childcare is precisely the implementation of a legal right to active fatherhood through the regulation of parental leave, meaning by this right that the father becomes a participant in the day to day care, nurturing and stimulation of his children, besides his continuing financial support .

By regulating this legal figure, an important step for the participation of women in public space and the incursion of man in the home is propitieted and becomes a reality, helping to achieve balance between family and professional activities. A model that proves effective in contribuiting to this balance must be based on legislative changes that impact both the field of public law and the private sphere, because if the implementation of effective measures still depends on the goodwill of employers or employers or on agreements within institutions , the possibility of creating suitable regulatory safeguards for every worker weakens

This led to the elaboration of a research project presented at the Latin American Faculty of Social Sciences, Mexico City Campus, as part of its M.A. in Human Rights and Democracy, which culminated in a proposal to Mexican law. Thus, through legal doctrine, a study of comparative law from Mexico, Colombia, Chile and Argentina regarding the figure of active fatherhood was conducted. The regulation of parental leave (both maternity and paternity) is analyzed in each legislative model, identifying its formal use from the applicable rules as well as its meaning and implications, strengths and weaknesses in relation to the principle of gender equality and non-discrimination.

The formal elements of Law that were analyzed from the legal doctrine point of view were the following: subjects or beneficiaries of the standard; access requirements; rights; liabilities; exceptions; guarantees; principles and rules. In light of the principle of equality and non-discrimination, the study analyzed whether there are parental benefits for the enjoyment of the right in each legislation studied; the types of permits that are regulated; if the right to different family models is accessible; if the existance of disease or infantile disability either at birth or during the upbringing of children are taken into account (enabling and promoting comprehensive, coherent and consistent parenting); if the content of the right to paternity has been expanded by court decisions and there is an effort to promote this right within each country. The results of that study lead to this article.

Among the main points of discussion, it must be stressed that under Mexican law - in the Federal Labor Code, as the Federal Law on State Service Workers does not forseeit- granting paternity leave (five paid working days off for the birth or adoption of a child), is seen as an obligation for the employer, but not as a right of the worker. Far from being an advantage, this implies a weakness, since the failure to establish mechanisms for access to the permit restricts the possibility of effective enjoyment. This state of affairs demostrates that the Law implicitly recognizes that the primary duty of care of children lies in the hands of women.

In addition to the comprehensive analysis of the articles governing parental leave in the Federal Labor Code, the study also discovered that the enjoyment of the rights involved in parenthood, is subject to a certain model of family (the nuclear, traditional family). Where, under Mexican Law, do single-parent, reconstituted or adoptive families fit? What about multiple births or situations where specific needs arise at the birth of children? What role is given to parenthood in the other analyzed countries?

[1] Under international law the care of children is a task entrusted to both parents: Convention on the Rights of the Child (article 18, paragraphs 1, 2 and 3). Convention on the Elimination of All Forms of Discrimination Against Women (article 11, paragraph 2). International Covenant on Economic, Social and Cultural Rights (article 10). Convention 156 on equal opportunities and treatment for workers, workers with family responsibilities, ILO (article I).

[2] The right to active fatherhood involves a series of positive and negative obligations that fall on both parents (mothers and fathers). They bear the shared obligation of raising the best possible citizens, of monitoring their children's education, of postponing child labor, eradicating violence and protecting offspring against any risk of physical, sexual or emotional harm, and respecting the rights of children and teenagers.

[3] The existence of General Agreement 45/2011 of the Federal Judiciary Council's Full Court is considered a breakthrough. This agreement was published on March 26th, 2012 in the Official Gazette, and regulates paternity leave, adoption leave, and additional criteria to grant leaves regarding maternal and paternal care in favor of civic and public servants allocated to Circuit Courts, District Courts and administrative areas of the Federal Judiciary Council. The agreement takes into account
various situations parents may face upon the birth of a child, in addition to establishing the specific procedure necessary to request paternity leave.

Illustrated by Christopher Cisneros

In Colombia, for example, the Labour Code provides -only if the worker can accredit parenthood -- eight working days of paid paternity leave. Of the legislations analyzed, Colombia has the most guarantees regarding the benefits accorded to parents (biological or adoptive) who are single or widowed. If the mother dies during childbirth or in the postpartum period, the rest of the license granted to the mother goes to the father. In the case of adoption, it does extend the benefits of biological parents to single adoptive parents.

In Argentina, the Labor Contract Law (LCT) grants- as a right for workers-two consecutive calendar days off for paternity leave and says nothing about adoption. It could be sensed that among the legislations studied, Argentina is the country that least guarantees paternity leave. However, there are Argentine laws or collective agreements which significantly improve or extend the benefits provided by the LCT, depending on the province and the collective labor agreement to which each post is subject , emphasizing that there is a specific legislation for agricultural and domestic workers, where mechanisms to incorporate them into the formal economy are established.

In Chile, the Labor Code provides for parental leave as an inalienable right of workers (five paid working days off that can be used continuously or in a piecemeal way); it also provides for postnatal parental permission, which represents a novel figure showing a way of regulating joint responsibility and childcare from the infants' earliest days of life. This special leave starts after the mother's postpartum leave and the time off can be shared with the father for a period of time.

Furthermore, Chilean law provides leave for the feeding of children under two years of age (an inalienable hour a day, with the possibility of making use of it at the beginning, the end or during working hours) which can be used by the father, mother or whoever holds the child's custody. Moreover, there exist different types of leaves for sick children, ranging from birth until they reach eighteen years of age and, if a disability is involved, past adulthood.

---

[4] The primary rationale for the choice of the countries under review lay in selecting Latin American countries with comparable central variables, such as their culture and traditions, labor market, economy and welfare system, combined with these countries having regulated the right in question before Mexico did, which allowed us to create a hypothesis of a much broader legal development.
ILO (2013) Panorama Laboral 2013. Latino America y el Caribe. Retrieved from http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima / documents / publication / wcms_232760.pdfm
See: United Nations Economic Commission for Latin America and the Caribbean. CEPAL (2013) Algunas dimensiones soslayadas del bienestar en America Latina. Retrieved from http://www.cepal.org/publicaciones/xml/9/51769/PanoramaSocial2013-capituloIII.pdf

[5] See: Constitutional Court of Colombia. Sentence C-383/12.

[6] According to the Center for the Implementation of Public Policies Promoting Equity and Growth, in Argentina paternity leave ranged from two to thirty days (whether due to birth or adoption).
Center for the Implementation of Public Policies for Equity
and Growth (2013) Licencias: proteccion social y mercado laboral. Equidad en el ciudado. Working Paper 106. Retrieved from http://www.cippec.org/documents/10179/51827/DT+106+Licencias+2013.pdf/2c56deb7-d401-47ab-80da-265df796c1cc

A full analysis of Chilean legislation on paternity leave and maternity, discovered that there is coherence and consistency in the care of the children (permits granted to parents at birth and during upbringing), because the use of leaves is not restricted to the mother, or to the prepartum, delivery or postpartum periods, as other legislation analyzed do.

Throughout the investigation, it was demonstrated that the right to active fatherhood in Mexico has a restricted formal scope compared to the way in which this figure is forseen in the countries studied, and that its content does not contribute to the promotion of equal responsibilities and opportunities for women and men in the public and private sectors.

The inclusion of women into professional life is a reality whose family responsibilities should be conciliated with women´s public life, but which should also be shared. The joint responsibility of childcare for both parents can help create a more equitable society, directly benefiting women, men and children. Thus, gender equality is promoted in two ways: firstly, the incorporation of women into the labor market is promoted in order to leverage their workforce and strengthen their competitiveness and professional growth; secondly, the cultural transformation of the rule that considers that the "ideal worker" is a man without personal, family or household responsibilities, is promoted. In addition, the familial bond between fathers and their children is fostered, thus improving the children's emotional development.

In order to keep pace with the present day changes in social and economic structures, it is necessary, in addition to legislative changes, to create appropriate mechanisms for social awareness and promotion of the right to paternity leave, as exemplified by the measures adopted by Latin American countries which are more protective on the subject as well as by the recommendations issued by the ILO (International Labour Organization) on this issue. ■

Maestra Alejandra Vargas Constantini: *Tribunal Clerk for the First Collegiate Tribunal on Criminal and Administrative Matters of the Twenty-first Circuit.*

Parental leave in Mexico,
Maternity, Lactation, Adoption

México:
Federal Labor Code

MATERNITY
12 paid weeks (6 antepartum and 6 postpartum).
» Extendable leave (allowable for medical reasons).
» Labor protection.
» Tallies seniority.

LACTATION
» a) Two thirty minute breaks a day (during child's first 6 months of life).
» b) Possibility of reducing workdays by 1 hour

ADOPTION
» **Mothers:** 6 weeks paid leave after receiving the child.
» **Fathers:** 5 days paid leave (employer obligation).

PATERNITY
» 5 paid days off due to birth of child (employer obligation).

Colombia, Argentina and Chile
and Paternity

Colombia: Labor Code

MATERNITY

14 paid weeks (2 antepartum and 12 postpartum).

» Weeks may be transferred from the antepartum to the postpartum period.
» Extendable leave (allowable for medical reasons).
» Contemplates premature newborns.
» Contemplates multiple births.
» Labor protection.

LACTATION

» Two thirty minute breaks (during child's first 6 months of life).

ADOPTION

» **Mothers:** same benefits as birth mothers.
» **Single fathers:** same benefits as adoptive mothers.
» **Fathers with a spouse or permanent companion:** 8 paid days of leave

PATERNITY

» 8 working days off upon proving paternity.
» If the mother should pass away, parental leave is transferred to the father.

Argentina: Labor Contract Law (General)

MATERNITY

90 paid days (45 antepartum days and 45 postpartum days).

» Days can be transferred from the antepartum to the postpartum period.
» Contemplates premature delivery.
» Special Law: 6 additional months of leave for mothers of children afflicted by Down Syndrome.
» Labor protection.

LACTATION

» Two thirty minute breaks (until 1 year after birth, extendable for medical reasons).

ADOPTION

» **Not contemplated** (Contemplated in specific legislations).

PATERNITY

» 2 consecutive paid days off (calculated from the next working day if the birth happened on a Sunday, nonworking day or national holiday).

Chile: Labor Code

MATERNITY

6 weeks antepartum and 12 weeks postpartum.

» Contemplates premature newborns.
» Contemplates underweight newborns.
» Contemplates multiple births.

LACTATION

Feeding children under 2

» **Mothers:** 1 hour a day to feed children under 2 years of age, which can be used to come in early or postpone working hours.
» **Fathers:** same benefits if they hold custody or if the mother is deceased or incapable of making use of this right.

ADOPTION

» **Mothers:** same benefits as birth mothers
» **Fathers:** 5 paid days off for adoption upon receiving the child (continuous or fragmented, according to fathers' choice).

PATERNITY

» 5 paid working days off upon the birth of a child (continuous or fragmented, according to fathers' choice).
» If the mother should pass away, parental leave is transferred to the father or whoever holds custody.
» Inalienable right. Labor protection.

AMJ PANEL DISCUSSION

How can we judge with gender perspective?

The Mexican Association of Law Enforcers, A.C. (AMJ) has met for eight years to consolidate actions in favor of the joint efforts between those who have a common jurisdictional activity.

The AMJ was formally constituted on April 20th, 2007, taking as its starting point the Jurica Declaration, signed in 2005 at the First National Law Enforcement Bodies Meeting. It was conceived on the basis of the National Consultation on a Comprehensive and Coherent Reform of the Law Enforcement System in the Mexican State (published in the Mexican Supreme Court´s 2006 White Paper on Judicial Reform), and two meetings between equivalent law enforcement bodies.

The Mexican Association of Law Enforcers, A.C. is made up of jurisdictional and administrative federal and local bodies, in their various areas of competence: civil, criminal, family, labor, electoral, fiscal, contentious-administrative, agricultural and constitutional law, which means that almost every object of law, except for military justice matters, are present. This circumstance makes the AMJ an internationally innovative space. There is no equivalent body that manages to bring all Judiciaries together in a single entity.

TOWARDS GENDER EQUALITY

Representation before the Association rests on female and male Justices, Ministers, Judges and Judicial officials divided into 11 groups or sections. Its general objective is strengthening and modernizing law enforcement in Mexico, as well as the promotion and safeguard of a common judicial agenda between law enforcement bodies.

This last framework for action is where the work on gender equality and non-discrimination of the AMJ Sections has inserted itself, considering that all law enforcing bodies within the country, regardless of their jurisdiction and competence, should work on creating a common agenda to achieve every Judiciary's intersectional objective: exercising justice with a gender perspective and to make the principle of equality a reality, ensuring the effective exercise of constitutional guarantees without discrimination and incorporating international treaties into judicial work.

To this end, driven by the Supreme Court Gender Equality Program, the AMJ integrated into the agenda of its annual meeting a panel discussion regarding how to judge with a gender perspective at the 2009 Fourth Ordinary General Assembly: Non-discrimination and Right to Equality; gender perspective in judicial decision-making.

At that meeting, the creation of a taskforce composed of one representative from each AMJ Section to work in the development of a Commitment Letter for law enforcing bodies regarding the issues of equality and non-discrimination was agreed upon. Later, during the working group's sessions, this document came to be referred to as the "Pact" (Pact for the Introduction of Gender Perspective into Mexican Law Enforcement Bodies).

The "Pact" was presented and approved at AMJ's Fifth Ordinary General Assembly in November 2010 and highlights the main concepts and strategies around the implementation of gender perspective within the jurisdictional scope and the institutional life of law enforcement bodies; establishes the necessary measures to introduce a gender perspective into those instances, and has a monitoring and evaluation mechanism for the implementation and execution of the actions mentioned.

Meetings for this panel have been installed in two frameworks: firstly, within AMJ's Monitoring and Evaluation Committee meetings themselves, and secondly, during the installation of AMJ Ordinary General Assemblies.

During the first meetings, it was considered appropriate to provide tools and options needed to start actions off efficiently. The Committee itself evolved and eventually observed national and international best practices in this area that could be replicated by all sections; it also started providing a space for representatives to inform and monitor any actions taken. Finally, a practical review and analysis of judicial sentences was incorporated with the aim of discussing how gender analysis is being assimilated into specific cases.

Regarding the number of participants, the meetings have grown importantly, from just 25 assistants at the very start until an average (counting the last three sessions) of 80-100 law enforcers per session, showing participants' clear interest in the matter.

During follow-up and evaluation meetings it was decided to maximize the "Pact's" footprint in local administrative bodies by having them accede to it and to the constitution of Monitoring and Evaluation Committees at a State level. Thus, to date, the States that have signed agreements to join the Pact are the following 16:

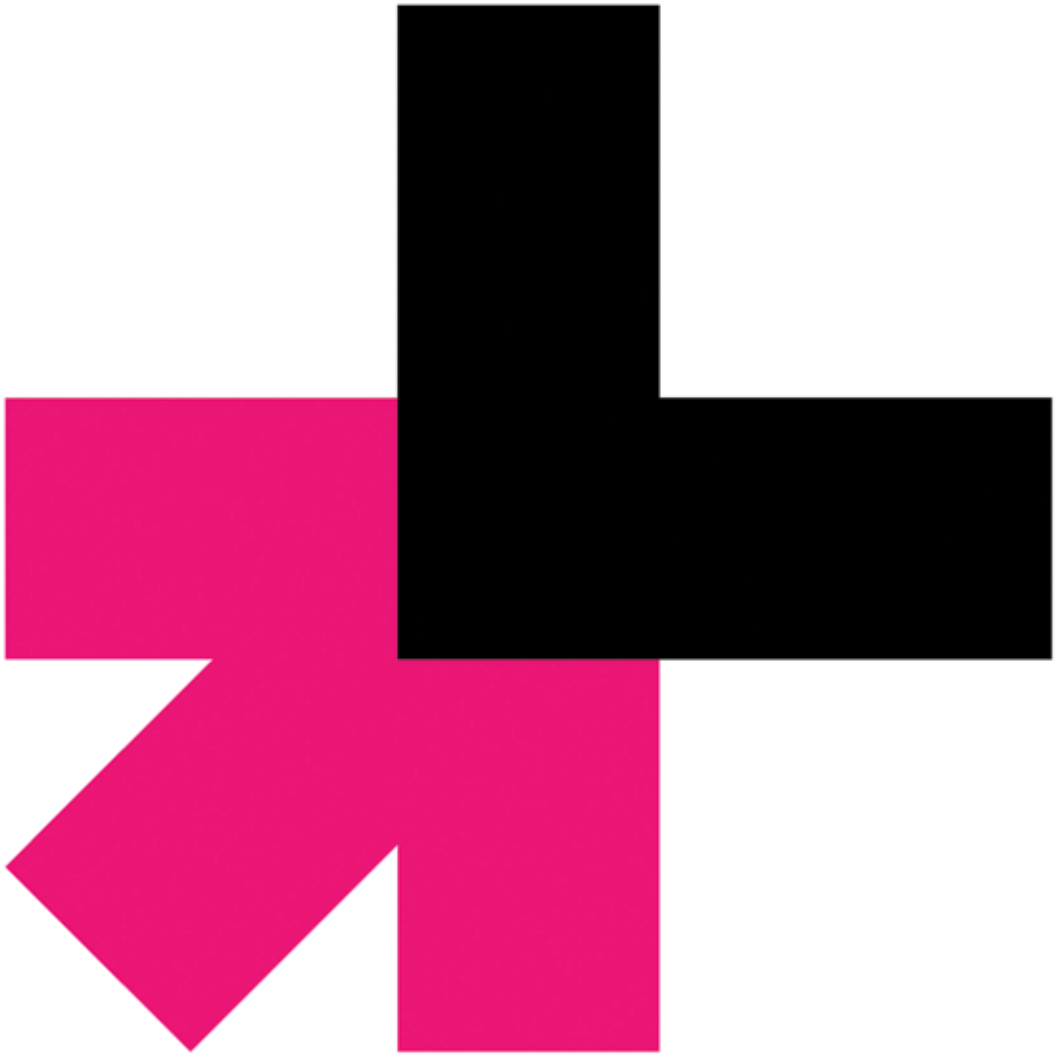
States party to the "Pact"

2012: Veracruz, Mexico City, Chiapas and Chihuahua
2013: State of Mexico and Yucatan
2014: Jalisco, Tamaulipas, Hidalgo, Nuevo Leon, Guanajuato, Colima and Puebla
2015: Oaxaca, Campeche and Queretaro

AMJ's discussion panels

Dates and locations for AMJ reunions

	Session	Date	Location	Host	Participants
1	AMJ's Fourth Ordinary General Assembly	October 22-23, 2009	Villahermosa, State of Tabasco	AMIJ	50 law enforcers
2	AMJ's Fifth Ordinary General Assembly	November 10-12, 2010	Ixtapan de la Sal, State of Mexico	AMJ	60 law enforcers
3	First Committee Session	May 26, 2011	Mexico City	Section IV: Federal Tax and Administrative Justice Tribunal	25 law enforcers
4	Second Committee Session	September 23, 2011	La Paz, State of Baja California Sur	Section VI: Electoral Tribunal of the State of Baja California Sur	40 law enforcers
5	Sixth Ordinary General Assembly	November 11, 2011	Cuernavaca, State of Morelos	AMJ	80 law enforcers
6	Third Committee Session	March 16, 2012	San Cristóbal de las Casas, State of Chiapas	Section III: Agrarian High Court	50 law enforcers
7	Fourth Committee Session	August 10, 2012	Mexico City	Section X: Agrarian High Court	50 law enforcers
8	Sixth Ordinary General Assembly	November 10, 2012	Mexico City	AMJ	80 law enforcers
9	Fifth Committee Session	May 17, 2013	Toluca, State of Mexico	Section III: Superior Justice Tribunal of the State of Mexico	65 law enforcers
10	Sixth Committee Session	September 6, 2013	Barrancas del Cobre, State of Chihuahua	Section VI: Electoral Tribunal of the State of Chihuahua	40 law enforcers
11	Seventh Committee Session	March 28, 2014	Mérida, State of Yucatan	Section III: Superior Justice Tribunal of the State of Yucatan	85 law enforcers
12	Eight Committee Session	August 15, 2014	Guadalajara State of Jalisco	Section II: Guadalajara Regional Chamber, Electoral Tribunal of the Federal Judiciary Branch, Guadalajara	85 law enforcers
13	Ninth Committee	June 27, 2015	Mexico City	Section I: Mexican Supreme Court	90 law enforcers
14	Tenth Committee Session	October 9, 2015	Tuxtla Gutiérrez, State of Chiapas	Section III: Superior Justice Tribunal of the State of Chiapas	90 law enforcers



HeForShe

Movimiento solidario de ONU Mujeres
para la igualdad de género