

“Racial, gender or sexual violence and other forms of discrimination and violence cannot be eliminated without changing culture.”

Charlotte Bunch/Activist, author and Human Rights organizer



FEDERAL JUDICIARY COUNCIL

Igualdad

GENDER IN WAR, GENOCIDE AND TERRORISM

Women often suffer the consequences of armed conflicts. New needs and demands are added to their gender vulnerability _08

⊕ Parity on the rise: Mexican women and politics

⊕ Eliminating violence against women: professionalism, dignity and respect now define the Federal Judiciary

⊕ Alternative dispute resolution: A tool against harassment and discrimination



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Against gender violence

The 16 Days of Activism Against Gender-Based Violence is an international campaign taking place every year from November 25th (International Day for the Elimination of Violence against Women) to December 10th (International Human Rights Day). This campaign started in 1991 as an initiative of the Center for Women’s Global Leadership.

During 2015, on the 20th anniversary of the Beijing Declaration and Platform for Action, this campaign for women’s and girls’ right to live without violence was especially relevant.

The International Day for the Elimination of Violence against Women, which marks the start of the 16 Days of Activism campaign, was approved by the U.N.’s General Assembly on December 17th, 1999. The proposal to select this particular date came from Dominican Republic, with the support of 80 U.N. Member States. The exact day was chosen as homage to the three Mirabal sisters, Dominican natives who fervently opposed Rafael Leonidas Trujillo’s dictatorship and who were assassinated by his orders on November 25th, 1960.

The three sisters were killed, obviously, because of their firm opposition to the regime, but their gender was also a contributing factor. The Mirabals’ persecution and the extreme violence they suffered started with the sexual harassment of Minerva by Trujillo. Patria and Maria Teresa were equally persecuted, harassed and finally murdered with special cruelty due to their refusal to fulfill the roles traditionally assigned to women.

In this context, it is particularly important to acknowledge violence against women as a Human Rights violation. It was in Vienna, in 1993, during the World Human Rights Conference, that violence against women (including violence generated in the private scope) was finally recognized as a Human Rights violation.

Women postulated that violations and discrimination against them were a devastating reality that demanded remedies as urgently as any other Human Rights violations. As former Secretary General of the United Nations, Kofi Annan, said: “Violence against women is perhaps the most shameful Human Rights violation... As long as it continues we cannot say we’re making real progress towards equality, development and peace.”

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



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Directory



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Fernandez Ortega and Rosendo Cantu Case

BACKGROUND

On November 28th, 2011, Ines Fernandez Ortega and Valentina Rosendo Cantu asked Juan N. Silva Meza, then Chief Justice of the Mexican Supreme Court, to form and register a “Various” file concerning the evaluation of the actions needed in order to address the sentences and reparation measures ordered by the Inter-American Court of Human Rights (IACHR) in its judgment of the cases Ines Fernandez Ortega and others against the United Mexican States and Valentina Rosendo Cantu and another against the United Mexican States.

Justice Juan N. Silva Meza formulated a request for the Full Court to determine the measures to be adopted in the Mexican regulatory framework to receive the sentences issued by the IACHR for the Fernandez Ortega and Rosendo Cantu cases, and ordered the creation and registration of the file Various 1396/2011, which was turned over to Justice Guillermo I. Ortiz Mayagoitia for study and project formulation. During December 2012, the dossier was referred again, to Justice Alberto Perez Dayan.

RESOLUTION

On August 14th, 2015, file Various 1396/2011 was published in the Official Gazette. The Official Gazette established the concrete obligations that the Federal Judiciary must comply with in light of the sentences dictated in the Fernandez Ortega and Rosendo Cantu cases. The resolution addresses the following topics:

- Ex officio application of international Human Rights laws in a diffuse control of constitutionality model
- Interpretative restriction of military jurisdiction

- Sexual violence as torture
- Indigenous people, access to judicial protection and gender perspective
- Administrative measures derived from IACHR sentences in the Rosendo Cantu and Fernandez Ortega cases that the Federal Judiciary must implement

RELEVANT GENDER ELEMENTS

The resolution reiterates that sexual violence is subsumed as an act of torture when the mistreatment is intentional, causes severe physical or mental suffering, and is committed with particular purpose.

The sentence identifies that sexual violence has specific causes and gender consequences, when it is used as a form of subjugation and humiliation and a method to destroy women’s autonomy, which can lead to an extreme form of discrimination aggravated by situations of vulnerability.

The sentence acknowledges the duty of Mexican judges to use gender perspective in order to verify if there is a situation of violence or gender vulnerability that prevents justice from being dispensed fully and in an egalitarian way. Thus, it states that the obligation to provide justice with a gender perspective is the general rule, which must be emphasized in cases where groups in vulnerable situations are involved.

In connection with the establishment of teaching programs for civil servants, including those working for the Federal Judiciary, the sentence states that the activities that have been carried out in regard to training (including preparation and continual updating of gender perspective and ethnicity skills, with an emphasis on sexual violence), must continue.

CRITERIA

From File Various 1396/2011 came the following isolated theses:

1. XVIII/2015 (10a.), VIOLENCE AGAINST WOMEN. POSITIVE OBLIGATIONS OF AN ADJECTIVE CHARACTER THAT MUST BE MET BY THE MEXICAN STATE. FULL COURT. Various 1396/2011. May 11th, 2015.
2. XIX/2015 (10a.), VIOLATIONS TO WOMEN’S RIGHTS. FEATURES THAT REPARATION MEASURES MUST FULFILL TO REPAIR DAMAGES WHEN SAID MEASURES ARE UPDATED. FULL COURT, Various 1396/2011. May 11th, 2015.
3. XXIV/2015 (10A.), SEXUAL VIOLATION. CASE IN WHICH IT IS SUBSUMED TO AN ACT OF TORTURE. FULL COURT. Various 1396/2011. May 11th, 2015.
4. XXIII/2015 (10a.), TORTURE IN ITS SEXUAL VIOLATION VARIETY. EVIDENCE ANALYSIS MUST HAVE A GENDER PERSPECTIVE. FULL COURT, Various 1396/2011. May 11th, 2015.
5. XVI/2015 (10a.), INTER-AMERICAN COURT OF HUMAN RIGHTS SENTENCES. DIRECTIVES TO ESTABLISH AND SPECIFY FEDERAL JUDICIARY OBLIGATIONS WHEN DEALING WITH CONSTITUTIONAL RESTRICTIONS. FULL COURT. Various 1396/2011. May 11th, 2015.

6. XXV/2015 (10a.), BEST INTEREST OF THE CHILD. JURISDICTIONAL PROCEDURE OBLIGATIONS OF THE MEXICAN STATE IN ORDER TO PROTECT THE CHILD. FULL COURT. Various 1396/2011. May 11th, 2015.

7. XXII/2015 (10a.) ACTS OF TORTURE. THEIR JURIDICAL NATURE. FULL COURT. Various 1396/2011. May 11th, 2015.

8. POSITIVE OBLIGATIONS OF AN ADJECTIVE CHARACTER THAT MUST BE MET BY THE MEXICAN STATE. FULL COURT. Various 1396/2011. May 11th, 2015.

9. XVII/2015 (10a.), ACCESS TO EFFECTIVE JURISDICTIONAL CUSTODY. WAYS TO SAFEGUARD THIS HUMAN RIGHT WHEN DEALING WITH INDIGENOUS PERSONS. FULL COURT. Various 1396/2011. May 11th, 2015.

Ines Fernandez Ortega and others against the Mexican State case (*)

Ines Fernandez Ortega, an indigenous Me'phaa woman, resident of Tecoani Canyon in the state of Guerrero.

On March 22nd, 2002, she was threatened, beaten and raped by three members of the Mexican Army inside her house in the state of Guerrero.

After a long search for justice within Mexico, on August 2010 the IACHR declared the Mexican State responsible for the violation of the Human Rights to personal integrity, dignity, private life and protection from arbitrary intrusion into the home against Ines Fernandez Ortega.

The Court argued that the State, in not taking into account Ines's situation of vulnerability (due to her language and ethnicity) had not complied with its "duty to guarantee, without discrimination, the right to access justice" (Paragraph 201 of the sentence).

The Court also determined that to enable indigenous persons to access justice, it is "indispensable that the State grant effective protection that takes into account the particularities, socio-economic characteristics and their especially vulnerable situation, as well as their customary law, values, practices and customs."

(*) IACHR (August 30th, 2010, sentence). Fernandez Ortega and other vs. Mexico. N/A. Available at www.equidad.scjn.gob.mx

Valentina Rosendo Cantu and another against the Mexican State case (**)

Valentina Rosendo Cantu, an indigenous Me'phaa woman, residing in Caxitepec, State of Guerrero.

In February 2002, while washing clothes in a stream near her home, Valentina Rosendo Cantu was threatened, beaten and raped by two members of the Mexican Army. At the time of the events, she was 17 years old.

During November 2003, after a series of irregularities committed by Mexican authorities, the case was taken before the Inter-American Commission on Human Rights.

In 2009, this Commission took the case to the IACHR in order to declare the Mexican State guilty of the violation of several Human Rights.

On the 31st of August 2010, the IACHR issued a sentence that found Mexico guilty of violating personal integrity, dignity, private life, children's rights, and the guarantee to access justice and receive judicial protection against Valentina Rosendo Cantu.

The Mexican State was condemned to reform its military legislation, pay Valentina Rosendo Cantu and her daughter a monetary compensation, and give them medical and psychological treatment as well as scholarships.

(**) IACHR (August 30th, 2010, sentence). Rosendo Cantu and other vs. Mexico. N/A. Available at www.equidad.scjn.gob.mx



“Amparo” in review 704/2014

RESOLUTION

On March 18th, 2015, the Mexican Supreme Court’s First Chamber issued the resolution of “amparo” in review 704/2014.

Although this was not the first time that the Mexican Supreme Court had pronounced itself on the constitutionality of the laws that exclude same-sex couples from marriage, this resolution led to a thorough analysis of the Colima norm that explicitly created a distinct legal

figure, the “marital bond” for homosexual couples. The resolution was based on the determination that this action constitutes discrimination by excluding same-sex couples from the institution of marriage.

FACTS

The complainant, who identified himself as gay, used an “amparo” to challenge various decrees and articles of Colima’s Constitution, Civil Code and Civil Procedure Code, since a recent reform to this state’s

Constitution establishes that this entity acknowledges “conjugal relationships”, which are divided into “marriage” (a civil contract celebrated between a man and a woman), and “marital bond” (celebrated between two people of the same sex); however, the reform to civil ordinances deals with substituting the concept of “marriage” for that of “conjugal relationships”. The complainant considered that the existence of such rules discriminated him and violated the Human Rights to

dignity, free development of personality, civil status and free sexual self-determination.

The District Judge that dealt with the “amparo” trial decided to dismiss the case, arguing that to concede such an “amparo”, the complainant’s juridical interest would have to be directly affected or wrongfully affected due to a law or some action taken by an authority. Furthermore, the Judge considered that the nature of the questioned civil ordinances was “heteroapplicative” (meaning that it required actual application). Thus the complainant would have to prove that, by virtue of being homosexual, he was not allowed to join another person in marriage.

Against this resolution, the complainant asked for a review, arguing that the Judge based his dismissal in the absence of his (the complainant’s) juridical interest, ignoring the fact that the complainant insisted on his legitimate interest. The man also argued that the Judge violated the *ex officio* principle of all Mexican courts being obligated to directly apply international Human Rights treaties to which Mexico is party, as well as the *pro persona* principle. Finally he argued that the Judge neglected to make an extensive interpretation of the ordinances and acted under unreasonable criteria.

The Collegiate Court admitting the review sent it to the Mexican Supreme Court, requesting it to assume jurisdiction. The Court accepted the case and granted the “amparo”.

RELEVANT ELEMENTS

The resolution reinforces the Supreme Court’s precedents as to the determination that the mere existence of a law may be discriminatory. In this regard, the Supreme Court states that the com-

plainant had a legitimate interest in challenging the legal system in the form of heteroapplicative standards, as he is the direct recipient of the stigmatizing message conveyed by those articles, since the discriminatory nature results not only in the arbitrary exclusion of homosexual couples from the institution of marriage -limiting them to another normative figure- but in encouraging attitudes and values in society that legitimize and perpetuate the notion that same-sex couples are less worthy of recognition than heterosexual couples.

In addition, the statement identifies the existence of discriminatory legislation by the expressed differentiation of the legislator, who decided to establish two different legal regimes for alleged equivalents, so that access to the right to marry, and the benefits marriage entails, are subject to the sexual orientation of the parties, which is unconstitutional.

Similarly, when analyzing Article 102 of Colima’s Civil Code regarding the allocation made by the legislator on the different functions expected of a man and a woman in a conjugal relationship, the Supreme Court ruled that the allocation of tasks, skills and roles within couples or families according to the sex or gender identity of persons, corresponds to a stereotypical view that constitutes a form of discrimination, both for homosexual and heterosexual couples, as long as the State denies the possible diversity of individual life projects and the possibility of a consensual distribution of labor within couples and families.

As a reparation measure, the Supreme Court declared the unconstitutionality of the contested regulations, which unjustifiably exclude same-sex couples from marriage. In addition to ordering the future inapplicability of the contested regulations, the complainant will no longer be exposed to the regulations’ discriminatory message. The sentence indicates

that the judicial system should be able to repair the damage caused by the authorities and promote a cultural change.

CRITERIA

From “Amparo” in review 704/2014, the following jurisprudence or case law was issued:

1a./J. 43/2015 (10a.). MARRIAGE. THE FEDERAL LAW OF ANY ENTITY THAT, ON THE ONE HAND, CONSIDERS THAT ITS ONLY END IS PROCREATION AND / OR THAT DEFINES IT AS A BOND EXCLUSIVELY BETWEEN A MAN AND A WOMAN, IS UNCONSTITUTIONAL. Published June 22nd, 2015.

1a./J. 45/2015 (10a.). LEGISLATORS CON-FIGURATIVE FREEDOM. THE FUNDAMENTAL RIGHTS TO EQUALITY AND NON-DISCRIMINATION THAT OPERATE CROSS-SECTIONALLY LIMIT IT. Published June 22nd, 2015.

1a./J. 46/2015 (10a.). MARRIAGE BETWEEN SAME-SEX COUPLES. THERE IS NO CONSTITUTIONAL REASON NOT TO ACKNOWLEDGE IT. Published September 11th, 2015.

1a./J.67/2015 (10a.). EXCLUSION OF SAME-SEX COUPLES FROM MARRIAGE. THE FACT THAT THERE IS A SIMILAR BUT DIFFERENT REGIME TO MARRIAGE THAT HAS BEEN USED TO BLOCK SAME-SEX COUPLES’ ACCESS TO MARRIAGE IS DISCRIMINATORY. Published October 23rd, 2015.

First female obtains MA in Human Rights, Law Enforcement and Gender

Magistrate Graciela Rocio Santes Magana became the first woman to obtain a Master's Degree in Human Rights, Law Enforcement and Gender.

In 2009, the Directorate General of Human Rights, Gender Equality and International Affairs, in collaboration with UNAM's Legal Research Institute and the Federal Judiciary Institute, opened a call for entries for a Master's Degree in Human Rights, Law Enforcement and Gender.

On November 30th, 2015, Judge Graciela Rocio Santes Magana was the first woman to earn a Master's Degree in Human Rights, Law Enforcement and Gender with the thesis *Due Process and Indigenous Justice: Analysis in National and International Headquarters. The Case of the Amuzgo Indian*. The jury was composed of Dr. Julio Cesar Garcia Vazquez-Mellado, Dr. Eugenia Paola Carmona Diaz de Leon and thesis supervisor Dr. Juan Abelardo Hernandez Franco.

In this interesting thesis the link between gender and multiculturalism as elements necessary for law enforcement within the framework of Human Rights is addressed. This paper argues that nowadays most indigenous community members (and society in general) claim due process as a Human Right and call for prompt indigenous justice. The State must assure indigenous communities an effective judicial remedy for fundamental rights violations so that people belonging to this vulnerable group are able to defend themselves against arbi-



trary acts of government; this is precisely what is meant by due process, hence its relevance.

The legal criteria to be adopted in any due process that involves members of indigenous communities must guarantee the free and full exercise of their rights, recognized in national and international instruments, thus reflecting the degree of fairness and equity that exists in society.

Therefore, Magistrate Santes considered it necessary to undertake a detailed study on a scientific methodology that allows us to objectively understand due process as a Human Right and its relationship to indigenous justice. The problem posed lies in the erosion of the rights of persons belonging to indigenous communities in relation to due process, particularly in a case presented to the Fourth Unitary Court on Criminal Matters of the First Circuit, which was identified and confronted with the jurisprudence of the Inter-American Court of Human Rights and the Mexican Supreme Court to determine what are

the legal effects in a criminal trial when the accused is a person belonging to an indigenous community who is being judged by a court distant from his home.

The focus of this research was the analysis and review of the Inter-American Court of Human Rights criteria regarding the exercise of both its jurisdiction and advisory competence, in comparison with national standards and Supreme Court criteria in relation to due process. This comparison study helped provide new information about due process in the case of indigenous people, which translates into a set of requirements that states are obliged to respect so that persons belonging to the indigenous population can fend off State acts affecting their legal rights or human dignity.

Through a compatibility study, Santes raised and proposed the elements of due process in international headquarters in contrast to the concept used in national headquarters in order to study them in a specific case and determine -through evolutionary



The second chapter is devoted to the study of criteria issued by the Inter-American Court of Human Rights and the Mexican Supreme Court; also, the ranges of rights and legal procedures were analyzed where the process involved persons belonging to indigenous communities, in order to demonstrate that they should have full access to justice, and that the authorities responsible for the analysis of their claims should be sensitive to their worldview and their characteristics as a vulnerable group.

Finally, in the third and most important chapter, Magistrate Santes focuses on the study of a particular case-the axis of this whole research effort- in our country. She examined in turn, carefully, the legal criteria to make way for the application of a positive control standard; developing an explanation of due process in a particular case in relation to a person belonging to an indigenous community and the impairment of his fundamental rights, in order to expose the guarantee of access to justice expansively and the acknowledgment of indigenous people' status of vulnerability.

She also produced a series of conclusions, which aim to provide an overview of what was achieved with this research; she spoke of the prospects of due process in relation to indigenous people in Mexico. The development of this thesis was based on the confrontation of her hypothesis (mainly with documentary methods and techniques). Deductive, inductive, historical, descriptive, analytical and comparative methods were also used. ■

interpretation and positive control of the norm- that an indigenous person should be judged by the court closest to their community, regardless of whether or not there is jurisdictional conflict. This research sought to glimpse a possible solution favorable to due process in the case of Mexican indigenous people.

In general, the objectives of this research were the following:

1. Revise the origin of the concept of due process and its current approach.
2. Analyze the philosophical context of persons belonging to an indigenous population and their recognition in domestic and international law.
3. Establish an analysis of the causal relationship between due process and Human Rights and its impact on indigenous justice.
4. Make a comparative analysis and review of Inter-American Court of Human Rights criteria, in exercise of its

contentious jurisdiction and advisory competence, in comparison with national standards and Mexican Supreme Court criteria.

5. Identify the legal implications in a paradigmatic case, when the court nearest his/her home does not judge an indigenous person, regardless of whether there is jurisdictional conflict.
6. Develop a series of reflections in relation to due process and indigenous justice in Mexico.

In order to achieve said objectives, the research was structured into three chapters. In the first chapter, the historical conformation of due process and primary documents to understand the use of the term were discussed. Also, the concept of due process and its variety in doctrine were analyzed. A philosophical and legal approach was also assumed in relation to persons belonging to indigenous communities, in order to confront the validity of their rights.

GENDER IN WAR, GENOCIDE AND TERRORISM

By Magistrate Carolina Isabel Alcala Valenzuela*

“War is too intimate an experience. And just as infinite as human life.”

Svetlana Alexievich. 2015 Nobel Prize in Literature

2015 OVERVIEW

The year ended and so did many global commemorations, but it also preserved in recent collective memory serious events that have already marked life in society. It also leaves open wounds, a huge amount of remembrances and, above all, unfinished thoughts, as well as a universal unfinished agenda, particularly regarding gender and its perspective, that almost globally reveals its incomplete incursion into both public social development, economic, cultural and political policies and good governance in public administration, in the genesis and implementation of legislative work and the enforcement and administration of justice.





In this short 365-day span elementary threads were interwoven: current stories in the increasingly overwhelming world of human violence in its myriad manifestations; always symbolic, but short, tributes and with little restorative power in their aspirations; and well deserved reminders and offerings devoted to so many people killed, discarded, abused, robbed, tormented, truncated, and / or destroyed, of and in their rights, values and lives, because of many conflicts, without the vindications sought for them (the victims) having left more than a brief outline of moral and intellectual pyrrhic victories, which are not reflected at all in the material well-being and harmony within societies, which are still seeking and pursuing equality.

2015 COMMEMORATIONS

The centenary of the beginning of the Armenian Genocide committed by the Turks (then part of the Ottoman Empire), seventy years since the end of World War II, the beginning of the sequel to the Nuremberg trials and the 20th commemoration of the end of war in the former Yugoslavia, among others sad anniversaries, were memorialized.

OTHER HISTORIC FACTS: WARS, MASSACRES AND GENOCIDES

Among the links of this centenary chain, others are situated: First World War, pogroms (“devastation” in Russian) in Ukraine and elsewhere, the war and invasion of Tibet, the Spanish Civil War, the wars (at different times) in Korea, Vietnam, Indonesia, and Cambodia, the famines in Ethiopia and Romania, “cribs and houses of death” in China, wars and genocides in Rwanda, the former Yugoslavia, Guatemala, Darfur and the Democratic Republic of Congo, massacres in the then Rhodesia, and separatist wars in Vizcaya, Ireland, Sudan, Chechnya and Ukraine.

DICTATORSHIPS, “SPRINGS” AND TERRORISM

Also within this 100 year span we can find military dictatorships and those held by small groups in power, which have

It is a known fact: terrorism has caused terrible and heartbreaking affectations worldwide. Several regional or national organizations have justified their terrorist actions by mentioning previous wars or acts, alluding to unfulfilled political or social claims, or by defending and trying to ideological, philosophical and / or religious principles.

abounded mainly in Latin America and Africa, with their terrible cascade of summary executions, forced disappearances, massacres and killings, committed countless times by a State’s own armed forces and authorities.

In Europe, we can highlight the liberalization movement in Poland and Hungary, which began just as the second half of the twentieth century started and continued years later in what was then Czechoslovakia, with its “Prague Spring”. In short: it was a struggle against the communist extremism that prevailed since the end of World War II, after the former Union of Soviet Socialist Republics became one of the world powers which imposed its single party authoritarian model so lacking in freedom. The international polarization that was delimited at that time between the USSR and the United States, led to new tensions and problems. Likewise relevant was the material (as well as paradigmatic and symbolic) “fall” of the Berlin Wall in November 1989.

At other times and in other latitudes, 2011 saw uprisings, incorrectly baptized as “The Arab Spring” which are now inset in the frame of a discreet and perhaps failed democratic transition in Yemen, Bahrain, Jordan, Egypt, Tunisia and Libya, nations that (mostly) lived under autocracies, some held by elderly, sick, dominant and authoritarian leaders who had inherited power. Meanwhile, Syria has seen a severe

rise in the violence of a conflict that has escalated due to several factors and that has already accumulated an incalculable number of victims, since one must consider not only the almost 100,000 deaths caused directly by the conflict, but also the hundreds of thousands or even millions of refugees and migrants attempting to flee the destruction wrought by war.

It is precisely this Middle East, armed and dissatisfied, crossed and divided by a complex web of conflicting interests, that gave rise to Al-Qaeda, Isis, Hamas, Islamic Jihad and other extremist groups whose main activity center on terrorism, that had already been occurring at high levels and causing deep fear, especially in the nations that are considered by them as enemies of their Holy War or jihad.

It is a fact: terrorism has caused terrible and heartbreaking damage worldwide. Different regional or national organizations justify their terrorist actions by mentioning previous actions and wars, unresolved social and political pretensions, or the defense and imposition of ideological, philosophical and / or religious principles.

Some research studies (performed, among others, by Walter Laqueur, Ph.D. recently partnered with the International Research Council Center for Strategic and International Studies in Washington, DC) indicate that contemporary terrorism appeared with the assassination in Sarajevo of the heir to the throne of the Austrian Empire in 1914, a fact that triggered World War. They point out that there are countless types of terrorism, not only the most common politically motivated type. That is why it is hard to attach a single definition to it.

The reemergence of terrorist operations started in the decade beginning in 1970. ETA and Armenian cells in Spain and elsewhere in Europe, the Red Brigades in Italy, the German Red Army, right extremist sects, bigots, religious rebel groups in Ireland, Russian revolutionary socialist groups, European anarchists, extremist Fedayeen in Israel, Lebanon and Palestine, etc. Countless examples have already developed in many parts of the world: the attack on Israeli athletes at the Munich



Olympics, various attacks on embassies and religious associations in several parts of the world, and in more recent times, the aircraft attack, that September 2001, on the twin towers of the World Trade Center in New York and in other strategic buildings across American cities. In later years, we can mention the attacks in Madrid, London, Pakistan, Kenya, Afghanistan, Nigeria, Iraq, India, etc.

Reports on terrorism, such as the ones the United States presents annually, warn us that worldwide warn, terrorist actions as well as the number victims who die or are injured by these actions, have increased by more than a third each year starting on 2012. 2015 ends with a bloody terrorism that began in early January with the bombing of the French weekly Charlie Hebdo, and was displayed again in the attack on Paris just last November, then in Mali and finally with a ostentatious display in San Bernardino, California.

PATRIARCHY AND GENDER IN THE LAST HUNDRED YEARS

In those conflagrations and conflict situations, hegemonic patriarchy has become fully visible, transformed and involved in its unequal, discriminatory and violent social structures, which impose disadvantaged social models on women, minorities and different groups on the grounds of religion, ethnic or racial origin, race, tribal or group integration, sexual preference and orientation, etc. ... All of them, however, share a common distinction: their inferiority was considered certain and irrefutable.

During the last hundred years the traditional roles that girls and women play, even in wars and genocide, have changed drastically. Certainly, women have always participated as companions to care for soldiers, as well as their own offspring, cook and help with cleaning tasks, and the care of clothing and footwear, almost all of these within the family circle; rarely, they could be nurses or caregivers for the wounded, and cook for large numbers of people. They also collected firewood and food, such as grains or fruits, and only in extraordinary circumstances and as a very last resort, could they act as actual combatants.



In an overview, it seems convenient to quote an excerpt from the conversation with a historian, which appears as the opening text in the book *War's Unwomanly Face*, written by the new Nobel Prize for Literature for 2015, Svetlana Alexievich (2015, pg. 9):

-According to historical studies, when did women become a part of professional armies?

-Already in the fourth century BC, in Athens and Sparta, women participated in the Greek wars. In later times, they were also part of Alexander the Great's troops. The Russian historian Nikolay Karamzin wrote about our ancestors: >>Sometimes, Slavic women bravely joined their fathers and spouses. For example, during the siege of Constantinople in 626, the Greeks discovered between the Slavs killed in combat many female bodies. In addition, Slav-

ic mothers, in educating their children, always prepared them to be warriors.>>

-And in the Modern Age?

-The first time women were involved was in England, between 1560 and 1650. It was then that hospitals where women served began to be organized .

-What happened in the twentieth century?

-At the beginning of the century, during the First World War, in England, women were admitted to the Royal Air Force; they then formed the Women's Auxiliary Corps and the Women's Section of Transport; in total, one hundred thousand troops. In Russia, Germany and France, there were also many women serving in military hospitals and hospital trains.

But it was during the Second World War when the world witnessed a real female

“Everything we know about war, we know from the “male” voice. We are all prisoners of “masculine” perceptions and feelings, of “male” words. Women, meanwhile, are silent”.

Svetlana Alexiévich. Nobel Prize for Literature 2015

phenomenon. Women served in the armed forces of several countries: in the British army (two hundred twenty-five thousand) in the U.S. armed forces (between four thousand and five hundred thousand), and in the German army (five hundred thousand)... In the Soviet armed forces there were about a million women.

They dominated every military specialty, even the most “manly”. This phenomenon even gave rise to a linguistic problem: until that moment, there was no feminine equivalent to the masculine words “combat vehicle driver,” “private” or “sharpshooter” since women had never before been in charge of these tasks. The feminine form of these words was born there, during the war ... “

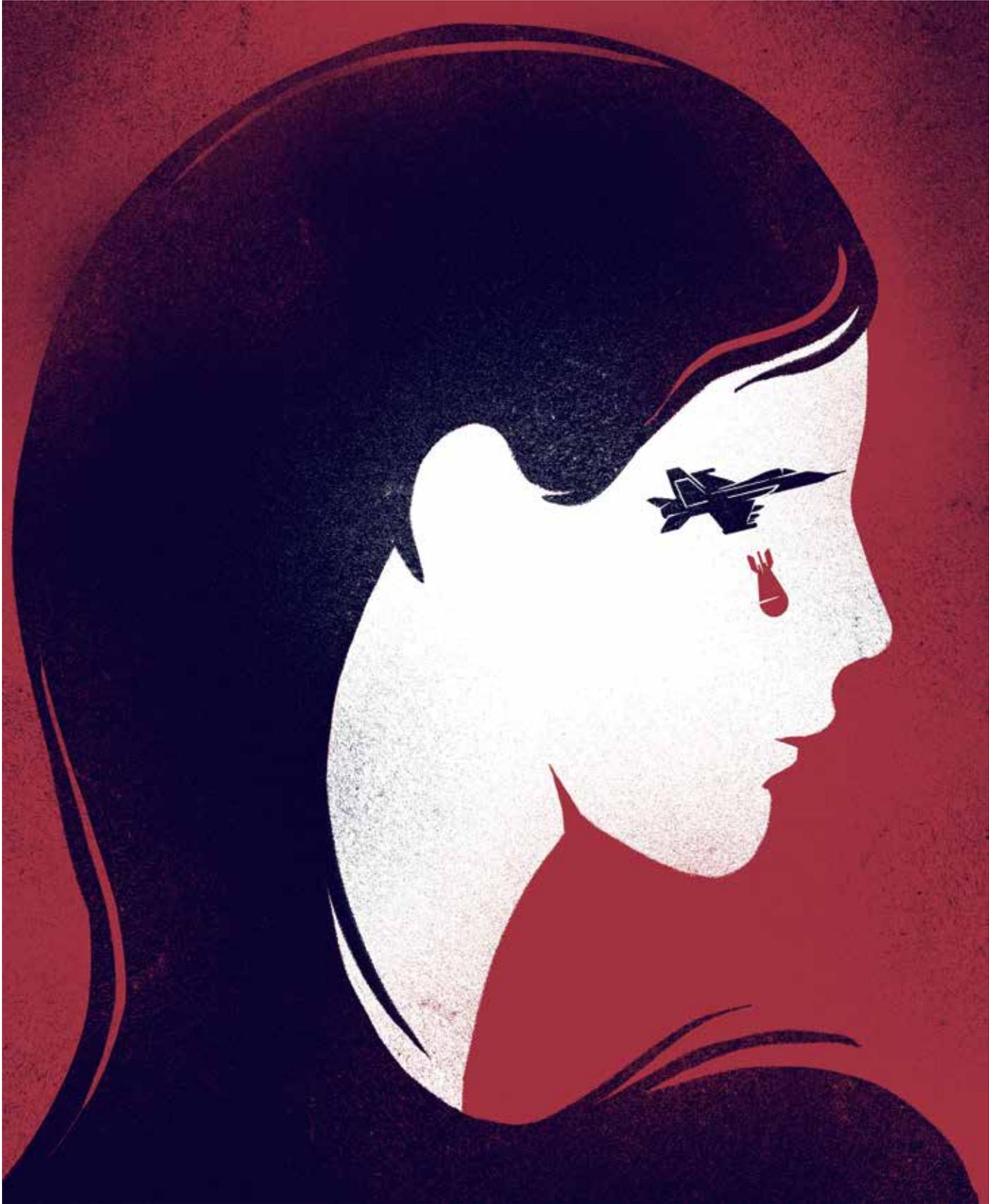
Now, let us start with the developments that led to the Armenian Genocide, whose origins date back to the hamidianan wars

and massacres perpetrated between 1884 and 1896, during the reign of Sultan Abdul Hamid (1876-1909), with a tragic result of more than three hundred thousand Armenian deaths.

With the advent of the “Young Turks” (as the members of the Union Committee and Progress ruling political party were popularly called) from 1909 onwards the destruction of the Armenian national community was set in motion. The Armenians were settled mainly in Western Armenia itself and Anatolia; in the East, in current Armenia (although the country was territorially diminished to a great extent) the measures were not suffered with the same intensity. It was determined that April 24th, 1915, would be the starting point of the massacre by summarily executing every political, social, economic, religious and cultural leader of the Armenian nation.

After accomplishing this initial slaughter, the population was separated: young and mature men were executed. Women, children and the elderly were forced to march, mainly through the desert of Der Zor (present day Syria), with the sole purpose of exterminating them through hunger, thirst, exhaustion, falling off cliffs, drowning and Kurdish and Turkish attacks, until almost total extermination was accomplished. Pan-Turkism carries in its memory more than one million five hundred thousand people massacred and more than five hundred thousand displaced, in what is now known as the “Armenian diaspora” (about seven million people of that origin who now live in many countries worldwide).

To utter a clear warning on the new roles or roles that women had to play in this first twentieth century genocide, it becomes necessary to mention another quote:



PARALLEL ACTS AND FACTS

Women and their new roles as leaders

A clear development of this time of extreme crisis was the leading role which women were forced to assume. It was women who became heads of families, who had to make critical decisions, such as whether the family should stay together at the price of death or whether it was necessary to save a part of the family by sacrificing some of its members, turning them in or even abandoning them. They became the main negotiators with the Turks, Kurds and Arabs for their own survival and that of their loved ones. It was those women taken to Arab homes who did their best to help others who were even more unfortunate and miserable than themselves. If the Armenian family was preserved during this period of unprecedented horror, much of the credit belongs to the last generation of Ottoman Armenian women, who took unconventional roles in the desperate struggle to survive.

WOMEN IN WAR AND GENOCIDE

Wars and genocides bring dire and dramatic effects against women and girls, who must try to survive in an environment of heightened violence and learn to live with obligatorily taken decisions, such as having to kill their own babies if they represent an obstacle or to save the lives of older children (who can already walk and will soon learn to fend for themselves), accepting forced or provoked abortions and also the fact that their bodies are considered “spoils of war”, enduring rape or even gang-rape. They must agree to become forced lovers or sexual slaves and work for whatever group wins, stoically withstand rejection, being denigrated, humiliated and abused, displaced, expelled and / or abandoned socially if they happen to belong to the defeated group, if they were forced to join resistance factions, or if they supported a particular rebel group by conviction or by simply being born as part of it.

They must learn to kill their own daughters, lest they see them subjected to the same abuse and rape they suffer. They must face the spread of venereal diseases and infertility or sterilization generated by

these infections or by botched maneuvers or procedures thereto related.

They must overcome the worst miseries, the worst famines and the most inhumane conditions to survive: pregnant Armenian women's bellies were opened with swords and machetes and then their babies were “skewered”.

During World War II, German women were forcibly treated as “baby factories” by the Nazis, and the end of the conflict, as the “spoils of war” by the victorious Russians and Americans (and to a lesser extent by French and British Allies). No wonder there is talk of more than two million women raped and more than five hundred thousand forced pregnancies by the end of this conflict. Female suicides, on account of such reasons, also skyrocketed.

In her book “Women in Conflict” Irantzu Mendia Azkue (2010, p.31-32) notes:

The patriarchal system is the main source of insecurity and Human Rights violations for women. This system establishes a social hierarchy based on a gender division that subordinates the female to the male and which persists thanks to different types of violence (direct, structural and symbolic). This hierarchy of gender cuts across all social institutions, including the State, markets and the Army, all of which work for it and serve its objective of differential allocation of social, economic and political roles for women and men.

In situations of armed conflict, this division tends to increase. Patriarchy, which links women to peace and men with violence in an essentialist way, promotes and radicalizes a form of aggressive masculinity to encourage men to be combatants. It calls for women to be bearers, caregivers and guarantors of the continuity of a group's, nation's or coun-

try's future generations. In most cases, the changes in gender roles created by an armed conflict overburden women because, to their role as caregivers, they must add the struggle for survival and maintenance of the family unit, and the assumption of certain tasks and responsibilities traditionally assigned to men, in addition to their own involvement in political activities and community support.

WOMEN AND TERRORISM

In a study on the role of women in terrorist attacks, titled “Victims or Victimizers? Rethinking conceptions of female suicide bombers”, Helke Enkerlin Madero and Luis Zatarain Marcela (2011, p.147-176), expose how, since the 1980s, female participation in suicide terrorism has been increasing. This is largely due to the fact that it offers “benefits” in various ways, e.g., generating surprise among the population when a woman commits terrorist acts, and accessibility to the objectives pursued by terrorist groups, who regard women as a “strategic weapon”.

The investigation seeks, among other things, to study the role women play in terrorist groups, to discover whether they are recruited for utilitarian and tactical reasons, or if they are actually active even to the point of reflecting a growing equality in their social context.

It is considered that within the terrorist acts that can be perpetrated (demonstrative, destructive and suicidal), suicide attacks are the most impressive and violent tactics, as the perpetrator seeks to cause the most damage even at the expense of his own life, and the coercive level of conflict is increased, which has led to suicide attacks becoming the tactic that brings greater results to terrorist groups.

The study notes that while the motivations of an individual who decides to sacrifice his life are complex (with converging social, cultural and personal factors), in the case of women many more aspects can be glimpsed. Far from the female stereotype of mothers concerned with their children's welfare, female terrorists are often the victims of double oppression: firstly, they are subjected to the traditional tyr-

anny of men, but they are also part of an oppressed community.

On the other hand, once their participation in conflicts seeking nationalist or feminist vindications ends, women do not gain the same rights as men. Furthermore, many of the changes in the relationship between women and men, necessary to obtain nationalistic gains, don't survive the establishment of the new Nation State.

From the two previous approaches, we can highlight the role of women in three different contexts: the Palestinian conflict in Israel, "black tigresses" of the Liberation Tigers of Tamil Eelam in Sri Lanka, and the "black widows" of Chechnya. In all three cases, female suicide terrorists were present only in a utilitarian role.

The motivations of female suicide bombers rest mainly on personal reasons, such as being rejected by their husbands, being single mothers, infertile, divorced, victims of rape or labeled as promiscuous. Therefore, the only way to "cleanse" their honor or avoid the public expositions of their personal situations is to engage in such acts. On many occasions, they are purposely placed in such a status, and then offered an only "honorable" way out: becoming suicide bombers.

In exceptional cases, these women had reached University or graduate level education. However, women are not involved in terrorist organizations' decision-making process, which emphasizes the role of weapon or useful "thing" assigned to them, their passive and doubly oppressed role in human conflicts.

In addition, women in conflict situations (war, genocide, terrorism) must accept becoming a taboo: they are the invisible victims of the worst human actions. History is silent when speaking of such atrocities.

***Magistrate Carolina Isabel
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*Seventh Collegiate Court of
the First Region's Auxiliary Center*



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PROFESSIONALISM,
DIGNITY AND RESPECT
WITHIN THE JUDICIARY

ELIMINATING VIOLENCE AGAINST WOMEN

One of the great challenges is ensuring that there is a working environment of respect and equal opportunities for women in the Federal Judiciary.

By Magistrate Dalila Quero Juárez*

I would like to tell the story of a case of physical assault against a young woman in a Federal Judiciary entity, a case which highlights how the Federal Judiciary Council sanctioned the offender as a sign of this institution's commitment to comply with the principle of non-violence against women and with ensuring true and effective protection. For reasons of privacy, actual names have been changed.



PHYSICAL VIOLENCE

In front of me, with her head down and her eyes reflecting deep sadness, sat Maria Gonzalez, who with a voice full of anger and impotence told me how her boyfriend, Pedro Hernandez, had physically abused her yesterday (Sunday) within the premises of the Court (private quarters of the Court Clerk).

Maria related the following story: >> My boyfriend Pedro Hernandez arrived at my cubicle while I was alone; when my colleague Ruben Solis entered, [Pedro] inquired if we had maintained an intimate relationship. Ruben denied it.

>> In response, Pedro took us into his office, where he reproduced a taped conversation in which it was said that Ruben and I (Maria) had maintained an intimate relationship. This was denied by Ruben, who added that he had commented on the recording made by Ana Sanchez (which was playing at the time) but that the whole thing only came from “men” who attempted to flatter him by “building him up in the eyes of others.”

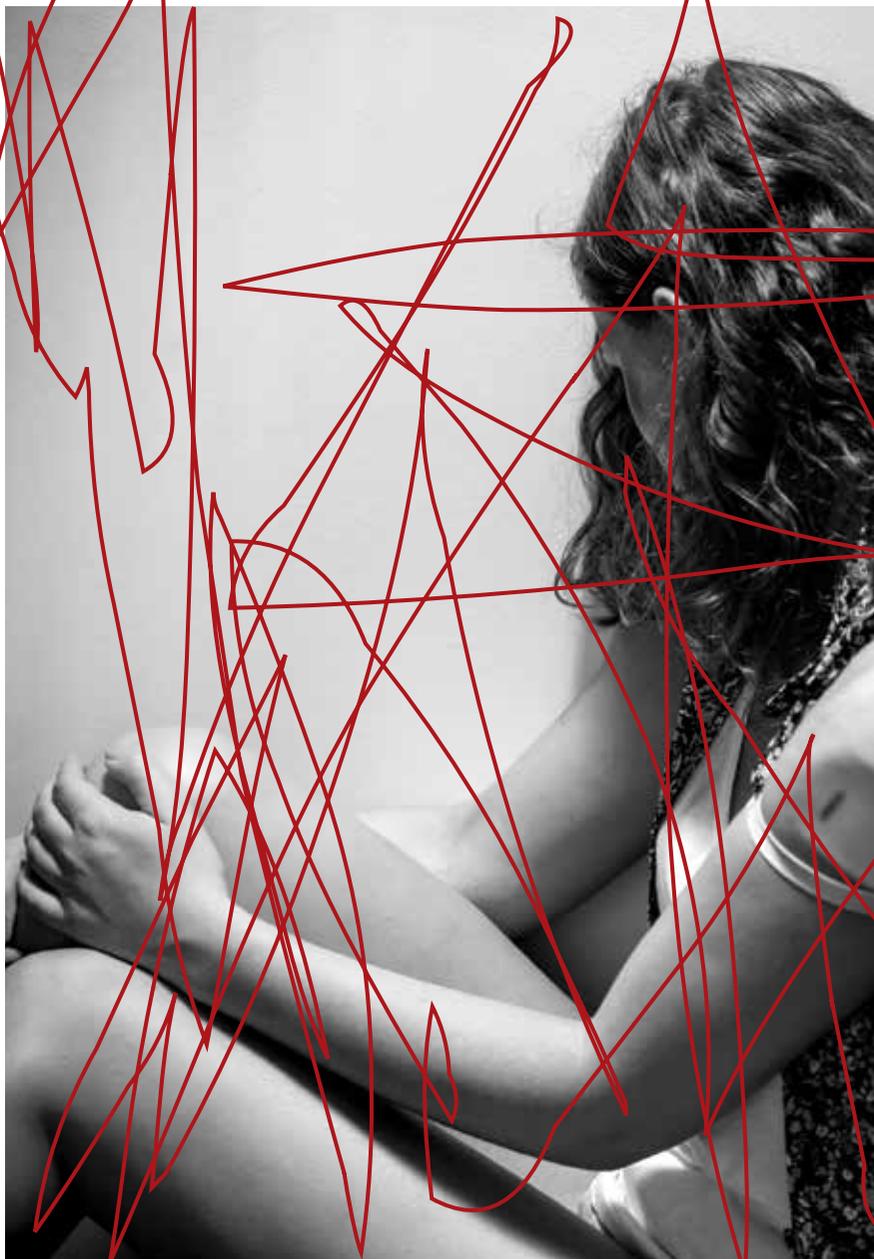
>> Once alone with Pedro, I denied everything, but he did not believe me and called me a liar. That was when he grabbed me and started slapping me; I was even losing my balance because I had high heels on. I fell several times, and during one of these times, he quickly grabbed the keys from his desk drawer and locked his private quarters. He pushed and pulled me. I fell twice and he only lifted me up to continue slapping me. He also told me he was sorry to have become involved with me and called me a whore. I told him to stop hitting me, that I had not done anything to him >>.

As proof, Maria exhibited four photographs that, according to her, showed the marks left behind by the physical attack she had suffered. On his part, Pedro Hernandez denied the imputations: He declared that he had been at Court at the time and place of the alleged attack, but that Maria and him had only had a “lovers’ quarrel”. Ana Sanchez declared that when she arrived at the cubicle Maria and Pedro were screaming and insulting each other. Ruben only confirmed Maria’s story. A few days after the incident, Maria presented a voluntary dismissal of her claim, which was sent to the Federal Judiciary Council.

THE PROCEDURE

The procedure was initiated only against Pedro Hernandez, for bad behavior within the premises of the Court. As exculpatory evidence, Hernandez offered the ratification of Maria’s written voluntary dismissal and her confession.

At the appointed time and place, Maria ratified her written voluntary dismissal. When asked about the events at the time and place of the alleged attack, she only admitted to a lovers’ quarrel with Pedro and declared that he had not physically attacked her. As the complainant, I



formulated the position that the attack had happened, that it had been ratified in an official report and I mentioned the photographs showing the effects of the attack on Maria. I also added that Maria had stated her accusation under oath. Maria admitted to this, but added that she had been angry and confused at the time.

THE SENTENCE

I think the verdict is an unprecedented decision. This is my opinion because I consider it relevant to the case that the violent attack occurred between two individuals involved in a romantic relationship with each other, a situation that many people would consider a strictly private affair. However, as the verdict correctly pointed



Photos: Cansstockphoto

out, this situation should no be seen as a mere “lovers’ quarrel” since it happened in a Judiciary body (which must be respected), and thus represented a breach of the discipline that should prevail within a Federal Court.

The Disciplinary Commission did not fail to notice that the events had taken place on a non-working day, and furthermore correctly considered that this in no way diminished the gravity of the misbehavior, since thinking otherwise would imply that reprehensible conduct could be “legal” or “acceptable” on days off.

As to the lack of ratification of the administrative proceedings, a masterful separation of workplace and administrative responsibility was made (in this case, lack of discipline and respect for a Judiciary Court).

In regard to the voluntary dismissal, the sensitivity exhibited in the handling of the entire case should be noted. This case highlights the application of a gender perspective in that it takes notice of the subordination, oppression and psychological violence suffered by the victim who, feeling guilty about affecting her romantic partner, decided to deny any kind of physical attack and insist that she was “confused” (an obvious ploy to avoid punishment for Pedro).

Furthermore, it was emphasized that the evidence allowed the hypothesis that her voluntary dismissal was related to the romantic relationship that existed between Pedro and Maria, since she meant to protect his job. However, the disciplinary body considered that violence against women could in no way be condoned, since the entity is working precisely towards the inhibition of attitudes that subordinate women or have them play stereotypical roles. To support this decision, thesis CLXIII/2015 was cited. This thesis, issued by the First Chamber of the Mexican Supreme Court titled “CRIMES AGAINST WOMEN. CLOSE RELATIONSHIP BETWEEN VIOLENCE, DISCRIMINATION AND GENDER BASED DISCRIMINATION.”

It seems fundamental to me that the respect that should prevail in an office, and the value conferred on women, should be emphasized. Women should be treated with dignity, to thereby ensure the reputation of the Federal Judiciary. This in order to stop violence against women, which is generally invisible, and thus avoid continuing impunity for misogynistic aggressors.

This decision is very relevant to women because it highlights the respect and good behavior that should prevail in Court, and this fact should be duly noted. This case clearly defined the values that allow humans beings to acknowledge, accept, appreciate and value (among other things) their rights and obligations. It also implies the consideration, deference and sensitivity that must be kept within a jurisdictional body.

My gratitude, admiration and respect for the honorable Councilors that with this decision dignify the working women of the Federal Judiciary. ■

*** Dalila Quero Juarez:** Circuit Magistrate for the Third Collegiate Court of the Ninth Circuit.

Pregnancy discrimination

Human Rights being a set of inherent prerogatives to the nature of individuals, since they are a result of human dignity, and their effective implementation being essential for their development by the simple fact of living in a legally organized society, it can be said that, consequently, Human Rights are a limit to the exercise of the power of the State in order to achieve harmonic social, economic and cultural evolution¹.

As a result of the June 2011 reforms, Article 1 of the Political Constitution of the Mexican United States has three new inclusions:

- » Human Rights
 - » Constitutional obligations regarding Human Rights
 - » Pro persona principle
-

Magistrate Victorino Rojas Rivera*

Equity involves acknowledging conditions and differentiated aspirations to ensure the exercise of equal rights and opportunities for women and men. It also means implementing distributive justice mechanisms, such as affirmative actions to ensure access to and equal enjoyment of, goods, resources and decision-making (participation). Meanwhile, equality is an universal legal principle recognized in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Mexico ratified; hence, gender equality denotes a total absence of discrimination between humans in regard to their rights.

In the next paragraphs, I would like to comment on a case where I intervened as Judge in the path to gender perspective and the commitment to judge cases from that very perspective when it warns us that a person is in a vulnerable situation.

GENDER AND PREGNANCY DISCRIMINATION

One of the strongest triggers of discrimination, which affects human dignity, is pregnancy. To start my commentary, I would first like to write about this case's historical background.





- i) A woman was hired by the Executive Government of the State of Michoacan as assistant director in the Treasury Department. Her duties were consulting, training and validating town halls and public administration bodies, noting that although she held a non-unionized post, implying that she did not have stability in her employment, that fact did not exclude her from claiming the payment of compensation and various benefits.
- ii) Likewise, on April 3, 2012, the woman told the incumbent Secretary of Finance and Administration that she was pregnant-since she intended her rights to be respected-and supported her claim with a medical certificate.
- iii) However, on May 18th 2012, at approximately two o'clock, she was fired by this same person.
- iv) The party being sued denied that the dismissal or any other change in employment were due to the woman's pregnancy. According to the defendant what happened is that they were forced to issue an appointment² in favor of another person by institutional procedures. At the same time, the Secretariat defended itself by saying that the nature of the woman's employment (non-Unionized) precluded her from demanding benefits.
- v) The Court in charge decided that the burden of proof should fall on the defendant, who had to prove that the woman was non-Unionized and as such had no right to benefits. Once the evidence was gathered and evaluated, the Court acknowledged that the Secretariat had acted as it should have.
- vi) This Court also determined that the state of pregnancy as cause⁴ of the woman's dismissal could not be proven. On the contrary, the Secretariat had proved that the woman was non-Unionized and thus had no guarantee of stability in her employment.

The violated concepts were dismissed as ineffective and unfounded because of the existence of case law on the lack of employment stability in non-Unionized workers and bureaucrats.

However, the Circuit Collegiate Tribunal (CCT henceforth centering its attention on the possible situation of discrimination arising from the pregnancy (which in turn includes the violation of a Human Right recognized by both internal and conventional Law), attended to three aspects⁵ before identifying the Human Right to non-discrimination in the jurisdictional debate: gender perspective; ex officio exercise of the duty of the Courts

to directly apply international Human Rights treaties to which Mexico is party; and the substitution of the deficient complaint, since the complainant belong to a vulnerable group due to her pregnancy.

Also, the CCT transferred the burden of proof to the State-employer so that, through exclusion, it could prove that non-Unionized pregnant or formerly pregnant women were still employed by it, thus demonstrating that pregnancy is not a cause for dismissal. If the State was unable to provide such proof, pregnancy could be assumed to be the motive for dismissal.

SANCTIONS FOR VIOLATING THE RIGHT TO NON-DISCRIMINATION

The TCC decision considered that the sanction derived from a discriminatory act is diverse from standard violations to labor rights, because the first one is a direct violation of the fundamental right contained in Article 1 of the Mexican Constitution.

The First Chamber of the Mexican Supreme Court has held that regarding discrimination as a direct violation of constitutional writ, it becomes possible to point out 4 types of consequences:

- i) Declaring the discriminatory act null
- ii) Reparation for damages caused
- iii) The imposition of reparation measures that act as deterrents
- iv) If applicable legislation permits, the establishment of criminal sanctions

When talking about the violation of a Human Right, if the reparation is monetary-no matter if the compensation derives from dismissal or from material or immaterial damages- it must be adequate in the sense that it should effectively compensate any damages or ill effects suffered on account of the discriminatory act, according to national standards. These kind of consequences are, obviously, fully justified in the Mexican legal system, as article 63 of the American Convention on Human Rights refers.

Is the dismissal of a pregnant worker a discriminatory act?

To answer this question, the TCC notes the following: discrimination operates as an instrument of social segregation to the extent that such conduct amounts to keeping the discriminated group distant and confined to its own space, a space which they can only leave under certain conditions, more or less restrictive.

Now, in this field the Declaration on the Elimination of Discrimination against Women (DEDM), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimi-

nation against Women (PFCEM) are of special relevance, because they have expanded and reinforced equal rights recognized in other international instruments.

Discrimination on grounds of sex comprises those pejorative treatments that are based not only on the pure and simple observation of the victim's sex, but also in the reasons or circumstances that have a direct and unequivocal connection to the sex of the victim. That is, employment discrimination based on sex includes not only pejorative treatments based on sex itself but also those founded on other circumstances that have a direct connection to sex.

Why does the dismissal of a pregnant worker constitute a Human Rights violation?

The TCC considered that the rights the claimant was stripped of due to the discrimination she suffered occurred mainly in the field of Social Security, because during pregnancy or childbirth, these rights are essential in enabling women to have a successful pregnancy and childbirth. Although there are many rights affected the following can be mentioned:

- » Medical attention that includes prenatal, childbirth and postpartum assistance
- » Periodic payment of monetary compensation particular to maternity leave
- » Periods of pre and postpartum rest- that in terms of Article 123, section B, paragraph XI, subparagraph c) of the Political Constitution of the United Mexican States should include three months- linked to the right to receive monetary compensation during the period where remunerated work is interrupted.
- » Maintaining an active worker status in Social Security listings

Therefore, the dismissed complainant undoubtedly suffered discrimination, because her vulnerability prevented her from enjoying the Human Rights she was entitled to during pregnancy, which would ensure economic, social and psychological stability, since the right to Social Security covered all the areas where she suffered deprivation.

Furthermore, with the deprivation of these rights, the plaintiff suffered emotional damage from her impossibility to enjoy them, which in turn affected her economically and could have affected her health.

As the complainant was pregnant at the time of her dismissal-regardless of her status as a non-Unionized worker- the act of the State-employer is a discriminatory one banned by the constitutional regularity control parameter, which is why the State must be exhorted to prevent gender discrimination and take any actions necessary to stop repeated layoffs on the grounds of pregnancy, actions that are constitutional obligations derived from Article 1, paragraph three, of the Mexican Constitution.

As a state agent, it must be the first one to respect the constitutional rule of law and consequently be an example of enforcement. ■

***Magistrate Victorino Rojas Rivera:** *First Collegiate Tribunal in Administrative and Labor Matters of the Eleventh Circuit of Morelia, Michoacan*

¹ Rojas Rivera V. and Flores Navarro, S. (2013) "La Protección Judicial de los Derechos Humanos mediante el Control de Convencionalidad" in *Control de Convencionalidad*. Mexico: Novum. First edition. Pg. 109.

² In exercise of the powers conferred by section XIX, Article 60 of the Constitution of the State, as well as paragraph 14 of the Organic Law of Federal Public Administration (LOAPF).

³ There was no point of discussion, as the complainant had recognized this in her lawsuit and the corresponding answer was not controversial.

⁴ Burden of proof implicitly falls on the acting party.

⁵ ADL 20/2015, decided by the majority votes of Jaime Uriel Torres Hernandez and Victorino Rivera Rojas (rapporteur) by the First Collegiate Tribunal in Administrative and Labor Matters of the Eleventh Circuit in its September 10th, 2015, session.

⁶ Cf. Execution of November 12th, 2014, issued in direct "amparo" in review 992/2014 of Justice's Arturo Zaldivar Lelo de Larrea lecture.

First Latin American Encounter on Gender Equality and Law Enforcement

In the last Plenary Assembly of the XVII Edition of the Latin American Judicial Summit, held in Santiago de Chile in April 2014, Supreme Court Chief Justices, Federal Judiciary Council and Magistrature Presidents of member countries agreed to incorporate gender equality and non-discrimination as guiding, transversal principles of the summit's activities.

Derived from the above, they approved the creation of a Permanent Commission on Gender and Access to Justice, under the premise that gender equality was a strategic and priority issue in future editions of this event.

It was determined that this Commission would aim to monitor the process of gender mainstreaming throughout the work of the Latin American Judicial Summit and would start functioning immediately.

The Judiciaries of the region were encouraged to expand the participation of women in the summit's decision-making processes, thus increasing opportunities for equal participation both in the preparatory process and during the celebration of the event itself.

As its first activity, on November 10th and 11th, 2014, the Permanent Commission on Gender and Access to Justice held its inaugural meeting in the city of San Jose, Costa Rica.

Following this initial meeting, the First Latin American Encounter on Gender Equality and Law Enforcement was held in Mexico City on October 15th and 16th, 2015.

The Federal Judiciary's First Latin American Encoun-

This first encounter aimed to promote the exchange of experiences and best practices regarding the incorporation of gender perspective into law enforcement (as well as the regional strengthening of gender perspective itself) in all the nations that make up the Latin American Judicial Summit.

ter on Gender Equality and Law Enforcement was the only space at a regional level that allowed for the sharing of experiences as to the implementation of actions and policies on equality and gender discrimination in the Judiciary as well as to the application of methodologies to judge with a gender perspective.

The recognized leadership of the Federal Judiciary as to gender issues in the framework of the Latin American Judicial Summit derived from the coordinated work between the Mexican Supreme Court and the Federal Judiciary Council, work that should be further strengthened on account of its positive impact within Mexico in its higher courts, and, at an international level, in the Latin American region. ■







Illustrated by Ángel Sánchez

ALTERNATIVE DISPUTE RESOLUTION:

Tools against harassment and discrimination

It has become a trend for public and private institutions to increasingly implement alternative mechanisms for the resolution of conflicts that arise in the workplace, specifically in cases of harassment and discrimination. .

This is due to the fact that they have several advantages over traditional procedures such as administrative responsibilities for public servants, and to their being effective measures to discuss issues, reduce tensions, resolve misun-

derstandings and establish resolution strategies and cooperation between the parties.

In Mexico, the framework that regulates or concerns itself, directly or indirectly, with these behaviors is vast and contained in various legislative instruments; without attempting a complete list, it is possible to note the following: Political Constitution of the Mexican United States; Federal Labor Code; Federal Penal Code; Federal Law on Public

Servants' Administrative Responsibilities; Federal Judiciary's Organic Law; General Law to Prevent and Eliminate Discrimination; Women's Access to a Life Free from Violence Act.

The Mexican Supreme Court, concerned and committed to eliminating the problems caused by harassment and discrimination involving the detriment of the dignity and integrity of people and productivity and exemplarity of the institution, commissioned two expert consultants on this issue to elaborate a comparative law study in order to discover the best practices on alternative dispute resolution mechanisms developed by governmental institutions, international organizations, universities and private companies.

The results presented show that a comprehensive policy to address this type of work situations not only addresses the conflict once it occurs but provides preventive and corrective measures at different levels of intervention, usually classified into three phases. Thus, the primary phase begins with the creation of an inclusive, safe and healthy work culture through educational and deterrent tools such as campaigns and awareness workshops and working environment surveys, to name a few.

The intermediate stage is precisely where the alternative mechanisms, with practical, agile processes, in which all involved parties have the opportunity to participate, jointly or separately, are accompanied in this process by experts who provide them not only with legal assistance but also with emotional support and counseling.

The last phase is the use of formal or traditional procedures, such as administrative responsibilities for public servants (which may result in the imposition of penalties), once the previous strategies have not been successful.

In the case of alternative mechanisms, the comparative law study shows that the most commonly used are mediation, conciliation, arbitration, establishing an

Ombudsman, and the “open door policy” in which various levels of management receive and dialogue with those affected by a situation of harassment or discrimination.

Usually, these alternative mechanisms are designed ad hoc to address workplace misconduct considering the characteristics of each organization. Therefore, their use may be independent or be accompanied by preventive and corrective phases to constitute a comprehensive policy.

Among the features that distinguish alternative mechanisms the following may be mentioned: They provide counseling and legal advice; their use is subject to the will of the parties; they are resolved by a neutral person trained in assisting the parties to reach a consensus, so that they take into account both the interests of the victim and those of the accused; confidentiality is maintained throughout the proceedings; and they do not conflict or interfere with formal channels because they are complementary to them.

It is important to consider that when the gravity of the conduct is such as to jeopardize the integrity or safety of the victim or configure a crime, when more than one person has been affected by the same aggressor, when there is recidivism, or when the public service under the accused party's care has been damaged, one should directly use available formal mechanisms.

An example of an institution that uses the three phases described above is the University of Chicago in the United States, which has a comprehensive policy on discrimination and sexual misconduct that considers: The creation of educational programs and campaigns to prevent sexually offensive behaviors; a process of informal resolution of complaints handled through advice and mediation, in which both parties must participate voluntarily; and a formal investigation that is carried out in cases of aggravated sexual harassment.

¹The preparation of this article was made based on the results that a group of experts presented to the Mexican Supreme Court's General Subdirector for Gender Equality in 2015. The studies were titled A Proposal of informal mechanisms for the Mexican Supreme Court (developed by Isabel Cristina Jaramillo Sierra, Maria del Pilar Carmona Suarez and Mariana Valentina Montoya Castellon Robledo and Perez, researchers at the University of the Andes in Colombia); Design of a protocol by using alternative methods of resolution for harassment and sexual harassment in the Supreme Court (developed by Jennifer Cooper, research professor of the Faculty of Economics at UNAM and an expert on gender issues); and Prevention and intervention strategies to address discrimination, harassment and sexual harassment in organizations: a review of best practices (developed by Djemila Zouyene, adviser and head of the Latin America Division of the organization Edge Strategy AG, which strategically supports companies worldwide to analyze gender equality and prepare them for the Global Certification for Corporate Gender Equality).

² To remember what kind of attitudes, actions or behaviors constitute discrimination and harassment it is convenient to go to the definitions provided in Article 1, respectively, of section III of the General Law to Prevent and Eliminate Discrimination and Article 2, Section I of the General Administrative Agreement number III / 2012 of July 3rd, 2012, issued by the Committee on Government and Administration of the Mexican Supreme Court, which sets the bases to investigate and punish bullying and sexual harassment in the Supreme Court, namely:

Discrimination: For the purposes of this Act discrimination means any distinction, exclusion, restriction or preference which, by action or omission, intentionally or not, is not objective, rational or proportional and has as its object or effect the prevention, restriction, prevention, impairment or nullification of the acknowledgement, enjoyment or exercise of Human Rights and freedoms, when based on one or more of the following grounds: ethnic or national origin, skin color, culture, sex, gender, age, disabilities, social, economic, health or legal status, religion, physical appearance, genetic characteristics, immigration status, pregnancy, language, opinions, sexual preference, identity or political affiliation, marital status, family status, family responsibilities, the existence of a criminal record, etcetera. Discrimination can also take the shape of homophobia, misogyny, any manifestation of xenophobia, racial segregation, anti-Semitism, racial discrimination and other forms of intolerance.

Harassment: The acts or behaviors at an event or a series of events in or due to a workplace environment, regardless of the hierarchical relationship of the people involved, that undermine a person's self-esteem, health, integrity, freedom or safety; among others, we can mention provocation, pressure, intimidation, exclusion, isolation, ridicule, verbal or physical attacks that can be made in an obvious, subtle or discreet way, and which cause humiliation, frustration, offense, fear, discomfort or stress to the person they are directed at or even to those who witness it, with the result of interfering with work performance or creating a negative atmosphere at work.



Another case worth mentioning is the Austrian Ministry of Science, which founded a counseling center for cases of workplace and sexual harassment at the University of Vienna, which is open to male and female employees as well as University students. Female psychotherapists, social workers and lawyers, supervised by the Department for the Promotion of Women, operate it. The services offered are initial contact line, intervention in case of crisis and legal advice. An important aspect is that there is constant evaluation of the counseling center, based on the documentation collected via anonymous interviews and research, with the aim of improving the services provided.

For its part, American company IS & K is an example of the establishment of a policy to resolve conflicts gradually, at different levels of involvement. It consists of five stages: The first is the “open process”, in which a supervisor or supervisory body listens to the complaint with a no reprisals guarantee; the second is a “hotline” through which advice and guidance on how to resolve the conflict is provided; the third option is a “conference” in which the employee and a representative of the company team up with an expert to discuss the dispute and establish a path to resolve it. The fourth step is mediation, where the accused is invited to participate, although it is not a binding procedure; and finally there is arbitration, in which those involved present their evidence, witnesses and arguments in a hearing by the American Arbitration Association or some other independent organization.

In short, the crux of policies and alternative dispute resolution mechanisms for cases of harassment and discrimination is to be practical and effective enough to address victims’ situations from the earliest stages, considering different alternatives to resolve their needs, being expeditious, monitoring compliance with the agreements reached, providing security and guarantee of the

non-repetition of offensive behavior against those affected (no retaliation or victimization) and ensuring the confidentiality of all proceedings.

Making the decision to promote this type of mechanism is not easy, as its implementation demands an institutional effort that may involve, as we saw, designing prevention strategies, modifying internal regulations, rethinking how to resolve disputes, and channeling human resources and specific financing to train staff that will operate and give a timely follow-up to any agreements reached.

However, it is well worth it to modify or at least rethink the traditional paradigm used to address and resolve these kind of problems, for its reported benefits translate into guaranteeing the dignity and integrity of people in their workplaces, thus improving institutions’ productivity and strengthening a culture of respect. ■

*General Directorate for the Study,
Promotion and Development of Human
Rights of the Mexican Supreme Court.*

³In particular, Mexico’s Supreme Court has issued several administrative agreements to resolve cases of harassment and discrimination occurring within this institution. Thus, we have the General Administration Agreement of March 6th, 2015, from the Mexican Supreme Court’s Chief Justice, that created the Special Unit for Labor or Sexual Harassment Complaints in the High Court; the General Administration Agreement number III / 2012 of July 3rd, 2012; the Governance and Administration Committee of the Mexican Supreme Court, which issues the bases used to investigate and punish bullying and sexual harassment in Mexico’s Supreme Court; General Agreement number 9/2005, of March 28th, 2005, from the Full Court, that deals with the administrative responsibilities of this High Court’s civil servants and monitors the assets of these and other public servants (referred to in Article 222 of the Federal Judiciary’s Organic Law); and the Best Practices Manual for investigating and punishing bullying and/or sexual harassment in the Mexican Supreme Court.

⁴The World Bank classifies alternative mechanisms into four categories according to the level of participation of the neutral third party that helps solve the conflict: i) adjudication based processes (the third party defines its decision after some kind of hearing or decision-making process); ii) recommendations based processes (unlike the adjudication, here the neutral party does not make a decision, but rather suggests to the other parties how to solve the situation); iii) facilitation based processes (the resolution is decided by the parties, so that the neutral third party only coordinates the process and facilitates dialogue between parties); and iv) hybrid processes (a combination of all of the above).

Licencia de Paternidad

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

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





SUPREMA
CORTE
DE JUSTICIA DE
LA NACIÓN

GENDER BASED VIOLENCE IN SOCIAL NETWORKS

The digital age provokes changes that transform the way people relate to each other. New technological tools have allowed information to be democratized: the Internet, email, blogs, instant real-time messaging, podcasts, smartphones... there exists a whole new series of novel ways to communicate. Many benefits have been derived from these digital communication networks; however, these new spaces have also generated disadvantageous situations, where gender still creates differences.

Inside these virtual spaces, where language is simplified and the use of idioms or slang (either in English or Spanish) allows messages to become universal, stereotypes, violence and discrimination are also reproduced. How is gender violence digitally expressed? Who is most vulnerable to digital gender-based violence or discrimination? What is being done to regulate the disadvantageous situations being played out in cyberspace? Is society even aware of virtual violence?

The benefits brought by new technologies are undeniable: They have improved access to information and have facilitated its exchange. However, it is challenging to find a way to protect oneself in the virtual world of Internet.



WHAT ARE PERSONAL DATA?

According to the Federal Law of Transparency and Access to Governmental Public Information and the Federal Law on the Protection of Personal Data held by Private Individuals, personal data are “any information concerning an identified or identifiable individual” .

Currently, personal data flowing through network elements not only identify individuals, but also represent big business for e-commerce and government organizations, as the generation of user databases is an important bargaining chip.

Now, with new technologies and network connections, people produce data about themselves every minute; these data can range from a photograph to video footage, bank information and geolocation data, among





Illustrated by Ángel Sánchez

others. To the extent that this traffic is collected and consolidated as data, it results in personal profiles, and thus can help determine patterns or knowledge about an individual's behavior.

NETWORK VIOLENCE

Much of the important information people handle, such as addresses, contacts, e banking, personal or work emails and images, is stored in their personal smartphone. If this device is stolen, much of this information could become vulnerable.

In the real world, violence against women has different ways of manifesting itself. The National Survey on Discrimination in Mexico (ENADIS) 2010 revealed that 24.4% of interviewees consider that women's rights are not re-

spected. Eight out of every ten persons interviewed think that women should not be physically struck; however, 95% of the population believes violence against women does happen.

The Women's Access to a Life Free from Violence Act states that violence against women is any act or omission based on gender, which causes psychological or physical, patrimonial, economic, or sexual harm or death, both in the private and the public scopes. However, how is gender violence different in the virtual world?

According to the 11th Study on the Habits of Mexican Internet users in 2015, there are over 54 million Internet users in the country, and half of them are women. This year, for the first time, the use of social networks is the main reason for accessing the Internet. 80% of the wom-



en surveyed use social networks (Facebook, Twitter or Instagram); 78% go online to look for information, and 73% send and receive emails, while 64% chat. The average usage time is over 6 hours a day.

Cyber stalking or cyber bullying is a form of violence that occurs in the virtual world, and it is much more invasive than “real world” bullying, because the impact is much bigger. When a photo or video is “uploaded” to the virtual world it can be seen in minutes by thousands of people; also whatever is “uploaded” can be very hard to eliminate, because the ability to share material can become infinite in cyberspace.

It is also permanent, because cyber bullying can be carried out at any and all times, social networks are always active. Cyber stalking can range from abusers attracting young girls or boys via Internet by, romantic partners controlling their lovers’ movements through mobile GPS, to online threats and extortion by ex-boyfriends or husbands who threaten to disseminate intimate videos or photos, and many other possible variants.

Thus, virtually reproducing real life stereotypes, women tend to be more open to posting intimate material on social networks than men, so that these virtual spaces have become “a reference point of their intimate space and a key source in building their self-image and self-worth” for women.

While the exposure of intimate photographs could have negative consequences for both men and women, it is also true that women are vulnerable to these risks much more often, since “bullying behaviors are more often identified with male users”. The risk that this creates is that in this “virtual” reality, anyone can invade others’ privacy and cause damage. In these virtual spaces male stereotypes are also reproduced; usually men are proponents and take the

¹ This material came from the course *Social Networks as a Platform for Gender Violence, a digital age challenge*, taught by Dr. Sigrid Arzt on October 26 -28, 2015, in the Mexican Supreme Court.

² Art. 3, fraction II and Art. 3, fraction V, respectively.

³ Conapred (2010). *National Survey on Discrimination in Mexico* (ENADIS). Mexico: Consejo Nacional contra la Discriminación (*National Council for Combating Discrimination*). Retrieved 20/11/2015 from <http://www.conapred.org.mx/userfiles/files/Enadis-2010-RG-Accss-002.pdf>.

⁴ Categorization defined in the course *Social Networks as a Platform for Violence, a digital age challenge*, taught by Dr. Sigrid Arzt on October 26-28, 2015, in the Mexican Supreme Court.

CYBER VIOLENCE CATEGORIES⁸

HACKING.

Using information and communications technology (ICT) to illegally access personal information, in order to alter personal data, denigrating the victim, breaking passwords, and controlling computer functions.

IMPERSONATION.

Impersonating the victim or someone else (a family member or acquaintance) through ICTs to access personal information, embarrass the “stakee” and create fraudulent documents.

TRACKING.

Using ICTs to track, monitor and stalk in real time.

HARASSMENT-SPAMMING.

Using ICTs to constantly contact the victim. It is not an isolated incident, online tools that send messages are permanently activated.

RECRUITMENT.

Using ICTs to attract potential victims to violent situations. False employment advertisements; false advertising of online dating sites, chat rooms or blogs.

MALICIOUS DISTRIBUTION.

Using ICTs to manipulate and / or distribute defamatory, illegal materials. Threatening to distribute intimate photos or videos.

initiative, and although women may reject them with one click to delete them from their virtual lives, the fact is that despite it, virtual space offers tools that allow constant interference and harassment, showing it is actually others who really are in control.

SOCIAL NETWORKS AND AWARENESS CAMPAIGNS

Some international agencies and civil society have prompted actions in social networks so that they are not only places where violence is played out, but also a means to expose and sensitize people about gender violence, either through testimonials, photos or footage of attacks.



Such is the case of Brazilian hash tag campaign #Primeiroassedio, where several women relate the first time they were sexually harassed. In just one week this hash tag already contained 30,000 messages telling the stories of women who shared their experience in order to make this type of violence visible to others.

In Mexico, the Federal Penal Code establishes punishments for cybercrimes in Articles 211 subparagraph 1, 211 subparagraph 2 and 211 subparagraph 3. These articles do not specifically mention cyber violence; however, the Women's Access to a Life Free from Violence Act establishes that all violence against women is punishable, including cyber violence: "Any other similar ways that harm or

are likely to damage the dignity, integrity or freedom of women.⁵⁴

In addition to this Act, efforts to sensitize and promote social awareness about the violence women and girls may be subjected to should be done, creating protective mechanisms that guarantee women a full and discrimination free development, both in the real world and virtually.

The Mexican Supreme Court recognizes the importance of learning about these new dynamics of interaction in virtual space, and so will continue to promote these issues as part of its training program on gender and Human Rights. ■

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

⁵ Cabrera, R.F. (N/A) Las redes sociales y el impacto de la vida cotidiana. N/A: Observatorio Iberoamericano de Protección de Datos. Retrieved 20/11/2015 from <http://oiiprodat.com>

⁶ Estenez, I. and Vazquez, N. (May 2013) *La desigualdad de genero y el sexismo en las redes sociales. Una aproximación cualitativa al uso que hacen de las redes sociales las y los jovenes.* Spain: Departamento de Educacion, Politica Linguistica y Cultura, Basque Government, Pg 95. Retrieved 20/11/2015 from <http://www.bibliotekak.euskadi.net/WebOpac>

⁷ Op. cit., p. 96.

⁸ Categorization defined in the course *Social networks as a platform for violence, a challenge of the digital era*, taught by Dr. Sigrid Arzt on October 26-28, 2015, in the Mexican Supreme Court.

⁹ El Mundo (September 8th, 2015) *#Primeiroassedio, un hashtag que desvela el acoso a las mujeres en Brasil.* Brazil: El Mundo. Retrieved 20/11/2015 from <http://www.elmundo.es/sociedad/2015/11/08/563de-85fe2704e376a8b4624.html>

¹⁰ Women's Access to a Life Free from Violence Act

First International Judging with a Gender Perspective Meeting

Justice Luna Ramos positions the Mexican Supreme Court at the forefront of gender equality in the Federal Judiciary.

The First International Judging with a Gender Perspective Meeting was held on November 12 and 13, 2015, convened by the Mexican Supreme Court of Justice through the President of the Gender Equality Inter-institutional Committee of the Federal Judiciary, Supreme Court Justice Margarita Beatriz Luna.

This meeting brought together over 300 Mexican local and Federal Judges as well as twenty international Judges. The purpose was to facilitate an open and constructive dialogue in which sentences, experiences and best practices to judge gender perspective could be shared.

The event was inaugurated by Chief Justice of the Mexican Supreme Court and Federal Judiciary Council head Luis Maria Aguilar Morales; President of the Gender Equality Inter-institutional Committee of the Federal Judiciary Justice Margarita Luna Ramos, and Magistrate Constancio Carrasco Daza, President of the Electoral Tribunal of the Federal Judiciary Branch.

The opening ceremony was attended by Gender Equality Inter-institutional Committee of the Federal Judiciary members Magistrate Martha Maria del Carmen Hernandez Alvarez, Federal Judiciary Councilor, and Magistrate Janine Madeleine Otalora Malassis, President of the Federal Electoral Tribunal's Mexico City Regional Chamber. The event was also attended by Justices Olga Sanchez Cordero, Jose Fernando Franco Gonzalez Salas, and Jorge Mario Pardo Rebolledo; Councilors Rosa Elena Gonzalez Tirado, Jose Guadalupe

Tafoya Hernandez and Felipe Borrego Estrada; Magistrate Pedro Penagos Lopez; Judges Flavio Galvan Rivera and Manuel Gonzalez Oropeza, and Dr. Leticia Bonifaz Alfonzo, the Mexican Supreme Court's General Director for Research, Development and Promotion of Human Rights.

This first meeting started with a Keynote Address by Dr. Gilbert Armijo Sancho, President of the Constitutional Chamber of the Costa Rican Supreme Court, who emphasized that the Judiciary is an essential factor-an engine- to include and promote equality in law enforcement.

In the two-day event, workshops were installed in order to analyze sentences issued in national and international Courts, and the way in which gender perspective is applied or not in Mexico was reviewed.

National and international presenters of sentences as well as first-rate academics, who highlighted the theoretical and conceptual elements applied in the analyzed sentences and those concerning Human Rights and gender perspective, integrated the workshops.

In these two days, 16 joint workshops organized by subject were moderated by former Justices of the Court, Federal Judiciary councilors, Federal Electoral Tribunal Superior Chamber Magistrates, Federal Court of Tax and Administrative Justice Magistrates, State Court Presidents and Federal Judiciary Institute incumbents, the Federal Institute of Public Advocates and the Federal Attorney General for the Consumer, more than

three hundred Mexican Judges, as well as members of Academia and the Judiciary from Austria, Australia, Argentina, Brazil, Bolivia, Cameroon, Chile, Colombia, Costa Rica, Spain, United States and Sweden, all of whom made it possible to have an intense workday that produced conclusions that show the state of affairs and the challenges of judging with a gender perspective.

MAIN FINDINGS

» Both female and male Judges must apply the duty and power of domestic courts to directly apply international Human Rights laws and constitutional reviews in their judicial resolutions to guarantee the *pro persona* principle and prevent sentences from endorsing or causing discrimination based on stereotypes, prejudices or cultural burdens that affect the rights of the parties.

» The application of gender perspective cannot be a subjective exercise by the female or male Judge. The necessary investigations should be organized and carried out to glean as much information as possible in order to judge based on the principle of equality and not on a person's gender.

» However, Judges should be careful not to neglect gender perspective in the resolution of a case, which seeks to protect the best interests of children. There must be a balance between the two principles, and compliance with criminal law must also be ensured.

» The importance of making the impact of gender visible in legal disputes and ac-



ting accordingly, adopting measures and criteria designed to eliminate disadvantages that violate the right to equality and non-discrimination, is acknowledged.

» Detection of the impact of gender stereotypes is not easy, since they involve practices deeply rooted in society that determine how people- including those who enforce the law- think and act.

» Judging with a gender perspective does not mean losing objectivity, but instead involves considering differences between individuals and applying a kind of logic that includes measures to guarantee equality.

» Measures to improve awareness of women's rights are required.

» Judging with gender perspective helps achieve full justice. The legality of a discriminatory act cannot be justified by arguing that one is respecting a traditional use or habit (*usos y costumbres*).

» Within Judiciary bodies the principles

of gender equality must also be observed. Opportunities for access to higher positions in the Judiciary must be accessible to female and male aspirants, taking into account their family situation.

» Ongoing training is an ethical obligation for Judges of both genders, especially as regards the implementation of gender and international Human Rights treaties, in order to properly apply the national policy framework and control of conventionality.

» The existence of public policies on gender is necessary. Sentences can be used as guidelines to define public policies.

» The sentences issued must generate cultural changes and contain comprehensive reparations.

Along with the workshops, two panel discussions were held: The first on Judges' personal and jurisdictional experiences, where they shared the story of their career paths in their countries of origin. Justice Eduardo Medina Mora and Magis-

trate Maria del Carmen Alanis Figueroa, one of the Superior Chamber of the Electoral Tribunal of the Federal Judiciary Branch members, moderated this panel. Elsa Kelly, Judge of the International Tribunal for the Law of the Sea, Argentina; Susana Esther Medina, Judge of the Superior Court of Entre Rios, Argentina; Vera N. Nkwate Ngassa, Judge in Cameroon; Annika Rojas Wiberg, Judge of the District Court of Jönköping, Sweden, and Stella Conto Diaz del Castillo, Judge of the State Council, Colombia, also participated in this first panel.

In the second panel of Mexican women leaders the role of women was made visible in different areas of public life and unique experiences (in both their political careers and personal lives) were shared by all panel participants.

With great warmth, closeness and fluidity, moderation was conducted by Justice Margarita Beatriz Luna. Senator Angelica de la Peña Gomez; Beatriz Paredes Rangel, Ambassador of Mexico to Brazil; Patricia Mercado Castro, Federal District Secretary; Margarita Zavala, and Josefina Vazquez Mota were also present.

The First International Judging with a Gender Perspective Meeting resulted in a successful effort by the Inter-institutional Gender Equality Committee of the Federal Judiciary to achieve one of its goals: getting Mexico to make gender perspective a reality in law enforcement. It is anticipated that, as of this date and on this issue, there will be ongoing collaborative work between this three Federal Judiciary bodies. ■

General Directorate for the Study, Promotion and Development of Human Rights of the Mexican Supreme Court

Interview | Magistrate Janine Otalora
*President, Regional Chamber of the Electoral Tribunal
of the Federal Judiciary Branch*

BEYOND GENDER QUOTAS

With a B.A. in Law from UNAM (National Autonomous University of Mexico) and a PhD in Political Science from the University of the Sorbonne, she began her career in UNAM's Legislative Documentation Center. She later worked for the French Senate, as Technical Lecture Legal Clerk and as Instructing Legal Clerk. In February 2013 the Senate appointed her Electoral Judge of the Regional Chamber of the Electoral Tribunal.

When did you become interested in the issue of gender equality?

Since the very beginning of my professional life the issue of equality has been a concern, as I am aware that participation in social and political life as well as access to higher positions, has always been more difficult for us women; I could often see that women's working conditions were inferior to men's. Since I entered the Federal Judiciary, I realized there was a need to introduce gender perspective when issuing sentences.

You have an ample academic career, including a PhD in Paris. In your professional and graduate studies, did you approach the issue of gender equality?

During my academic career I did not have the possibility of addressing the issue of gender equality. However, I did delve into Human Rights even as an UNAM undergraduate, from the perspective of Comparative Law, which implies becoming sensitized to the development of and respect for the rights to equality and non-discrimination.



Do you believe gender discrimination exists today in Mexico? If you do, would you please point out an example of this phenomenon?

Obviously and unfortunately, in Mexico there is a great deal of gender discrimination, which is even more notorious in certain socioeconomic classes. Mexico has yet to manage seeing women as equal to men or having the working conditions necessary to allow for the promotion of females. As long as an education and culture focused on respecting people's dignity are not instilled, it will be impossible to eradicate discrimination. I have personally seen, for example, that pregnant women are not offered easier working conditions in Courts where workloads are high.

Have you ever felt discriminated against either personally or professionally?

While I could sometimes sense certain distrust towards me as a woman, I can say that in general, in my life, I have not felt discriminated against on account of my gender.

Why is it important to include gender perspective as a Judge?

It is relevant to judge with gender perspective since that is the only means to achieve the full exercise of the right of equality for women when solving a judicial dispute involving a breach or violation of any of their rights. If a Judge only applies and interprets Law without using gender perspective, it is difficult to restore the violated right and repair the damage caused by this violation. Obviously, this approach should always be applied with full respect for the principles of legality and legal certainty.

Could you please mention any of the gender sensitive sentences you have issued?

On the occasion of the electoral process in the state of Tlaxcala in 2013, I proposed



to the Full Court a sentence which ordered the first application of a horizontal parity principle in nominations for municipal positions. In 2015, during the electoral process in the State of Morelos, I proposed a sentence ordering the substitution of a female candidate for another woman, since the second female was better qualified politically. Both sentence projects were approved unanimously.

What is the Gender Equality Inter-institutional Committee's function within the Federal Judiciary in its drive to close the breach of inequality between women and men?

The role of the Inter-institutional Committee is essential to ensure that the three bodies of the Federal Judiciary harmonize their policies to reduce

situations that cause gender inequality, both administratively and in the Judiciary itself. The Committee recommends actions to reduce this gap by strengthening, for example, the rise of women in the Judiciary, or by regularly conducting surveys to assess the gender situation in each Judiciary body.

Which challenges must be met to ensure a full exercise of equal political rights for women and men?

The challenges are manifold. First, we must continue to strengthen justice administration with a gender perspective in both local and Federal bodies. We also have to disseminate the effects of Electoral Tribunal sentences that have widened the political participation of women. Parity has been achieved in the



“

As long as education and culture focused on respecting people's dignity are not instilled, it will be impossible to eradicate discrimination.

”

nominations, and this has caused some political gender violence, so it is necessary to create working groups to define this form of violence with women's experiences as a starting point.

What do you think about gender quotas?

I believe that quotas as such (60/40), were unconstitutional on the grounds that they are contrary to the constitutional principle of equality between men and women. Nevertheless, I recognize that in the political arena they were, at the time, the way to reach parity; in effect, imposing a minimum percentage of female candidates allowed us to guarantee women's access to elective office. It could be said that quotas were the first essential step to achieve the goal of substantive equality.

Which are the challenges women face in a democracy?

The biggest challenge is to occupy positions thru merit rather than gender. There is still, in the citizen's vocabulary, the notion that women should access more senior positions due to their gender, a concept that in my opinion is wrong, because the greater participation of women in public and private spheres must happen on its own merits. This is the discourse that should be given priority and on which we should all be working.



INCREASING PARITY

Mexican women and politics

Women's participation in Mexican politics is relatively recent, but its evolution has been a constant. This, because not until the mid-twentieth century did we have the opportunity to participate in the electoral process with our vote. The first time that Mexican women were able to vote in federal elections was on July 3rd, 1955. This led to further struggles for the right to participate in politics.

By Karina Quetzalli Trejo Trejo*

From Aristotle onward, political participation was conceived as inherent to human beings in society; some writers have associated political problems with those pertaining to equality, so that issues seeking equality between men and women become essential for Political Science in constitutional rule of law, as they involve people's participation in democratic life.





Representative political power has the particularity not only of being exercised, but also of taking into account, for purposes of government, the interests of either the majority or certain groups. Thus, to talk about qualitative democracy there needs to be a guarantee that all sectors of society (divided into groups that can be represented) have an actual opportunity to access representative positions on equal terms.

However, the importance of recognizing gender in political matters derives from the fact that the contribution offered by women is of utmost importance in countries seeking to strengthen their democratic systems every day.

Mexico has established, through various regulatory mechanisms, women's participation in politics as a guarantor of Human Rights, with the aim of not only promoting the active and full participation of a sector of the population which necessarily, by its mere numbers, must be represented; but also of undoubtedly generating diverse perspectives and realities that come to consolidate a true democratic system, with a plurality of proposals that implicitly can impact public policy in country where women account for more than half the population .

The electoral reform of 2014 represented an extremely important step forward for our country, since it raised political parties' obligation to ensure gender balance in their nominations to a constitutional mandate.

This constitutional provision was regulated by the General Law on Electoral Institutions and Procedures, which mandated that proportional representation lists be integrated by candidate formulas of the same gender and that similar lists be alternated until their exhaustion; in addition, it was anticipated that delegations of relative majority be integrated by candidate formulas with 50% of the total for each gender.

In this context, this obligation was also included in the General Law on Political Parties by establishing that each political institute would determine and make public the criteria (which must be objective and ensure equal conditions between men and women) meant to guarantee gender parity in local and federal legislature candidacies.

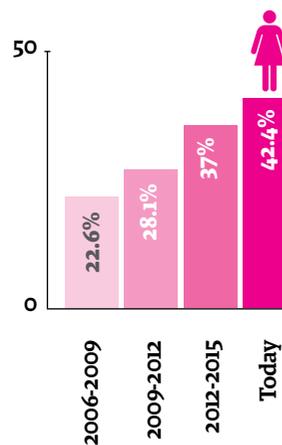
These constitutional and legal parameters are the source of an *a priori* structure linking electoral authorities to the main political parties-in their capacity as the main conduits to reaching public office- and to citizens, in order to protect and ensure equal footing in women's access to politics.

¹ Of the over 87 million voters registered to vote, over 52% are female, according to official documents found at http://www.ine.mx/2015/Docs/Numeralia_ProcesoElectoral_2014-2015.pdf

Women in politics today

Gender parity has been rising steadily since the LX Legislature (2006-2009). However, thanks to the inclusion of gender parity at a constitutional level, female participation has increased exponentially.

House of Representatives



In this way, the modifications mentioned are meant to overcome the need for affirmative actions in the search for equality between men and women.

In the application of the norm in the recent elections held in 2014-2015 in our country, the new parity rules consolidated women's participation in democratic life, as it was possible to place a greater number of females in elected office, achieving greater representation in parliamentary groups where their presence was scarce, which we hope will result in greater female leadership in the political arena.

In order to illustrate this phenomenon, I refer to the data obtained from the federal election, where 300 Congressmen were elected by relative majority and another 200 were elected according to proportional representation. These elections broke all previous records as to number of females elected to office, something that was due to the new parity rules implemented federally.

This because historically, during the LX Legislature (2006-2009) the lower House of Congress (Cámara de Diputados) had only 22.6% women, and from 2009 to 2012, this legislative body had a female representation of 28.1% .

Derived from the constant activity to promote public policies and even the issuance of resolutions with a gen-



Illustrated by Ángel Sánchez

The participation of women in political life enhances democracy in our country, since it eliminates inequalities and expands opportunities for participation where females can be acknowledged, constituting a real political choice and boosting their gender-specific public policies.

der perspective from 2012 to 2015, the lower House of Congress was composed of 37% women . While this situation represented an improvement, it was not enough in terms of equality.

As noted, derived from the inclusion of gender equality at a constitutional level, this popular representation body is currently made up of 42.4% women, evidencing the momentum that the recent reform resulted in as to the female gender's participation in Mexican politics.

The participation of women in political life enhances democracy in our country, since it eliminates inequalities and expands opportunities for participation where females can be acknowledged, constituting a real political choice and boosting their gender-specific public policies.

With such data it becomes evident that the participation of women in political life has evolved in Mexico;

from not even having the right to vote at federal elections in the 1950s, today political representation spaces are integrated almost equally. Therefore, I believe that gradually the exclusion of women in politics will be eliminated, but there are still unresolved structural and factual elements to overcome, elements that deserve and require detailed analysis and the establishment of effective mechanisms that completely eliminate any situation that results in de facto discrimination, which prevents women's access to public office. ■

***Karina Quetzalli Trejo Trejo:** Study and Account Clerk of the Federal District's Electoral Tribunal.

² N/A. Retrieved from http://www.ine.mx/2015/Docs/Numeralia_ProcesoElectoral_2014-2015.pdf

³ N/A. Retrieved from <http://observatorio.inmujeres.gob.mx/candidaturas-a-diputaciones-federales-en-2015/>

⁴ Idem.

⁵ Idem.



Is it discriminatory to judge with a gender perspective?

By Carla Rodríguez Padron *

Since the constitutional reform of June 2011, all authorities are obliged not only to ensure the Human Rights established in the Political Constitution of the United Mexican States, but also those contained in international instruments to which the Mexican State is a party; consequently, any authority must make the most favorable ruling on the Human Right in question that it possibly can.

For its part, the Supreme National Standard also contains the right to equality between people, prohibiting any discrimination motivated by gender, among other factors. That is, in Mexico there exists a legal and constitutional equality of men and women.

In this sense, jurisdictional authorities are obliged to judge without discrimination. In the face of this obligation, a question inevitably arises: Is it a discriminatory act to judge with a gender perspective?

To answer the question, one might think that, given the point of view held by Articles 1 and 4 of the Political Constitution of the United Mexican States, in principle any act that creates disparity between men and women in an attempt to privilege women is unjustified.

In contrast to the above, and derived from an interpretation of the American Convention on Human Rights, it can be argued that not all differences in legal treatment are discriminatory because not all differences in treatment may be considered, in themselves, as offensive to human dignity. It is only possible to consider a distinction as discriminatory when it lacks an objective and reasonable justification.



Once this has been established, under the control parameter of the regularity of the laws that make up the Mexican legal system, we can conclude that judging with a gender perspective, far from being an act of discrimination against men and thus contrary to the principles of the judicial function, is a vehicle to access justice and protect a group that historically has been found in vulnerable situations, in this specific case, women.

Accordingly, it is valid to argue that any act adopted in a reasonable, proportionate and objective way in order to favor the female gender by this simple fact and resulting from a situation of inequality between men and women, conforms to the pro persona principle established in the Mexican Constitution and the American Convention on Human Rights. Therefore it could not be considered as an attack on human dignity, since it would not be arbitrary or detrimental to Human Rights, considering that such “discrimination” can be allowed in light of the regionally recognized standard.

Thus, access to justice with a gender perspective is not discriminatory against



Illustrated by Ángel Sánchez

men, representing instead the search for an ideal situation, because only in this way can we guarantee that women have equal access to justice, understanding such equality not from a purely formal point of view (as a rule that protects people without distinction), but from a material or real one, which is achieved through the implementation of measures for the effective participation of women in society, by establishing certain conditions sufficient to remedy de facto inequalities.

In this sense, equality is not the elimination of diversity, but the recognition of differences that exist between people and social groups. The task of the legal operator is to ensure that these differences are considered when administering justice, in order to avoid compromising women's rights.

Due to all these reasons, justice cannot be neutral; it must instead consider the asymmetric relations -identifying what authority is involved, gender conditions and in any case, if an asymmetric exercise of power does exist- and warn us about possible situations of inequality and discrimination in the exercise of the rights at stake.

In that sense, the Mexican State has adopted permanent measures to remedy the exclusion of women's rights and persistent discrimination as well as measures to promote conditions of equality for the exercise of Human Rights, with the aim of accomplishing one of the principles contained in the Political Constitution of the United Mexican States regarding the prohibition of any kind of gender-based discrimination.

One concrete example of these measures is the Judicial Decision-Making with a Gender Perspective Protocol issued by the Mexican Supreme Court since 2008 as a methodology that emerged from the work and experience of those who have integrated its Gender Equality Program.

Equality between women and men, as well as full respect for their Human Rights, has become a priority for the Mexican State, which has been concerned and occupied with the elimination of unfair and arbitrary gender-based differences between men and women at the moment of accessing effective judicial protection.

Thus, Judges have turned to the essential task of issuing their judicial rulings with a gender perspective, which means that they conduct an exercise of weighting the norms, considering all the facts and the subjects involved, since a merely formal approach to the Law is not enough, in many situations, to achieve substantive equality between women and men.

This, because the legislator cannot resolve, through general and abstract provisions, every case of discrimination and structural disadvantage against women. That is why the role of the Judge issuing sentences with a gender perspective helps reduce the gap that women have historically lived with regarding the full exercise of their rights.

Given this scenario, the need to incorporate gender perspective into law enforcement becomes evident as a path that opens up the possibility of combating situations of structural violence towards women's Human Rights, as sentences issued under this system are the strategy for strengthening rights with equality.

All that is left is to point out that, although the Mexican government has implemented various procedures to achieve gender equality when accessing justice, the truth is that the judicial apparatus is still being adjusted, especially regarding the task of creating interpretative and application criteria for international instruments on Human Rights.

Certainly, from my point of view, Mexico is already in the process of administering justice with a gender perspective as a tool for respecting women's Human Rights and their material efficiency; however, there are still great challenges for Judges and Magistrates regarding equal rights between men and women. ■

*Carla Rodríguez Padron: Legal Clerk for Agreements of the Electoral Tribunal of the Federal Judiciary Branch's Regional Chamber, corresponding to the Fourth Plurinominal Judicial District, based in Mexico City.



Measurable justice

By Maribel Tatiana Reyes Perez*

Among the sentences considered for the Garrote (cudgel) prize, which seeks to denounce judicial resolutions that negatively affect gender issues, the 2015 edition of the Genero y Justicia al Descubierto awards (created by the Women's Link Worldwide), nominated the Ecuadorian No con falda (Not if wearing a skirt) case. The case itself consisted of the following: a female lawyer came to a prison in her professional capacity in order to assist a woman who was about to appear before a Judge and undergo a trial the very next day; however, this female lawyer was denied access. The reason given for this measure? According to the prison guards, jail protocol considered the lawyer's dress too short.

The female lawyer followed the necessary procedures and petitioned for protection, indicating that, while she completely understood that certain security measures had to be applied within a prison, her condition as a woman, right to formal and material equality, right to non-discrimination, right to freely develop her personality, her right to free speech and freedom of thought, her right to work and to decide her personal image, among many others, were violated. The judicial resolution issued for this case estimated that it did not constitute discrimination.

Regardless of the nuances that you want to give the matter at hand, it serves as an example to demonstrate the importance of enforcing the law with a gender perspective, for it transcends this case and helps eradicate stereotypes and prejudices that are deeply rooted in society, or, in contrast, issues judgments that may set the field of equality back.

Undoubtedly, the role of the Courts is critical to the creation of a cultural change, because the breakdown of such stereotypes and prejudices is neither shallow nor flat, and cannot be understood and urgently addressed from a singular dimension. Doing otherwise will allow the subsistence of even violent scenarios of all kinds. Hence, it makes perfect sense that international instruments, such as the Convention of Belém do Pará, include specific standards, which are conceived as part of its nodal principles of equality and non-discrimination (ius cogens), access to information and political participation and access to justice.

The role of judicial operators is a key link to achieve substantive equality, which is why the continued measuring not only of quantitative but also of qualitative advances that are being promoted from the Judiciary is so significant. This kind of measurement includes two aspects: the way in which gender is conceived within Judiciary bodies (labor with conviction) and how this is reflected in daily business, which in turn must be seen beyond the specific case, as a benefit to society.

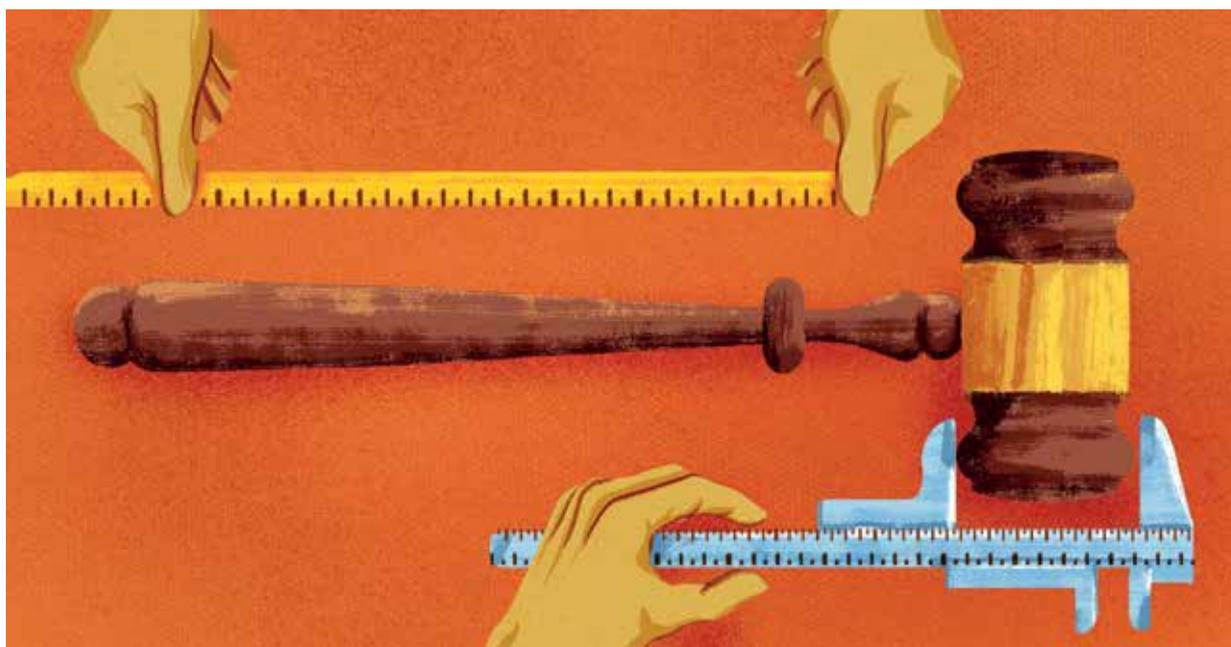
Indeed, in documents such as the Practical Guide to the Use of the System of Indicators for Measuring Progress in the Implementation of the Belém do Pará Convention (MESECVI, 2014), issued in February, it is stated that >> The "full realization of a Human Right" requires the existence of effective means (legal, administrative, judicial or quasi-judicial) that enable people to demand respect, protection and effectiveness for their rights, whether they be civil, political or economic and social .>>

¹ I want to thank Magistrate Janine M. Otlara Malassis for giving me the opportunity to write in this important magazine. Thank you for the sorority.

² Women's Link Worldwide (WLW) through its Gender Justice Observatory, monitors sentences throughout the world and in 2009 created the Genero y Justicia al Descubierto awards, in order to acknowledge the best judicial resolutions with the Mallette prize and denounce the worst by giving them the Garrote (cudgel) award. In past editions, the Electoral Tribunal of the Federal Judiciary was awarded the Mallette de Bronce (bronze gavel) for sentence SUP-JDC-12624/2011, related to gender quotas "Juanitas" affair.

³ N/A. Retrieved from <http://www2.womenslinkworldwide.org/wlw/sitio/caso-interna.php?idcaso=448>

⁴ Retrieved from http://www.oas.org/es/mesecvi/docs/Guia_Indicadores_BDP_ESP.pdf



Illustrated by Ángel Sánchez

In that vein, the Guide notes the need for progress indicators that are divided into structural, process and results gauges, which are defined as follows:

- **Structural:** They reflect the approval of international instruments, analyze the way the institutional and legal apparatuses are organized in order to respond to conventional obligations, and examine if the regulatory framework and State strategies are adequate and effective in guaranteeing every right.
- **Process:** They measure the quality and magnitude of the efforts made to implement rights, analyze the coverage and content of the strategies, politics, plans and programs or other activities and interventions to reach the goals necessary to the attainment of a right, and directly oversee the application of public policies.
- **Results:** They reflect individual and collective accomplishments that indicate the state of attainment of a Human Right in a certain context, measure the real impact of strategies, programs, and State intervention in matters related to women's rights, and provide a quantitatively verifiable and comparable measure of State action.

In the case of access to justice there are several indicators (structural as well as related to process and results) that are interesting to discover in order to better measure the way the task develops from the Judiciary arena, and in interaction with other authorities and civil society (ranging from the publication of sentences and judicial statistics and the training of judges, prosecutors and defenders, to the official records of organizations whose mission is the promotion of women's rights, documenting cases and programs in Law Schools, public policies, etcetera).

Documents like the one just cited invite us to reflect on the way judicial function transcends particular cases, helps eliminate stereotypes and prejudices, and impacts life-projects and the concept of justice in society, so that it becomes necessary not only to continue implementing indicators (quantitative and qualitative), but to encourage their discovery in order to strengthen the role of "change agent" natural to the Judiciary, whose members must breathe life into Human Rights. I agree with those who align themselves with the words of Kofi Annan, former Secretary General of the United Nations: "Human rights are your rights. Take them. Defend them. Promote them. Understand them and insist on them. Nurture them and enrich them... They are the best of us. Give them life." ■

***Maribel Tatiana Reyes Perez:** Regional Study and Account Clerk for the Electoral Tribunal of the Federal Judiciary.

Violence against women in Mexico

Today, violence against women is a priority in the democratic political agenda. Gender-based violence, that is, violence motivated by the mere fact of being a woman, seeks to dominate females in every aspect of their lives. It manifests in different ways and with varying shades that in some way limit individual and social development and their participation in various walks of life, and can reach extremes such as death.

Depending on the type of relationship existing between the female victim and the aggressor, the area in which this situation occurs can be defined as public or private: in the public arena we can include academic, workplace and community environments; the private sphere deals with acts coming from sentimental partners and family members. The Women's Access to a Life Free from Violence Act enacted on February 1, 2007, defines domestic violence as an abusive act of power or intentional omission committed by an aggressor who has or has had a relationship by blood or marriage, or cohabitation or has maintained a de facto link with the victim. This act or omission is meant to physically, verbally, psychologically, economically or sexually dominate, subjugate, control or assault women, inside or outside the family home. Currently, violence within the family has been coming to light: its presence has been denounced in different spaces, its dimensions have been documented and there have been attempts to assess the impact it has on victims, offenders and society as a whole. However, much remains to be done in order to advance its eradication in our society.

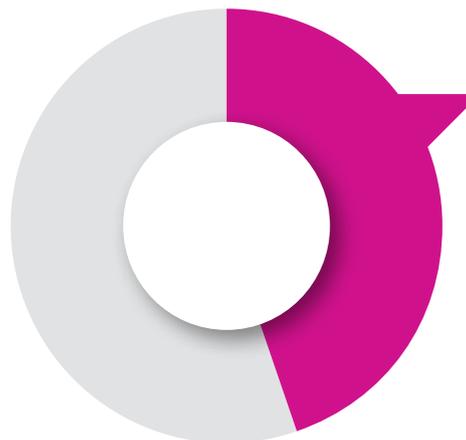
The ENDIREH (National Survey on the Dynamics of Relationships in the Home) 2011 survey aims to identify

Violent Mexico

The 2011 National Survey on the Dynamics of Relationships in the Home (ENDIREH) shows alarming figures regarding violence against women 15 and over who live with a male partner.



In Mexico there are...
24,566,381
women over 15
who are married
or live with a male
partner



44.85%

have experienced an episode of abuse or assault during the course of their relationship.



This percentage equals 11,018, 415 women.

the prevalence, frequency and magnitude of different types of gender violence suffered by all women 15 and older, inflicted by their partner or at family, academic, workplace and community levels.

Violence between sentimental partners is reproduced as a natural way of life, which is justified by cultural and social standards; however, the identification of this problem depends on women's perception of the situation, since in many cases, abused women consider they deserved to be attacked.

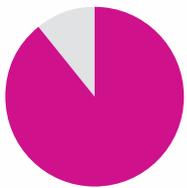
The ENDIREH 2011 survey captured information on cases where married or cohabiting women have been assaulted by their partner during their relationship. ■



25.8%
have suffered physical aggression from their partners throughout their relationship (it's worth noting that this group could also be targeted for other types of abuse).



56.4%
have experienced at least one episode of economic violence (while probably also suffering other types of aggression).



89.2%
have experienced emotional violence (the most common type of aggression).



8.1%
of women in violent marriages or relationships have considered suicide.



38.8%
have tried to commit suicide at least once.



9.5%
of women in violent relationships request assistance or report the aggressions to proper authorities.



16.2%
of women in violent relationships have suffered extreme aggression, which means a total of 1,785,469 victims.

1 out of 3
women in a relationship has been a victim of her male partner during the last year.

JUDGING WITH A GENDER PERSPECTIVE

By Jose Francisco Perez Mier, Attorney at Law

In this article the measures taken by the Judge (myself) in order to guarantee a woman's right to a life free of violence and discrimination and to access to justice under equal conditions, following the parameters I'll explain briefly, established by the First Chamber of the Mexican Supreme Court to judge with gender perspective, require a method aimed to detect and remove all barriers and obstacles that discriminate against people by sex or gender; to achieve this, it is necessary to note the existence of "power situations" that create an imbalance between parties due to gender. Therefore, openness should be favored in the way evidence will be assessed and those conditions necessary to realize empowerment must be implemented; in case such situations of power imbalance are detected, we must question the neutrality of applicable law under the Human Rights standards of the people involved, especially when dealing with women and minors.

Thus, in the District Court under my care, a woman filed "amparo" proceedings to protest a summons against her by a trial Judge as the likely perpetrator of the offense of injury (a bite to the arm) to the detriment of her male spouse on the occasion of the complaint made by the latter in a preliminary inquiry.

The lawsuit was admitted and the comprehensive reading of the extension of the concepts of violation caused me to pay special attention, since the complainant admitted to biting the third party, but stated she did it to save her own life because her spouse, using his superior physical strength, struck her and the couple's underage daughter several blows with hands and feet. To justify her acts, she offered as proof a preliminary investigation followed by the same prosecutor, which only differed from the parallel investigation against the complainant by two subsequent numbers, to which she was not summoned for inexplicable reasons. After admitting the application





for defense, and also after several requests and fine warnings, the Public Prosecutors Office agent sent a copy of the evidence deduced from the preliminary investigation formed by the accused woman's complaint; thus, the petitioner requested her appeal against the failure to be summoned as a complainant be broadened before the Judge who heard of the provision made regarding the injuries her spouse caused her.

Under these conditions, following a traditional perspective, it would appear that the Litis of the trial drifted toward a new act for which another "amparo" must be promoted; however, based on the denial of justice that I discovered and the new standards for judging with a gender perspective, I ruled for the broadening of the appeal and requested a justification report. After obtaining said report, I discovered that the Judge in charge at first declared intent to punish (something which struck me as odd, since the complainant was processed for events that happened at the same time). The Public Prosecutors Office agent appealed this resolution and the Superior Chamber dismissed the proceedings, ordering the Judge in charge to make a decision on the arrest warrant. It was so that the Judge, without studying the accreditation of the corpus delicti and probable responsibility any further, determined to return the inquiry to the Public Prosecutors Office, because he failed to summon the parties to a conciliation hearing, a resolution which in fact constitutes the act that in itself justifies a further broadening of the lawsuit.

Thus, at the obvious power unbalance I granted a provisional suspension, under the principles of a presumed bonum ius and the dangers that delay represented, according to the reasons that I list below.

PRESUMED BONUM IUS

Now, the act that supports said provisional suspension was justified according to argumentation contrary to Law, since the Judge in charge pointed out substantially (disregarding the fact that he was dealing with violent crimes against women and



that a child was involved) that upon re-analyzing this criminal case, he discovered that the Public Prosecutors Office did not seek, in compliance with the provisions in Section II of Article 9 of the Organic Law of the Public Prosecutors Office of the State of Sinaloa, to summon the parties to a conciliation hearing, something which was considered a demand that constitutes a presupposition of intent to criminally pursue, justified under the criteria SETTLEMENT HEARING IN THE PRELIMINARY INVESTIGATION. FAILURE OF PROSECUTORS TO SUMMON THE PARTIES OR CELEBRATE A HEARING, DOES NOT CONSTITUTE AN IRREPARABLE AND CONSUMATED VIOLATION IN THE RESOLUTION OF INDIRECT "AMPARO" PROCEEDINGS (STATE OF MEXICO LEGISLATION).

This, under presumed bonum ius, is

a regrettable decision, because section IV of article 8 of the Women's Access to a Life Free from Violence Act declares that the procedures for mediation or conciliation should be avoided in violent crimes against women. This is due to the fact that the aggrieved women do not come to these conciliation hearings on an equal footing; obviously the misogynistic aggressor has on his female victim a hold of constant empowerment through the continual violence exerted on her.

DANGER REPRESENTED BY DELAY

The State of Sinaloa's Criminal Code, in articles 122 through 129, points out the rules for operating the figure of statute of limitations; likewise, the crimes that caused the Public Prosecutors Office to push for indictment are MALICIOUS INJURIES AGGRAVATED BY FAMILY TIES AND



INTRAFAMILIAL VIOLENCE, provided for and sanctioned by articles 135 and 136, fractions I, II and 241 Subparagraph 1, of the State of Sinaloa's Penal Code, which contemplates a prison term of 15 days to 9 months 5 days, with an average sentence of 7 months 10 days (hence the update to 3 years of the rule contained in number 125 of this state's Criminal Code).

Under the circumstances, if the Chamber responsible in mid-2015 reversed the decision and ordered the study of the elements of the crimes referred and the probable responsibility in their commission, as the Prosecutor exerted criminal action, the statute of limitations cannot be concluded, because the Judge in charge contumaciously did not issue an arrest warrant on the basis of the data on which the present broadening of the "amparo" and the pro-

visional suspension are based, thus allowing the days for the aforementioned updating of legal statute of limitations to accumulate, something which would cause irreparable harm to the plaintiff, even if the final decision to grant constitutional protection was issued.

PROVISIONAL SUSPENSION EFFECTS

In this case, acting in accordance with presumed *bonu ius*, the dangers represented by delay and the desire to not affect society's interests by not seeking gender perspective in law enforcement, I granted the provisional suspension so that the Judge in charge could solve the indictment and the request for an arrest warrant against the injured party, studying the accreditation of the evidence for the crimes of MALICIOUS INJURIES AGGRAVATED BY FAMILY TIES AND INTRAFAMILIAL VIOLENCE as well as probable criminal responsibility in their commission, for we are actually in the presence of a entity that concerns precisely the Prosecutor's request (which must be fulfilled), on which the provisional suspension is granted because it constitutes a direct violation of every person's constitutional right to access justice effectively and equitably. However, that resolution shall be exercised in full jurisdictional freedom.

It is also necessary to highlight that the bestowal of this suspension in no way exhausts the issue (which must be dealt with in the sentence concerning the "amparo") or voids the need for a trial. This is due to the fact that it is the judicial resolution issued in the fulfillment of said suspension that will be examined in the constitutional trial (with its previous broadening), since both the elements of the corpus delicti and the probable criminal responsibility should have been carefully analyzed by the Judge in charge were he not acting contumaciously and arbitrarily denying justice... Therefore, this suspension in no way prejudices the substantive issues, since it is precisely the Judge's attitude of denial of justice that I ruled on, and that will be analyzed in the constitutional trial.

So, I believe that the efforts of the Mexican Supreme Court and the Federal Judiciary Council to train staff in order to teach them to judge with a gender perspective requires total commitment to the study of cases in which a situation of violence against women and children is present, where it is the duty of the Judge to perform any acts necessary to combat omissions or actions that generate procedural disparity and constitute barriers to accessing justice.

This should be true even if the actions taken go beyond the ordinary, as I repeat that contempt of the rules governing the procedure of trial guarantees was not committed; rather, mindful of the obligation to prosecute with gender perspective, the necessary legal means were used to make sure the plaintiff had access to real, full and impartial justice. ■

**Jose Francisco Perez Mier: Seventh District Judge for the State of Sinaloa*

III AMMJUM International Day

On October 29th and 30th, the Third International Conference sponsored by the Mexican Association of Female Judges (AMMJUM) was held in the city of Zapopan, Jalisco, with the theme Women, Justice and Human Rights, and with the participation of State and Federal officials, both from the field of justice administration and from various governmental and university organizations as well as institutions related to the topics covered.

Thus, in order to continue meeting AMMJUM's social objectives, the event unfolded with the enthusiasm and unparalleled contribution of national and international speakers and panelists who addressed diverse topics that predominantly affect the vulnerability women in Mexico face when making use of their basic rights in various areas, such as access to justice, job opportunities and health services, among other issues.

In that vein, the issues discussed generally alluded to gender perspective in justice administration; the treatment of femicide at national and international levels; human trafficking and smuggling, power, violence and Human Rights; crimes and protection measures in disputes involving women; legislative changes and affirmative actions towards equality between women and men, and the right to receive health services free from any kind of discrimination.

Of notable importance was the contribution made by the Advocacy Network for Women of the Ombudsman's Iberoamerican Federation, in which a panel with the presence of the Republic of Panama unfolded, offering an



opportunity to perform an exercise in Comparative Law and sensitize us to the social and legal situations prevalent in Mexico and Panama in the field of women's rights.

On the other hand, the day was enriched by the participation of the NGO Hear my voice through the exhibition of "gender" posters related to the aforementioned issues, reflected through images designed by graphic artists from around the world (in countries such as the United States, Italy, Turkey, Germany, Ecuador and, of course, Mexico), who from their own trenches have joined the universal claim for equal rights and nonviolence in favor of all human beings.

Similarly, the presence of the United Nations High Commissioner was highlighted through Lu'um Creators' documentary *Suelo Mirar al Cielo*, reproduced within the framework of the event as an ideal way to achieve awareness of the specific issue of social vulnerability facing female refugees, forced to leave their country for different situations involving systematic violation of their Human Rights, mainly to protect their own lives.

Distinguished Justice Margarita Beatriz Luna, AMMJUM honorary member, delivered a Keynote Address which focused on the work done by the Mexican Supreme Court's Gender Unit to introduce gender perspective in justice administration and the institutional life of



Justice Margarita Beatriz Luna Ramos, honorary member of this association, was honored during the third AMMJUM International Day.



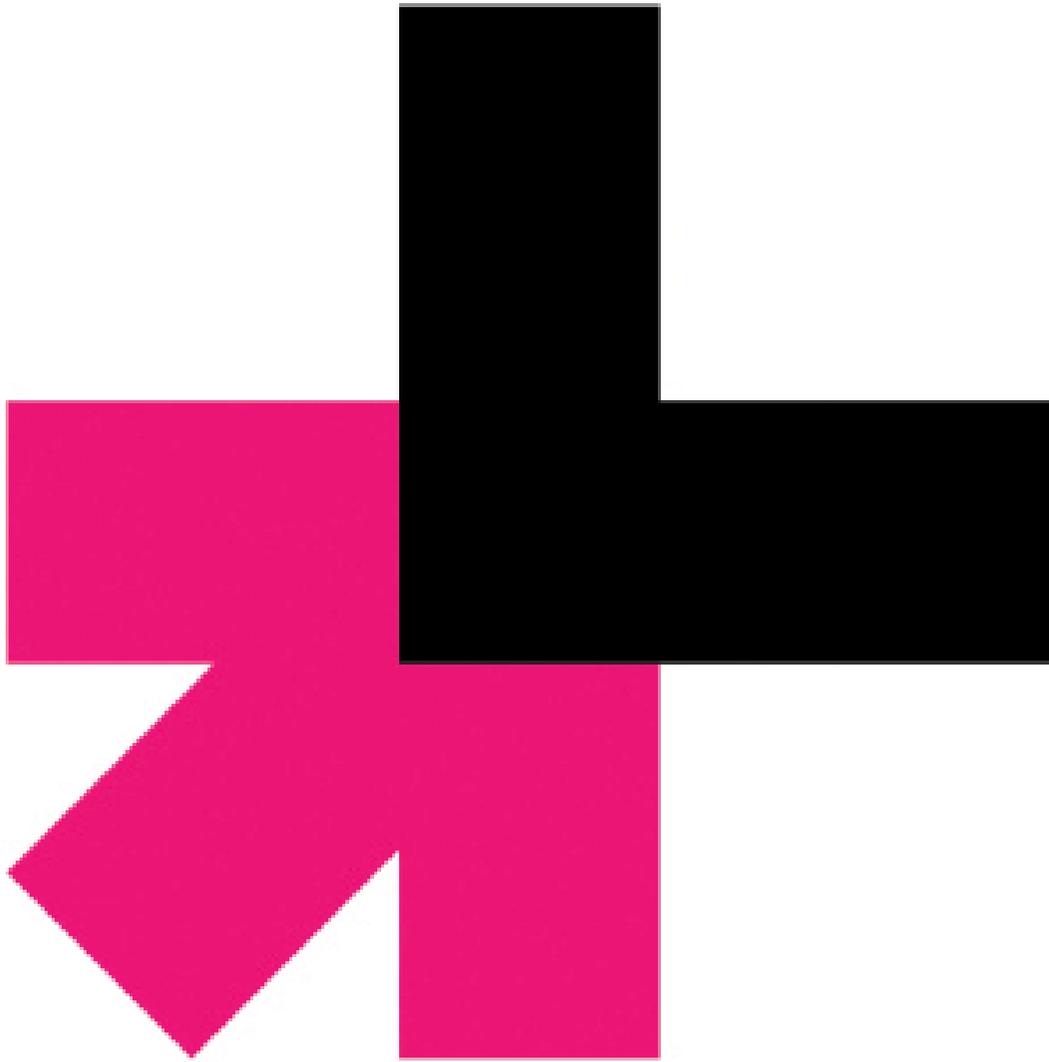
this Court and that of the Federal Judiciary itself; recalling how gender equality has evolved in various Federal Judiciary bodies, Minister Luna Ramos also made an invitation to State and Federal Judges to keep on joining efforts to continue with this action (still in its infancy), through the following message:

“[We] all do exactly the same functions, the only thing that changes us is competence, but we do exactly the same thing, thus we are in the same boat, on the same page... How beautiful it is to be able to communicate with people who [also] do this function that on a personal level has filled my life completely.”

It was an emotional message, which, together with the general work of this day, produced the fruit of committing the association and all other participants to a continual joint effort to achieve substantive equality in women’s rights.

The closing ceremony was conducted by Judge Arcelia Garcia Casares, representing the President of the Supreme Court of the State of Jalisco. ■





HeForShe

Movimiento solidario de ONU Mujeres
para la igualdad de género