

“Parity is the first kind of equality.”

Victor Hugo (1802-1885) / French novelist



FEDERAL JUDICIARY COUNCIL

Igualdad

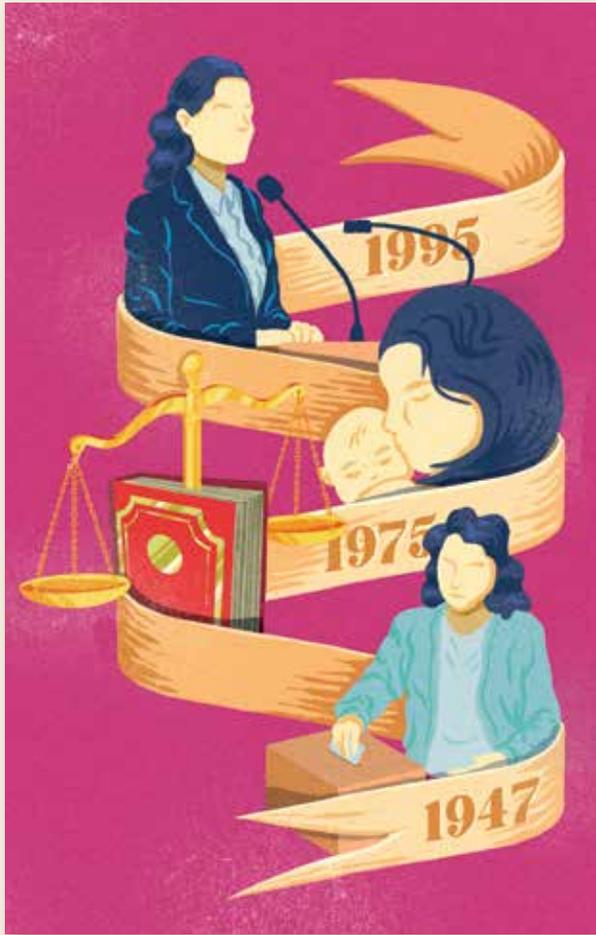
+ A Protocol for political violence against women

+ The evolution and challenges of equality: History as witness to an era

MARIA CRISTINA SALMORAN DE TAMAYO MEDAL TO FEMALE LEGAL MERIT

Salmoran Tamayo was the first woman to be appointed Justice in the Mexican Supreme Court, where she remained throughout almost 25 fruitful years. With great talent, she faced the challenge of joining a space previously reserved for men. [_06](#)





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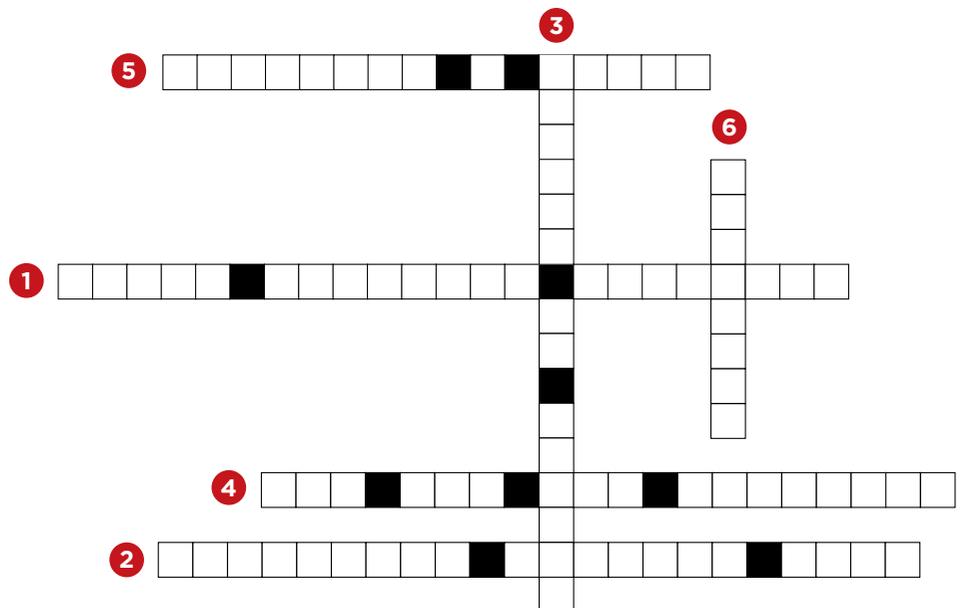
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Our crossword puzzle

1. What are the first and last names of the first female Justice in the Mexican Supreme Court?
2. What are the first and last names of the first female Federal Judiciary Councillor?
3. Who was guillotined for defending women's rights?
4. What is the program conducted by Justice Beatriz Luna Ramos called?
5. Which was the first sentence (case) issued by the Inter-American Court against the Mexican State that involved gender perspective?
6. What UN Women campaign promotes gender equality?



PARTICIPATE AND WIN. The first fifty contestants to correctly answer this puzzle will earn a General Directorate for Gender Equality product kit. Email your answers to dgdhigai@correo.cjf.gob.mx

A woman of courage

The phrase “Por mi raza hablara el espiritu” (which is UNAM’s motto) uttered by celebrated Jose Vasconcelos becomes ever more valid when reflecting on the life and works of a great woman, Doña Maria Cristina Salmoran de Tamayo.

Surely an example of tenacity, strength of character and great legal knowledge, her judicial sentences, works and speeches, whose legacy is increasingly current as time goes by, speak on her behalf.

It was in 1961 (that is, eight years after the publication of the decree that announced Mexican women’s right to vote), that a woman first held the position of Supreme Court Justice, in the person of Maria Cristina Salmoran de Tamayo, who also served on several occasions as President of the Fourth Chamber of this highest Mexican court.

Her example and twenty-five year career as Supreme Court Justice consolidated the presence of women as heads of Federal Judiciary bodies and, in general, [validated] female performance in the workplace.

Therefore, this issue of Igualdad magazine widely acknowledges this great Mexican woman, who notwithstanding the obstacles of her time, demonstrated women’s ability to venture into various public offices, including the noble task of dealing out justice. ■

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



Illustrated by Ángel Sánchez

Directory



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Edited by | DGDHEGAI

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“MORE THAN A STORY”

Judiciary Channel program led by Justice Margarita Beatriz Luna.

Premieres Tuesdays at 7:00 p.m.

Encore presentations Sundays at 8:00 p.m.





Illustrated by Daniel Esqueda Media / Ángel Sánchez

Alimony for stay-at-home wife and mother

*Thesis contradiction 416/2012*¹

RESOLUTION

The case resolves the contradiction of criteria for determining whether, in regard to the alimony demanded by the plaintiff spouse, the wife has in her favor the presumption of need, so that, consequently, it is the defendant who must destroy that presumption; or conversely, whether the wife does not enjoy such a presumption, and as plaintiff is required to prove she has the need to receive alimony.

The First Chamber determines that although the law recognizes the right of spouses to receive alimony, it makes no distinction on grounds of gender, and therefore does not establish a legal presumption in favor of any of them to receive it. However, when the wife demands payment of alimony arguing that she needs it, because she was predominantly devoted to housework and to caring for and educating her children, on the grounds that her marriage distributed the burden of contributing to the household thus, it must be presumed that such an argument is true.

This, considering the proven fact that in Mexico, most married women are predominantly engaged in housework and/or the care and education of the offsprings, and so have not been able to develop professionally and occupationally, or that this kind of development is limited compared with that of her husband.

So when the alleged need for alimony has been preceded by such an assumption and is based on negative events and on the distribution of the burden of proof, it must be concluded that in any case it is the defendant who shall be responsible of proving otherwise (i.e., that the plaintiff herself is able to meet her needs).

¹ Thesis contradiction 416/2012 (April 2013) First Chamber, Tenth Epoch, Book XIX, Volume 1, Pg. 591. Available at <http://sjf.scjn.gob.mx/SJFSist/paginas/DetalleGeneral-Scroll.aspx?id=24320&Clase=DetalleTesisEjecutorias>

EXTRACT

The affairs from which the contending criteria emanate have their origin in an ordinary civil trial, in which one spouse (specifically, the wife) demanded payment of alimony from the other spouse.

The Seventh Circuit's First Collegiate Tribunal on Civil Matters affirms that the plaintiff enjoys the presumption of needing said alimony; and therefore, gives the defendant the burden to rebut that presumption.

On the other hand, the Seventh Circuit's Second Collegiate Tribunal on Civil Matters asserts that, to establish the need for alimony from the spouse that demands it, the female plaintiff must provide evidence tending to show her personal circumstances, because the law does not establish the existence of presumptions in her favor, since the burden of demonstrating the need for alimony, in the case of either spouse acting as creditor, corresponds to whoever makes the claim.

RELEVANT GENDER ELEMENTS

It cannot be denied that there is a noticeable difference in the use of time devoted to housework and family care between women and men; and this is the result, in part, of the gender division of labor and the persistence of gender roles, which have assigned to women the responsibility for the care of home and children, a fact which has necessarily limited their opportunities to access paid work and earn an income.

While a simple demonstration that one is the spouse of the defendant is not sufficient to create the presumption of needing alimony, as there exists the human presumption that in Mexico most women are predominantly engaged in housework or the care and education of the offsprings, when the female spouse asserts that as a result she holds no assets or does not have enough of them to meet her nutritional needs, that she is unable to find work or that her chances of finding it are limited, as she has preponderantly devoted herself to housework or to the care and education of children, a condition which limited her professionally and kept her from updating her skills, it must be presumed that she preponderantly devoted herself to housework and/or to the care and education of her children. ■

Certainty and the equality principle in acts authorities should encourage both

SDF-JDC-455/2014

Through the Committee of the Executive Board of Mexico City's Federal Electoral District 08, the Supreme Court's Regional Chamber ordered the Executive Direction of the Federal Register of Voters (dependent on the Federal Electoral Institute), to take the steps necessary to meet a request for replacing a plaintiff's voter identification card.

This conclusion sprang from the premise of remedying the partial discrimination resulting from the contested agreement, which consisted of denying to homeless individuals the possibility of access to a voter identification card. Such an action would promote the principle of equality which directly links every authority to the obligation of not discriminating on account of ethnic origin, gender, age, disabilities, social condition, health, religion, opinion, sexual preferences, civil status or any other trait that harms human dignity and has the objective of diminishing or annulling an individual's rights or freedoms.

Hence, after a Regional Chamber analysis on whether the plaintiff was in any way limited in his political-electoral rights found no such limitations, the Chamber analyzed the constitutionality of the contested negative, estimating that, on the basis of an interpretation that allowed a wider and more synchronous definition of domicile as a constitutionally protected attribute of both the political-electoral right to vote and be voted and the principle of certainty, the plaintiff should be favored as to his political-electoral right to vote.

In this regard, the Regional Chamber considers it necessary to formulate a proposal for allocation of a home address for geo-electoral purposes only, which will have the single judicial effect of allowing the plaintiff to be registered in the electoral section and district that correspond to the location where he spends nights, solely for the exercise of his right to vote, without including any other of the typical elements of domicile; all of the above, according to the principle of certainty in the integration of the Electoral Roll. ■

SAN LUIS POTOSI STATE UNIVERSITY GRANTS PhD JUSTICE LUNA RAMOS IS AWARDED HONORARY DEGREE

43 directors, plus San Luis Potosi State University's President and Secretary, attended this ceremony.

Héctor del Castillo Chagoya Moreno*

On February 28, in a solemn extraordinary session of San Luis Potosi State University's Honorable Governing Council, a Doctor Honoris Causa degree was awarded to Supreme Court Justice Margarita Beatriz Luna Ramos.

The session began with the Mexican anthem, followed by a quorum verification made by Secretary General of San Luis Potosi State University David Vega Niño, who confirmed the attendance of forty-three directors, plus the President and the Secretary of said university body.

Ruling committee President Dr. Maximo Carvajal Contreras briefly reviewed the many merits of this celebrated member of Mexico's highest court, whom he described as a "prototype of women from the state of Chiapas", adding that she will be the first woman to receive this award from San Luis Potosi State University. He also pointed out that Supreme Court Justice Luna Ramos, throughout her professional life, has gone through all judicial service positions, stressing that she first entered the Federal Judiciary in 1975, was appointed District Judge in 1986, Circuit Magistrate in 1993, Federal Judiciary Councillor in 2003 and, finally, Supreme Court Justice in 2004. Also, when talking about her role in academia, he mentioned that she has held the chair of Constitutional Law, Amparo and Judiciary Branch in many Mexican universities, especially highlighting UNAM (National Autonomous University of Mexico), Iberoamericana University, ITAM (Autonomous Technological Institute of Mexico), Panamericana University and the Judicial Specialty Institute.

Meanwhile, San Luis Potosi State University Dean Manuel Fermin Villar Rubio, MA in Architecture, sent



a message to the honoree, recognizing her exceptional merits. He added that "Justice Luna Ramos is a professional who, ever since graduating from her alma mater, has expressed her commitment to compensate the knowledge acquired in her student years through proximity and closeness to academia", and that her "her work makes an invaluable contribution to Law and the promotion of the core values that govern human beings' life in society."

According to article 1 of the regulations for granting the Doctor Honoris Causa title, San Luis Potosi State University created this figure for individuals who, due to



Other personalities who have received the Honoris Causa from San Luis Potosi State University are Mario Vargas Llosa, Jose Narro Robles, Fernando Savater, Carlos Monsivais, Maximo Carvajal Contreras, Jorge Carpizo MacGregor, Mario Molina and William Daniel Phillips.

Various local authorities attended this emotional ceremony. Especially relevant was Dr. Juan Manuel Carreras Lopez, Governor of San Luis Potosi state, who acted as witness of honor and presented the medal and the degree to Justice Luna Ramos.

The jury that determined to grant this honorary degree to Justice Luna Ramos was presided by Dr. Maximo Carvajal Contreras, National Association of Law Departments and Schools (ANFADE) President, and made up by B.A. Juana Maria Meza Lopez, Magistrate of the Ninth Circuit's Second Colle-

their prestige and outstanding contributions to Education, Science and Art in national and international arenas, could be included with pride among this institution's PhDs, so it is clear that the jury of honor considered that no one could better fulfill those requirements than Supreme Court Justice Luna Ramos.

Upon her intervention, Justice Luna Ramos was excited and grateful not only to the University but also to Federal Judiciary coworkers who had accompanied her both during her judicial career and during the ceremony itself. She expressed her satisfaction at receiving the honorary degree, and added that her life "does not represent an extraordinary contribution, but only the successful development of forty years of professional life, dedicated to the noble task of enforcing the Law."

giate Court; Dr. Teresita de Jesus Rendon Huerta, Director of the Politics and Government Division of Guanajuato University and ANFADE Vice-president; Dr. Luis Ruben Sacarai Ramos, Director of the Academic Unit of Law at Zacatecas State University; MA Jose Rodolfo Chavez de los Rios, ANFADE Board member; Dr. Carlos Hinojosa Cantu, former Director of Tamaulipas State University's Academic Unit of Law and Social Sciences; B.A. Roberto Llamas Lamas, Director of San Luis Potosi State University's Multi-disciplinary Academic Unit for the Huasteca Zone; and B.A. Ricardo Sanchez Marquez, former Director of San Luis Potosi State University Law School and San Luis Potosi state Supreme Court Magistrate.

Among the Federal Judiciary authorities that attended the event, were Supreme Court Justice Norma Hernandez Lucia Piña and Federal Judiciary Councillor Martha Maria del Carmen Hernandez Alvarez.

***Héctor del Castillo Chagoya Moreno:**

Technical Secretariat for the Transparency, Information Access and Personal Data Protection Commission.

Día Internacional de la Mujer *Mujeres de siempre*



Former Justice receives medal to female legal merit

The Maria Cristina Salmoran de Tamayo 2016 award is presented in appreciation to former Supreme Court Justice and legal pioneer Victoria Adato Green.

On March 8th, in the context of International Women's Day, Mexican Supreme Court Chief Justice and Federal Judiciary Counsel Head Luis Maria Aguilar Morales presented, for the first time, the *Maria Cristina Tamayo Salmoran* 2016 medal to feminine legal merit to former Supreme Court Justice Victoria Adato Green, for her outstanding career and contributions to improving access to justice in Mexico.

The medal was presented at an official ceremony headed by Mexican Supreme Court Chief Justice and Federal Judiciary Counsel Head Luis Maria Aguilar Morales and Supreme Court Justice Margarita Beatriz Luna Ramos, Gender Equality Inter-institutional Committee President.

In his speech, Chief Justice Aguilar Morales said that this award pays tribute to women in the Judiciary, whose presence not only reaffirms and reflects today's society,

characterized by diversity, but also helps strengthen the Judiciary itself.

He also noted that with these kinds of actions, the Federal Judiciary endorses the wholehearted acknowledgment of all female officials and women who work in the areas that support judicial and administrative functions.

Female Justice Norma Piña Hernandez, male Justices Javier Laynez Potisek, Jorge Mario Pardo Rebolledo, Eduardo Medina Mora and Alberto Perez Dayan, Magistrate Constancio Carrasco Daza, (Electoral Tribunal of the Federal Judiciary Branch President), and Federal Judiciary Councillors also attended the ceremony.

Meanwhile, Gender Equality Inter-institutional Committee President Justice Luna Ramos said that former Justice Victoria Adato Green is a woman with merits as a law enforcer, but also a person who stands out for her long-standing commitment to each of the various positions she has held during her career, something which "is acknowledged with the *Maria Cristina Salmoran de Tamayo* medal to female legal merit."

Former Supreme Court Justice Victoria Adato Green said she received the medal not in a personal capacity, "but on behalf of all women involved in Mexican law enforcement, Clerks, Judges, Magistrates and Justices, who in honestly performing their duties effectively apply their knowledge, talents, experience and dedication to the difficult job of enforcing the law." ■



Acknowledging female legal merit

Thanks to Mexican Supreme Court Chief Justice and Federal Judiciary Counsel Head Luis Maria Aguilar Morales' initiative, the Federal Judiciary's Gender Equality Inter-institutional Committee launched during January 2016 the yearly call to award the Maria Cristina Salmoran Tamayo medal to female legal merit, instituted in order to pay homage to Mexican female law enforcers whose careers stand out due to their efforts, perseverance, dedication and contributions to improving access to justice in Mexico.

The medal bears the name of Maria Cristina Salmoran de Tamayo, the first woman to be named Supreme Court Justice by Mexican President Adolfo Lopez Mateos in 1961, a position in which she remained for twenty five fruitful years until her retirement. Justice Salmoran was a talented woman who braved the challenge of becoming part of an institution until then exclusively reserved for men, thus blazing a trail for other women

who, with hard work and extraordinary effort, fight to participate in and carve a professional path for themselves in the Judiciary.

Doña Cristina was a professor and founder of High School No. 5 (the celebrated Escuela Preparatoria No.5), and a tenured professor at UNAM's Law School, her alma mater. She was member and President of the Mexican Association of Female Lawyers and Head of the Official Mexican Delegation in the 43rd ILO Conference, as well as of many other committees. She also held public administration positions, such as her role in the Federal Board of Conciliation and Arbitration as its first female head. Hence, the medal holds double meaning: it is a salute to Mexican women in law enforcement and a perennial tribute to Justice Salmoran.

In this way, the Mexican Supreme Court and the Inter-institutional Gender Equality Committee clearly acknowledge and recognize women of excellency in law enforcement, who in their daily work seek to achieve a fairer society, based on full equality between women and men. ■

An outstanding track record

Former Justice Victoria Adato Green obtained her bachelor's degree at UNAM's Law School. She was an investigator at UNAM's Legal Research Institute (1995-1999) and coordinated the National Human Rights Commission Program on Women, Childhood and Family. She has chaired courses and held positions as tenured professor in UNAM's Law School and ITAM (Autonomous Technological Institute of Mexico), and been a numerary member of the Mexican Academy of Criminal Sciences.

Among the outstanding government positions she has held are the following: Auxiliary Public Prosecutor for Mexico City, Tenth Judge on Criminal Matters in that same city, Magistrate for the Seventh Chamber of the Mexican capital's highest court, Advisor to the General Directorate of Mexico City's Public Works, Deputy Director of the Institute of Prison Staff Preparation and the Technical Institute of the Attorney General's Office for Mexico City, Solicitor and Attorney General for Mexico City, numerary Justice for the Mexican Supreme Court and Advisor to the President of the National Human Rights Commission. She was part of the team that drafted various Mexican states' criminal procedure codes and has written more than six books and articles in legal magazines. ■



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POLITICAL VIOLENCE AGAINST WOMEN A NEW PROTOCOL ARISES

**MA Marcela Talamas Salazar and
B.A. Sofia Lascurain Sanchez de Tagle***

In recent years, constitutional and legal reforms, along with judicial interpretation, have placed international instruments in a prominent place within normative production and law enforcement. This process, which brings with it a new way of conceiving individuals before the Law, has also raised some concerns about how international obligations should be implemented based on judicial work. One way to address these concerns has been the adoption of protocols.

Thus, the Mexican Supreme Court developed both the good practices handbook to investigate and punish labor or sexual harassment in its premises and bodies and eight protocols meant to judge with a gender perspective, deal with cases related to development and infrastructure projects; regulate acts constituting torture and ill-treatment as well as matters involving sexual orientation or gender identity; process matters related to individuals, communities and indigenous peoples; deal with children and adolescents; process issues regarding migrants and persons subject to international protection, and regulate matters involving people with disabilities.

¹ Disponibles en <https://www.scjn.gob.mx/libreria/paginas/protocolos.aspx>



**POLITICAL
VIOLENCE
AGAINST
WOMEN**

**Requirements for
establishing gender-
based political violence:**

- » Violence is directed at women due to their female condition
- » Violence has a differential impact on women
- » Violence disproportionately affects women



In this sense, the Electoral Tribunal of the Federal Judiciary Branch adopted the Action Guide for Law-enforcers in Matters Related to Indigenous Electoral Law and, more recently, on March 14th, 2016, presented the Protocol to Address Political Violence Against Women.

This Protocol, in addition to dealing with the obligations arising out of international instruments on equality and female political participation, responds to the absence of a specific law on this matter, despite various initiatives presented in both Houses of Congress¹. In fact, as of 2016, only Bolivia has created a law specially designed to deal with this issue, while Costa Rica, Ecuador and Peru have introduced initiatives.

Taking into account the cases of political violence against women reported in the past electoral process (38 according to the Special Prosecutor's Office for Electoral Crimes)², as well as the fact that fourteen Mexican states will hold elections on June 5th³, the Electoral Tribunal of the Federal Judiciary Branch (TEPJF), coordinated the Protocol's creation with the active collaboration of the Federal Electoral Institute (INE), the Special Prosecutor's Office for Electoral Crimes (FEPADE), the Executive Commission for Victims (CEAV), the Human Rights Unit of the Secretariat for the Interior's Human Rights Sub secretariat (DD-HH-SEGOB), the Special Prosecutor's Office for Violent Crimes against Women and Human Trafficking (FEVIMTRA) and the National Institute of Women (Inmujeres).

The Protocol's objectives are the following:

- » **Facilitate the identification of political violence against women**

- » **Avoid further injury to victims, their families and loved ones**
- » **Generate adequate coordination between the institutions responsible for dealing with cases of political violence against women**
- » **Serve as a general guide to address political violence with gender elements in all its aspects, at federal, state and local levels**

Naturally, the Protocol is an action guide and not a binding document, but it has been constructed from national and international standards applicable to cases of violence against women, which are legally binding. The Protocol responds to the duty of the Mexican State to take all "appropriate measures to eliminate discrimination against women in the political and public life of the country [...] guaranteeing their equal opportunity to be eligible for all bodies whose members are subject to public elections."⁴

According to articles 1 and 2 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (or Convention of Belém do Pará) and article 5, fraction IV, of the Women's Access to a Life Free from Violence Act (LGAMVLV), this Protocol states that to identify gender based political violence against women, it is necessary to verify that...

- » **The act or omission is directed at a woman on account of her gender, has a different impact and / or disproportionately affects women**
- » **The act or omission intends to impair or nullify the recognition, enjoyment and / or exercise of women's political and electoral rights**

² At a state level, Campeche and Jalisco have modified their laws dealing with violence to include political violence; Oaxaca has even classified political violence as a crime. Although this initiative has been approved, it lacks publication by the Local Executive.

³ In this regard it is important to make two distinctions. The first is that the numbers should be interpreted with caution, since possibly there were cases that were not reported or were not perceived as cases of political gender violence. The second is that, due to political gender violence's lack of criminalization, the FEPADE framed such behavior as two of the possible criminal offenses referred to in Article 7 of the General Law on Electoral Offenses (LGMDE): obstructing or interfering with the adequate development of male and female electoral public servants' tasks (fraction IV) and committing acts that provoke fear or intimidate the voters, attempts to curtail the freedom to vote, disturb the peace or voters' free access to voting booths (fraction XVI).

⁴ TEPJF. (March 14th, 2016) 2016 Electoral Calendar (preliminary version). Mexico: Electoral Tribunal of the Federal Judiciary Branch. Retrieved from: http://www.trife.gob.mx/sites/default/files/calendario_electoral_2016_V10.pdf



Illustrated by Daniel Esqueda Media / Angel Sanchez

- » Occurs in the exercise of political and electoral rights or in the exercise of public office (regardless of the fact that it manifests itself in a public or private, political, economic, social, cultural or civil sphere, whether it takes place within the family or domestic unit or in any interpersonal relationship, in the community, in a political party or institution)
- » The act or omission is symbolic, verbal, equity related, economic, physical, sexual and / or psychological

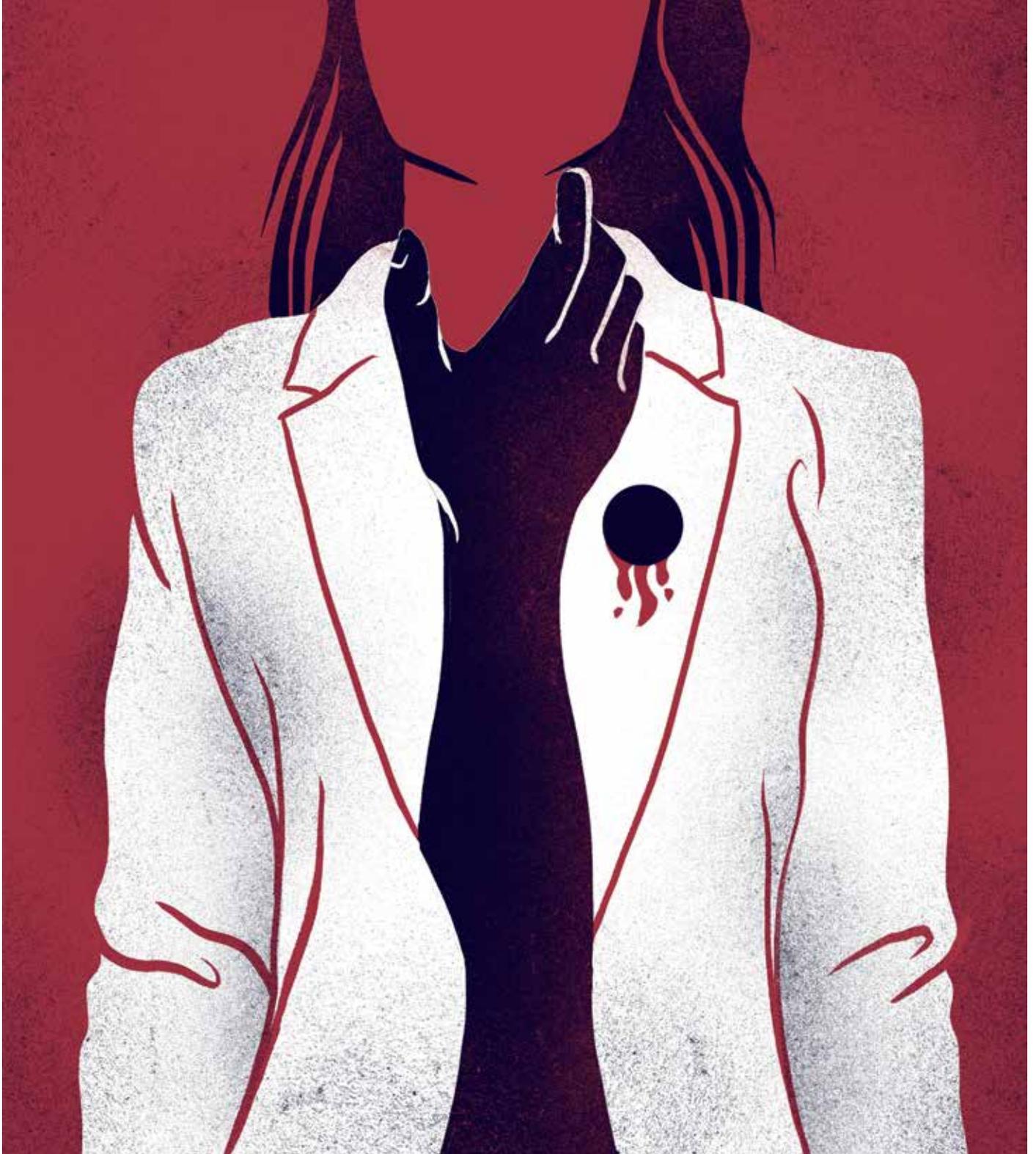


- » The act or omission is perpetrated by the State or its agents, hierarchical superiors, colleagues, political parties or representatives thereof; media and its members, an individual and / or a group of persons

According to the Protocol, these points constitute a sort of checklist to determine whether we are actually dealing with a case of political violence against women. The fact that the five elements mentioned above are not met in a concrete case does not detract from the facts, nor does it mean that the act should be left unpunished. Simply, it will require a different kind of attention.



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When analyzing a case of political violence it is pertinent to recall the fact that being a “woman” places a person into a suspect category, i.e. within one of the categories of discrimination prohibited by international treaties and the Mexican Constitution. Consequently, Judges must perform “strict scrutiny” to determine whether an act was based on the fact that the person is a woman and, where and if appropriate, grant the adequate legal consequences.

The Mexican Supreme Court’s jurisprudence 66/2015 establishes that suspect categories are “the criteria enunciated in the last paragraph of Article 1 of the Political Constitution of the United Mexican States⁵”. To the categories supplied by the Constitution, we must add those provided by international treaties. Gender and sex are found within those categories.

At the same time, it is important to remember that the Inter-American Court of Human Rights, in the *Ríos and Perozo* cases, both against Venezuela, said “that not every Human Rights violation committed against a woman necessarily implies a violation of the provisions of the Convention of Belém do Pará.” That is, the violations of women’s Human Rights are not always gender violence. This distinction becomes relevant because stating that any discrimination or violation of a woman’s Human Rights constitutes gender violence would destroy this concept’s contents, nullifying its legal and moral significance.

In that sense, the Protocol to Address Political Violence Against Women establishes that the following requisites must be fulfilled when dealing with gender-based political violence:

- » **Violence is directed at women due to their female condition**
- » **Violence has a differential impact on women**
- » **Violence disproportionately affects women**

In addition to the Protocol’s contribution to the conceptualization and identification of political violence, it is important to note that this instrument identifies responsibilities and defines how different authorities must act. Currently, training schemes to enable electoral authorities to implement the Protocol’s contents are being designed.

Now the Protocol is about to be tested. The upcoming electoral process will allow us to detect its usefulness and design other actions for the prevention, investigation and sanction of political violence against women. ■

*** MA Marcela Talamas Salazar**, Study and Account Clerk for Magistrate Maria del Carmen Alanis Figueroa and **B.A. Sofia Lascurain Sanchez de Tagle**, Senior Advisor to Magistrate Maria del Carmen Alanis Figueroa

⁵ Article 7.a of the Convention on the Elimination of All Forms of Discrimination against Women.

⁶ See also Thesis: 1a./J. 87/2015 (10a.), titled: “CONSTITUTIONALITY OF LEGISLATIVE DISTINCTIONS SUPPORTED BY A SUSPECT CATEGORY. WAYS IN THAT THE TEST OF STRICT SCRUTINY MUST BE APPLIED.”

⁷ CIDH. (Sentencia del 28 de enero de 2009). “Excepciones Preliminares, Fondo, Reparaciones y Costas” en *Caso Ríos y otros vs. Venezuela*. Serie C, No. 194, párrafos 279 y 280. N/D: Corte Interamericana de Derechos Humanos.

⁸ CIDH. (Sentencia de 28 de enero de 2009). “Excepciones Preliminares, Fondo, Reparaciones y Costas” en *Caso Perozo y otros vs. Venezuela*. Serie C No. 195. Párrafos 295 y 296. N/D: Corte Interamericana de Derechos Humanos.



THE EVOLUTION AND CHALLENGES OF EQUALITY: HISTORY AS WITNESS TO AN ERA

After World War II, progress in gender equality was already evident, though it was still not enough to achieve true improvement and full equality regarding rights. Women of that time asked to be allowed to vote; [their request] is now a reality, since this important sector of the population constitutes the majority of voters in Mexico.

Magistrate Laura Xochitl Hernandez Vargas*

A few years earlier, when opening the House of Representative's (lower house of Congress) sessions, Mexican President Lazaro Cardenas presented a bill to amend Constitutional Articles 34 and 35, thus recognizing women's civil rights. The reform was approved by both houses of Congress and local legislatures but, due to a procedural irregularity that led to its non-publication in the Official Gazette, it was not formally declared or instituted.

The reform therefore was not incorporated into the Constitution, and, of course, never came into force. This situation was a serious blow to the feminist movement. Furthermore, the rise of Avila Camacho's administration resulted in a weakening of the movement, as he was part of the conservative forces who opposed equal rights for women.

In 1947, during the Miguel Aleman administration, permission for women to vote in local elections was granted. In 1952 the Alliance of Mexican Women, which was chaired by Amalia Caballero de Castillo Ledon, paved the way for women's suffrage. Adolfo Ruiz Cortines finally granted women the vote for the national election held in 1953. The decree was published in the Official Gazette on October of that year.

Women's groups coalesced around lawsuits meant to improve the situation of women in general; or, they supported the struggles of men within political parties or groups. Such was the case of the National Union of Mexican Women, created in 1962 and composed of Party members' wives.

This Union held the Unification of Mexican Women congress, whose labor and political demands were not

limited to women or to a specific issue, in 1964. In 1968, as part of the student protest movement, a series of demands were raised, demands that would only be structured until the late seventies, a period in which the influence of American and European feminists became evident. This movement incorporated middle class women, female university students and leftist sympathizers; it also proposed a relationship with worker and peasant groups, with little success.

The seventies were the scene of demonstrations, of workers' and peasant organizations, and, above all (it should be noted), it was also particularly at that point in time that a popular movement, made up mostly of women, began expanding and consolidating increasingly.

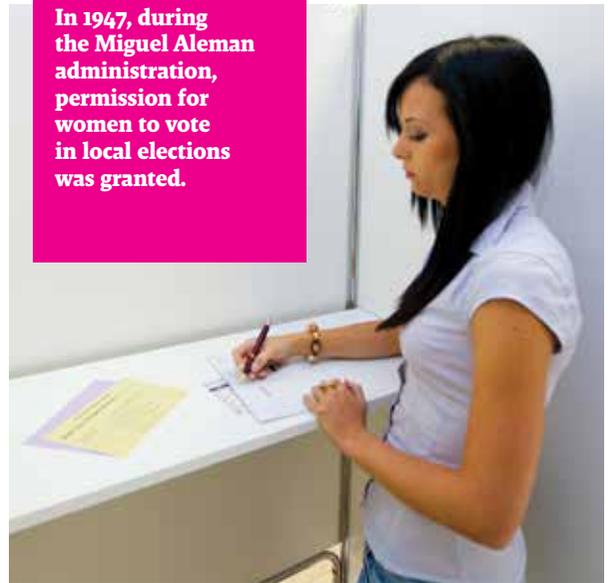
In 1975, amendments to the fourth article of the Mexican Constitution came into force, stating that:
Men and women are equal before the law, which will protect the organization and development of the family. Everyone has the right to decide the number of children they want to have freely, responsibly and in an informed manner¹.

On matters of equality, the fact that this right is recognized constitutionally is a breakthrough which places women at the same level and hierarchy than men, a situation that should have already materialized years earlier; however, legislative work does not end with letters on a piece of paper, and this requires the opening of more spaces and an important pact among other members to achieve a participatory, human democracy.

Women have also been victims of this process, which has substantially affected their forms of organization. At the beginning of the eighties, the feminist movement and feminine labor recomposed themselves, and some groups (civil associations, political groups, trade unions and entrepreneurs, among others) began to have outstanding political participation and considerable convening capacity.

During the six years of Ernesto Zedillo's administration, the National Program for Women (1995-2000) was

In 1947, during the Miguel Aleman administration, permission for women to vote in local elections was granted.



promoted by the Secretariat of the Interior with the participation of other agencies and institutions. This program was the result of an extensive, nationwide consultation that collected women's opinions into several thematic points that were issued in Mexico with a view to this country's participation in the fourth World Conference, held in Beijing in 1995. The central theme was a common factor that affects women around the world: being relegated to a discriminated category for the sole reason of their gender. It was a conference on the rights and fundamental freedoms of women and girls and the persistent inequality in relation to men that, to a greater or lesser extent, continues in virtually every society².

Gender perspective —that first point of transition and first stirring of change with specific programs aimed at women— and its structural integration into planning processes arose in this context. As far as I can surmise, this was done in an attempt to unite economic redistribution with gender equity, benefit women for their physical (maternity), psychological and social conditions, and seek a higher status within the government for instances that deal with women's issues. At this stage, programs and projects of all previous approaches coexisted, institutionalization was still incipient and, although there had been great progress, the playing field was still not level due to the lack of gender parity.

¹ Political Constitution of the United Mexican States. N/A, Pg. 28.

² Serret, E. (March-April 2000). "Mexican feminism facing the twenty-first century", in *El Cotidiano*. Mexico: UAM. Pg. 48.

³ Tibol, R. (October 14th, 2007). "Orozco in the context of some Mexican administrations" in *Revista Proceso*. Mexico: Revista Proceso, Year 2, and Number 1224. Pg. 77.

⁴ Available at <http://www.gob.mx/presidencia/prensa/nuestro-principal-objetivo-es-que-las-mexicanas-puedan-desarrollarse-plena-y-libremente-epn/?sref>

⁵ Idem.

So far, the current administration has worked to help women in Mexico achieve better and more prosperous conditions, so that they can develop fully and freely, both personally and professionally, in family and community life.

Vicente Fox, as is widely known, was the first president from the political opposition to the party that governed Mexico for several presidential terms [...] this [also] represented the arrival of leftists to the federal government and their significant rise in the Legislature, state and local governments. During Fox's administration, women faced a complex situation in the labor market (i.e. lack of options and employment opportunities, ill-paying jobs, little chance of access to Social Security and benefits, and unstable employment and salaries³).

So far, the current administration has worked to help women in Mexico achieve better and more prosperous conditions, so that they can develop fully and freely, both personally and professionally, in family and community life.

President Enrique Peña Nieto has that said that today, the Mexican government is working for the women of Mexico, because their development is essential. If they move, grow and have opportunities for personal fulfillment, achieve conditions of greater prosperity and,

above all, achieve their full realization, "Mexico will have a different face, a face of greater prosperity for all of Mexican society⁴."

Peña Nieto's government has also undertaken policies meant to continue encouraging women's empowerment and gender equality, challenges that we must all take on equally:

This means, added [President Peña Nieto], "that all government actions [...] should promote the welfare, protection and advancement of women in Mexico". To achieve this, he continued, Mexico has the National Program for Equality of Opportunities and Non-discrimination against Women (PROEQUIDAD), which aligns government policies and actions towards substantive equality between women and men⁵. ■

***Magistrate Laura Xochitl Hernandez Vargas:**

Sixth Regional Chamber of the State of Mexico's Contentious Administrative Tribunal.

Women's Human Rights Historical Evolution

Judge Karla Montes Ortega*

To guarantee women's Human Rights, thorough comprehension of social structures and power relations is needed.

First, we should define what we mean by Human Rights, which are fundamental rights¹, attributed to the female gender [and] internationally recognized, as they have been codified into international Human Rights and international humanitarian laws ever since World War II; for instance, the rights of women, girls and adolescents as Human Rights have been expressly recognized in the Vienna Declaration and Programme of Action², stressing the importance of eliminating public and private violence against women. Hence, those very fundamental rights for the female gender expanded their field of action under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendation No.19, the UN's Declaration on the Elimination of Discrimination against Women and the Convention of Belem do Pará, as is clear from its preambles and articles.

¹ In Manuel Atienza Rodriguez, *Human Rights in general are the group of principles and rules that make up the "current" code of justice in contemporary societies. But these rights, both theoretically and practically, do not always converge. Stark criticism about the difficulty of implementing them in the case of Mexico can be found in Reyes Parra [Reyes Parra (2007). Silent screams: girls and women facing prostitution networks. A setback for Human Rights. Mexico: Ed. Miguel Angel Porrua, Pg.19-20].*



Hence, it would be correct to establish that "women's Human Rights" are those fundamental principles and rules intended especially for females that require States to adopt fair measures against discriminatory practices. These kind of fundamental rights provide the legal foundations to eliminate discrimination based on gender or on expressions of systemic violence perpetrated against women through various kinds of abusive treatment or acts³.



Regarding women's Human Rights, the primary reflection should be that they are not the rights of minorities, because the female population makes up, at least, 50% of human society. From this viewpoint, one cannot speak of the rights of a group of people whose small number has made them go unnoticed, or of a group which by its singularity or new emergence has not been provided with representation or voice and action platforms.

This fact points out the severity of the problem, since we are dealing with the very late acknowledgment of half the population's rights. The reason behind this might be historical: due to the massive death rate of the adult male population during both World Wars, women were brought into public life by the need to substitute missing male workers. Thus, women's abilities were validated in the new era and, at the same time, their needs and rights had to be acknowledged. Notwithstanding that the 1789 Declaration of the Rights of Man and the Citizen had established the equality of mankind by the mere fact of its humanity, without distinction as to race, caste or fortune, by the end of the second great war, the lack of worldwide fulfillment of these goals was evident ... Actions in women's favor did not arise until the UN's Economic and Social Council (ECOSOC) was created in 1947, [and these actions] were, at first, directed against human trafficking. Women's rights were only one more item on the agenda, among slavery, opium and drug trade, child trafficking or double taxation.

Originally ECOSOC functions were supposed to be delegated to various UN commissions once main UN bodies (such as its different Commissions –the UN Commission on the Status of Women among them- and the United Nations Secretariat) were formed and organized. In fact, Resolution 11, issued on June 21st, 1946, foresaw that the development of these institutions would be “gradual”, considering how recently the League of Nations had transferred its assets and library to the newly formed United Nations. The present and future of women’s rights was a long-term proposition in the first pact of goodwill among nations⁴.

Ever since then, when gender equality was only a partial goal driven by good will, progress on women’s rights has been, as predicted, gradual. Simply by paying attention to the titles of the actions and documents signed, one can comprehend the maddeningly slow pace, as the UN WOMEN site tells it, “at which a little bit of history is being made”. The site indicates that it was only in February 1947 that ECOSOC met for the first time in Lake Success, New York, only a short time after the creation of the United Nations. Its fifteen representatives were women and it was buttressed by the support of a UN body that would later turn into the Division for the Advancement of Women, which depended on the UN Secretariat. However, between 1947 and 1962, ECOSOC focused only on setting standards and formulating international conventions to change discriminatory laws and increase global awareness on women’s issues.

Thus arose in 1951 the ILO’s convention concerning equal remuneration for male and female workers for work of equal value, in 1953 the Convention on the Political Rights of Women to protect their political rights; in 1957 the Convention on the Nationality of Married Women, and in 1962, the convention on consent to marriage, minimum age for marriage and registration of marriages. In 1963 a general statement for the elimination of discrimination was requested (which was not adopted until 1967), followed in 1999 by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).



In 1972, coinciding with the twenty-fifth anniversary of its creation and as if that were a cause for celebration and not regret, the Commission recommended that 1975 be declared International Women’s Year. The first United Nations World Conference on Women in Mexico City was held as well, followed by the United Nations Decade for Women: Equality, Development and Peace (1976-1985), world conferences in Copenhagen (1980) and Nairobi (1985), the creation of the United Nations Development Fund for Women (UNIFEM) and the International Research and Training Institute for the Advancement of Women. (INSTRAW).

² *Secretariat of the Interior, Legal Affairs Unit*, (2012). Article 18. Mexico: *Secretariat of the Interior*. Retrieved 16/10/2014 from <http://www.ordenjuridico.gob.mx/TratInt/Derechos%20Humanos/INST%2033.pdf>.

³ *Article 18 of the Vienna Declaration and Programme of Action*. *Loc. cit.*

⁴ *United Nations Entity for Gender Equality and Empowerment of Women, UN Women*. N/A. Retrieved 16/10/2014 from <http://www.unwomen.org/es/csw/brief-history> and <http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf>.



Such slow progress clearly implies that gender equality has been a pending subject internationally. The fact that the UN General Assembly has ordered investigations into violence against women in 1994, as well as the third United Nations World Conference on Women held in Nairobi in 1987, the Declaration on the Elimination of Violence Against Women and the fourth United Nations World Conference on Women of 1995 (during which the Beijing Declaration and Platform for Action were adopted) clearly show that international momentum on the issue has been inexcusably delayed since 1946.

The fact that after fifty years really relevant concepts such as gender equality, advancement and empowerment have been formulated, and that the methods

needed to implement them “in the real world” are still necessary, indicates that at least one generation of women, our grandmothers and mothers, never saw their just hopes crystallized and that even women of our generation will receive [no reward], but will instead have to continue planting the seeds [of change] that, hopefully, new generations will reap.

In conclusion, effectively ensuring women’s Human Rights requires a thorough understanding of social structures and the power relationships that determine not only laws and policies but also the economy, social dynamics and family and community life, because discrimination comes at a very high cost, not only for the woman who suffers such violence directly, but for society as a whole; so it is necessary that these [rights] become a reality for all women and all girls. Without discrimination. Without violations. Without exceptions. ■

***Judge Karla Montes Ortega:** Center for Criminal Justice of the State of Morelos, located in Cuernavaca.

Despite the Campo Algodonero (Cotton Field) case

Por Juez Juan Carlos Ramírez Benítez
and Ana Victoria Mariche Balcázar*

In the Cotton Field¹ case, the International Court of Justice and Human Rights determined the existence of a serious situation of violence against women, concluding that the attacks on the three victims constituted cases of femicide in an atmosphere of violence in Ciudad Juarez, with increased risks and patterns of discrimination and impunity to the detriment of needy youth, configured from the murders, disappearances, torture and sexual abuse that have taken place in this city since the 1990s.

In this resolution, the authorities' actions against the murders were questioned, and negligence in conducting the investigations as well as inefficient crime solving, were established. In addition, the Mexican State's contributing responsibility to the formation of the pattern of violence, stemming from the lack of security policies aimed at protecting women; its justice system's lack of response in searching for the affected girls; its inefficiency in investigating consummated crimes and the fact that the actions of its public agencies were linked to discriminatory standards and male chauvinism, were confirmed.

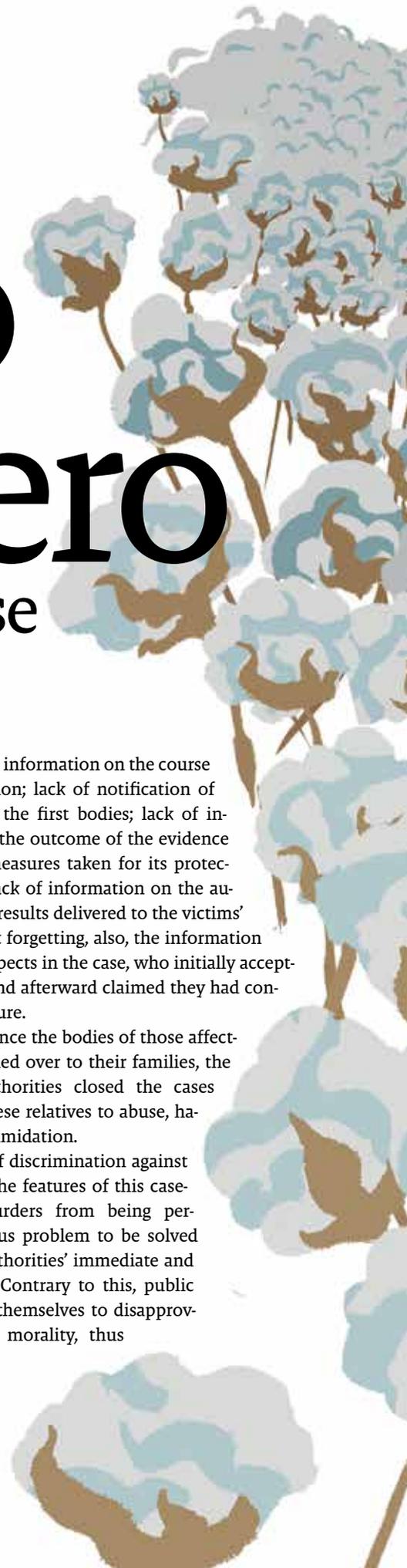
In this context, the Court highlights authorities' irregularities, consisting of delay in finding the victims even after the complaint for their disappearances had been made;

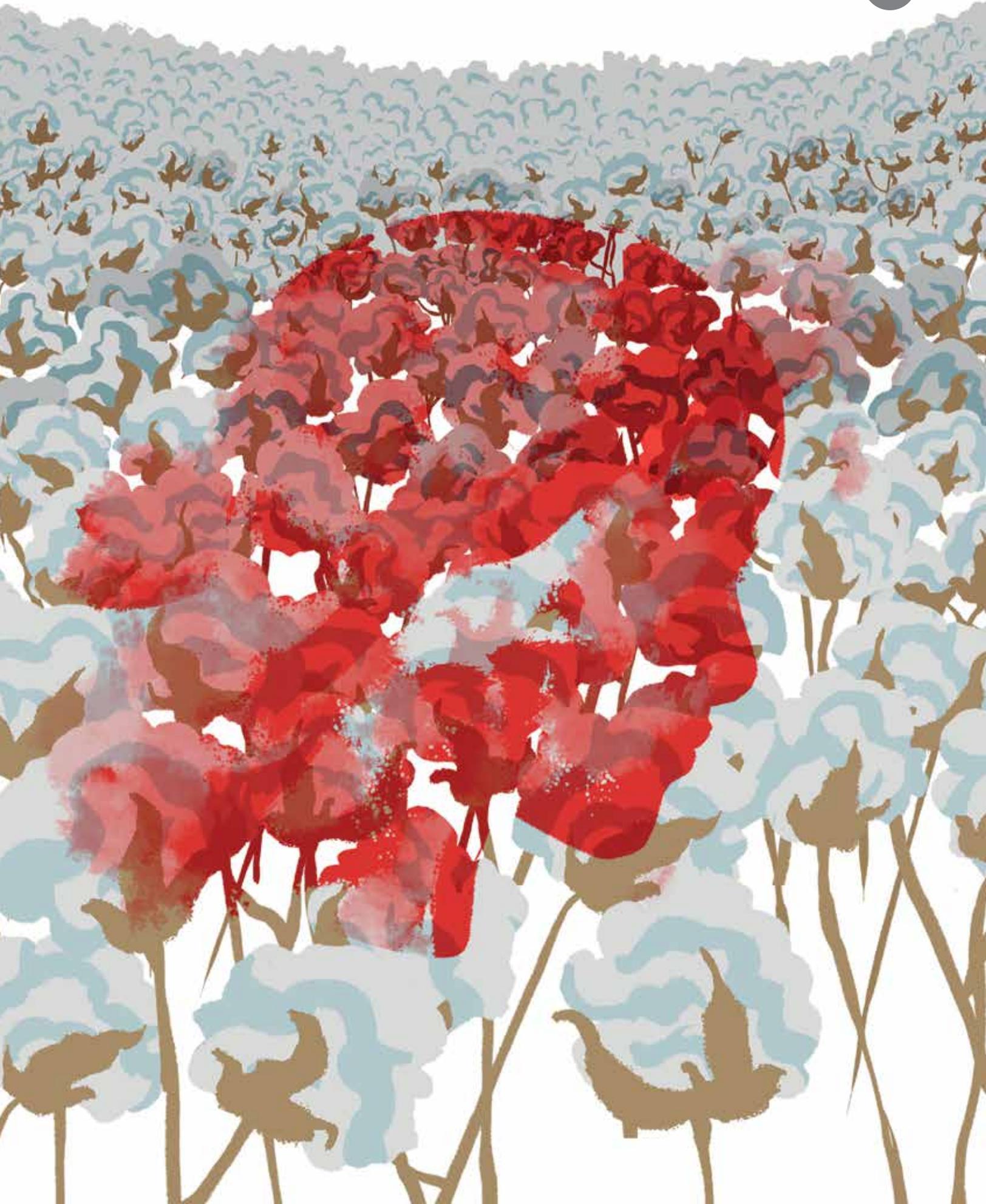
refusal to provide information on the course of the investigation; lack of notification of the discovery of the first bodies; lack of information about the outcome of the evidence found and the measures taken for its protection, as well as lack of information on the autopsies and DNA results delivered to the victims' relatives; without forgetting, also, the information regarding the suspects in the case, who initially accepted their crimes and afterward claimed they had confessed under torture.

In addition, once the bodies of those affected had been turned over to their families, the investigating authorities closed the cases and subjected these relatives to abuse, harassment and intimidation.

The culture of discrimination against women -one of the features of this case- stopped the murders from being perceived as a serious problem to be solved by competent authorities' immediate and forceful actions. Contrary to this, public servants limited themselves to disapproving the victims' morality, thus

¹ International Court of Justice and Human Rights. N/A. Gonzalez case and others (Campo Algodonero) vs. México. N/A. Retrieved from http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf





causing delays and irregularities in the investigation, resulting in the loss of valuable time and data.

As some of the aspects emanating from the international ruling to be met by Mexico, the recognition of the existence of violence against women in Ciudad Juarez as a structural violation of Human Rights, Mexico's public responsibility as to the violation of Human Rights concerning the rights to life, integrity and personal liberty enshrined in the ACHR² (American Convention on Human Rights), the principles of due diligence, access to justice and judicial protection instituted in the Convention of Belém do Pará³, can be derived.

The Mexican State was also ordered to effectively conduct criminal proceedings; investigate and punish officials accused of irregularities and harassment of a victim's family members; erect a monument to honor the memory of the victims; standardize protocols in ministerial investigation, expert services and law enforcement in crimes related to disappearances, sexual violence and the murder of women; implement ex officio searches without delay in cases of disappearance; eradicate obstacles that subtract effectiveness, and to use human, financial, logistic, scientific or any other type of resources, with special intensity when the victims are minors. The ruling also mandated the creation, by the State, of a constantly updated website with information on all victims missing from 1993 onwards⁴; the implementation of programs, training and education courses on Human Rights and gender to guarantee due diligence when conducting preliminary investigations and judicial proceedings related to discrimination, violence and feminine homicides; to provide free and immediate medical, psychological or psychiatric attention to victims' families, adequately and effectively, and to pay for funeral expenses and those produced by the search for the victim, as well as any costs derived from the case itself.

According to the UN, Mexico is ranked number sixteen in femicide in the world. During 2007-2012, 1909 [femicides were committed], equivalent to a rate of 3.2 crimes per 100,000 women, an amount estimated to be above the average global rate.

Meanwhile, a comparison of the annual homicide death rate for women in the Mexican states with the highest incidence of this crime⁹ from 2011 to 2013 shows that Guerrero, Chihuahua, Tamaulipas, Coahuila, Durango, Colima, Nuevo Leon, Morelos, Zacatecas, Sinaloa, Baja California and the State of Mexico had the highest rates. However, the Mexican states with the highest rise in the homicide rate from 2012 to 2013 are Guerrero, Zacatecas and Mexico City; this rate has decreased in Chihuahua, Coahuila, Durango, Tamaulipas, Colima and Nuevo Leon.

From January 2016 to today, there is rising concern about acts of violence against women in Puebla and Jalisco,

Presumed homicides per year 2000-2014⁸

The trend in women's homicides shows a pattern with little variation, with a significant increase between 2008 and 2012, as shown in the following statistic: a:

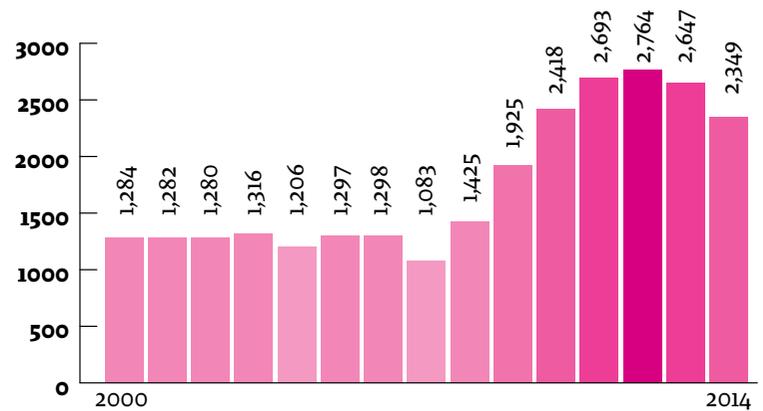


Fig. 1.0

Women homicide annual deaths rate comparison

	Chihuahua	Guerrero	Tamaulipas	Coahuila	Durango	Colima	Nuevo Leon	Morelos	Zacatecas	Sinaloa	Baja California	Mexico	National rate
2011	22.7	10.4	5.5	4.2	6.9	5.1	9.5	4.7	2.4	7.9	6	5.6	4.6
2012	14.8	13.2	9.9	9.2	8.5	7.2	6.9	6.6	7	4.2	4.7	5.6	4.6
2013	10.1	12.8	5.5	7.1	5.8	5.1	4.8	6.3	7	4.2	4.6	5.6	4.4

co, which are not included among the states with the highest rates of femicide in Mexico. According to recent reports, there has been an alarming increase in the number of this kind of homicides. Specifically in the state of Puebla, State prosecutors reported 158 female murders between 2012 and 2013, resulting in a monthly average of 6.5 homicides, only six of which were investigated as femicides¹⁰. However, according to a certain media outlet, the State Prosecutor acknowledged during his appearance before local Congress a total of 13 femicides, and at least 19 homicides so far this year. He added that 37 cases of femicide and 95 female murders were recorded in 2015. Contrary to that information, non-governmental organizations refer to higher figures¹¹.

This suggests authorities' desire to hide the actual figures for these crimes and to avoid addressing this violence with adequate relevance, a desire that caused political and social organizations to appear before the National Institute of Women to formally request the declaration of a Gender Violence Alert¹² (GVA) in Puebla¹³.

Something similar happens in Jalisco. According to Jalisco's Institute for Women, crimes against females are increasing, and, just during 2015, at least 150 female murders were recorded¹⁴; as of June 2016, there have been 28 homicides¹⁵. This logically led to social unrest due to gender violence, resulting -unlike the situation in the state of Puebla- in the February 8th, 2016, issuance of a Gender Violence Alert in the Guadalajara, Zapopan, Tlaquepaque, Tonalá, Tlajomulco, El Salto, Ameca and Puerto Vallarta townships, and also to authorities contemplating a strategy based on five areas: urgency, prevention, protection, access to justice and security¹⁶.

Female murders per year in Jalisco¹⁷



In these Mexican localities, according to newspaper reports, patterns identical to those of the Cotton Field case can be observed, giving rise to organized protests by the victims' relatives to denounce their loved ones' cases, something which also coincides with authorities' slowness and lack of interest in initiating or continuing investigations, while withholding information, denying the importance of events, and proving unable to solve cases, despite the update of gender aspects¹⁸.

Although more than six years have passed since the issuance of the *Cotton Field* sentence, a real problem sadly continues to be unaddressed, to the detriment of the female gender, due to authorities' negligence, coupled with their lack of consideration despite the relevance of the facts and the repetition of patterns, and with the situation now aggravated by the concealment of information.

In view of the constitutional reform on Human Rights published on June 10th, 2010, Mexico cannot afford another international rebuke of such magnitude, and therefore Mexican authorities are obliged to act effectively; even though their obligation is related more to means than to results¹⁹, it must be diligently and responsibly assumed, and not become a mere formality, foredoomed to failure, as stated by the Court. ■

***Juan Carlos Ramírez Benítez y Ana Victoria Mariche Balcázar:** /Adversarial System Specialist District Judge and Certificate and Records Assistant (respectively), allocated to the Federal Criminal Justice Center of the State of Tlaxcala, residing in Apizaco.

² Articles 4, 5 and 7.

³ Article 7.

⁴ It was never generated, plus INEGI's official data only dates to 2014, which has led to a need to refer to data derived from the media that have denounced this problem.

⁵ Revista Proceso.(2016) *Femicides in Mexico*. Mexico: Revista Proceso. N/A.

⁶ Checked and verified according to the study *The Global Burden of Armed Violence 2015*. Every Body Counts.

⁷ Animal político. (2015) *Mexico, among the top 10 countries with more femicide by firearms in the world*. Mexico: Animal político. Retrieved from <http://www.animalpolitico.com/2015/05/mexico-en-el-top-10-de-paises-con-mas-femicidios-por-armas-de-fuego-del-mundo/>

⁸ Note: 2014 data is preliminary, reaching only to July 9, 2015, and was obtained from Press Release no. 276/15 on homicide. INEGI/ CONAPO (2015) *Mortality statistics for cause. Population Projections 2010-2050*. Mexico: INEGI/CONAPO

⁹ Idem.

¹⁰ Milenio. (N/A) *A Map of Femicide in Mexico*. Mexico: Milenio. Retrieved from http://www.milenio.com/politica/Mapa-femicidio-Mexico-muerte-mujeres-violencia-violentas-Inmujeres-policia_o_448155199.html

¹¹ Revista Sin embargo. (2016) *Families of women murdered in Puebla carry their pain and anger in a silent march*. Mexico: Revista Sin embargo. Retrieved from <http://www.sinembargo.mx/25-02-2016/1629135>

¹²According to *Sin embargo* magazine, this is the mechanism to safeguard the lives and integrity of the female population, to be issued according to Article 25 of the Women's Access to a Life Free from Violence Act when there have been crimes against the life, liberty, integrity and security of women that have disrupted the peace in a given territory and been denounced by society.

¹³ Revista Proceso. (N/A). *Gender alert declaration progresses in Puebla*. Mexico: Revista Proceso. Retrieved from <http://www.proceso.com.mx/435861/avanza-declaratoria-alerta-genero-en-puebla>

¹⁴ Noticieros Televisa. (N/A) *Femicidies, the new alert (part 1)*. Mexico: N/A. Retrieved from <http://noticieros.televisa.com/programas-primer-noticias/1602/femicidios-nueva-alerta-parte-1/>

¹⁵ El Universal. (2016) *Femicides triple in Jalisco*. Mexico: El Universal. Retrieved from <http://www.eluniversal.com.mx/articulo/periodismo-de-investigacion/2016/03/22/se-triplican-femicidios-en-jalisco>

¹⁶ Excelsior. (2016) *Jalisco government issues a Gender Violence Alert*. Mexico: Excelsior. Retrieved from <http://www.excelsior.com.mx/nacional/2016/02/08/1073841>

¹⁷ Jalisco Institute for Women.

¹⁸ Revista Sin embargo. *In Jalisco, women are perceived as "property": specialists; the Gender Alert falls short, it is said*. Retrieved from <http://www.sinembargo.mx/16-02-2016/1622919>

¹⁹This obligation is not breached by the mere fact of not obtaining results from an investigation, as it must be undertaken seriously and not as a simple formality doomed to failure. It must have an objective and be assumed by the State as its own legal duty, not as a the administration of merely private interests subject to the initiative of the victims, their families or the private contribution of evidence, without an effective search for the truth conducted by proper public authorities.

A BRIEF GLANCE AT CEDAW OBJECTIVES, CONTENT AND MONITORING MECHANISMS

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)¹ is the most comprehensive international instrument on the rights of women. It was approved by the United Nations General Assembly on December 18th, 1979, and went into force on September 3rd, 1981.

It was created by the labors of the UN's Commission on the Status of Women², a commission dependent on the UN's Economic and Social Council (ECOSOC)³ which dedicates itself to promoting gender equality and the empowerment of women. To date, 189 countries have ratified this Convention. Mexico became a party on March 23rd, 1981.

This Convention contains a catalog of rights to ensure equality between men and women, whose development and security translates into specific obligations for the States that have ratified it in order to eliminate discrimination against women in the political, social, economic and cultural arenas, among others.

To this end, it urges States parties to use measures such as emitting and adjusting standards to enshrine gender equality; the abolition of legal provisions, customs and practices based on the inferiority or superiority of either sex; the implementation of public policies; and the adoption of affirmative actions⁴, as well as the establishment of judicial protection for women's rights through the pertinent courts. Some of the treaty's most striking features are:

- » Acknowledging that people's social and cultural behavior patterns (tradition, religion, customs and customary practices) have contributed to continued discrimination against women, so that States must take steps to eliminate practices and prejudice based on the inferiority or superiority of either sex or on stereotyped roles for men and women.
- » Pointing out the duty to accomplish substantive or de facto equality- actual equality, proven through facts- so that States have an obligation to remove any obstacles to a kind of equality that will produce results, in addition to formal o de jure equality –established in national and international legal instruments – which in general terms refers that Human Rights are common to all persons notwithstanding their gender. It also alludes to an equality of results, as a consequence or product of substantive equality, until measures to transform the culture of male power, recognize biological differences between women with men, grant equal opportunities and treatment for both genders, correct women's lack of representation and disadvantaged position, and redistribute resources to females, among others, are undertaken.
- » Incorporating into a single document economic, social, cultural, civil, political and collective rights as well as the right to development.
- » Extending States parties' responsibility to acts committed by individuals, non-governmental organizations or companies, under the consideration that discrimination not only occurs at State level.
- » Ascribing responsibility to the signatories for violations committed in their respective territories, regardless of their occurrence at federal, state or town hall level.
- » Promoting a family education that considers maternity as a social function and acknowledging men and women's common responsibility in the education and development of their offspring.

[It also] Rules rights for women, such as non-discrimination, the suppression of trafficking and sexual exploitation; the right to participate freely and on equal terms with men in politics; the right to vote and be elected; to formulate and implement public policies; participate in organizations and associations; to represent their government at the international level; as well as the right to acquire, change or retain their national-

Illustrated by **Daniel Esqueda Media** / Ángel Sánchez

¹ This Convention's contents can be retrieved from <http://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm>

² Established in 1947. Ever since then it has played an important role in the issuance of international law to promote equality between women and men and abolish gender-based discrimination; promote women's rights; formulate recommendations to promote such rights politically, economically and socially and examine world progress towards equality for women. It organized the Fourth World Conference during 1995, where the Beijing Declaration and Platform for Action were approved. This Commission's secretariat falls on the United Nations Entity for Gender Equality and Empowerment of Women (UN Women). For more information on the Commission on the Status of Women, please visit <http://www.unwomen.org/es/csw/brief-history>, <http://www.unwomen.org/es/csw> y <http://www.cinu.org.mx/temas/mujer/ccjsm.htm>

³ The UN's Economic and Social Council deals with economic, social and environmental matters through policy review, issuance of recommendations and oversight of progress accomplished as to internationally agreed development objectives. The Council's website is available at <https://www.un.org/ecosoc/es/>

⁴ Article 15 septimus of the Federal Law to Prevent and Eliminate Discrimination indicates that affirmative actions are special, specific and temporary measures in favor of discriminated persons or groups of persons whose objective is the correction of situations of inequality in the enjoyment or exercise of rights and freedoms and which shall be implemented only as long as those situations persist. Affirmative actions must be adequate to the conditions needing remedy; they must be legitimate and respect the principles of justice and proportionality. Such actions, details Article 15 octavus of this law, may consider measures in education, employment and elected office through the establishment of percentages or quotas. Also, their application should be directed mainly towards indigenous peoples, Afro-descendants, women, children and adolescents, people with disabilities and older adults. This law's full text can be found at <http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf>



ity irrespective of their marital status, and equal rights with men regarding the nationality of their children.

It also establishes the right to education; to employment and training opportunities, wages and benefits equal to men's; to health and appropriate services in relation to pregnancy, childbirth and postpartum; [the right] to get family benefits, bank loans, mortgages and financial credits; participate in recreational activities, sports and culture; as well as equal rights before the Law, regarding marriage and in rural areas.

To review and monitor the progress made by the State party regarding CEDAW provisions, the same instrument provides for the establishment of a committee of experts known as the Committee for the Elimination of Discrimination against Women. This committee currently consists of 23 persons of recognized standing and proven experience in gender issues, which are selected and nominated by the States parties. They hold office for four years in a personal capacity as independent experts, but not as delegates or representatives of their respective countries.

One of CEDAW's mechanisms for supervision and monitoring is provided by its Article 18, which orders the State party to submit periodic reports on the legislative, judicial, administrative, or other measures taken to effectively implement the Convention's provisions. In these reports, the State party must describe any progress achieved and identify the factors and difficulties impeding the implementation of Convention obligations.

The reports are a dialogue between the State party and the Committee, enabling the latter to assess the situation of women's rights in a given country. After reviewing the report, the Committee issues a report with its observations on the progress made by the country in implementing the Convention, the main problem areas and recommendations with steps the country's government should take. This report is communicated to the State concerned and also made accessible to the public.

Non-governmental organizations (NGOs) can present parallel or “shadow” reports to the State, thus being able to inform the Committee on critical issues affecting women in their country and suggest that the State be questioned about them. Thus, the Committee knows not only the official version but also information with a perspective that allows it to have a more complete picture of the Convention’s implementation status in a certain territory.

When considering the reports that States parties deliver, and in order to provide guidance on the implementation of the Convention in specific situations, the CEDAW Committee has the power to issue [its] General Recommendations⁵. Up to March 2016, the Committee has made 34 recommendations of this type. Its most recent one clarifies the obligations of States parties to guarantee the rights of women in rural areas⁶.

The other two mechanisms for monitoring and surveillance available to the CEDAW are: i) the procedure through which individuals or groups are given the possibility of filing complaints or communications on the violation of any of the rights of the Convention by a State party; and ii) the investigation procedure which enables the Committee to conduct investigations on alleged violations that are particularly serious because of the severity of the act that occurred or because the violation has occurred systematically. These procedures are set out in Articles 2 and 8 of the Optional Protocol to the Convention, respectively⁷.

The first complaint mechanism can be operated by persons or groups of individuals (by themselves or through a representative) who consider themselves to be victims of a violation (individual or collective) related to any of the articles of the Convention in the territory of

⁵ The CEDAW Committee's General Recommendations are available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

⁶ General Recommendation No.34 can be consulted at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf

⁷ CEDAW's Optional Protocol was adopted on October 6th, 1999, in the UN General Assembly with the aim of granting women further tools to guarantee the enjoyment of the rights established by the Convention. As an additional legal instrument to the Convention, it introduces aspects not covered by it and serves as a mechanism of correction and complaint in the case of Human Rights violations. Its ratification by States parties is optional. Mexico ratified it on March 15th, 2002. The Protocol's full text can be retrieved from <http://www.ohchr.org/SP/ProfessionalInterest/Pages/OPCEDAW.aspx>

a State party signatory to the Protocol. Complaints must be in written form and cannot be lodged anonymously.

The Committee will not admit a complaint for the following reasons: i) that not all remedies under domestic jurisdiction have been exhausted, unless it is likely that such procedures will not be effective or if their processing will take longer than reasonable time; ii) that the facts are being or have been examined in other international fora; iii) that the petition or communication is incompatible with the Convention, is unfounded or lacks substance; iv) abuse of the right to file a complaint (for example, by defaming a person); and v) that the violations were committed before the Convention went into force, excepting violations that have continued over time.

The Committee may order the State party to take interim measures to protect the victim or victims of the alleged violation. Once the complaint is admitted, the Committee will send it to the State party within six months' so that it might reply in written form on corrective measures taken and make clarifications on the case. To analyze the complaint, the Committee must take into account the information sent by all parties, which may be strengthened in favor of the victim or victims with reports that NGOs have presented.

After reviewing the case in closed sessions, the Committee formulates and transmits its views and recommendations to the parties, explaining the reasons why the facts constitute a violation and determining the measures (such as reparation, compensation and / or rehabilitation for the victim or victims) that the State party must carry out. While the recommendations are not binding, it is expected that the State comply with them in good faith. The Committee grants the State another six months to submit its written response, which should explain in detail the measures it has taken in this regard. The State may be called again to give further information which will help the Committee to monitor the actions carried out in order to remedy the violation; this information can also be delivered as part of the periodic report under Article 18 of the Convention.

Finally, the second mechanism established under the CEDAW's Optional Protocol -a research procedure- gives the Committee the authority to order to inquire into allegations that allude to serious or systematic violations of the rights contained in the Convention, in which case the Committee will invite the State party to collaborate and submit its comments; a visit to the country to examine the situation closely might be included in this procedure.

The information that the Committee gathers, which should be treated as confidential, will serve to order one or more of its members to conduct an investigation and prepare an urgent report. Once this is done, all findings, observations and recommendations are forwarded to the State party, which is given six months to respond. After this deadline, the Committee may require that the State manifest itself on any measures taken in this regard and include this information as part of the periodic report under Article 18 of the Convention. ■

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Covenant to Introduce Gender Perspective into Mexican Law Enforcement Bodies

From its very first session in 2011, the Committee for Monitoring and Evaluating the Covenant to Introduce Gender Perspective into Mexican Law Enforcement bodies strives to formalize the implementation of gender perspective within the judicial sphere and in the institutional life of law enforcement bodies.

This monitoring and evaluating committee has celebrated eleven Ordinary Sessions in these five years of labor. Certain changes to the Covenant and its Operating Rules were authorized during 2015 in order to integrate into this instrument the existence and workings of the state committees to oversee the Covenant that arose from state adhesions to this agreement. Similarly, actions were incorporated to display the existence of the Covenant in resolutions and institutional commitments towards gender perspective. The Monitoring and Evaluating Committee is a national body, which includes representatives of all AMIJ¹ (Mexican Association of Law Enforcers) Sections and state Committees².

In these sessions, each of the AMIJ Sections and the state monitoring committees present their progress on that instrument and invite legal, academic or even public figures -always experts on gender equality issues- to impart Keynote Addresses or participate in a lecture, both of which result in increased awareness and reflection on the issue from a theoretical perspective.

On the other hand, the last two sessions have included the review and analysis of judicial rulings (sentences) with the aim of discussing the implementation of gender perspective in concrete cases. This format, new in the life of the Committee, seeks to open a space for discussion in relation to a particular topic, whether it is a case of discrimination based on sex, gender stereotypes, violence, equality, democracy or others. The intention is that, based on a specific case, female and male judges of any instance and matter be able to reflect on the way an issue is resolved in particular: whether power issues that generated an imbalance between the parties could be identified, if the facts were questioned and evidence evaluated, discarding stereotypes or prejudices, if the evidence was appropriate and sufficient and whether the neutrality of applicable rules was questioned. All this with the objective of holding a fruitful theoretical discussion, in no way intended to discredit or favor one position or resolution in particular, which is why in every analysis exercise all information on the judicial bodies and female and male judges who ruled on the cases -even fully knowing that such information is public- is deleted, in order to avoid finger-pointing and create an authentic argumentative exercise.

Now, in relation to the new integration of the state committees into the national committee, we can say that such committees, state committees, constitute a monitoring mechanism for concrete actions regarding gender in the sphere of state courts. The intent of this integration is to create a neutral, common and shared space between local courts, where they can discuss, plan, share and work on actions and projects related to gender equality.

The basic idea underlying the labors of the different state committees is that sometimes there will be actions that interest all member courts and that can be replicated elsewhere; there will be other actions that must be undertaken individually, to meet the specificities and needs of a single court; and finally, there will also be activities that can be performed jointly in order to reach a greater number of Judges, Magistrates and litigants, making a more efficient use of the economic, human and material resources allocated.

To date, nineteen Mexican states have acceded to the Covenant and formed their own state committees. With these signatures and the consequent creation of state committees, progress has been made as to formalizing gender perspective and consolidating the right to equality and non-discrimination of all people in Mexico through various actions, including the following:

- » **Incorporating gender perspective into institutional projects**
- » **Including gender perspective in judicial and administrative staff's permanent training programs**
- » **Adopting "parenting" leaves of absence**
- » **Providing, within law enforcement bodies' premises, basic medical attention services for the staff and their offspring**
- » **Creating efficient mechanisms to prevent, attend, heal and eradicate sexual and workplace harassment**
- » **Creating awareness and giving judicial and administrative staff the tools they need to deal with workplace and sexual harassment**
- » **Applying gender perspective in judicial rulings**

As a 2016 goal, all law enforcement bodies that make up the Committee for Monitoring and Evaluating the Covenant have committed to redouble their efforts to reach

their goals and comply fully with the provisions of the Covenant established for the benefit of people seeking access to justice, as well as to give the staff of their various law enforcement bodies optimal equality and non-discriminatory conditions when performing their duties and to encourage professional and personal development, both judicially and administratively.

It is vitally important for the Mexican Supreme Court to acknowledge the effort and work done to formalize the introduction of gender perspective into law enforcement bodies by various state committees and in general for all areas in charge of equality in Mexican courts. The Supreme Court trusts that such actions and strategies will continue in order to generate ever-greater impact and progress in the provision of equal justice without discrimination in Mexico. ■

¹AMIJ Sections are set up as follows:

Section I Mexican Supreme Court (which also includes the Federal Judiciary Council Circuit Tribunals and District Courts)

Section II Electoral Tribunal of the Federal Judiciary Branch (also including its Regional Chambers)

Section III Justice High Courts (including local Federal Judiciary Council, Justice High Court Chambers and local courts)

Section IV Federal Tax and Administrative Justice Tribunal (and its Regional Chambers)

Section V Local Contentious Administrative Tribunals

Section VI Local Electoral Tribunals

Section VII Federal Board of Conciliation and Arbitration (also including Special Boards)

Section VIII Local Conciliation and Arbitration Boards

Section IX Federal Conciliation and Arbitration Tribunal

Section X Agrarian High Tribunal (including Unitary Agrarian Tribunals)

Section XI Bureaucratic Conciliation and Arbitration Tribunals

²Nineteen Mexican states have signed the Covenant and established an overseeing committee: Campeche, Ciudad de Mexico, Chiapas, Chihuahua, Colima, Durango, Estado de Mexico, Guanajuato, Hidalgo, Jalisco, Morelos, Nuevo Leon, Oaxaca, Puebla, Queretaro, Tamaulipas, Tlaxcala, Veracruz and Yucatan. A further two states have confirmed their intent to become signatories to the Covenant in the next few months.



Illustrated by Daniel Esqueda Media / Ángel Sánchez

II. General issues and recommendations on women's access to justice

A. Justiciability, availability, accessibility, good-quality, provision of remedies and accountability of justice systems.

13. The Committee has observed that the centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender-insensitive judgments/decisions due to the lack of training, delays and excessive length of proceedings, corruption, etc.) all prevent women from accessing justice.

14. Six interrelated and essential components — justiciability, availability, accessibility, good-quality, accountability of justice systems, and the provision of remedies for victims — are therefore necessary to ensure access to justice. While differences in prevailing legal, social, cultural, political and economic conditions will necessitate a differentiated application of these features in each State party, the basic elements of the approach are of universal relevance and of immediate application.

Accordingly:

- a)** Justiciability requires the unhindered access by women to justice as well as their ability and empowerment to claim their rights under the Convention as legal entitlements;
- b)** Availability requires the establishment of courts and other quasi-judicial or other bodies across the State Party in both urban, rural and remote areas, as well as their maintenance and funding;
- c)** Accessibility requires that all justice systems, both formal and quasi-judicial systems, be secure, affordable and physically accessible to women, adapted and

GENERAL RECOMMENDATION NO. 33 WOMEN'S ACCESS TO JUSTICE

With the goal of mentioning all pertinent elements and explaining how States parties must fulfill their obligations to respect and ensure the rights of women enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW by its acronym), on August 3rd, 2015, the CEDAW Committee issued General Recommendation No. 33 on women's access to justice¹, meaning to establish basic guidelines and elements that States parties' law-enforcement systems must keep in mind so that women can have free and non-discriminatory access to justice.

In order to disseminate the content of this Recommendation, and the relevance it bears for Mexico's Federal Judiciary, the section that deals with the general issues and specific recommendations to ensure women's access to justice will be reproduced exactly in the following paragraphs².

¹ CEDAW's Committee General Recommendation No. 33 can be retrieved from <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

² Any material reproduced after this footnote is an exact copy of the text contained by General Recommendation No.33. Original footnotes have been adjusted to fit this document.

appropriate to the needs of women, including those who face intersectional or compounded forms of discrimination;

d) Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality³ and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems be contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women;

e) Provision of remedies requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer (see article 2 of the Convention); and

f) Accountability of justice systems is ensured through the monitoring of the functioning of justice systems to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility in cases in which they violate the law.

15. On justiciability, the Committee recommends that States parties:

a) Ensure that rights and correlative legal protections are recognized and incorporated into law, improving the gender responsiveness of the justice system;

b) Improve women's unhindered access to justice systems and thereby empower them to achieve de jure and de facto equality;

c) Ensure that justice systems professionals handle cases in a gender sensitive manner;

d) Ensure the independence, impartiality, integrity and credibility of the judiciary and the fight against impunity;

e) Tackle corruption in justice systems

as an important element of eliminating discrimination against women regarding access to justice;

f) Confront and remove barriers to women's participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers in justice related services. Take steps, including temporary special measures, to ensure women are equally represented in the judiciary and other law implementation mechanisms such as Magistrates, Judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities;

g) Revise the rules on the burden of proof in order to ensure equality between the parties, in all fields where power relationships deprive women of the chance of a fair judicial treatment of their case;

h) Cooperate with civil society and community-based organizations to develop sustainable mechanisms to support women's access to justice and encourage non-governmental organizations and civil society entities to take part in litigation on women's rights, and

i) Ensure that female Human Rights defenders are able to access justice and receive protection from harassment, threats, retaliation and violence.

16 On availability of justice systems, the Committee recommends that States parties:

a) Ensure the creation, maintenance and development of courts, tribunals and additional entities, as needed, that guarantee women's right of access to justice without discrimination on the whole territory of the State party, including remote, rural and isolated areas. The establishment of mobile courts, particularly for women living in those areas, should be considered, as well as the creative use of modern IT solutions when feasible;

b) In cases of violence against women, ensure access to financial aid, crisis center shelters, hotlines, and medical, psychoso-

cial and counseling services;

c) Ensure that rules on standing allow groups and civil society organizations with an interest to lodge petitions and participate in the proceedings; and

d) Establish an oversight mechanism by independent inspectors to ensure the proper functioning of the justice system and address any discrimination against women committed by justice system professionals.

17. On accessibility of justice systems, the Committee recommends that States parties:

a) Remove economic barriers to justice by providing legal aid and ensuring that fees for issuing and filing documents as well as court costs are reduced for women with low income and waived for women living in poverty;

b) Remove linguistic barriers by providing independent and professional translation and interpretation services when needed; provide individualized assistance for illiterate women in order to guarantee their full understanding of the judicial or quasi-judicial processes;

c) Develop targeted outreach activities and distribute information about available justice mechanisms, procedures and remedies in various formats, and also in community languages, through specific units or desks for women. Such activities and information should be appropriate for all ethnic and minority groups in the population and designed in close cooperation with women from those groups and, especially, women's and other relevant organizations;

d) Ensure access to the Internet and other information and communication technologies (ICTs) to improve women's access to justice systems at all levels. Give consideration to the development of Internet infrastructure, including video conferencing, to facilitate the holding of court hearings, and sharing, collection and support of data and information among stakeholders;

(e) Ensure that the physical environment and location of judicial and quasi-judicial institutions and other services are welcoming, secure and accessible to all women. The creation of gender units as components of justice institutions should be considered. Special attention should be given to covering the costs of transportation to judicial and quasi-judicial institutions and other services for women without sufficient means;

(f) Establish justice access centers, such as “one-stop centers”, which include a range of legal and social services, in order to reduce the number of steps that a woman has to take to gain access to justice. Such centers could provide legal advice and aid, begin the legal proceedings and coordinate support services for women in areas such as violence against women, family matters, health, social security, employment, property and immigration. Such centers must be accessible to all women, including those living in poverty and/or in rural and remote areas;

(g) Pay special attention to access to justice systems for women with disabilities.

18. With regard to the good quality of justice systems, the Committee recommends that States parties:

(a) Ensure that justice systems are of good quality and adhere to international standards of competence, efficiency, independence and impartiality, as well as to international jurisprudence;

(b) Adopt indicators to measure women’s access to justice⁴;

(c) Ensure an innovative and transformative justice approach and framework, including, when necessary, investing in broader institutional reforms;

(d) Provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women;

(e) Implement mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice;

(f) When necessary to protect women’s privacy, safety and other Human Rights, ensure that, in a manner consistent with due process and fair proceedings, legal proceedings can be held privately in whole or in part or that testimony can be given remotely or using communications equipment such that only the parties concerned are able to gain access to their content. The use of pseudonyms or other measures to protect the identities of such women during all stages of the judicial process should be permitted. States parties should guarantee the possibility of taking measures to protect the privacy and image of victims through the prohibition of image capturing and broadcasting in cases where doing so may violate the dignity, emotional condition and security of girls and women;

(g) Protect women complainants, witnesses, defendants and prisoners from threats, harassment and other forms of harm before, during and after legal proceedings and provide the budgets, resources, guidelines and monitoring and legislative frameworks necessary to ensure that protective measures function effectively⁵.

19. With regard to the provision of remedies, the Committee recommends that States parties:

(a) Provide and enforce appropriate and timely remedies for discrimination against women and ensure that women have access to all available judicial and non-judicial remedies;

(b) Ensure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered. Remedies should include, as appropriate, restitution (reinstatement), compensation (whether provided in the form of money, goods or services) and rehabilitation (medical and psychological care and other social services⁶). Remedies for civil damages and criminal sanctions should not be mutually exclusive;

(c) Take full account of the unremunerated domestic and caregiving activities of women in assessments of damages for the purposes of determining appropriate compensation for harm in all civil, crimi-

nal, administrative or other proceedings;

(d) Create women-specific funds to ensure that women receive adequate reparation in situations in which the individuals or entities responsible for violating their Human Rights are unable or unwilling to provide such reparation;

(e) In cases of sexual violence in conflict or post-conflict situations, mandate institutional reforms, repeal discriminatory legislation and enact legislation providing for adequate sanctions, in accordance with international Human Rights standards, and determine reparation measures, in close cooperation with women’s organizations and civil society, to help overcome the discrimination that preceded the conflict⁷;

(f) Ensure that non-judicial remedies, such as public apologies, public memorials and guarantees of non-repetition granted by Truth, Justice and Reconciliation Commissions, are not used as substitutes for investigations and prosecutions of perpetrators when Human Rights violations occur in conflict or post-conflict contexts; reject amnesties for gender-based Human Rights violations, such as sexual violence against women, and reject statutory limitations for the prosecution of such violations (see General Recommendation No.30 on women in conflict prevention, conflict and post-conflict situations);

(g) Provide effective and timely remedies and ensure that they respond to the different types of violations experienced by women, as well as adequate reparation, and ensure women’s participation in the design of all reparation programs, as indicated in general recommendation No. 30⁸.

20. With regard to the accountability of justice systems, the Committee recommends that States parties:

(a) Develop effective and independent mechanisms to observe and monitor women’s access to justice in order to ensure that justice systems are in accordance with the principles of justiciability, availability, accessibility, good quality and effectiveness of remedies, including the periodic auditing/review of the autono-

my, efficiency and transparency of the judicial, quasi-judicial and administrative bodies that take decisions affecting women's rights;

(b) Ensure that cases of identified discriminatory practices and acts by justice professionals are effectively addressed through disciplinary and other measures;

(c) Create a specific entity to receive complaints, petitions and suggestions with regard to all personnel supporting the work of the justice system, including social, welfare and health workers as well as technical experts;

(d) Data should include but need not be limited to:

(i) The number and geographical distribution of judicial and quasi-judicial bodies;

(ii) The number of men and women working in law enforcement bodies and judicial and quasi-judicial institutions at all levels;

(iii) The number and geographical distribution of men and women lawyers, including legal-aid lawyers;

(iv) The nature and number of cases and complaints lodged with judicial, quasi-judicial and administrative bodies, disaggregated by the sex of the complainant;

(v) The nature and number of cases dealt with by the formal and informal justice systems, disaggregated by the sex of the complainant;

(vi) The nature and number of cases in which legal aid and/or public defense were required, accepted and provided, disaggregated by the sex of the complainant;

(vii) The length of the procedures and their outcomes, disaggregated by the sex of the complainant;

(e) Conduct and facilitate qualitative studies and critical gender analyses of all justice systems, in collaboration with civil society organizations and academic institutions, in order to highlight practices, procedures and jurisprudence that promote or limit women's full access to justice;

(f) Systematically apply the findings of those analyses in order to develop priorities, policies, legislation and procedures to ensure that all components of the justice system are gender-sensitive, user-friendly and accountable.

For the Federal Judiciary it is vital to take into account and comply with the guidelines established by General Recommendation No. 33 on women's access to justice in order to help improve and guarantee women's rights in Mexico. Since 2008, the Mexican Supreme Court began working to incorporate gender perspective into all law enforcement areas, thereby achieving more effective access to justice for women and girls. ■

³ See Basic Principles on the Judiciary's Independence, endorsed by the General Assembly in resolution 40/32.

⁴ I.e. Indicators to Measure Violence Against Women (E/CN.3/2009/13), and indicators to calculate progress in the measurement of the application of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women or Convention of Belém do Pará, adopted on May 21st, 2013.

⁵ International guidance and best practices on the protection of victims and their families against intimidation, retaliation and further victimization should be used.

For examples, consult the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence.

⁶ See paragraph 32 of General Recommendation No. 28, that states: "Those resources should include different kinds of reparation, such as monetary compensation, restitution, rehabilitation and reintegration; measures of satisfaction like public apologies, public memorials and guarantees of non-repetition; changes in Law and pertinent practices and bringing perpetrators of women's Human Rights violations to trial."

⁷ See the Nairobi Declaration On Women's and Girls' Right to a Remedy and Reparation (2007).

⁸ See also A/HRC/14/22.

Public Electoral Advocacy for Indigenous peoples and Communities

Protecting disadvantaged groups

Dr. Janine M Otalora Malassis*

The Federal Electoral Tribunal's Superior Chamber incorporates criteria to ensure inclusive justice for disadvantaged groups.

The constitutional law that comprises Articles 1, 2, 14 and 17 of the Political Constitution of the United Mexican States, as well as articles 8 and 25 of the American Convention on Human Rights, integrates a set of obligations for the Mexican State as a subject of international law, as well as for all Mexican authorities within their respective powers, involving the recognition of a series of general and specific judicial guarantees for indigenous peoples and communities. Especially relevant among them are the fundamental rights to due process, effective judicial protection and full access to State jurisdiction for indigenous peoples and communities, ensuring their rights in all trials and proceedings in which they are individual or collective interested parties, and taking into account their customs and cultural differences, as well as establishing the State's duty to assist them through interpreters and advocates well versed in their language and culture.

In accordance with Article 1 of the Constitution, there are three fundamental lynchpins that define the actions to be carried out by all authorities in order to protect Human Rights: all persons shall enjoy the rights recognized by the Constitution and international treaties ratified by the Mexican State; the rules concerning Human Rights should be interpreted in accordance with the Constitution and international treaties on the matter, to ensure at all times the broadest possible protection for individuals; and all authorities have an obligation to promote, respect, protect and guarantee Human Rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness.

In turn, the Supreme Court's full court has held in its jurisprudence (P. /J. 20/2014), that the first constitutional article recognizes a group of Human Rights whose source is the Constitution and the international treaties to which Mexico is party; that Human Rights standards, whatever their source, are not related in hierarchical terms; and that Human Rights, as a group, constitute the control parameter of constitutional regularity under which the validity of the rules and acts of the Mexican legal system should be analyzed.

Article 12 of the International Labour Organization's Covenant 169, on indigenous and tribal peoples in independent countries, points out that the peoples concerned shall be safeguarded against the violation of their rights, may initiate legal proceedings to ensure the effective protection of these rights and that steps should be taken to ensure that members of these peoples are able to understand and be understood in legal proceedings, providing (if necessary), interpreters or other effective means [of communication].



Illustrated by Daniel Esqueda Medina / Ángel Sánchez



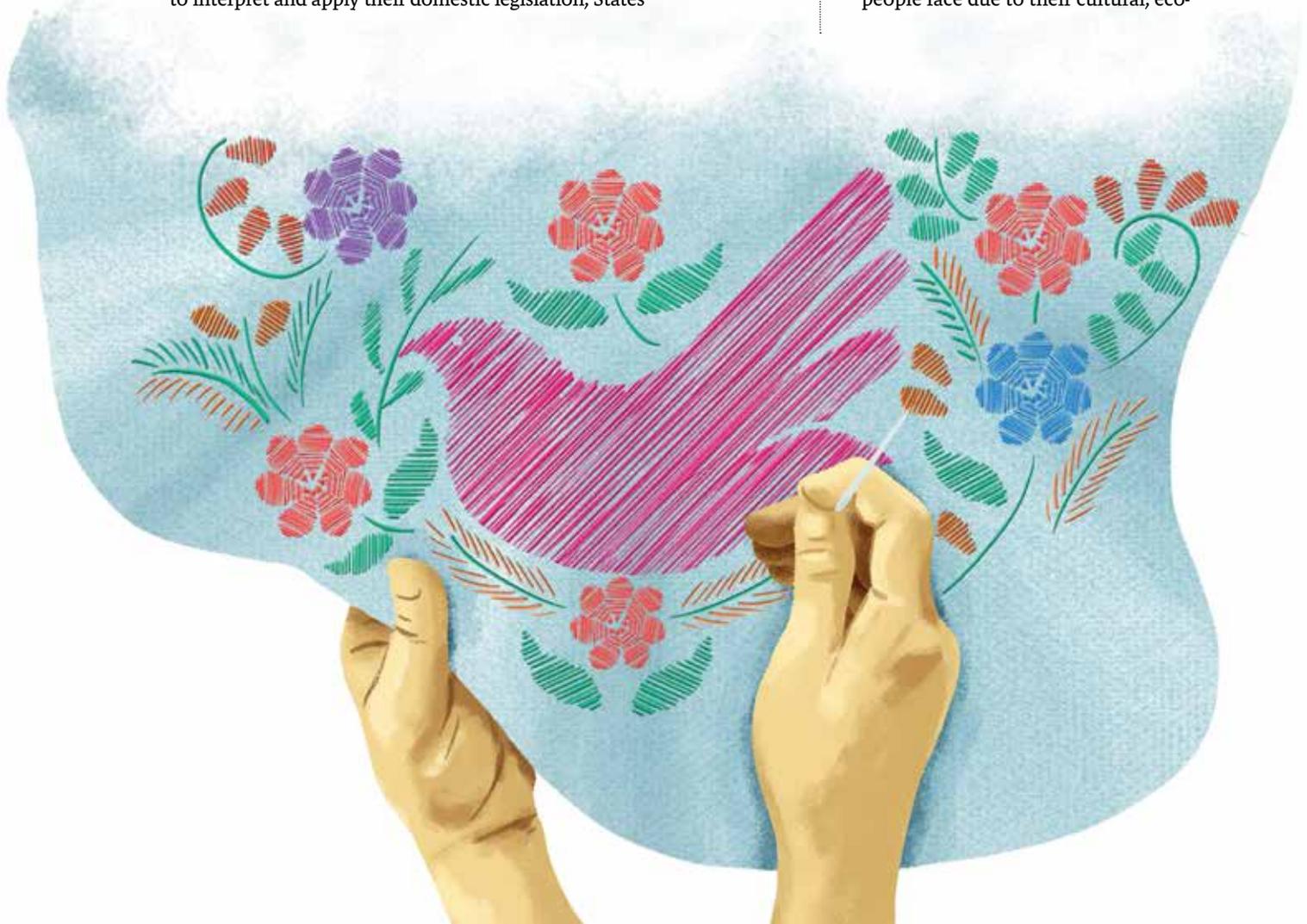
In turn, Article 40 of the Declaration on the Rights of Indigenous Peoples determines that indigenous peoples have the right to just and fair procedures for the settlement of disputes with States and other parties, to a prompt resolution of their disputes and to effective remedies for any infringements of their individual and collective rights.

The Mexican Supreme Court has recognized that the right of indigenous peoples to have full access to the State's jurisdiction means that, in any kind of judicial ruling or procedure in which they are an individual or collective party, regardless of the subject or procedural time, their customs and cultural differences must be taken into account and they should receive at all times the assistance of interpreters and advocates who are familiar with their language and culture; all of the above constitutes an excellent mechanism for the adequate defense of this historically vulnerable group.

As the Inter-American Court of Human Rights has reiterated in several cases, ensuring members of indigenous peoples and communities access to justice requires that States grant effective protection that takes into account their particularities, social and economic characteristics, their situation of special vulnerability, their customary indigenous laws, values, traditions and customs. Therefore, to interpret and apply their domestic legislation, States

should take into consideration the characteristics that make up their cultural identities and differentiate members of indigenous peoples and communities from the general population; also, [the Inter-American Court of Human Rights] has stated that States are obliged to take positive action to reverse or change discriminatory situations that exist in their societies to the detriment of a certain group of people, something which implies a special duty to protect and defend any such group.

The jurisprudential line of the Electoral Tribunal of the Federal Judiciary Branch's Superior Chamber has been characterized by the incorporation of criteria aimed at ensuring the provision of inclusive justice to vulnerable groups in order to safeguard their political and electoral rights. It has defined that the fundamental right to effective judicial protection in the case of indigenous peoples and communities is based on their ease of access to court, which is necessary to overcome the procedural disadvantages indigenous people face due to their cultural, eco-



conomic or social circumstances, the point being not to place them in a state of true and frank defenselessness by requiring they satisfy or comply with procedural burdens that are irrational or disproportionate; that the electoral jurisdictional authority must not only remedy the deficiency of reasons for grievance, but even compensate their absolute absence, with no limitations other than those derived from the principles of consistency and contradiction inherent to any legal proceedings; that specific and alternative ways of conflict resolution within indigenous peoples and communities should be favored through procedures and institutions deemed appropriate and communally valid, thus contributing to ensure full respect for their autonomy and self-determination; that the constitutional right of indigenous peoples and communities to have full access to State jurisdiction is not exhausted by the obligation to take into account their traditions and culture or by the assistance of interpreters and advocates familiar with their language and culture: instead this right must be interpreted in the light of the pro persona principle, which involves establishing special legal protections in their favor.

In this context, the Electoral Tribunal of the Judiciary Branch has a duty to create a framework of special legal protection for vulnerable groups, given their particular conditions of inequality or disadvantage, providing effective access to electoral justice; in order to ensure the former, this tribunal must take all necessary measures to ensure that vulnerable groups, including those who are members of indigenous communities, are able to access electoral jurisdiction integrally.

On March 4th, 2016, the Electoral Tribunal of the Federal Judiciary Branch amended its Rules of Procedure in order to create a Public Electoral Advocate for Indigenous Peoples and Communities. Subsequently, on March 7th, the Official Gazette published the Electoral Tribunal's *General Agreement Establishing the Organization and Operation of the Public Electoral Advocate for Indigenous Peoples and Communities*.

The Public Electoral Advocate (technically independent and operationally autonomous) is a subsidiary body of the Administration Committee, which aims to provide free advocacy services and electoral assistance in favor of indigenous peoples, communities or any individuals belonging to either in their appearances before Chambers of the Court.

Any person who becomes part of the Public Electoral Advocate must abide by the principles and criteria governing public service and federal judicial career-paths in matters related to gender, austerity, gratuity, control, economy, honesty, integrity, impartiality, independence, loyalty, legality, objectivity, rationality, accountability and transparency, paying particular attention to the following: good faith, quality, commitment, confidentiality, effectiveness, efficiency, excellence, generosity, professionalism and responsibility.

The Public Electoral Advocate also aims to assist the Electoral Tribunal in ensuring full access to electoral jurisdiction, due process and effective judicial guardianship in order to ensure the political and electoral rights of indigenous peoples, communities or any individuals belonging to either, before the Chambers of the Court. It must guarantee respect, protection and promotion of indigenous peoples and communities' political and electoral rights. Likewise, it should guide indigenous peoples, communities or any of the individuals who integrate these regarding the nature, content and scope of their political and electoral rights.

The services provided by the Public Electoral Advocate are electoral defense (consisting of the administration, representation and / or mandate to defend the political and electoral rights of indigenous peoples, communities or any individuals who integrate these, before the Chambers of the Court) and electoral assistance (which means directing, guiding or giving technical instruction on the nature, content and scope of constitutional political-electoral rights as well as any conventional or legal rights established in favor of said peoples, communities or their members).

In short, the creation of the Federal Electoral Tribunal's Public Electoral Advocate for Indigenous Peoples and Communities stands as a special legal protection that will help indigenous peoples and communities be in a position to access, in conditions of material equality, full and effective electoral jurisdiction for the defense and protection of their political and electoral rights. ■

***Dr. Janine M Otorala Malassis:** *Head of the Electoral Tribunal of the Federal Judiciary Branch's Public Electoral Advocate for Indigenous Peoples and Communities.*



GENDER PARITY REACHES LOCAL ELECTORAL BODIES

PhD Alejandra Montoya Mexia*

The declaration adopted at the first European Women in Power Summit, held in Athens on November 3rd, 1992, shows that formal and real equality between women and men is a fundamental human right; that women represent more than half the population and that democracy requires parity in the representation and management of nations¹.

In this context, parity is a critique from women to a democracy that long ignored the subordinate position of women's status in society generated by the construction of roles in a patriarchal culture, a democracy that generated unequal access to resources of all kinds for women and limited their ability to exercise and enjoy the rights recognized by formal equality. An example of this can be found both in the fields of political and electoral rights and the workplace.

The Mexican State ratified various international instruments in which the right of Mexican women to participate in our country's public affairs from any elected or appointed position is recognized under conditions of equality and non-discrimination². During 2014, the Political Constitution

of the United Mexican States was reformed under the framework of these international instruments. The principle of gender parity in federal and local legislative candidates was inserted into Article 41 of our Constitution³; under this constitutional reform, the Electoral Tribunal of the Federal Judiciary Branch (TEPJF) resolved several legal challenges related to the issue of gender parity in the nomination of candidates for the integration of state, federal and local popular representation bodies. The resolutions of these challenges led to the issuance of various case laws with the following contents⁴:



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FRAME 1

Case law/ Gender Parity In The TEPJF

REFERENCE

NUMBER	CATEGORY	THEME	FILES
3/2015	AFFIRMATIVE ACTIONS IN FAVOR OF WOMEN. THEY ARE NOT DISCRIMINATORY	Affirmative actions are special temporary measures adopted to create equality and shall not be considered discriminatory if they are reasonable, proportionate and objective. Once the purpose for which they were implemented is achieved, their application will cease.	SUP-JDC-1080/2013 and its additions SUP-JDC-380/2014 SUP-REC-936/2014 and its additions
6/2015	GENDER PARITY. MUST BE IMPLEMENTED IN THE NOMINATION FOR FEDERAL, STATE AND LOCAL POPULAR REPRESENTATION BODIES	Nominations that take parity into consideration are meant to effectively generate truly equalitarian access to elected office.	SUP-REC-46/2015 SUP-REC-85/2015 SUP-REC-90/2015
7/2015	GENDER PARITY. LOCAL DIMENSIONS OF ITS CONTENTS	Political parties and electoral authorities must ensure bidimensional (vertical and horizontal) gender parity in the nomination of local candidates.	SUP-REC-46/2015 SUP-REC-85/2015 SUP-REC-90/2015
8/2015	LEGAL INTEREST. WOMEN POSSESS IT IN ORDER TO ASK FOR GUARDIANSHIP OF THE CONSTITUTIONAL PRINCIPLE OF GENDER PARITY IN THE CANDIDATES TO ELECTED OFFICE	When it comes to legal challenges related to measures linked to the fundamental right to gender parity, any woman possesses legal interest to apply for guardianship.	SUP-JDC-12624/2011 SUP-REC-90/2015 SUP-REC-97/2015
11/2015	AFFIRMATIVE ACTIONS. KEY ELEMENTS	Thus, it follows that the Mexican State is obligated to establish affirmative actions as long as these are temporary, reasonable, proportionate and objective measures aimed at material equality.	SUP-JDC-1080/2013 and its additions SUP-REC-112/2013 SUP-JDC-380/2014
36/2015	PROPORTIONAL REPRESENTATION GENDER PARITY AS AN ALLEGED AMENDMENT OF THE ORDER OF PRIORITY IN THE REGISTERED CANDIDATE LIST	The allocation of proportional representation positions must respect the priority order set by the registered candidate list and comply with the specific rules set forth in the applicable regulations.	SUP-REC-936/2014 and its additions SUP-REC-564/2015 and its additions SUP-REC-562/2015

In line with the contents of its resolutions, the Electoral Tribunal of the Federal Judiciary Branch established in Article 64 of its Rules of Procedure that the Judiciary would have the gender parity principle as a lynchpin to be applied to administrative civil service. Clause 188 Ter of this regulatory provision indicates that the integration of the Public Electoral Advocate will be guided by the gender parity principle⁵.

On February 2nd, 2016, the TEPJF's General Agreement for Admission, Promotion and Development with Gender Parity within the Judiciary Career-path was published in the Official Gazette⁶.

This Agreement establishes that the judiciary career-path within the TEPJF is made up of the following categories:

- » **Superior Chamber General Secretariat for Agreements**
- » **Superior Chamber Assistant Secretariat for Agreements**
- » **Superior Chamber Instruction, Study and Account Secretariat**
- » **Regional Chamber Agreements Clerks**
- » **Regional Chamber Secretariat for Study and Account**
- » **Federal Judiciary Actuary**

The substantial purpose pursued by this Agreement is the implementation of a judicial career system with gender parity geared toward the TEPJF's specific activities with an established admission, promotion and development model guided by the principles of objectivity, legality, professionalism, excellence and parity, a model which would also include skill training programs, joint responsibility measures for work and family life; staggered work hours that reconcile professional activity with a full family life; and physical spaces especially equipped for breastfeeding and child care (to care for workers' Preschool and Grade school aged daughters and sons when not attending academic institutions).

This model tends to regulate cultural patterns of conduct in order to eliminate practices that generate gender imbalance or any other type of

discrimination. To accomplish this, the model is based on a series of positive actions implemented by the TEPJ in various areas, actions aimed at strengthening the participation in the judicial career-path of females and males who play caregiving roles, who will be given priority for academic scholarships, incentives, and stimuli to facilitate their training, upgrade their skills, help increase their professionalism and assist them in attaining promotions within the TEPJ.

GENDER PARITY REACHES TEPJ'S LOCAL LEVELS

On March 17th and 18th, 2016, the National Meeting of Female and Male Electoral Tribunal Magistrates organized by the TEPJ, the Electoral Tribunal of the State of Queretaro and the Mexican Association of Electoral Courts, was held in the city of Queretaro. Those attending the national meeting signed a declaration; in one of its sections, named Equal Opportunity Appointments, Staff Retention and Promotion, the following commitments were made:

- » **Generate selection processes for judicial and administrative staff based on personal merit and professional skills, respecting the principle of equality and non-discrimination**
- » **Promote women's access to judicial and administrative positions under conditions that favor inclusion**
- » **Establish or strengthen judicial and administrative career-path systems in local judicial bodies, based on the principles of objectivity, legality, professionalism, excellence, impartiality, independence, age, gender parity and equal opportunities⁷**

There can be no doubt that in order to establish or strengthen gender parity sensitive judicial and administrative career-path systems in local electoral tribunals, it will be necessary to enforce actions for their implementation, such as homogeneous training programs, joint responsibility measures for family and professional life, and staggered work schedules that allow women to contend on an equal footing (based on the principle of parity), with other aspirants to judicial and administrative positions.

This will allow effective equality with real gender perspective and parity in women's access to judicial and administrative positions in our country's electoral tribunals. ■

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¹ Available at http://www.cimac.org.mx/cedoc/ciudadania_mujeres/6_marco_jur_inst_part_pol_de_mujeres/declaracion_de_atenas_1992.pdf

² Among these international instruments we find the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

³ Available at <http://www.trife.gob.mx/legislacion-jurisprudencia/catalogo/federal/2016-constitucion-politica-de-los-estados-unidos-m>

⁴ Available at <http://www.trife.gob.mx/legislacion-jurisprudencia/catalogo>

⁵ Available at <http://www.trife.gob.mx/legislacion-jurisprudencia/catalogo/federal/2016-reglamento-interno-del-tepjf-4-de-marzo-de-20>

⁶ Available at <http://portales.te.gob.mx/normateca/acuerdo/30>

⁷ Available at http://www.te.gob.mx/declaraciondequeretaro/Declaracion_Queretaro.pdf

Does the Federal Criminal Code Violate Justice? Avoiding re-victimization

By Judge Oscar Javier Mendoza Altamirano

This analysis is meant to establish that the second paragraph of Article 259 subparagraph 1 of the Federal Criminal Code violates access to justice and effective judicial protection, with a connotation of gender-based violence, since part of this article conditions the doling out of punishment to the actual commission of a harmful act towards the victim

Firstly, I will transcribe the precept to explain the reasoning which led me to this conclusion; then, I will explain the reasons why I consider that the principle of conforming interpretation (interpreting this precept consistently with the Mexican Constitution and international treaties on Human Rights) is not enough to harmonize it with international law; finally, I will discuss the meaning within the rule that does meet those standards.

“Article 259 subparagraph 1. [Anyone] Who repeatedly besieges a person of either sex with lascivious purposes, using his/her higher hierarchical position deriving from labor relations, a student-teacher relationship, an asymmetrical power relationship at the home or any relationship involving subordination, shall be sanctioned with the imposition of up to forty days fine. Moreover, if the harasser was a public servant who used the means or circumstances that his/her position provided, he/she shall be dismissed from office.

¹ IACHR. Series C No 209. Sentence issued 23-11-2009.

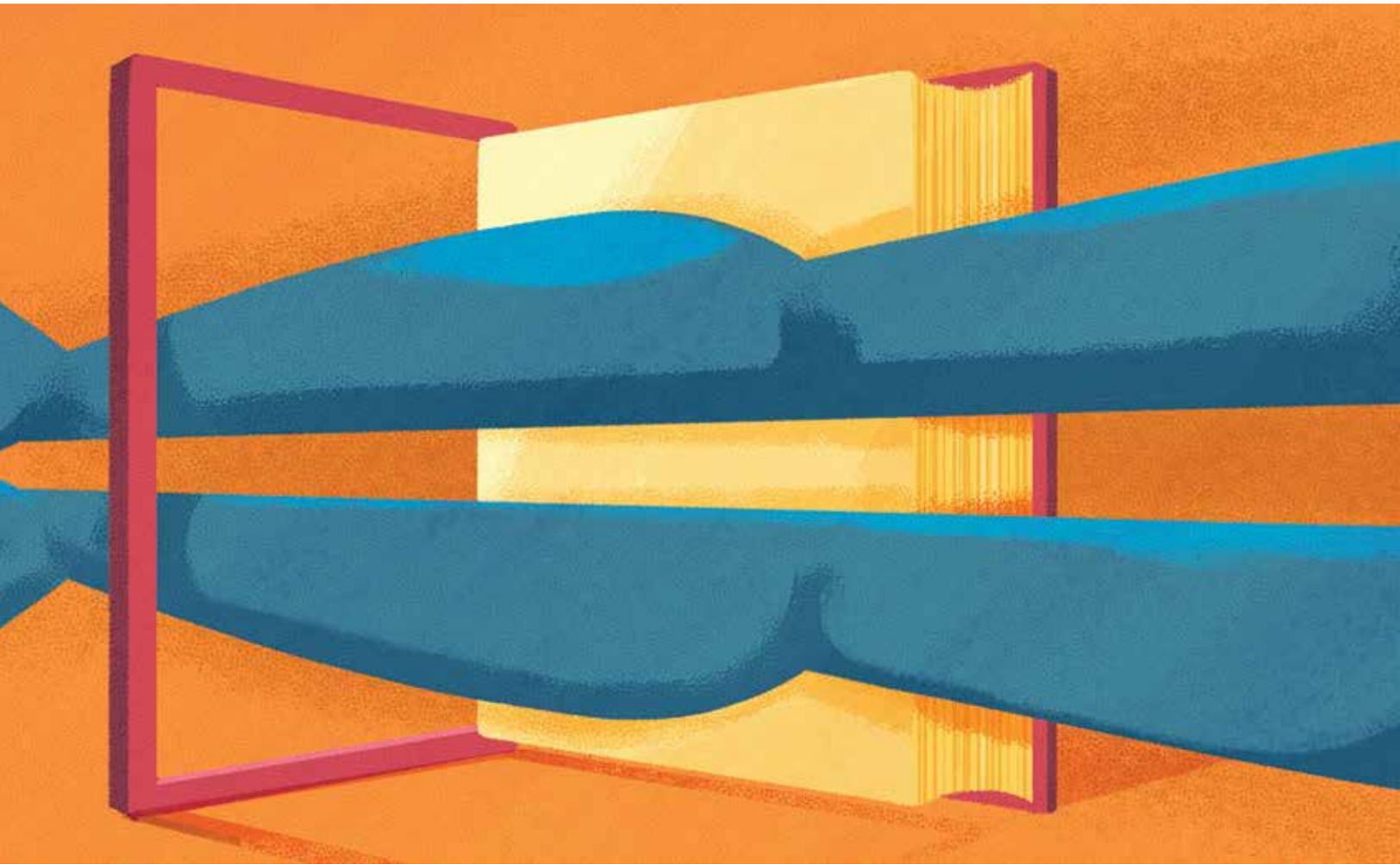
² Ferrer Mac-Gregor, E. (2012). “Principle of Conforming Interpretation and Diffuse Constitutionality Control. The new model for the Mexican Judge” in *Constitutional Review, Principle of Conforming Interpretation and Dialogues on Jurisprudence: a Latin American and European perspective*. Mexico: Porrúa and UNAM. Pg. 96.

³ Op. cit. Pg. 91-93.



Sexual harassment will only be punishable when actual harm or injuries are inflicted. Action against the perpetrator will only be undertaken at the request of the injured party.”

Sexual harassment can be found in Title Fifteenth, Chapter I, Book Two of the Federal Criminal Code; thus, this norm protects sexual and psychosexual liberty and its normal development; that is, it comprises individuals over and under eighteen and individuals incapable of comprehending such acts.



It carries a procedural requirement, as it cannot be investigated without a victim's complaint, a condition which in itself implies inhibiting the investigation of such conducts, because as has been established already, in most cases the victims of this crime are women and the imposition of this origin requirement tends to dissuade the victim due to the well-founded fear of being harmed upon complaining.

It also provides that the crime be committed against a "qualified victim", who must be subordinate to the perpetrator due to a domestic employment, student-teacher or other type of relationship, denoting a type alternately conformed and qualified, by aggravating the punishment when the perpetrator is a public servant and uses the means or circumstances provided by his/her position to commit

the crime, in which case he/she should be dismissed.

However, the sanction itself- up to a forty day fine and dismissal under aggravated circumstances- is conditioned to actual harm or injury to the victim. And it is precisely this aspect that constitutes a matter for gender perspective analysis, since the law itself is infringing the Human Rights to dignity and honor by imposing the condition that sexual harassment is punishable only when damage is caused, this damage being understood as the perpetrator's retaliation upon his/her subordinate victim.

This means [that] to punish sexual harassment, in addition to suffering besiegement and repeated lewdness, which already implies affecting the victim's psychosexual freedom, actual harm or injury occur, which can imply a failing grade when the perpetrator is a teacher who besieges his male or female students, dismissal from an employer who sexually stalks his employees of either sex... that is, the crime will be prosecuted only when the perpetrator's intent is frustrated and actual damage is done. The fact that the damage or injury can also be psychological is not neglected, but given its subjective

nature, it is clear that an opinion cannot be conclusive, as the victim may not be affected at all. This, however, does not imply that the inappropriate behavior does not violate dignity and honor.

It is therefore the legal requirement of damage or injury which is unconventional: if this is not updated, the offense will go unpunished, notwithstanding the violation of the victim's psychosexual freedom, since the impairment of the victim's dignity by a lewd act is sufficient to demand justice, without having to re-victimize the offended party by denying it due to the fact that the victim has not lost a job or failed a class, for example.

The second part of this study focuses on defining why, in this case, the interpretation is not sufficient to meet international standards on Human Rights. While any judge can accomplish this harmonization, the derogation or declaration of invalidity of the rule is reserved for competent judges only, according to each State's judicial system.

The Mexican Supreme Court, upon resolving file Various 912/2010 –derived from compliance with the conviction in the Radilla Pacheco vs. Mexico case⁴, widened this spectrum and granted ordinary Judges the faculty to not apply this “unconventional” norm in concrete cases through diffuse constitutionality control (consisting of the Constitution and constitutional precedents handed down by the national courts), but reserved the declaration of invalidity to constitutional control Judges⁵.

In turn, diffuse constitutionality control, according to Ferrer Mac-Gregor, is a compatibility test all judicial authorities should perform between national acts and standards and the jurisprudence of the Inter-American



Illustrated by Daniel Esqueda Media / Angel Sánchez

⁴ Silva Garcia, F. (2011). *Interamerican Jurisprudence on Human Rights. Essential Criteria*. Mexico: Federal Judiciary Council. Pg. 477-478.

⁵ Herrerias Cuevas, I. (2011). *Constitutional Control and its Effects on Sentencing*. Mexico: UBIJUS. Pg. 84-85.

⁶ Lemaitre J. (2008). “Violence” in Cristina Motta and Macarena Saez, *Judges’ Point of View: Gender in Latin American Jurisprudence*. Pg. 608. N/A: N/A

Court of Human Rights, as a minimal standard that may be widened through State parties' Law and jurisprudence to conform the constitutionality/conventionality block with various international treaties, instruments and declarations, in addition to reports, recommendations, general observations and supranational bodies and courts' resolutions, as long as they maximize the protection of whatever Human Right they deal with³.

In this context, the study of the standard being done tends to protect victims and prevent them from being re-victimized by having to endure the reiterated lewd siege of a perpetrator who is their superior, and being unable to obtain justice until actual damages are done or injuries happen.

This is due to the fact that most sexual harassment victims are women and the State cannot tolerate that a group historically discriminated against because of its gender be prevented from accessing justice through legal obstacles planned in the legal standard itself, whose presumption of legality leads us to believe it was created to protect said standard; however, a large number of cases of harassment go unreported, precisely for fear of the consequences arising thereof⁴, a fact which in itself implies a case of structural discrimination, since a consummated behavior can become atypical by the subsistence of sexual harassment without punishment for the perpetrator, thanks to the inexistence of material damages or injuries.

So, is the principle of conformity interpretation enough to harmonize domestic legislation and international standards? It is not necessary to apply the normative portion that adds an external aspect to the punishable offense? Before answering [either question,] psychosexual freedom must be understood as the legal protected interest, for the damage or external injury required by the type implies an affectation in the school, home or work environment that certainly exceeds the ratio of the standard, making the right of victims nugatory to an effective remedy, regardless

of the violation to their dignity and honor, by forcing them to tolerate criminal conduct until they suffer the damages or injuries that legislation requires to mete out punishment.

Another aspect to be analyzed involves asking if any of the Human Rights of the accused is violated with the non-application of the normative portion of the rules is being discussed. The answer is no, because inapplication only eliminates a requirement that re-victimizes the victims, safeguarding their right to an effective remedy and to reparation without aggravating the punishment.

Hence, in our opinion, the exercise of restricted conventional control is necessary to prevent such violence, mostly against women, from being legally consented, since their invisibility has created regulations considered beneficial for them when in fact they are harmful, such as the crime being discussed.

Women have the right to live under conditions of equality, enjoyment and protection of all rights and fundamental freedoms in every possible way: non-discrimination, better health, legal conditions and fair and favorable labor conditions – especially as refers to equal legal protection- established in articles 3,5 and 23 of the Universal Declaration of Human Rights, 7, 9 and 26 of the International Covenant on Economic, Social and Cultural Rights; 6 and 7 of the International Covenant on Economic, Social and Cultural Rights; and 5 thru 11 of the American Convention on Human Rights.

Thus, in unrestricted compliance with the principles of universality, interdependence, indivisibility and progressiveness, to harmonize constitutional law (consisting of Articles 1, 4, 16, 17 and 133 of the Constitution) with the international standards that enshrine the rights mentioned, so that victims of sexual harassment can enjoy effective judicial protection, it is necessary to ignore the portion of the rules being analyzed, in order to ensure constitutional/conventional supremacy and respect for Human Rights⁵, and hence avoiding that, on a structural level, "battered women, upon asking for State protection, end up being forced to conciliate with their long-time aggressor"⁶. ■

***Judge Oscar Javier Mendoza Altamirano:** *La Paz, Baja California, Center for Criminal Justice District Court.*



a waste of teaching time because, ultimately, the goal of every woman was quite simply to marry.

Criminal Matters are crude, cruel and sometimes shocking. How does a woman of that time decide to devote herself to criminal matters in the circumstances of “invisibility” and prejudice that you told us about?

Criminal law allows its dedicated practitioner to have the opportunity to learn about human beings in depth, to discover people’s dark and luminous side. I think that is one of the most rewarding lessons that anyone can learn ...

What were your impressions at that time, as a female pioneer working in a task reserved exclusively for men?

Women of my generation have to commit an act of justice and recognize the courage displayed by Don Fernando Roman Lugo, who had to face the terrible problem of the awful reputation of the Public Prosecutor’s Office, that he headed. Brave as he was, he convened a group of women to take charge of Public Prosecutor’s Offices... [the first thing that came into his mind] was to give value to women because of their image, their honesty and dedication. We women were placed in different areas of Public Prosecutor’s Offices.

The first problem we had to face was how physically dirty the premises were, full of filth, of garbage. We had to wash the desks, to clean up the place, and we also had to communicate trust- and this was not accomplished just by being female- to the citizen that came in demanding justice.

The first shocking thing that happened was that the staff could not believe their boss was a woman, ridicule arose from that fact. [Also] we were put to the test every time we had to deal with a corpse, [the staff] wanted to see if we were able to withstand the impact of dealing with a dead person who had been violently deprived of life... It was a challenging but wonderful time. After seeing the manifestation of the darkest side of a person committing a crime, I came to the loving shelter of my home, my children, and my house. It made me forever appreciate the simple life, a life full of love because it is full of the tenderness, affection and protection that are home...

You are free when you do not have to depend on anyone for your subsistence... whoever receives must also heed orders [whoever loving they are].

As an official at the Public Prosecutor’s Office, how did you feel dealing with litigants who came in, with the people who were detained, with those presented as witness or with the policemen themselves, when you became a woman who literally “wore the trousers”? What made you take that decision?

I always thought that women’s labor conquests should also be reflected in their clothing. The trousers issue came up when Don Fernando Roman Lugo had the good sense to separate those accused of intentional crimes from detainees whose offenses arose from traffic incidents. All the women that he had come to trust, of whom he had a good impression due to their performance as Public Prosecutors, were called to integrate a new body, the Traffic Crime Bureau (OFIDELTRAN). So there we all went... and then [the resident] Traffic experts wanted us to confirm their verdicts and expert reports sight unseen. The first thing we women did (we all agreed on that), was decide that we would never accept an expert opinion if the scene of the crime was not inspected both by the Traffic expert and ourselves. [It sometimes happened that] the Traffic expert indicated a ten-meter skid mark, while we could plainly see that the distance was only a meter. And then the expert would tell us to bend over and measure for ourselves if we did not accept the report. Since measuring the skid mark is a test to determine the speed of a vehicle, from that moment on all of us wore trousers so that we could bend down freely and personally check on what the experts told us.

Besides that, I always had the habit of receiving litigants who wanted to speak to me in spaces that were open to the public. I also always kept my hands behind my back, because, painfully but unfortunately, cases where lawyers, interns or family members of those involved in a criminal drama claim to have bribed a Judge or a Public Prosecutor’s Office official are very recurrent and on many occasions that is just not true ... hence, I decided on this behavior as the norm.

You were the first female head of the Public Prosecutor's Office in Mexico City... indeed, its first female head nationwide. You were also the only woman that held a position belonging to the sitting President's Cabinet. How did you feel about being the only female in this situation?

It was a very enriching experience, being the only woman among men with great professional qualities, but the responsibility was enormous. When the phone rang at night it did not bode well, the situation was bound to be serious. I had to answer coherently even if I was very deeply asleep. I had to wake up quickly from a deep slumber to hear and process the news, make decisions and talk and think coherently. Next to my bed I kept a basin of cold water; before answering the phone at night I washed or wet my face with that cold water in order to wake up and be very alert.

How wonderful, always managing to be aware of what you had to do and responding to the best of your abilities.

I had to, as the first female Public Prosecutor. If my actions were misguided or simply apathetic, I would not only betray myself, but also my country and the women who wanted to make their way into places formerly reserved for men.

Victoria Adato has been a pioneer among workingwomen in Mexico; she also reached the Mexican Supreme Court as Justice. What can you tell us about your arrival at the Supreme Court, a place also intended for men, an institution that was also hard to break into?

Thanks to Doña Cristina Salmoran and Doña Gloria Leon Orantes, the first women there, I found a welcoming atmosphere. The problem of women in public office or decision-making positions has been something that implies overcoming centuries old cultural patterns. Emotionally and as a woman I am very pleased that I came to integrate the Third Chamber, the Civil Chamber. That was a big challenge because at the time we also dealt with Family matters.

I especially remember the case of a peasant couple that spent their savings to seek justice. On the death of their daughter, they were trying very hard to raise their grandson, a well-groomed little boy with good grades, well fed and cared for. When the child was 7 years old,

his biological father, who did not know the boy or been involved in his upbringing, returned from the United States intending to take the child with him as an illegal immigrant. Family law stipulated that, when the parents were unavailable, care, custody and parental rights fell first to the paternal and then to the maternal grandparents. I took a project, where the central themes were the best interests of the child, rather than those of the parent who claimed custody, to the Third Chamber. Although the father evidently had rights as such, we structured the argument - that is commonplace today, but did not exist at that point in time- of the prevalence of the child's best interests.

How to reconcile this professional brilliance with a family life?

A mother who works too much is tormented by guilt in her throat, in her heart, [a guilt born of] not having enough time to give to her children so that they can become well-rounded and happy beings. There is never enough time to give them, more is always required. Thus, the only recourse left is to sacrifice sleep, to work during the very early mornings and to rob her children of a little bit of the time that legitimately, human and lovingly belongs to them.

How does a bright professional woman who has a very structured family, who has written books and essays, given lectures, who is also an extraordinary cook and an avid poetry reader, reconcile everything in her life?

I concentrate my five senses on what I'm doing at the time (for example, on cooking when I'm in the kitchen), and that helps reduce the pressure a bit.

What would be your message to women?

You are free when you do not have to depend on anyone for your subsistence ... whoever receives must heed the giver's orders, whoever loving they are. As a woman, the only road to freedom is to get an education and achieve the goals you set for yourself, using constant effort and self-improvement as your instruments. ■

** Interview done to Former Supreme Court Justice Victoria Adato Green by Supreme Court Justice Margarita Beatriz Luna Ramos for "More Than a Story" television program aired on March 8 of 2016.*

GENDER PERSPECTIVE:

IMPRISONED WOMEN

***MA Montserrat Matilde Rizo Rodriguez**

Both Mexican law and the international Human Rights protection system have instruments that seek to guarantee the rights of imprisoned women or those accused of a crime.

I. MINIMAL RIGHTS

Writing about women and gender is like writing on a blank sheet, both in regards to doctrine and to the legal system itself; this continues to be so despite the constitutional Human Rights reform of June 10th, 2011, that amended the second paragraph of the Mexican Constitution's eighteenth article to modify the Mexican prison system, which now must be based on respect for Human Rights, work related training, education, health and sports as a means to achieve the social reintegration of the sentenced person, thus ensuring authentic rehabilitation. It also establishes that women should serve their sentences in locations completely separate from men's.

When a right is established in the Constitution, citizens have a justified claim to demand correlative obligations from the State, which, in this case, will be centered on the rights of imprisoned women. Thus, the State's obligations on these rights derive primarily from Articles 1 and 133 of the Mexican Constitution, which establish the "conventionality block" which is binding for legal operators of either gender in the country.





In that sense, it should be pointed out clearly that the rights of individuals (except for those rights expressly restricted by a judicial sentence) are not suspended upon imprisonment. Due to this fact, the State is obliged to guarantee the fundamental rights of any persons deprived of his/her liberty, as it must do for any other individual. A person whose rights are violated within a prison is legally entitled to the same protection as a person whose rights are violated outside such a facility². The State may deprive people of their freedom, but it is in no way entitled to deprive them of their right to life, to food, to work, to education, to health and proper housing, among other fundamental Human Rights.

Also, one should note that Constitutional Articles 1 and 4 establish that the constitutional rights to equality and non-discrimination, and particularly to equality between women and men, are basic and unalienable rights. Article 1 also spells out the obligation of all authorities to promote, respect, protect and guarantee Human Rights and human dignity³ in accordance with the principles of universality, interdependence, indivisibility and progressiveness, and the pro persona interpretation mandatory for all legal operators, especially as applied to imprisoned women.

In this regard, the mainstreaming of gender perspective “represents a paradigm in public policy as it means transforming a social order based on exclusionary gender and power relations and thus achieving comprehensive changes in the status of women and men in their advance toward equality⁴”. The prison system should also be open to this paradigm shift that can identify and counteract asymmetric power situations, contexts of structural inequality based on stereotypes related to sex, gender or the sexual orientation of individuals deprived of their freedom.

II. IMPRISONED WOMEN IN MEXICO CITY

Regarding women imprisoned in Mexico City, one should take into account, firstly, that fraction IX, Article 3 of Mexico City’s Law on Women’s Access to a Life Free of Violence⁵, considers them women in a vulnerable situation. From our point of view, this vulnerability occurs because of situations like their greater exposure to torture, abuse, family abandonment and social stigma, among others, so that we can validly say that the law should be applied in a reinforced way for female prison inmates. According to Article 2 of the same law, legal operators in Mexico City are

required to establish principles and criteria that recognize, promote, protect and ensure the right of women to a life free of violence from the perspective of gender oriented public policies, which will progressively mitigate the institutional violence, discrimination, sexism, misogyny, stereotypes and lack of gender perspective that women prisoners are subject to, but most importantly, will increase public servants' training to comply with international standards⁶.

It is noteworthy to mention that the applicable legislation on the prison system regarding Mexico City's Law on Detention Centers is contained only in articles 53, 54, 70 and 121 (all related to women prisoners), articles that establish what is already stated by the Constitution: separation between men and women, and the fact that security personnel inside women's detention centers whose functions require physical contact with women prisoners and women visitors, should be female only.

For its part, Mexico City's Law on Execution of Criminal Sanctions and Social Reintegration dedicates Articles 26, 27, 72, 75, 96 and 103 to imprisoned women, generating the so-called "advice on sexual freedom rights", which consists of having specialized staff to support and guide female prison inmates in recognizing and denouncing acts of aggression, harassment and sexual harassment, as well as pregnant inmates' right to adequate nutrition.

III. INTERNATIONAL STANDARDS

The international system for the protection of Human Rights has implemented a number of instruments in order to guarantee the rights of persons deprived of liberty, such as the Standard Minimum Rules for the Treatment of Prisoners and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas; however, in the particular case of imprisoned women, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bang-

kok Rules)⁷ represent, perhaps, the most important step towards acknowledging the gender specific needs of female prison inmates regarding their sexual and reproductive rights and introducing the pertinent guarantees to reduce the risk of ill treatment and torture they might face.

Naturally, the obligation to implement training for prison staff to ensure the rights of women and their children in prison, training which must have a gender perspective and be respectful of Human Rights (Rules 29-35), is also contemplated. A special section is reserved for teenagers and special categories of female prisoners (Rules 36-41), as well as for the implementation of activity programs that take into account their sex specific needs (Rule 42). The section on post-incarceration relations and assistance, in particular Rule 45, which establishes the obligation of the prison authorities to provide (as much as possible), options such as home visits, "open" prisons, halfway houses and community-based programs services to female inmates in order to facilitate their passage of imprisonment to freedom, reduce any stigma and restore contact with their families as soon as possible, are worth noting.

In addition, Rules 53 to 56 establish the rights of female prisoners of different nationalities, those belonging to minority groups and indigenous peoples, and women in preventive detention. Finally, these rules consider non-custodial measures and the proper research, planning and evaluation of crimes committed by women, as a basis for the effective planning and development of programs and public policies destined to meet the social reintegration needs of women deprived of their liberty (Rule 67).

IV. CONCLUSIONS

Based on a cursory analysis of the various provisions of Mexican law, we can conclude that legal practitioners have a pending agenda with the constitutional and international mandate to harmonize the applicable regulations that ensure the rights of female inmates in different Mexico City prisons.

¹The Mexican Supreme Court established that all fundamental rights as a whole constitute the regularity parameter that governs the actions of all legal operators. Thus, the rights contained in any treaty that the Mexican government has ratified are enforceable as long as they do not contravene the Constitution, so that, rather than speaking of hierarchy, we would have to refer to a block of conventionality, remembering that when a wrongful act is updated the sentence is not only for the legal operator who updated it, but for the entire State apparatus. Extended text of the Supreme Court's Full Court resolution in contradiction of Thesis 293/2011, in the presentation by Minister Arturo Zaldivar Lelo de Larrea, September 3rd, 2013, Pg. 64-66. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=129659>

² Perez Correa, C. (2011) "From Constitution to prison. Fundamental rights and the penitentiary system", in M. Carbonell y P. Salazar (coords.), *Human Rights constitutional reforms: a new paradigm*. Mexico: UNAM-IIIJ. Pg. 223.

³ Weekly Federal Judiciary Gazette (October 2011) 1st. CCCLIV/2014 (10a.), First Chamber, Book Eleven, Volume I, Tenth Epoch, Isolated Thesis (Constitutional) HUMAN DIGNITY. [IT] CONSTITUTES A RULE WHICH ENSHRINES A FUNDAMENTAL RIGHT IN PEOPLE'S FAVOR AND NOT A SIMPLE ETHICAL STATEMENT. Pg. 602.



A starting point for such harmonization would be to include (in the applicable regulations) the international standards contained in the Standard Minimum Rules for the Treatment of Prisoners and the Principles and Best Practices on the Protection of Persons Deprived of Freedom in the Americas, but above all, to include the content of the UN Rules for the treatment of women prisoners and non-custodial measures for women offenders (the Bangkok Rules) to the Mexico City prison system, in order to avoid the violation of the fundamental rights of women imprisoned in Mexico's capital.

In the short term, an action protocol with gender perspective for this prison system could be developed, following the example of the Federal Judiciary⁸, as legal operators are required, within their respective powers, to intersectionalize gender perspective in their actions⁹, which, among other things, would involve establishing specific guidelines in the prison system to achieve gender

equality, positively impacting its structures, regulations, procedures, programs, processes, actions and practices.

This, without losing sight of the fact that equality in fundamental rights is defined as the equal right to the claim and the protection of individual identity, due to the identical value associated with all the differences that make each person an individual different from all others and each individual a person like everyone else¹⁰. ■

***Ma. Montserrat Matilde Rizo Rodriguez** /Mexico City's Human Rights Commission Second Inspector General

⁴ Barquet, M. and Benitez Silva, A. (2012). *The intersectionality of gender perspective: a strategy towards equality*. Mexico: Mexican Supreme Court, Electoral Tribunal of the Federal Judiciary Branch, Mexico City's Electoral Institute. Pg. 26.

⁵ Weekly Federal Judiciary Gazette (March 2014). Tenth Epoch, Register 2005800, FIRST CHAMBER, Isolated Thesis, Book Four, Volume I, Constitutional Matters, Thesis: 1st. lxxxv/2014 (10a.) WOMEN'S ACCESS TO A LIFE FREE OF VIOLENCE IN MEXICO CITY. CONSTITUTIONAL OBJECT OF SAID LAW. MEXICO: SCJN. Pg. 529.

⁶ Perez Vazquez, T. (March 2014) "Institutional violence against women", in *Dfensor. Revista de Derechos Humanos*. Number 3, Year XII. Mexico: CDHDF. Pg. 56-62.

⁷ Adopted by the UN General Assembly on December 21st, 2010, A/RES/65/229.

⁸ SCJN (2013) *Judicial Decision-Making with a Gender Perspective Protocol*. Mexico: SCJN

⁹ Weekly Federal Judiciary Gazette (Friday, April 15th, 2016) Tenth Epoch, Register: 2011430, FIRST CHAMBER, Constitutional Matters Case law. Thesis: 1a. /j. 22/2016 (10a.) ACCESS TO JUSTICE UNDER CONDITIONS OF EQUALITY. ELEMENTS TO JUDGE WITH GENDER PERSPECTIVE. Mexico: Mexican Supreme Court

¹⁰ Ferrajoli, L. (2001) Rights and guarantees. *The law of the weakest*. Madrid: Trotta. Pg. 76.

Mexican Association of Female Judges

Its story and objectives

Currently, the Mexican Association of Female Judges has over 140 members nationwide.



During March 2012, concerned by the slow progress of gender equality in Mexico and its culture, a group of seventeen female federal Judges decided to found the Mexican Association of Female Judges (AMJAC), with the aim of working for the rights of women both inside and outside the Federal Judiciary, as well as for the rights of individuals (whether women or men) in vulnerable situations.

In this context, its functions are serving as a platform to develop capacities and assisting Federal Judiciary Council and Mexican Supreme Court authorities regarding public policies that incorporate constitutional reforms on Human Rights, as well as seeking to create equal opportunities for men and women, eliminating gender stereotypes and attempting to resolve the situations that cause social, family and work inequality.

Regarding this second aspect, the AMJAC implements strategies to meet the social commitment of supporting people who are in a state of vulnerability, either due to their economic status, their belonging to a certain social group or their state of confinement. Actions taken include various social campaigns that primarily involve the support and contribution of those working in the Federal Judiciary and that tend to improve the living conditions of vulnerable individuals.

In the four years since its founding, [the AMJAC] has addressed various issues affecting women both in their individual status and in their situation as public servants: domestic violence, sexual harassment, violence in social networks, mobbing, preventive health care for



working women, violence in dating, addiction problems in women, human trafficking, victims' rights, protection orders and self-harm in adolescents, among other matters. There have also been various actions and proposals related to the issues of women's access to positions of greater responsibility, gender sensitive allocations and reallocations, the creation of nursing rooms for working mothers, child development centers' schedules, the Federal Judiciary Institute's courses and the granting of parental leaves.

These actions have been carried out by preparing and distributing leaflets, holding conferences, cinema forums and training workshops, publishing material in newspapers, disseminating information through social networks and participating in Judicial Channel programs, as well as through support for campaigns and programs implemented by Federal Judiciary bodies responsible for gender equality issues, which have enabled the AMJAC to participate and be included in the meetings held by the Federal Judiciary's Gender Equality Inter-institutional Committee, thus achieving direct dialogue with the appropriate authorities.



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Currently, the AMJAC has over one hundred and forty members throughout the entire Mexican Republic, members of the Federal Judiciary, the Agrarian High Tribunal, the Federal Tax and Administrative Justice Tribunal, Mexico City's and the State of Mexico's Contentious Administrative Tribunals, and the Justice High Court of the State of Colima. We are adding [more and more women] every day.

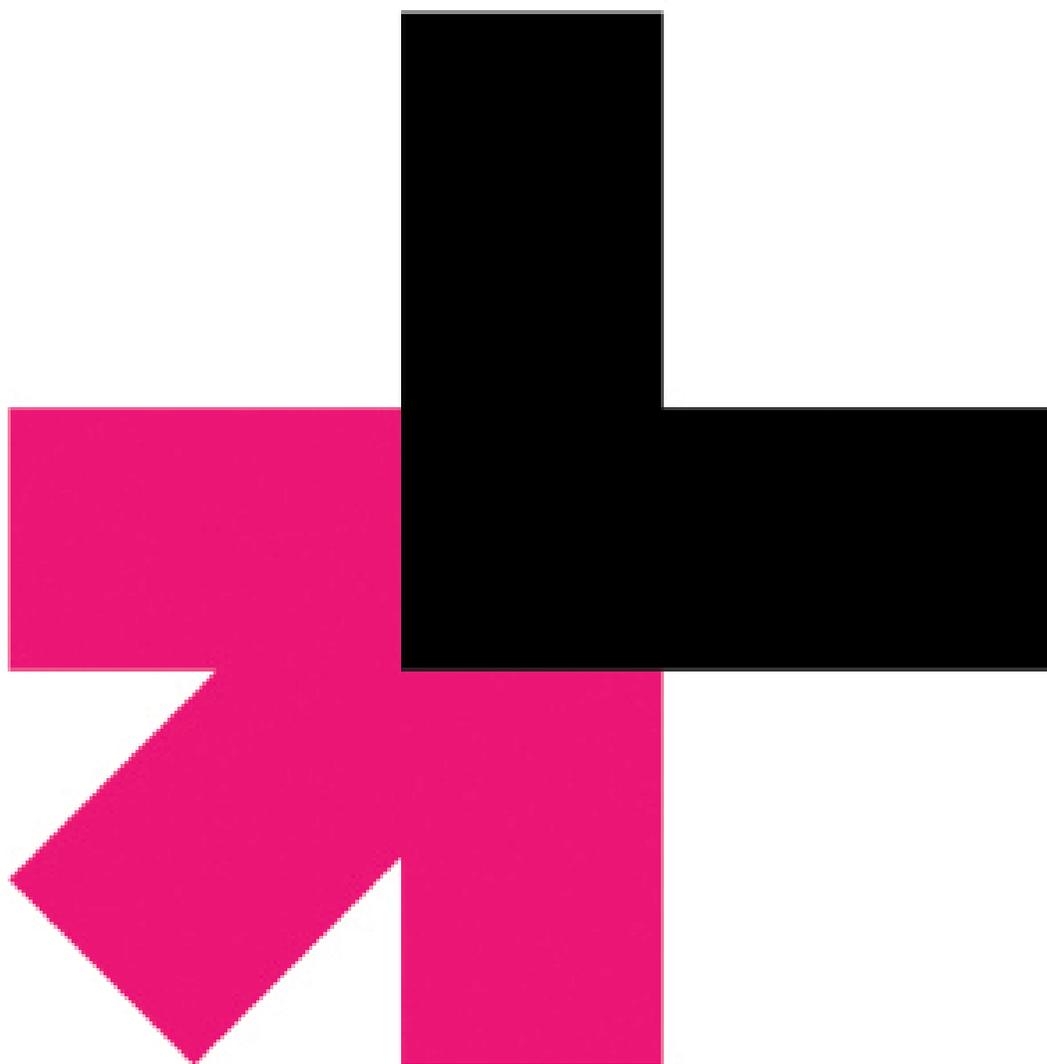
Another primary objective for AMJAC is to achieve an inclusive dialogue, not only with women, but also with men from different law enforcement, academic and social areas. That is why the AMJAC Friends Network was created, to conduct a joint and coordinated effort between women and men in order to achieve proper equality and the necessary balance for the adequate development of all people.

This last March, a new Board, consisting of former

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Magistrate Adela Dominguez Salazar, President; Magistrate Lilia Monica Lopez Benitez, Secretary; Judge Armida Buenrostro Martinez, Treasurer; and Magistrates Clementina Flores Suarez and Isabel Alcala Carolina Valenzuela as spokespersons, took office. The current board considers it important to focus most actions on gender awareness and training in the areas within its reach, in order to build the bridges that will tear down the barriers that prevent women from making full use of their rights. ■



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