

"Women's equality must be a central component in any attempt to solve the world's social, economic and political problems".

Kofi Annan



CONSEJO DE LA JUDICATURA FEDERAL

Igualdad

INTERVIEW

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Editorial

Strengthening Gender Equality through Reform

As 2013 ended, the Federal Judiciary's Organic Law was reformed with the aim of strengthening gender equality at the Federal Judiciary Counsel (CJF). This regulatory amendment orders crosswise incorporation of gender perspective into all of our institution's functions, programs and actions.

In other words, this reform increases the legitimacy of the gender equality policy that is implemented in the Counsel, but also extends its objectives and demands of better communication and coordination between administrative areas, in order to identify the most efficient alternatives to introduce gender perspective in all its activities.

To the CJF, equality is embodied in three specific areas: 1) that the issuance of resolutions with a gender perspective will become a visible and common practice; 2) increasing the number of female judges and magistrates, but above all reversing the trend of younger generations of judges and magistrates having proportionally less women than older generations; and 3) incorporating a culture of respect into the daily life of our institution.

This second issue of *Igualdad* magazine features an article that refers to this reform, shifting attention back to the distance that exists between the normative framework of rights and the reality that women live in different environments (as homemakers, potential sexual crime victims, employees in an unequal labor market, etc.). On the other hand, it presents examples of efforts in favor of equality such as the experience in UNAM, the story of a training program implemented in the CJF and new discussions on the subject. Finally, it includes an interview with Minister Olga Sánchez Cordero, a pioneer in the struggle for equality in the field of law enforcement. We hope that this issue is of interest to our readers.

**General Directorate of Human Rights,
Gender Equity and International Affairs
of the Federal Judiciary Counsel**



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Sentence revoked for woman who lost children’s custody as a result of abandonment

The First Chamber of the Mexican Supreme Court (SCJN) resolved in the month of October, by majority of votes, the direct appeal in review 2655/2013. In doing so, it revoked a court sentence that denied a woman’s appeal. This woman, who abandoned her marital home for more than six months, was sentenced to the loss of custody of her four minor children, in a divorce case in which no analysis based on gender perspective was performed.

This is so, since the court omitted studying the complainant’s arguments, who claims that when assessing evidence and facts, the court did not take into account the gender-based violence she suffered and which, according to her, justifies abandonment of both the family home and of the duties implied in parental custody.

In resolving this, the First Chamber held that women’s rights to a life free from discrimination are constitutional, and it is thus necessary to analyze whether the situation of violence that was claimed at the time of the complaint influences the valuation and appreciation of the evidence in the case. This, in turn, will allow this analysis to determine whether the articles of the Civil Code of the State of Guanajuato, which decreed divorce and loss of custody, were correctly applied.

The First Chamber returned the matter to a competent court, which will analyze the complainant’s concepts of violation and thus the legality of the judicial resolution.

It should be mentioned that in the present issue, the minors father sued for necessary divorce and loss of maternal custody; authorities in charge ruled in this man’s favor. The complainant, after promoting several resources, filed an appeal. Its denial is the reason of the present review.

Source: Suprema Corte de Justicia de la Nación (2013), Sistema de Consulta de Comunicados de Prensa, number 214. Retrieved from <http://www2.scjn.gob.mx/red2/comunicados/comunicado.asp?id=2734>

SCJN Theses with Gender Perspective

ISOLATED THESIS LXXXV/2014 (10TH). WOMEN’S ACCESS TO A LIFE FREE OF VIOLENCE IN THE FEDERAL DISTRICT. CONSTITUTIONAL OBJECT OF THE RELATIVE LAW.

Article 122, first base, fraction V, subsection i, of the Political Constitution of the United Mexican States, establishes as faculties of the Federal District’s Legislative Assembly the abilities to regulate civil protection, civic justice on police and government misdeeds; security services provided by private companies; prevention and social rehabilitation; health and social assistance; and social prevention... Hence, the object of the Women’s Access to a Life Free of Violence Act in the Federal District, in terms of its 2nd article, consists of establishing the principles and criteria that, from a gender perspective, guide public policies to recognize, promote, protect and guarantee women’s right to a life free of violence, as well as set up Inter-agency coordination to prevent, sanction, and eradicate violence against women.

Resolution in review 495/2013. December 4th, 2013. Five votes.

ISOLATED THESIS LXXXVII/2014 (10TH) WOMEN’S ACCESS TO A LIFE FREE OF VIOLENCE IN THE FEDERAL DISTRICT. THE ARTICLES 62 AND 66, FRACTIONS I TO III, OF THE RELATIVE LAW, WHICH PROVIDE FOR, RESPECTIVELY, MEASURES AND EMERGENCY PROTECTION ORDERS, DO NOT VIOLATE ARTICLE 16, PARAGRAPH THIRD OF THE FEDERAL (MEXICAN) CONSTITUTION.

The aforementioned legal provisions, by establishing measures and emergency protection orders, in the matter of violence against women, do not violate article 16, paragraph third, of the Political Constitution of the United Mexican States, in the preceding and subsequent text of the reform published in the Official Gazzette on June 18th, 2008. Such measures are acts of urgent application according to the best interests of women who

are victims of violence, when their physical and psychological integrity, liberty or security (as well as those of indirect victims of violence) are at risk; in addition, they establish that not only a criminal judge is capable of dictating them, but also empowers civil or family matters jurists; hence, measures and orders that include reference numerals do not have to be dictated under the conditions and requirements established by the constitutional precept for arrest warrants, because the object and purpose of the two figures are completely different.

Resolution in review 495/2013. December 4th, 2013. Five votes.

ISOLATED THESIS XC/2014 (10a) WOMEN’S ACCESS TO A LIFE FREE OF VIOLENCE IN THE FEDERAL DISTRICT. EMERGENCY PROTECTION ORDERS AND THE MEASURE FOR THEIR COMPLIANCE PROVIDED, RESPECTIVELY, IN THE ARTICLES 66, FRACTIONS I TO III, AND 68, FRACTION I, OF THE RELATIVE LAW, SHOULD NOT HOMOLOGATE OR RELATE WITH A SEARCH WARRANT.

Emergency protection orders and the measure for compliance to which the cited precepts refer to must be analyzed in the light of article 16, first paragraph, of the Political Constitution of the United Mexican States, which provides the right to inviolability of the home, and not in reference to the eleventh paragraph. That is, the search warrant has a specific purpose, as it permits taking persons into custody and searching for certain objects. On the other hand, emergency protection orders are issued when physical or psychological integrity are at stake, or when the liberty or security of the victim or indirect victims that live in the same household as the aggressor are threatened, and may be requested before reporting a crime or beginning prosecution, as might happen in civil or family matters; hence, by not being exclusive to criminal matters, emergency protection orders and the measure for their compliance cannot be homologated or related to a search warrant, as their purpose and object is not taking individuals into police custody.

Resolution in review 495/2013. December 4th, 2013. Five votes.

Atala Riffo and girls vs. Chile

(Inter-American Court of Human Rights, February 24th, 2012)

The present case relates to the alleged international responsibility of the State for the discriminatory and arbitrary interference in her private and family life suffered by Mrs. Atala due to her sexual orientation in the judicial process that resulted in the loss of custody over her daughters. It is also related to the supposed non-observance of the girls’ superior interest, whose custody and care were determined in breach of their rights and on the basis of alleged discriminatory prejudices.

Mrs. Atala married Ricardo Jaime López Allendes, with whom she had three girls. In March 2002, Mrs. Atala and Mr. López Allendes decided to end their marriage by means of a de facto separation. As part of this separation, they established by mutual agreement that Mrs. Atala would keep the girls’ custody, with weekly visits to their father’s house. In November 2002, Mrs. Atala’s sentimental partner started living in the same house as Mrs. Atala, her three girls and older son.

On January 14th, 2003, the girls’ father sued for custody before Juvenile Court, claiming that the “girls’ physical and emotional development would be seriously endangered” if they continued under their mother’s care. He also alleged that Mrs. Atala “was not capable of watching over and caring for the three girls, since her new sexual orientation, in addition to her lesbian living arrangements, were having harmful consequences in the minors’ development, since their mother had not shown any interest in ensuring and protecting the girls’ integral growth”. The issue revolved around the right to equality, privacy and judicial guarantees.

The Court decided that the best interest of a child is a legitimate purpose, and that neither the mother’s sexual orientation nor a closed, traditional concept of family could serve as an ideal measure to restrict children’s rights, so it ruled that the Chilean State violated the rights to equality, non-discrimination, and privacy in regards to personal life. Thus Chile is internationally responsible, and must be forced to take the measures necessary to comply with this resolution.

Within the frameworks of the Universal System and the Inter-American System, sexual orientation has qualified as one of the categories of prohibited discrimination. The Court noted that judges and bodies linked to justice administration at any level are obligated to exercise ex officio control of conventionality, thus prohibiting all forms of discrimination regarding an individual’s sexual orientation, as stipulated in the American Convention on Human Rights.

NOVELTIES AND EVENTS

103 Women's Day
anniversary

Commemorating the 103 International Women's Day anniversary on March 8th, and as part of the Federal Judiciary's Gender Equality Inter-agency Committee, reflection and analysis panels were conducted at the Universidad del Claustro de Sor Juana's auditorium. These were attended by Justice Olga María del Carmen Sánchez Cordero de García Villegas, Counselor Daniel Francisco Cabeza de Vaca, magistrate José Alejandro Luna Ramos (President of the Federal Judiciary's Election Court) and the Magistrate of the Court itself, María del Carmen Alanís Figueroa. The event was hosted by Carmen Beatriz López-Portillo, Universidad del Claustro de Sor Juana's director. Three

panels were held with topics related to the history of the struggle for equality between women and men. The first panel, "Empowerment of women", shared experiences of successful Mexican women, who have distinguished themselves through their struggle for structural and substantial equality between men and women. The second panel addressed the theme "Gender and history" which covered the life of Sor Juana Inés de la Cruz and her poems, becoming a sort of

historical tour of feminist movements in the 20th century. The third and last panel was entitled "Feminist economics in the development of public policies" and it included a lecture about women's unpaid workload. A relevant point that arose is that while women spend 65% of their working time doing non-remunerated activities, especially domestic work, caring for children or other family members, men spend only 21% of their working time on similar tasks. ■

FJC presents
Igualdad magazine

On April 4th, Igualdad magazine, published by the Federal Judiciary Counsel's General Directorate of Human Rights, Gender Equality and International Affairs, was presented at the Museo Memoria y Tolerancia in Mexico City. This is the first Mexican magazine aimed at jurists with a gender perspective, offering a place to discuss and exchange information, ideas, experiences and better practices on this topic. It seeks to provide tools and contribute to the daily performance of those imparting justice for the benefit of the defendants, promoting a culture of equality, as well as eradicating discrimination and violence against women. Participating as commentators were Counselor Daniel Cabeza de Vaca, Judge Luis Fernando Ángulo Jacobo, (Executive Secretary of the Plenary and the Office of the President of the FJC), and Dr. Ana Gúezmes, UN – Women in Mexico representative, who agreed that "judging with gender perspective includes making the



right to equality a reality. It responds to a constitutional and conventional obligation of fighting discrimination by means of the jurisdictional duties to guarantee access to justice and remedy, in a specific case, any asymmetrical power situations. ■



GENDER EQUALITY REFORM

By Daniel Francisco Cabeza de Vaca Hernández*

“I believe that social relations between both sexes...that make one sex be dependent on the other...are bad in themselves, and today they constitute one of the main obstacles for the progress of humanity; [as] I understand that they should be replaced by a perfect equality, without privilege or power for one sex or any incapacity for the other.”

John Stuart Mill – 1869

I. PREAMBLE

By the end of 2013, the Federal Judiciary's Organic Law was reformed with the purpose of granting a new and important attribution to the Federal Judiciary Counsel¹. This will strengthen, in a decisive manner, its institutional capacity to achieve equality among genders.

Specifically by initiative of congresswoman Lucila del Carmen Gallegos Camarena, member of Congress' LXI Legislature, the following precept has been added to that Organic Law as a last paragraph:

Article 81. Attributions of the Federal Judiciary Counsel are:

I. a XLIII. ...

The Federal Judiciary Counsel will incorporate gender perspective in a transversal and equal way in the performance of its duties, programs and actions, with the purpose of guaranteeing to both women and men, the exercise and enjoyment of their human rights in equal conditions and will ensure that those organs under its charge do so².

¹ **vid.** Decree by which a last paragraph is added to the 81st article of the Federal Judiciary's Organic Law, published in the Official Gazette of the (Mexican) Federation on December 11, 2013.

² In accordance with the only transitory article of the decree of law, this was enforced the day following its publication.

The modification proposal was presented before the Plenary Meeting of the Permanent Commission on August 1st, 2012, and submitted that same day to the Justice Commission, to be issued with the original text that appeared in the Parliamentary Gazette on the sixth of the same month:

Article 81

I. a XLII. ...

The Federal Judiciary Counsel will incorporate gender perspective in the fulfillment of its attributions and will ensure that the organs under its charge do so.

As justified by the bill, this legislative reform was built mainly on the Mexican Constitution and the United Nation’s Convention on Elimination of All Forms of Discrimination against Women, in addition to diverse national and international regulations, interpretations and jurisprudences.

Its formulation incorporated the Ministry of Foreign Affairs’ pronouncement, the acceptance of the Mexican Supreme Court and the United Nations Development Fund for Women’s opinion.

The modified written proposal presented by the Justice Commission was approved without changes or opposition by the House of Deputies on February 21st, 2013, with 420 votes in favor; and eventually by the Senate on November 7th, with 84 votes in favor.

II. DEBATES

The unanimous consent expressed by the legislative bodies was registered through the valuable contributions derived from the parliamentary debates that allowed the Federal Judiciary’s Organic Law to be approved.

The first speaker, congresswoman María del Rocío Corona Nakamura, expressed the need for a Mexican Federal Judiciary that contributes to “full equality of rights and opportunities between women and men in accordance with the principles of non-discrimination and equity”.

For House of Representative’s Dora María Guadalupe Talamante Lemas, the reform in question is embedded in the Federal Legislative’s general efforts to achieve substantive equality in social, economic, political and cultural scopes, and is also part of a moral imperative to enhance the balanced participation of women and men without discrimination.

“Why are we to support this proposal?” was the immediate question from popular representative Nelly del Carmen Vargas Pérez. Providing the answer herself, she continued:

Because it is sustained by international standards for equality, gender equity and the acknowledgement of wom-

en’s human rights, going [sic] from a conception related with equality in opportunities to the transversal quality of gender perspective.

The principle of gender equality mainstreaming in the Federal Judiciary, according to congresswoman Margarita Tapia Fonllem, would impact the following:

- 1. Organic and administrative configuration of its courts.
- 2. Content of administrative and labor decisions, as well as judicial sentences.

Lastly, congresswoman Mirna Esmeralda Hernández Morales expressed that if there is any area “eager” for gender perspective and affirmative actions, it is precisely law enforcement and justice administration. On that subject, she added:

The Federal Judiciary needs to adopt fair, equal, inclusive, tolerant and egalitarian practices, so that it may emit consistent and adequate external resolutions. Anything else would result in a paradox.

In the Senate there was no actual discussion and only senator Angélica de la Peña Gómez expressed her hope that this reform may serve “as a benchmark for pending reforms in other instances”.

III. SCOPE

On the basis of this article, it becomes patently clear that Congress decided that the government body charged with administrating, overseeing and maintaining discipline over the Federal Judiciary should immediately incorporate gender perspective both transversely and equally, in all its attributions, policies, programs and actions with the aim of...

First: guaranteeing its women and men the exercise and enjoyment of their human rights, fairly and under equal conditions.

Second: overseeing that the jurisdictional, administrative and auxiliary organs under its command do so as well, in a complete and effective way.

Indeed such a substantive measure represents a decisive step in the correct path to achieve human rights established in favor of both genders in the Mexican Constitution and international treaties signed by Mexico.

Such an important legislative measure harmoniously complements the affirmative equality action incorporated by Congress a couple of years ago so that precisely such criteria should be adopted in case of a draw in judiciary career contests:

Article 114. Free opposition and internal opposition contests for admittance to the categories of Circuit Judge and District judge will be subjected to the following procedure...

II. ...

...

The Federal Judiciary Counsel will clearly and precisely establish, in the respective summons, the parameters to define the highest scores and the minimum-passing grade... in the opposition contest.

In case of a draw, affirmative action of equity criteria⁹ will guide the final resolution.

Also, the adoption of this new attribution in favor of this constitutional body allowed recognition and implementation of the better practices concerning equity, gender equality and gender perspective that had already been incorporated thanks to the Federal Judiciary Counsel’s great leadership and resolute conviction.

IV. CAUSES

When incorporating the new text about gender perspective and equality, popular representatives understood that Mexico continues to face serious limitations as to universally acknowledging and effectively implementing human rights for women, as a condition to ensure full citizenship to its female population.

Special consideration was given to the set of observations recently formulated by the Committee for the Elimination of Discrimination against Women and the content of the report over the Independence of Judges and Lawyers approved by the United Nations Human Rights

Council, documents that emphasized and pointed out the following for the judicial branch:

» **The persistency of stereotypes and the lack of effective implementation of gender perspective in the entirety of Mexican jurisdictional activity;**

» **The need to guarantee women complete access to justice, especially ensuring that cases of violence against females will be investigated and sanctioned;**

» **The advisability of incorporating gender perspective and gender equality in all Mexican judicial branch activities;**

» **The relevance of building awareness over perspective and gender equality in all civil servants;**

» **The need to assure equal participation of both genders in institutional positions in the Federal Judiciary, especially when dealing with relevant posts;**

» **The requirement of using objective criteria when regulating women in the judiciary’s incomes, stability and promotions;**

» **The importance of selecting the best professionals available for a position by means of an open opposition contest, under objective and transparent criteria that include gender perspective**.

During the parliamentary debate, representative Margarita Tapia Fonllem asserted that if the reform in question is approved, stricter mechanisms could be established on behalf of the Counsel to eliminate exploitation practices, misfeasance, sexual and labor harassment, and the physical and psychological violence that women unfortunately face at the workplace.

Organic Law, published in the Official Gazette of the (Mexican) Federation on May 26, 2011.

¹⁰ Total citizenship for women requires a simultaneous reconfiguration of the duties of man as citizen. For example, men should also assume a role in the care of socially dependent people, in exactly the same way as women already do. Vid. Bryony Clare E. (1995) *The paradox of men who do the caring: re-thinking sex roles and health work*, Thesis, Sociology department. England: University of Warwick. (This book argues that men and women share the same values about care but their roles around this social responsibility are in conflict due to beliefs about their sexual identity.)

³Diary of the Debates of Congress, House of Deputies LXII Legislature, second period of Ordinary Sessions of the First Year of Exercise, Year 1, February 21, 2013, Session No. 7.

⁴**vid.** Diary of the Debates...

⁵ Diary of the Debates...

⁶ **vid.** Diary of the Debates...

⁷ Diary of the Debates...

⁸ **Stenographic version**, Ordinary Session of November 7,2013, Mexican Senate.

⁹ **vid.** Decree by which the second paragraph of fraction II is reformed and added to paragraphs third and fourth of article 114 of the Federal Judiciary’s

REFORM'S INICIATIVE OBJECTIVES

According to the Federal Legislative's will, as expressed in the reform initiative, in parliamentary debates and opinions draft decrees, the following institutional advances are expected from the Counsel and other jurisdictional, administrative and auxiliary organs under its care:



» **First:** The development and progress of women in the judicial scope, making sure that females both enjoy and exercise their human rights and fundamental civil liberties as fully as men do.



» **Second:** Prohibiting any discriminatory practices that might single out, underestimate or eliminate acknowledgement, enjoyment or exercise of women's rights.



» **Third:** Devoting its regulations, policies, programs and acts to the development of gender perspective and equality, aside from assuring practical application of these principles.



» **Fourth:** Implementing an equal opportunity philosophy, which will in turn lead to an understanding of the transversal quality of gender perspective.



» **Fifth:** Increasing female participation in decision-making, relevant and leadership positions within the Federal Judiciary¹⁴.



» **Sixth:** Generally improving women's conditions, which will enable them to achieve sustainable long-term development.



» **Seventh:** Prompt female public servants into becoming active decision makers as well as participants and beneficiaries of decision-making processes.



» **Eighth:** Stop adscription changes from becoming a limitation for new female judges or magistrates¹⁵.



» **Ninth:** Dispatching provisions, policies and programs so that public servers of any gender may harmonize work and family life.



» **Tenth:** Allow female public servants to further their education and update their skills during normal working hours and at times compatible with their roles as mothers or heads of households.



» **Eleventh:** The full, efficient and timely exercise of the budget assigned to promote gender related issues¹⁶.



» **Twelfth:** As a whole, comply with Mexican women's expectations, as they await true representation and substantive equality from the nation and its government.

To summarize, from a legitimate concern that gender perspective has not yet permeated the judicial branch to its fullest, Congress used this approach once more to tackle the problem in a comprehensive and equitable way in matters that concern the Federal Judiciary Counsel, from which institutional behavior aimed at getting tangible results¹⁷ is expected. Such an absolutely correct orientation brings to mind the famous quote from José Legaz y Lacambra: "laws are either useful for everyday life or absolutely useless".

In this way the Federal Legislative branch found in the aforementioned reform a path that will allow the Counsel- at least federally- to reach the supreme objective of equal rights and opportunities, built on real equity and non-discrimination, for its public servants¹³.

V. STATISTICS

During the formulation of the reviewed reform, Congress understood that in Mexico, gender continues to configure both individual perception and the general structure of functions that society itself grants in a differentiated way to men and women, thus compromising true equality.

To confirm this unacceptable reality, the following data were provided during parliamentary debates:

...one third of women [in Mexico], or 33.5 percent of females, do not have their own income. 40 percent of working women have to subsist on 64.76 pesos per day, or, in the best case scenario, on 129.52 pesos a day.

...50 percent of women work without a contract, 49 percent without social benefits, 50 percent have no access to health services and 80 percent cannot count on daycare services.

...six out of every 10 Mexicans has an informal, underpaid job, without any rights or guarantees... and women lead this group¹⁸.

Concerning the Federal Judiciary's situation, it was pointed out that:

...actual Supreme Court structure... consists of 11 members, of which only [sic] two are women; at the Federal Judiciary Counsel, all members are male. Of 573 magistrates that integrate Panels in the country, only [sic] 106 are women, that is, only 18.4 percent. Likewise, out of 76 members of District Courts, only [sic] 14 are women; in Election Court, out of 7 judges in the Upper Division, only [sic] one is a woman¹⁹.

Concerned by these figures, the Federal Legislative expressed that it will stay alert- acting of course within the constraints implied by federalism, democracy and



the division of powers (those most appreciated republican values)- to the actual progress of the changes formulated by the Counsel in this matter²⁰.

VI. GUIDELINES

The implementation on behalf of the Counsel of gender perspective and equity in their institutional reality is undoubtedly a tool that will continue to contribute to an integral and egalitarian society.

In this sense, promoting equality and empowering public servants will prove vital to improve the economic, social and political status of all Mexicans (males and females).

¹⁴ **vid.** Law initiative adding article 81 of the Federal Judiciary's Organic Law, representative Lucila del Carmen Gallegos Camarena, from the PAN's Parliamentary Group. Presented at the House of Deputies Permanent Commission session on August 1, 2012. Also taken into account was the opinion emitted by the Justice Commission with a bill project adding a last paragraph to article 81 of the Federal Judiciary's Organic Law, published in the Parliamentary Gazette of the House of Deputies on February 19, 2013.

¹⁵ Diary of the Debates...

¹⁶ **vid.** Law initiative... and Opinion...

Within this context and with the renewed momentum of the aforementioned reform, during 2014 the Federal Judiciary Counsel will continue strengthening its five Strategic Guidelines of the Annual Work Program for Gender Equity²¹, which highlight:

- » **Gender diagnosis in the implementation of justice, whose purpose is evaluating equity conditions and detecting possible areas of improvement in organizational and cultural scopes.**
- » **Analysis of federal sentences, which will contribute in the creation of guidelines for national and international justice criteria with a gender perspective.**
- » **First class, nationally available education (either in a classroom or online) on gender issues by means of workshops, courses, master’s degrees and PhDs.**
- » **Special scholarships for civil servants, to be granted on proven capabilities in dealing with gender matters and human rights.**
- » **Disseminating information on gender perspective, equity and equality by means of periodic and scientific publications, amongst which the successful diffusion of Igualdad magazine will be a priority.**
- » **Entailment by means of the third national “Judging with Gender Perspective” congress, which already exists as a regular space where federal judges share their “first hand” experiences and contributions.**
- » **Institutions will continue to be strengthened by means of supporting health prevention (mainly by early detection of breast, cervical-uterine and prostate cancers), in addition to the implementation of special lactation rooms for working mothers in all Counsel facilities.**

To achieve effectiveness and efficiency on a short, mid- and long term basis, gender mainstreaming executed by the Counsel must have a thorough impact on the definition, negotiation, execution and follow-up of policies, instruments, structures, procedures and actors oriented towards the achievement of equality among public servants under its care, always considering its socially significant diversity²².

VII. FINAL REFLECTIONS

In spite of the progress made and of coming challenges, it’s a fact that only with the unified efforts of all members of this Counsel, will it be possible to achieve the objectives, practices and standards regarding women’s human rights and in favor of equal conditions between genders proposed by the new reform.

As a group, we should all work together with the highest expectations and unbreakable will to promptly implement mechanisms to facilitate women’s equal participation in the Counsel’s institutional life.

Incontestably, all women following the judicial career path have proven ipso facto that they are capable of executing the post better than anyone, with outstanding capability, decisiveness and- overall- with excellence.

Hence, all arguments and attitudes that ban, restrict or demerit Mexican women’s general aptitude to occupy important posts at the judicial branch are unsustainable²³.

If experience in the Federal Judiciary proves anything, it is that areas from which women have been historically excluded are precisely where they will excel most. This has been proven by the fact that their vocation in Governance issues is usually shown from the very start.

Fortunately, in Mexico, it’s only the behavior of the woman devoted to her jurisdictional tasks, supported by her irrefutable knowledge, merit, and vocation to serve the public, which has granted her the highest respect and consideration from society in both public and private spheres.

Consequently, unconditional inclusion of women in the judicial career is and will be the best guarantee to achieve equality of opportunities between genders, as only women understand in the best of ways the fundamental rights of more than half the people that support our nation day after day.

Only through these means will it be possible to guarantee democracy, integral development and sustainability that will strengthen our sovereignty and democratic regime in a decisive way, a result longed for by our highest popular representatives in Congress, who once again trusted the Counsel not only as an agent of change but also as an entity capable of inspiring and detonating a new and deeply held reality in favor of Mexican women.

At this point, we agree with congresswoman Mirna Esmeralda Hernández Morales’s eloquent words. For her, gender equality goes beyond equal opportunity, as she demands women’s participation in the transformative process of basic rules, hierarchies and practices of our country’s public institutions:

*If women are not present in debate spaces, where decisions are taken and the foundations of new governance are built, it is practically impossible that our institutions will allow for the different needs and demands that women as a gender have presented*²⁴.

The congresswoman concludes that it is only possible to articulate democratic governance and gender equity when women are strengthened and legitimated in public spaces and participate in decision making, articulating their gender interests within the broader interests of democracy, governance and justice. ■

***Daniel Francisco Cabeza de Vaca Hernández,**
Federal Judiciary Counselor.

¹⁸ Nelly del Carmen Vargas Pérez, with data taken from Foro Brechas y Desigualdades en el Empleo ONU-Mujeres en México and Reporte de Discriminación en México 2012. CONAPRED and CIDE. Diary of the Debates...

¹⁹ Dora María Guadalupe Talamante Lemas. Diary of the Debates...

²⁰ Congresswoman Ruth Zavaleta Salgado declared that “...it is fundamental that we, aside from approving budgets, aside from changing provisions, keep abreast of and observe judicial branch bodies... [to ensure] that they are truly promoting the changes discussed and debated here and that... are so revolutionary, so that we have a more democratic society, as has long been our aspiration.” Diary of the Debates...

²¹ a) Research: generate, analyze and systematize information on gender perspective and gender equality allowing for greater knowledge on the matter; b) Education: grant theoretical tools and practices to acquire and update knowledge, abilities and aptitude in gender equality matters; c) Diffusion: promote a culture of gender equality inside the Counsel, to create an atmosphere of respect and harmony; d) Binding: build a solid foundation that enables cooperation with other government bodies and institutions in order to exchange experiences and knowledge concerning gender, human rights and discrimination, among other issues; e) Strengthening institutions: incorporate gender perspective and equality in the different actions and phases comprising the formulation, execution and evaluation process of the Federal Judiciary Counsel’s institutional policies.

²² vid. Report ECOSOC (A/52/3.18 September, 1997). Chapter IV: *Mainstreaming the gender perspective into all policies in the United Nations System*. New York: United Nations Publications.

²³ Concerning a quote from congresswoman Margarita Tapia Fonllem- for whom discrimination against women has no relation with female abilities, education, capacity and least of, rights- in a debate at the Justice Commission that dictated the reform now reviewed, some said:

... (that) women maybe were not so capable of examining files and sentencing... Diary of the Debates...

²⁴ Diary of the Debates...

²⁴ On this specific issue, federal representative Dora María Guadalupe Talamante Lemas pointed out that:

“Our vote in favor of the ruling is to increase women’s participation in decision-making posts of the judicial branch. [This should be granted] not as a gracious concession, but as an act of justice towards women, who have assumed the responsibility and commitment of contributing to a prosperous and egalitarian nation.”

²⁵ According to federal representative Nelly del Carmen Vargas Pérez, this demand rises from the “[the need to] respect the territory were these women live so they can continue developing their career at the Judiciary”. Diary of the Debates...

²⁶ Congresswoman Ruth Zavaleta Salgado emphasized this point, declaring that it was convenient to “force such an important government body to pay attention to gender perspectives and use the resources supplied reliably. It is... [sic] important to women”. Diary of the Debates...

²⁷ According to representative Nelly del Carmen Vargas Pérez, part of the segregation suffered by women in our country is due “in great measure to the lack of law implementation in [sic] the matter”. Diary of Debates....

WOMEN AT UNAM: REFLECTIONS ON INSTITUTIONAL EQUALITY

By: Lic. Luis Raúl González Pérez*

December 31, 2014 will mark 40 years since the *Official Gazette* published a decree, which added a first paragraph to Article Four of the Mexican Constitution, a paragraph that expressly recognized the equality of men and women before the law. More than a quarter of a century has elapsed since that date, but equity among genders is still a work in progress, a fact that provokes multiple reflections, debates and controversies over the reasons that have prevented us from reaching this goal.

Inequality between men and women in our country is paradoxical if we consider that, of the more than 119.7 million people who'll make up Mexico's population by mid 2014¹, about 61.3 million will be women, thus constituting approximately 51.2% of all Mexicans (in the realm of facts, women are the majority within our society, but are often assumed as a minority in a vulnerable situation). As has been said in various forums, women, more than a vulnerable group, have been a violated group, so deep social and cultural transformations would be required to help remedy this situation.

While they are frequently used as synonyms, it is necessary to distinguish between equity and equality. In this context, there have been many definitions of what should be understood by each of these terms. Analyzing and defining precisely what is meant by both concepts would by far transcend the scope and object of this

¹ In accordance with the information available in the website of the National Population Council's website, and in concordance with the "Population Projections of Mexico 2010- 20150" Mexico's total population by mid 2014 will be of 119'713,203 people, of which 61'277,304 will be women (51.2%) and 58'435,900 men (48.8%).

article, so for illustrative purposes I will just point out that equality may be understood as a guarantee that men and women will have the same opportunities of accessing and protecting their rights, while equity refers rather to the establishment and implementation of measures that, taking into account the existence of differentiated characteristics and conditions between man and woman, make it possible for both sexes to enjoy equality.

Gender equality is, first and foremost, a human right, being a condition without which our society may not reach the living standards and degree of development to which we aspire. In our country, only recently have solid and consistent steps been taken in the pursuit of gender equality, such as the development of a regulatory framework aimed at treating women's issues. Among the most relevant regulatory efforts that have been made in this regard, we can mention the following: General Law to Prevent and Eliminate Discrimination, General Law regarding Equality Between Women and Men, General Law

to Prevent, Punish and Eradicate Human Trafficking and Women's Access to a Life Free from Violence Act, etc. Internationally, Mexico has signed various treaties to ensure equality and non-discrimination of women, including the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), the Inter-American Convention over Concession of Political Rights to Women and the Convention over Nationality of Married Women.

To comply with the regulations mentioned above, various agencies such as the National Institute of Women (Inmujeres) and the National Council to Prevent Discrimination (Conapred) have been created to help achieve equality among genders.





UNAM (National Autonomous University of Mexico), as a fundamental part of Mexican society, has not remained aside on the struggle to achieve equality between men and women. Throughout UNAM's history, and from many different areas of knowledge and disciplinary fields, women have played and continue to play a prominent role in achieving their objectives; this being the reason why concerns about condition for women and gender issues have been ever-present in the University.

While the social and cultural context of our country in the first half of the 20th century was not conducive to gender equality, the truth is that the presence of women in the life and transformations of UNAM have been a constant, at least during the last 70 years. In this regard, it's important to remember that within the integration of the University Constituent Congress, whose deliberations resulted in UNAM's Organic Law (published in the Official Gazette on January 6, 1945), there was a small feminine presence that had a significant impact despite its reduced size. Among the graduates that integrated UNAM's Congress were the then prominent Director of the Geography Institute, Rita López de Llergo, as well the substitute representatives of the National School of Dentistry and Veterinary Medicine student body².

Both concern and attention to gender equality issues have been reflected in this university in many and very varied forms, from the arrival of Dr. Clementina Díaz and Ovando as the first woman in the Board of Governors in 1976, through the first designations of women to management positions in administrative areas, as well as in faculties and institutes (even in those traditionally directed by men, as was recently the case of the university's Law School with the appointment of Dr. María Leoba Castañeda Rivas), to the approaches that have been made in community analytical processes, such as the University Congress of 1990, where plural reflection on the characteristics of gender issues and the search for proposals and strategies to deal with these issues were assumed as urgent.

A major leap forward in this route to equality was taken on April 9th, 1992, with the agreement to create the University Program of Gender Studies (PUEG), a program that has been positioned, both inside and outside UNAM, as a center which produces specialized knowledge and formulates critical proposals when developing pedagogical models which help students become sensitive to and aware

of the most appalling inequities. PUEG also offers up cultural context proposals, promotes and coordinates inter-disciplinary research and oversees a versatile and extensive editorial research project.

Some years later, on March 21st, 2005, an extraordinary session of the University Council was witness to another fact that materialized this gradual but unstoppable progression towards the incorporation of gender perspective into UNAM's institutional and regulatory structure, with the transcendent addition of a second paragraph to the second article of our General Statute, which prescribed that: "In all cases women and men in the University shall enjoy the same rights, obligations and prerogatives, recognized and guaranteed by the rules and regulations that integrate University legislation."

This journey towards equality led to the need of establishing a body that could attend to gender equity inside UNAM's highest organ of communitarian representation, the University Council, while also spreading towards University life. This need materialized in the Council session held on March 26th, 2010, which established the Special Committee on Gender Equity. From that very moment, the Special Committee envisioned gender equality as an transversal issue, which is why its integration included representatives of all institutional sectors.

On March 8th, 2011, within the framework of the decade for the Teaching of Human Rights convened by the UN and International Women's Day, Mexico's Women's Museum opened its doors. The museum is an interactive space meant to spread knowledge, and, as was stated during its inauguration, aims to review Mexican history (from the pre-Hispanic period to present day Mexico) with a gender focus. The Women's Museum also wants to increase the visibility of female patriotic duties and contributions to nation building, so that Mexican women's history can become a present, living influence and an inspiration for the activities of both modern day women and those women yet to be born.

Now, a fact that constitutes a true reference on UNAM's road to equality

(whose transcendence has just started being recognized) happened on March 7th, 2013, when the UNAM Gazette published general guidelines for gender equality in this institution. These guidelines resulted from the committed work and enthusiastic support of Special Committee on Gender Equity members. Rightly called a "cutting-edge document", these guidelines are mandatory for the University community since they constitute a legal, academic and cultural platform that seeks to promote and regulate gender equity. Through them, our institution helps promote equality, also providing criteria, elements and input to prevent, detect, deal with and end violence within this document's scope.

While some progress has been made, the challenges are even greater; University policies must be strengthened in order to materialize such guidelines. The University and those of us who have a responsibility to it will promote a culture of equality and gender equity above all.

Space limitations prevent a detailed mention of the diverse programs, centers and associations that have been generated to address gender issues at the heart of the National University, but it is relevant to point out that it is a field of very dynamic and constantly updated academic activity, both inside UNAM itself and in Mexican society as a whole.

Gender equality is an issue that transcends the mere distinction of sexes, it is a subject that implies the degree of respect each member of society has towards him or herself and towards others. As such, it impacts everyone. We cannot aspire to a society where individuals will develop fully as long as the capacities and rights of some of its members are undermined. Attention to these issues is, and must be, of primary interest for men, women and, of course, for the National University itself. ■

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²González Oropeza, M. (2010). *Génesis de la Ley Orgánica y del Estatuto General de la Universidad Nacional Autónoma de México*, 1ª Edición, (pp. 117 -120). México: UNAM.

GENDER AND LEGAL ANALYSIS

The incorporation of gender perspective in legal analysis has an origin, an objective and a utopia.

By Marta Torres Falcón*

Its origin refers to a moment in the trajectory of gender studies in which new highlights were opened for analysis. At first, in the last quarter of the twentieth century, the research objective was establishing women's conditions in different areas: education, workplace, political participation, rural and indigenous communities, family, etc. Findings, not so surprisingly, pointed to discrimination as a constant that resulted in lower educational levels, salary breaches, "glass ceilings", occupational segregation, scarce representation in legislative or decision-making bodies, limited access to traditional community positions, strict and excluding gender roles...

A starting point of studies on the legal condition of women was the constitutional reform of 1974, previous to the start of International Women's Year and the United Nations Conference, which was to take place in Mexico. Under modified Article Four of the Mexican Constitution, legal equality of men and women was acknowledged; then, a long process of standard homologation was initiated- certainly with its ups and downs and contradictions- and some academic texts were produced- more descriptive than analytic- giving proof of such legal modifications. During this stage, it was impossible not to notice that women were *almost* invisible in many laws. Sometimes, there was no "almost" about it.

In a second period, analysis was widened to match the law mandate with specific social conditions; in such a task, there was a fruitful interaction with other disci-

plines and a clear articulation with the tenets of the feminist movement. Finally, the whole process delved into theoretical analysis and denounced the character-excluding and profoundly contradictory restriction of human rights.

The pragmatic subject of such rights, when the first declarations on this issue were formulated in the eighteenth century, was quite limited: a white, urban, "enlightened", Christian and property owning man. In the nineteenth century, there was progress in the recognition of fundamental prerogatives to (most) men; in the twentieth century, some demands from organized women were crystallized, prominently suffrage. Only two countries granted its women the right to vote in the nineteenth century (New

Zealand and Australia); most of the European nations did it in the first third of the twentieth century, while women in our continent were only able to go to the polls after

1939. As amazing and shameful as this may seem, there are still some countries where the feminine vote is limited or conditioned².

By exploring human rights' conceptual scaffolding, other issues emerge for reflection and analysis, both in the legal and gender studies areas. The principle of equality is studied in a critical manner and the contents of univer-

sality are questioned. Concerning the first point, the danger of essentialism is underlined; in the second one, the euphemism 'universal' applied to a theory and practice is implemented, leaving out half of humankind.

Upon reaching this point, the true objective emerges clearly: to analyze the gender component in the theory of Law, legal standards, public policies, legal sentences and jurisprudence.

THE NOTION OF EQUALITY

One of the guiding principles of human rights is, without a doubt, equality. All human beings, by the mere fact of being such, have the same fundamental rights. If this notion articulates with the principle of universality, the new formulation would be that all people are entitled to all rights. This postulate is usually accepted without hesitation in any discussion on the matter... But, when contrasted with gender, a certain questioning attitude could be perceived.

On one hand, women have had to fight strenuously for each prerogative: voting, education, participation in politics, employment, etc. Yes, "Man"- spelled with a capital letter- is considered a synonym of humanity. Men are the specific rights holders; women are not. And if men hold a set of rights, it is because each one of them is considered an individual, which in modern language means a moral autonomous subject. Women are on the margins of that discourse and that kind of recognition. They are not individuals, they are women. Simone de Beauvoir posed it clearly more than sixty years ago; according to French philosophy, there were only two types of people: human beings and women, and when women fought for their humanity, they were accused of wanting to become men.

Moreover, within this progressive school of thinking that is feminism, three different positions were posed. Liberals argued that men and women are essentially equal and thus entitled to the same rights. Cultural feminism addressed the differences and stated, as a consequence, that women and men should have the same rights. Finally, the so called "radical" current sustained that while men and women are different, they must have some equal rights and some other gender specific rights.

While the three positions were widely discussed at various forums, it is important to stress that there is a false dichotomy right at their foundations: equality vs. difference. All people are different: Not only men and women, but also men and women amongst themselves... Differences

¹The Thirteen Colonies' Declaration of Independence from the British Crown was released in 1776. The Declaration of Men and Citizen's Rights, in the frame of the French Revolution, dates from 1789. The "subjects of rights" in both instruments clearly constitute an exceptional minority.

²Saudi Arabia, the United Arab Emirates and Lebanon are some examples.



Illustrations: Daniel Esqueda Media / Ángel Sánchez

es can be found even among the members of a community or a family, including twin brothers or sisters. This differences are a fact, an indubitable characteristic of our species. In this planet, which we inhabit, there is great and extraordinary human diversity.

Equality is not a description but a normative principle. It is not a fact but rather a value. Difference is the foundation of equity, not its opposite. Precisely because all people are different- by race, gender, phenotype, ideology, religion, customs, likes, abilities, etc. - equality is required as a standard. So far, it still remains a goal to strive for.

The other dichotomy, also false and misleading, refers to equity. This concept, linked to justice, refers to the need to take into account existing differences -whatever they may be- to make a fair decision. A judge's prudent discretion must be guided by reflection to achieve a conscientious solution. Equity takes away from equality, highlights differences and points to equivalence. If it is applied to gender matters, the formulation would be that men and women are equivalent; they are not equal, but are treated as if they were. And that hue carries the risk of ambiguity. If all people are different, why is it necessary to emphasize sexual differences? Specifically what rights are affected by applying an equity criterion? Who are the holders of the "good conscience" needed to decide on such matters? What effects may it have if this "good conscience" makes the wrong decision? And among all these questions, where is the equity principle?

John Rawls argued that a constitution should enshrine equality and ensure the same rights for all citizens. This principle is a democratic goal that we must be devoted to as a fundamental standard. At the same time, equity must occupy a place in secondary standards, as an enhancer of equality, not as its opposite. Equity must be a tool. According to this author, democratic nations should seek out mechanisms to guarantee that disadvantaged groups have real access to the same opportunities and rights as everyone else. Clear

examples, to which we will return later, are affirmative actions. Equity may function as a strategy; it can serve in reaching equality or in averting it. Therefore it is important to have a clear destination point and clarity about the paths that may lead to it. In short, the difference is using equality as a solid foundation. Equity should be the strategy to reach this equality. Any dichotomist approaches are falsely based and lead to mistaken results.

DIFFERENCES AND INEQUALITIES

The first right woman claimed was education. In 1405, for the first time, a woman took up her pen to record the need for womankind to have access to education. In *The city of the ladies*, Christine de Pisan states such a demand, deeply felt as early as the turn of the fifteenth century.

Several centuries later, at the end of the French Revolution, Olympe de Gouges wrote her famous Declaration of Women's Rights and Citizenship, which is an authentic demand of equality and also leaves clear proof of women's participation in the struggle against monarchy. Soon it was made evident that the revolutionaries could be extremely belligerent in their confrontation with the old regime, but wanted to preserve the patriarchal order intact. Robespierre, who called himself the Incorruptible, sent the revolutionary Olympe de Gouges, who until the last minute asserted her innocence and her confidence in the republican regime, to the guillotine.

The nineteenth century was the scene for suffragist fights and acknowledgment of women's rights, which were barely approached in a consistent manner in the past century. In such debates, the emphasis in differences appears systematically, an attitude that distances equality from the spectrum of possibilities and guides us, in an almost inevitable manner, to essentialism.

Some debates, which take place in legislative precincts, political parties and even in the media, give us an idea of the weight of essentialist prejudices when women's situation is approached. One of these prejudices, which is also repeated in very different latitudes, refers precisely to women's vote. Why would women want to vote, if politics are a tough, problematic and severe field (not to mention aggressive and corrupted)? Why the need to leave dreams and fantasies in exchange for rational thought and decisive action?

If women are tender, sweet, dreamy and exquisite, why would they want to leave the pink cloud they live in? Allusions to wives' ability to blackmail and manipulate their

husbands' vote were also made.

These arguments, which now may seem absurd and almost laughable, keep reappearing almost in the exact same terms when women's participation is addressed in different situations. In 1974, a Mexican woman's right to transfer her nationality to a foreign spouse was discussed. The parliamentary debate revolved around female capacity- mental, not legal capacity- to choose a good mate and not a conman who would want to take advantage of her tenderness, innocence, kindness and lack of intelligence to become a Mexican. Needless to say, none of these fears were expressed about men married to foreign women. Objectivity is an attribute that the social collective defines as masculine, opposite to subjectivity, which is associated with femininity.

Recently- within the present century- the debate on gender quotas in Congress has also been impregnated with essentialist prejudices. On one hand, it's argued that women provide a "feminine touch" to political activity, a field traditionally dominated by men. Although this "feminine touch" is not clearly defined, it's taken for granted that a female presence will cause discussions to be less intense, prompt men to behave as gentlemen should, and cause gender specific issues to be addressed (issues which are often relegated because the traditional agenda does not include gender matters). This vision emphasizes differences and discounts women as individuals: They are *women* and as such should take care of others. For example, in the House of Representatives, feminine presence is overrepresented in the Equity and Gender Commission and holds a clear majority in the Childhood Rights Committee (made up by 10 women and 2 men). In other committees, this situation differs noticeably. In Human Rights, proportion is 17 to 10; in the committee meant to strengthen federalism, there are 17 men and 7 women. The Government Committee has only 5 women, but 24 men; the budgeting committee has 39 men and 5 women. This disparities, quite clearly, reinforce stereotypes.

On the other hand, those opposed to gender quotas suggested that women should compete under the same conditions as men and "earn their place" at Congress in the polls. In this group, essentialist voices may also be heard; there are those who say that for women it will be easier to attract votes precisely because they are women; there are others who state exactly the opposite. What both positions have in common is that they view women as women and not as individuals. In other words, the trap of dichotomy equality persists vs. difference; whether differences are underlined or ignored, there is a clear resistance to recognize women as holders of fundamental rights.

Since its inception as a concept, in the late eighteenth century, men arrogated the sole representation of humanity and, thus, assigned themselves a 100% share of the



legislative and decision-making positions in general. The underlying problem is not to settle on a pre-established percentage of female representatives- whom, supposedly, may only represent other women and be in charge of certain limited functions- but also to recognize women's character as individuals and the real conditions needed for the execution of their rights. At this point, it is convenient to recall Rawls' approach and recognize that if women have been a disadvantaged group, equitable measures –that is, strategies- are required to accelerate equality. And so, affirmative actions are, by definition, temporary³.

NEW DEBATES

In family terms, together with old debates on women's condition and their essential feminine quality, there are some new discussions that demand attention. Firstly, the definition of family should be noted. For years it was felt that the term was unambiguous and any explanation redundant. Civil State codes were meaningless. Simply, “family” was not defined: It could be interpreted as a group whose members were bound by relationship ties. However, the definition of the term “family” itself did not exist.

In several international instruments, something similar can be observed. For example, the American Convention on Human Rights, also known as the San José Pact, considers the family as a “natural and fundamental element of society” entitled to legal protection. It talks about the right every man and every woman has to form a family. Some of its articles also mention that nobody is to be molested in his/her person, family or property, etc. Certainly, it's almost commonplace to talk about the family as something natural, possibly in opposition to a life in complete isolation. Without a doubt, relating to other human beings is one of our characteristics as a species, but going from this premise to the affirmation that the family is a natural unit, is quite a stretch. In 1995, at the UN's IV World Conference on Women, carried out in Beijing (China), it was acknowledged that there are diverse types of family and that all of them deserve the same respect and protection. Family types include nuclear families (formed by a mother, a father and offspring), extended families (including one of the spouses' blood relatives), monoparental



families (mother and offspring, or father and offspring), reconstituted families (stepparents, stepchildren, siblings and half-siblings), homoparental (built by a homosexual couple), etc. Family is a cultural construction, and as such many different combinations of this primary social unit are possible.

In this same field of thought, several systems indicate that the family should receive legal protection. The question is what would legal protection to a group (however small) consist of and whether group rights can or should be above the individual rights of its members. This issue is not a casual or trivial one. Family violence has been kept silent and in the dark precisely because it favors co-existence under the same roof over the individual rights of women, minors, the elderly or any other victim of this terrible social scourge.

In the twenty-first century, we are participating in huge transformations in the concept of family. Recognizing “equal” marriage responds to a principle of legal equality: The same rights for all people. And this includes different couples and different kinds of families.

Also, new technologies open up interesting lines of analysis for family relationships and pose strong challenges to contemporary Law. Assisted insemination, in vitro fertilization and surrogacy, are just some of the contemporary phenomena that demand our attention. Law may lag behind all these changes or fulfill its role as a promoter of social transformation.

The huge challenge continues to be translating philosophical principles of equality into a legal standard, and creating the necessary mechanisms for its practical implementation. Along with this challenge, there's a temptation to succumb to the utopia of eradicating gender analysis. This implies constructing a new paradigm of basic rights that refer to human duality. When the principle of equality escapes the lines of rhetoric and totally saturates human relations, the need for gender analysis will be completely overcome. Only then will the time be right to start building a new utopia.

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³At some point in the beginning of the twentieth century, it was discussed if female teenagers should have access to higher education under the same conditions as male teenagers. It was said, for example, that it was a useless expense, since they would end up getting married. Finally, a human rights centered vision was imposed- mainly because basic education (free, secular and mandatory) already was constitutionally guaranteed to all children and teenagers, and female teenagers had access to educational facilities. Today, this subject is not even up for discussion. Nobody is surprised to see women in middle school, high school or college. Girls and women don't require affirmative actions in this instance because feminine presence is totally standardized.

Family Democratization Program

Gender and Authority resignification

By **Beatriz Schmukler**, Instituto Mora /
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Since 2010, the Dr. José María Luis Mora Research Institute, at the request of the Federal Judiciary, has implemented the “Training in Family Democratization to Prevent Gender and Family Violence” Program. In this framework, from November 2012 to May 2013 two groups from the CJF (Federal Judiciary Counsel) attended the weekly class entitled Family Democratization for the Development of Equitable Connivance between Men and Women, in addition to working in the Mora Institute’s virtual classroom.

Four themes were defined to work on the social construction of gender equality:

- a) Loving practices in couple and family ties.
- b) Analysis of socio-demographic changes and new systems of family authority.
- c) New family configurations, with women and men living transitions in their gender identities.

d) Power in relationships between genders and generations and how love, power and authority are combined in daily family and labor ties.

FAMILY DEMOCRATIZATION FOCUS

Training in family democratization is intended to promote tools for developing awareness about gender stereotypes. This training impacts mainly four areas: 1) allowing women to recognize discomfort related to abusive relationships that promote gender stereotypes; 2) allowing partici-

pants to build collective knowledge in order to give new meaning to gender conceptions and authority in families; 3) enabling women and men to generate resources for dialogue and negotiation, helping them recognize personal desires without dismissing the human rights of all family members and 4) allowing men to recognize the difficulties they have in sharing authority, being co-responsible for caretaking tasks and developing committed bonds of love while respecting the individual autonomy of both members of a couple.

Training in family democratization is developed in two areas: the cognitive, acquiring new concepts, information and theoretical and practical contents concerning gender equity and its promotion in the family, the community and at work; and the emotional, related with personal relationships, personal experiences with gender inequalities, personal difficulties for transformation, detecting gender misconceptions acquired through personal history and developing strategies to democratize their own daily lives.

Why train civil servants in family democratization?

Family democratization impacts public policy for the prevention of gender violence in families, which also has repercussions in the institutions and communities where the participants work. We understand violence prevention as redefining processes of gender relations, “love practices” and female and male subjectivity. This redefinition of processes lead towards proposals of co-responsibility in all areas of family life, in caretaking roles, in the generation of the income necessary for survival and in the development of capabilities and tools for life.

The paths to democratization are full of emotional and subjective barriers linked to cultural, social and economic constraints. In the training process we work with such impediments, with regulations, gender and authority sociocultural models and with subjective and emotional obstacles that emerge and are associated with these models.

During training, dialogues and debates on personal conflicts, abuse situations and violence experienced in their own families are discussed among participants. Possible alternatives are developed, based on family democracy values. This has converged in generating a transformation in the social representations of gender, family and authority.



COURSE IMPACT ON FAMILY DEMOCRATIZATION

The training course aimed at CJF staff has impacted participants in two ways: Firstly, giving new meanings to gender and authority categories in their own families and labor relations; secondly, avoiding traditional conceptions of gender and authority to seep in when they have to judge or address cases of violence and abuse. From this perspective, results in the following areas were identified:

a) Acceptance of the legitimacy of new family configurations. Disappearance of old patterns of patriarchal family configuration. The unique “ideal” family (mother-father-offspring), giving way to diverse conceptions. Elimination of a misplaced sense of loss/emptiness when coming from a “broken” home, and deleting the concept of dysfunctional family. Thus, it is recognized that change does not imply the destruction of the family, but that new family forms are arising and new concepts of love contribute to build them.

b) Equal respect for male or female authority. Masculine participants developed empathy for their partners by actively listening to their desires, needs and concerns, learning to value them in their autonomy and entirety, and supporting their partners in their personal development and exercise of their rights. In women, the course increased their capacity to set limits, express their desires without feeling guilt and stop feeling forced to do things they don’t want to do.

c) Participants now recognize that domestic violence manifestations may be subtle and seem natural and normal because of traditional gender roles that we have internalized. Forms of oppression were identified. Participants recognized women’s right to choose their level of involvement in child upbringing (from full time or part time motherhood to asking more of their partner in family responsibilities). In this new concept, motherhood ceases to be an ultimate goal and is recognized as a choice, a responsibility shared with the father. As for men, this course highlighted the benefits of binding affectively with offspring and with their own partner.

d) Couples were impacted by the generation of alternatives to abuse and violence. They began to recognize that the female tendency to silence conflicts for fear of generating violence is in itself violent, and that this situation is linked with representations that traditionally characterize women as generous, altruistic and connected with others’ desires, while setting aside their own. The participants identified that expressing a conflict or their

own desires, allows for joint and shared solutions, and the development of a negotiation process.

e) Redefining the concept of family, love, gender, and authority enabled men and women to recognize the collaborative exercise of authority, with the participation of all family members: boys and girls, younger and older adults. As a group, second thoughts were given to the need to take into account the desires and interests of boys and girls, setting such limits as prove necessary for children’s welfare, and adopting more flexible attitudes as parents.

AT THE WORKPLACE

a) A need to reformulate the legal concept of family. An example would be the concept of complete and incomplete or “broken” families, as is the case with the acceptance of households headed by females as complete families. Also discussed was the concept of normality or abnormality of the families, which can no longer be associated with the presence of a heterosexual couple at its core.

b) New forms of coexistence in labor dynamics. Personal strategies were discussed, putting into practice skills such as empathy, assertive communication, negotiation, appreciative dialogues and conflict resolution. These skills, built and strengthened during the course, allow for more positive relations among colleagues. Strategies were also developed to expand and practice tolerance, respect and empathy with the co-workers.

c) Visualizing violent situations that happen in the family, removing the mask of “normalcy” that used to disguise them. Allowing the identification of violent situations in the workplace. Some examples identified and discussed were sexual harassment, misfeasance, abuse suffered by participants, and abuse they have inflicted on their own subordinates, as well as other kinds of abuse and disrespect at the workplace.

d) Developing interpersonal links that promote respect and care among people coexisting in the workplace. Coexistence in class developed empathy among colleagues. After taking the course, they knew and understood their conflicts and the emotions that accompany them; they reflected on the working environment of the institution, subject to rigid hierarchy rules. They discussed the possibility of limiting authoritarian and abusive demands. Participants went from complaining to reflecting on

causes and seeking alternatives to approach their bosses, peers and caregivers. They recognized the large differences that exist between the types of abuse suffered by women and men: Women face abuses of authority related to their sexuality and a lack of recognition of their intellectual and professional skills; abuse of men is linked to violations of their rights as workers as to work schedules and days off.

The participants’ challenge was seeing that authoritarianism is not synonymous with authority. Authority is not weakened by listening, asking opinions, consulting others, etc. Democratic authority in private spheres involves creating agreements regardless of hierarchies and respecting other people. On the other hand, in a professional setting, it also implements listening and negotiating strategies with colleagues, bosses and subordinate staff or underlings. The possibility of transformations consolidating into sustained progress depends on collective processes of permanent reflection and dialogue, where alternative paths are built as a group to democratize personal and work relations. Transforming the gender culture via the generation of democratic processes will allow carrying those tools developed in private life to the workplace, where these tools will prove just as valuable when dealing with social transformations that require urgent and innovative answers from justice imparting institutions. ■

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LABOR MARKET INEQUALITY

Applying Gender perspective as the first step to eliminate it

Women's unemployment rates are much higher than men's worldwide. These rates are not expected to decline in coming years, according to a report prepared by the World Labor Organization (WLO). Likewise, between 2002 and 2007, female unemployment rate stood at 5.8%, compared to 5.3% for men.

By Senator Diva Hadamira Gastélum Bajo*

The WLO stated that, in 2012, the percentage of women in "vulnerable employment" (such as unpaid employees in family owned businesses and self-employed workers) was 50%; while men's was 48%. But the disparities are much bigger in North Africa (24 percent), the Middle East, and Sub-Saharan Africa (15 percent each).

According to a recent report from the World Bank entitled "The effect of the economic power of women in Latin America and the Caribbean", in the last decade (2000 to 2010), women have played a fundamental role in the reduction of poverty: A 15% increase in feminine participation in the labor market was followed by a 30% reduction in extreme poverty indexes.

Concerning the great economic impact that women cause in companies, this can be explained by the fact that



Photo: Canstockphoto

women control close to 65% of all goods and services purchasing decisions at a global level (this phenomena is not limited to traditionally feminine categories).

This gives women an extraordinary role inside companies, since they know what most consumers wish to buy. Today, women are involved in the design, manufacture and marketing of a wider range of goods and services, something which undoubtedly adds commercial value and generates higher profits for our nation.

Gender inequality in the labor market is a reality in modern day Mexico. For our country to develop successfully, it is essential to overcome these differences, which currently still exist.

Mexican states with the highest female economic participation are Yucatán (47.5%), the Federal District (47.5%), Tamaulipas (45.8%) and Nuevo León (47.5%). The state of Quintana Roo stands out, with the highest economic participation rate for both women and men (52.4% for females and 85.3% for males)¹.

Our country must provide to each and every one of its inhabitants the same rights, regardless of their gender. However, there are still existing differences concerning the access and treatment of women in the labor market, thus the public policies generated must aim to promote gender equality in the Mexican labor market.

According to statistics from INEGI (National Institute of Statistics and Geography), a third of Mexico's economically active population is made up by women. Also, 21% of households are under feminine leadership and up to 52.1% receive income from a woman.

The ENOE (National Survey of Occupation and Employment) of 2011 points out that 9 out of every 10 of the 83.7 million Mexicans who are older than 14, participate in the production of goods and services. This proportion equals 80.3 million people, of which 42.9 are women (53.5%) and 37.3 million are men (46.5%).

Although this reflects women's greater participation in the labor market, this does not mean their inclusion happens under equal conditions (generally, the jobs they obtain offer a lower rank and salary than men's).

In addition, women continue to carry out most domestic work and are responsible for household care, so they cover double shifts.

Just in the last six years, Mexican women maintained a

rate of almost 98% in terms of both paid and unpaid labor participation. (Men, on the other hand, weigh in at 94%).

Obviously the wage gap between genders gets bigger when education decreases, this also being an indicator of poverty.

Regarding working hours, the ENOE points that women devote an average of at least 46.3 hours per week to work, while men devote just 41.7 hours (that is, 4.6 hours less than women). In terms of remuneration, the amount received by men and women for their work (or income per working hour), shows that, regardless of age, educational level or marital status, women's remuneration is generally between 89 and 96% of what men receive.

In addition to facing inequities in salary and working hours, etc., we must also add harassment, sexual harassment, restricted hiring due to marital status and discrimination based on pregnancy, among other factors, to the difficulties women face at the workplace.

Mexican states with the highest labor discrimination are Chihuahua (26.2%) and Coahuila (25%) while the Federal District (13.9%) and Guerrero (13.4%) have the lowest percentages of women in this situation².

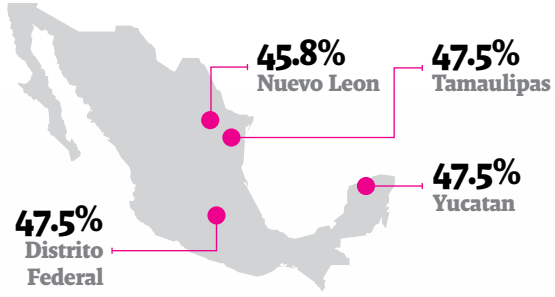
Derived from these statistics, it is believed that public policies should be addressed to reducing gender disparities and must take into account mainly the following aspects:

- 1. It is necessary to improve labor infrastructure to reduce the burden of work at home.**
- 2. We must guarantee a fair balance in the division of paid and non-remunerated labor among women and men.**
- 3. It's also necessary to compensate for inequalities in the opportunities offered to men and women, particularly through measures to eliminate the negative impact of interrupting one's career for motherhood via paid maternity leave and the guarantee of job security for mothers who return to work.**
- 4. We must carry out equal opportunity campaigns that will sensitize people to changes in gender stereotypes, and guarantee the implementation of anti-discrimination legislation.**

Women in the Mexican economy

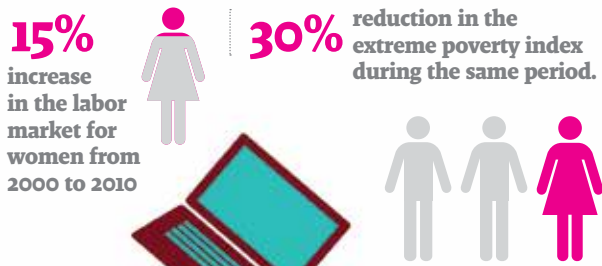
Feminine economy

The federal entities with highest feminine economic participation are:



Positive effect

In "The Effect of Women's Economic Power in Latin America and the Caribbean" report, the World Bank presented the positive effect of women's participation in the labor market:



65%

of worldwide enterprises goods and services purchasing decisions are made by women.



46.3 hours

is the average amount per week worked by women, while men work an average of 41.7 hours.

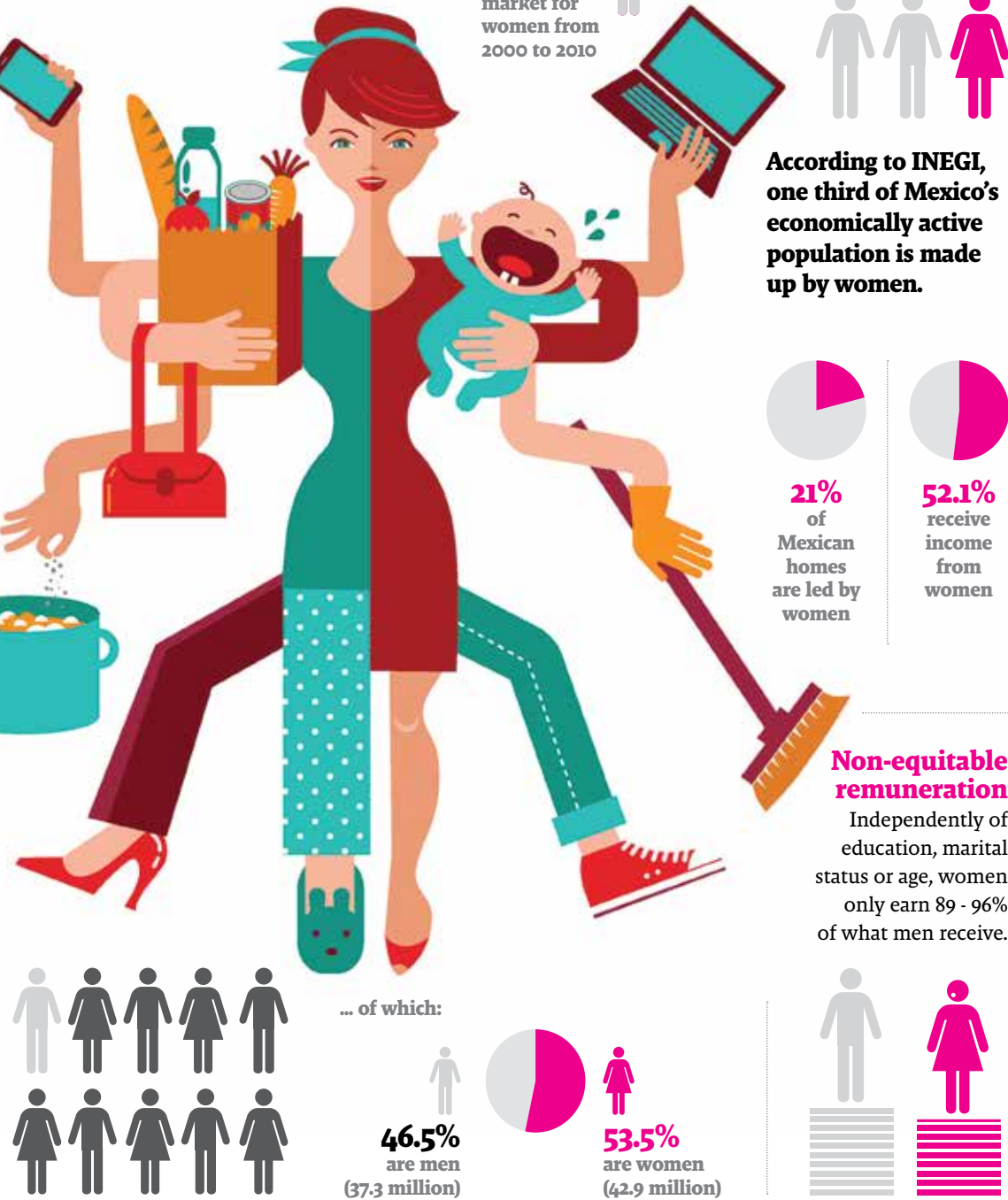
According to the 2011 National Survey of Occupation and Employment (ENOE)...

83.7 million

Mexicans are older than 14 years..

9 out of 10

Mexicans manufacture goods and services. This equals 80.3 million people...



¹ **Women's National Institute.** (2013). *Estudio sobre Desigualdad de Género en el Trabajo*. (pp. 4) México: Inmujeres.

² **PNUD** (2013). *Indicadores de Desarrollo Humano y Mercado Laboral de Mujeres y Hombres...* (Second issue, pp. 2) Mexico: PNUD.

This has already started with the current administration. In fact, for the first time ever, Mexico's PND (National Development Plan) 2013- 2018, considers gender perspective as a transversal axis for each and every one of its development goals.

This positioning of gender perspective as an axis of the national development strategy, in addition to being unprecedented in Mexico's history, formally places equality among women and men right at the center of government planning.

Coupled with this, and in accordance with provisions of the PND 2013-2018, in September of last year, under the leadership of the National Women's Institute, Proigualdad (the National Program for Equal Opportunities and Non Discrimination against Women) was published, with mandatory enforcement for all agencies and entities of the Federal Public Administration. Its main objectives are to develop, promote and adopt policies and actions of work-family balance that promote equality in family responsibilities, all in order to promote women's employment, improve labor competency conditions and increase their quality of life.

By creating similar policies and strengthening the recognition of women's rights in this country, consolidation of equality between women and men will be achieved. We must not forget that ensuring equal opportunities between women and men is not only a fair measure, but also a profitable economic strategy.

**Diva Hadamira Gastélum Bajo: Senator for the Revolutionary Institutional Party (PRI), LXII Legislature.*



**SOMOS IGUALES
VALEMOS LO MISMO**



Secretaría General
de la Presidencia

Dirección General de
Derechos Humanos,
Equidad de Género y
Asuntos Internacionales

Interview | **Olga María del Carmen Sánchez Cordero de García Villegas**
Mexican Supreme Court Justice

EQUALITY STRUGGLE PIONEER

Appointed Supreme Court Justice by the Mexican Senate on February 1995, Olga Sánchez Cordero also chairs the Federal Judiciary's Inter-agency Committee for Gender Equality.

Born in Mexico City, she holds a Law degree from the National Autonomous University of Mexico. Sánchez Cordero also has graduate studies in Social Policy and Administration from the University College of Swansea, Great Britain. She is a Doctor Honoris Causa by both the Autonomous University of Morelos and the Autonomous University of Nuevo León.

As Notary Public 182, she was the first woman to hold that position in Mexico City, occupying this post from 1984 to 1993 (she currently has a leave of absence). She has received important national and international awards.

According to a publication from ANUIES, 54% percent of all students graduating from Law schools in Mexico are women and 46% are men. An education in Law is very versatile since people who conclude their studies can become lawyers, litigants, notary publics, deliverers of justice, devote themselves to academia, become public defenders, etc. In your opinion, how do all these options differ for women and men?

A career in Law is very versatile and yes, indeed, there is a wide range of options: litigating advocates, public defenders, notaries, academics, and researchers... In principle there should be no difference between women's and men's careers; however this difference does exist. Let's look at the statistics: In the Federal Judiciary, only 25% of judges and 20% of magistrates are female; only 5% of all Notary Publics in Mexico City are women.

As the first female Notary Public in Mexico City, you set a precedent in this profession. What was the biggest challenge back then?

Indeed, it created a precedent, as it was a man's world. Achieving access as a notary was a huge challenge... this was 30 years ago. For women it continues to be a challenge, because they don't even become candidates for this post. We need to fully identify the "glass ceiling" that prevents them from even trying. We would need to study the causes of this phenomena... surely fault does not lie in a female lack of capacity. Also, we have to determine if there have or have not been enough affirmative actions to compensate for any biases.

What has been your experience in justice administration, as a professional?

Wonderful, there are many issues where I have intervened as Supreme Court Justice; for example, in the Plenary, I have worked on issues regarding the separation of government into its three branches. I have also had important experiences in Criminal matters, where people's liberty was

at stake. And what could I add about Civil matters? On many occasions, judicial decisions relate to inheritance rights or family relationships of those who come to ask for justice.

However, the issues that have given me my greatest satisfactions as a judge are those related to vulnerable groups (women, children, those with disabilities, people with different sexual preferences or an indigenous racial background, etc.) as we have issued decisions which have recognized the rights of these groups considering their vulnerability, something which was not done previously.

You have become known for maintaining liberal positions with your arguments and decisions. From your perspective, what has been your greatest contribution to the protection of women's rights?

The first issue in which I had an opportunity to make a pronouncement in women's favor (long before the human rights reform) was in 2005, when we modified jurisprudential criteria of the previous integration of the Supreme Court, which stated that the crime of rape could not be configured between spouses. We said that the interest protected by the crime of rape is sexual freedom, which recognizes that human beings, simply by being such, have a right to sexual self-determination, concluding that no right derived from marriage permits a spouse to violently force their partner to engage in a sexual act. Taking into account the date of that determination, I consider that this has been one of the most important contributions that I been able to carry out concerning protection of women's rights; besides I also had the opportunity to present this issue myself.

Is women's participation in the Federal Judiciary different today than what it was when you started out professionally?

Yes, of course. Today there are more women judges, although there should be even more considering that the Federal Judiciary has more feminine than

masculine personnel. Nonetheless, the higher you go up the hierarchy, there less female presence there is. For example, there are only two female Supreme Court Justices (myself included); the Federal Judiciary Counsel is made up exclusively of men. It is desirable to increase the number of women in high-level posts, to break those "glass ceilings". Perhaps we should bear in mind the possibility of affirmative actions when selecting future judges.

In your working career, have you faced any professional constraints due to being a woman?

As I already mentioned, to become the first female Notary Public in Mexico City was a challenge, as it was a man's world; even my clients found it unusual for me to be a woman... I had to overcome several obstacles such as that one. When I became a Supreme Court Justice I was the only woman present, and continued to be the only female for nine years, until fellow Justice Luna Ramos arrived. But I must say that as Justice I didn't encounter any obstacles due to my gender. Besides, my colleagues have always been true gentlemen.

Taking into account that you chaired the Federal Judiciary's Inter-agency Committee on Gender Equality, what advances have been made regarding the need to judge with gender perspective in federal law enforcement?

Four years after this Committee (which comprises three instances of the Federal Judiciary: Supreme Court, Federal Judiciary Counsel and Electoral Tribunal of the Federal Judiciary Branch) was established, we have had various advances, but something of great importance was introducing intercultural gender perspective into federal law enforcement, a perspective which addresses the structural barriers faced by people, groups and indigenous communities when they try to access justice... unfortunately, the barriers get worse when women are involved.

“My mother was a decisive influence in my life; she was very well educated for her time, since she finished three years of Law school before marrying. I remember that she read all day and told me to become professionally and economically independent in all aspects towards my partner, because only in this way could we have a relationship of equals.”

Olga María del Carmen Sánchez Cordero de García Villegas,
Mexican Supreme Court Justice.



What's your advice for young female judges?

Fight for equality and become promoters of differential judgment (that is, judgment with a gender perspective). Young female judges shouldn't restrict themselves to solving whatever dispute is posed. They should go further, taking into account any disadvantages of gender discrimination that might obstruct equality. These young women need to make sure that the Law impacts men and women in the same way.

Did any woman influence you to become a fighter in favor of equal rights for women?

My mother and my grandmother. My mother was a decisive influence in my life; she was very well educated for her time, since she finished three years of Law school before marrying. I remember that she read all day and told me to become professionally and economically independent in all aspects towards my partner, because only in this way could we have a relationship of equals. My maternal grandmother was also a very

progressive woman; she raised her children practically on her own, since my grandfather was always in hiding (he was chased because he sympathized with the Cristiada-a rebel Christian group-in a time of religious persecution in Mexico).

Outside the family sphere, what other woman or person inspired you to fight for gender equity?

Simone de Beauvoir, who in 1949, wrote the book *The Second Sex* to refer to the secondary role that women played in social relations. Her work created a commotion due to its controversial topic... Ever since then women's role in society has been a matter of discussion. It is necessary to change not only their role, but also man's, in order to achieve equality and freedom for both genders.

You are a great promoter of women's rights. What motivates you to get involved in this issue and promote equality between women and men?

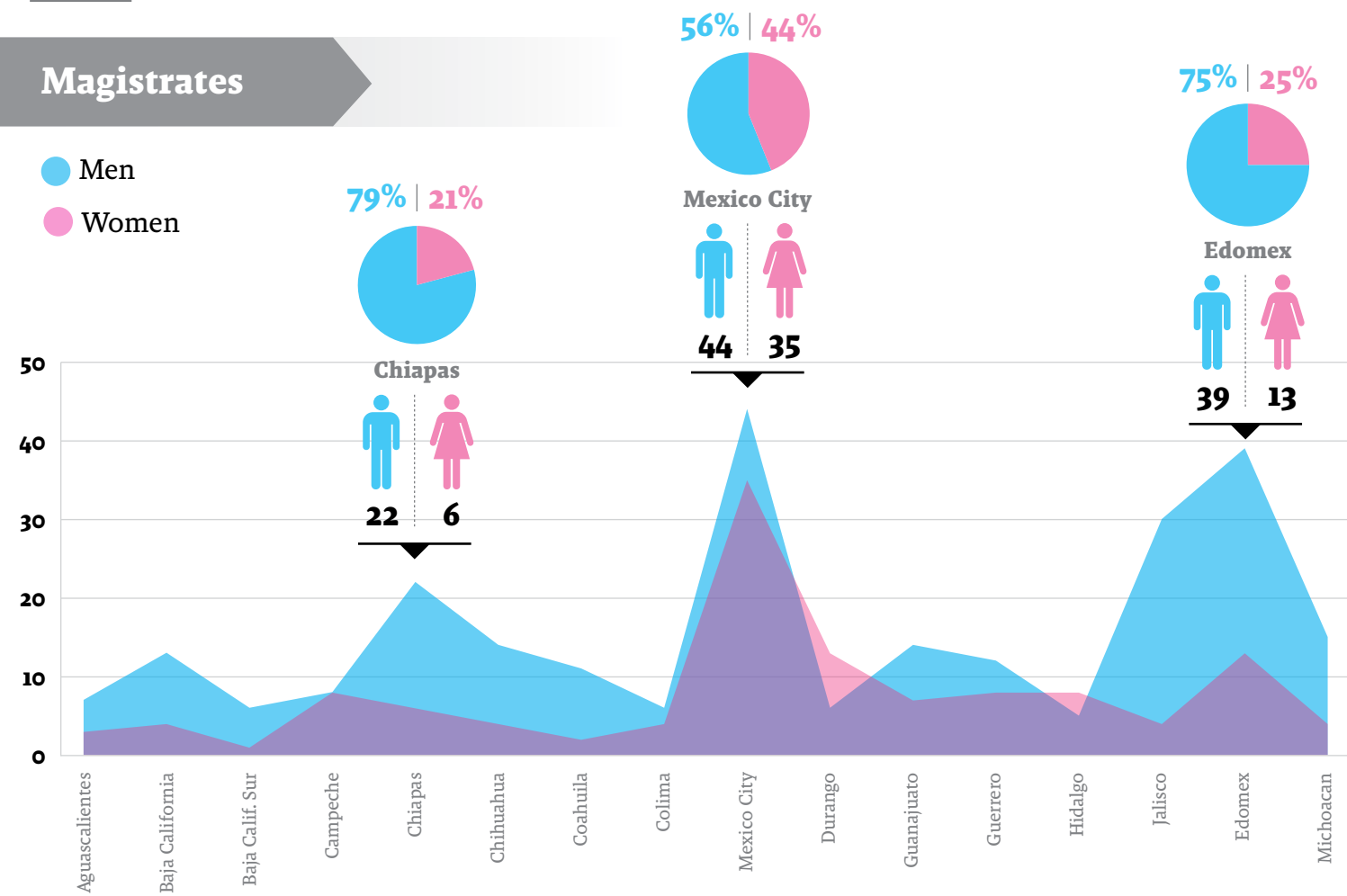
The desire to achieve genuine equality, a substantive equality that allows women to access all their rights in the same way as men, taking into account any unfavorable, gender-based conditions that discriminate females or prevent them from reaching true equality.

What relevant experience or anecdote from your distinguished professional career, regarding gender equality or inequality, can you share with us?

Back when I was the first female Notary Public in Mexico City, there was actually no ladies room for female colleagues at the College of Notaries' headquarters in that city. As I said before, it really was a man's world. Among male notaries, an ironic comment was made about the need to inaugurate a sewing room... ■

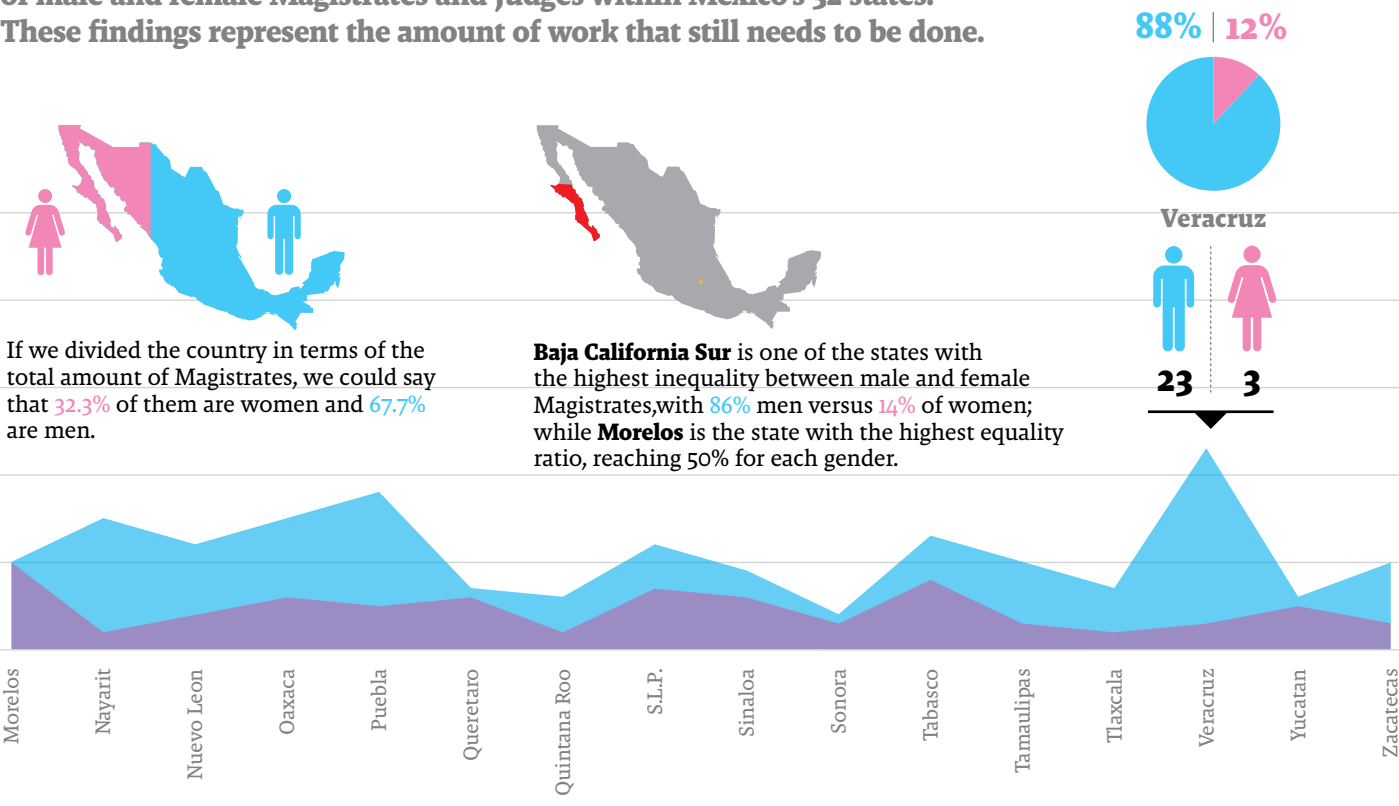
Magistrates

Men
Women



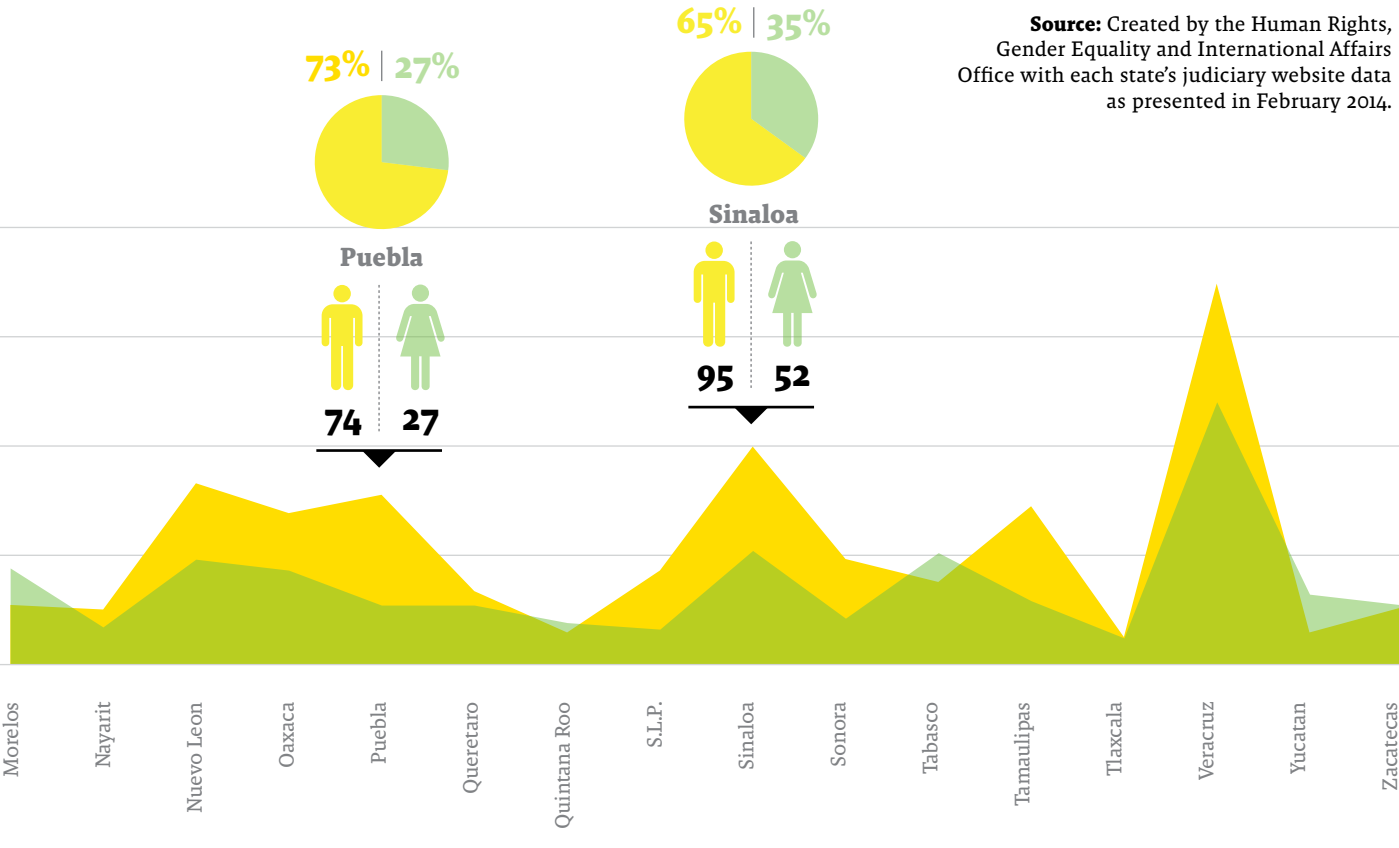
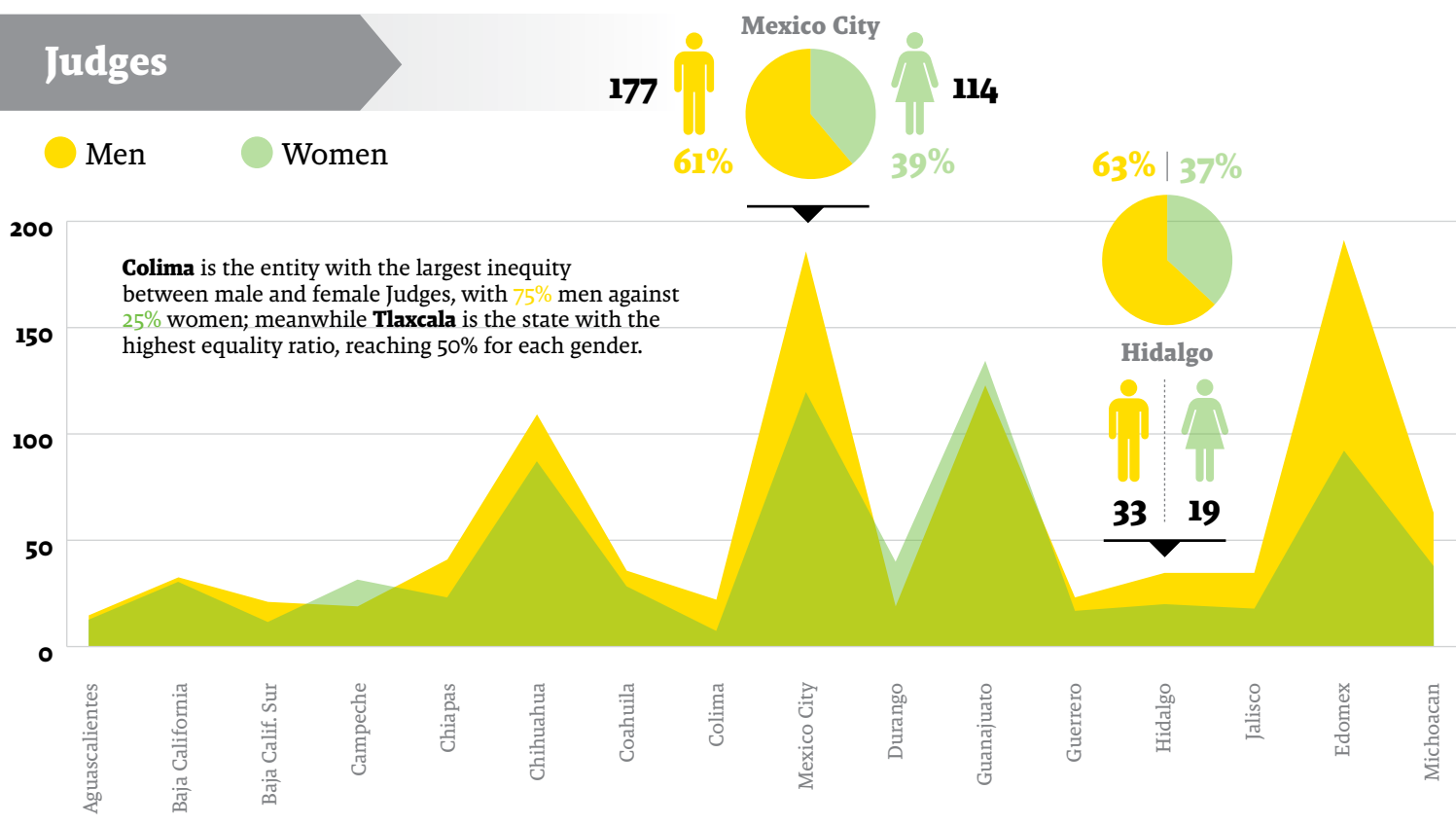
Male and female Judges in Mexico

A vision of equality (or in many cases, inequity) in figures and percentages of male and female Magistrates and Judges within Mexico's 32 states. These findings represent the amount of work that still needs to be done.



Judges

Men
Women



Source: Created by the Human Rights, Gender Equality and International Affairs Office with each state's judiciary website data as presented in February 2014.

SEXUAL CRIMES VEIL

FRAMING THE VICTIM'S STATEMENT

By Magistrate Irma Rivero Ortiz*

According to the Royal Academy of Spanish Language dictionary, veil, in its first connotation, means *curtain or cloth covering something*. Sexual offenses have this veiling feature; even though they usually leave traces upon being committed, these traces don't always provide clarity as to the way events unfolded, essentially because the perpetrator takes advantage of the victim's solitude.

This situation prevents the recovery of direct evidence – aside from the report that the affected person may provide to prove execution and, in other occasions, gathering of evidence which could provide information on the perpetrator: there will be cases where the agent of the felony is known by the affected person,

and therefore, identification will be simple to a certain point; but in many occasions, the offender is a stranger. All that obscures the case and will not allow observation of this type of misconduct, leaving the aggravated person's (who, besides, is generally hampered by the trauma of the experience he/she has lived through) testimony completely isolated.

The First Chamber of the Mexican Supreme Court, considering the characteristics of sexual crimes, has sustained for some time that since the active subject in general, seeks his “hidden realization” (that is, an act committed in the absence of witnesses), then the victim's version acquires special relevance, even if this does not mean that the sole manifestation of it is enough to demonstrate the alleged wrongful act, given that the testimony must be strengthened, but not as to the execution of the crime, but with respect to the circumstances surrounding its essence and making it credible¹.

Under these provisions, without disregarding the relevance of the Public Prosecutor Office's activity, which is meant to gather ideal elements of proof and efficiently expose them before the jurist as supporting evidence of sexual crime cases before eventually making an accusation, the court acquires a specific and definitive job facing this type of crimes, since consideration of evidence as the foundation of the particular resolution adopted corresponds to jurisdictional authority.

It is known that the first obstacle for a judge is that he or she lacks direct knowledge on the fact presented for her/his consideration; a judge depends essentially on information provided by the involved parties. Thus, soundness of mind, reasoning powers and previous experiences will allow him or her to reach good decisions.

It may be stated that such tools on which the jurist may rely upon to gain a better understanding of the convictive situation, comprise the basis of the jurisdictional reason and the interpretation of facts that will justify his or her decision. But in cases related to sexual crime, in which its pre-appointed embedded nature grants special relevance to the version provided by the victim, I consider that historical, social and cultural context play a transcendental role for those affected by this kind of felonies; criticism and stigma (that fall on them as social pressures), in fact, sometimes inhibit the victim from reporting events of this type. If this is so, one cannot demand that those strong enough to start the process, initially relate the event in detail. In fact, it is not surprising that in early victim narrations a reluctance to comment on the substance of the facts may appear; only gradually, as trust develops, will victims be able to reveal all.

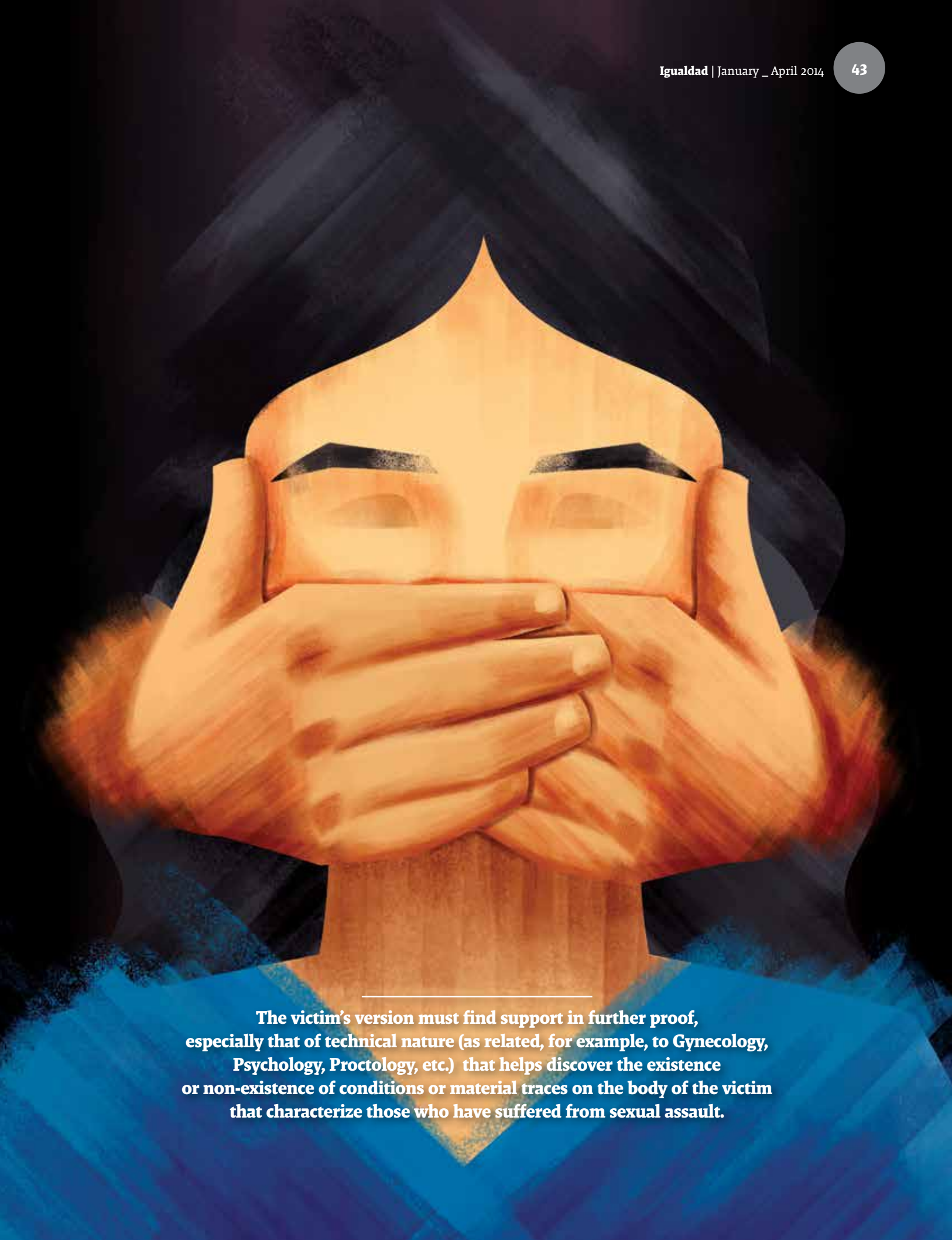
Therefore, from my perspective, this context must be considered as another element when evaluating the victims' statement, so as to analyze in a fair dimension any imprecisions in which they may incur. This does not mean one will be judging from subjective or even ideological considerations, but that situations may become objective after manifesting in a certain juncture or that they may already constitute subjects of study. In consequence, these situations are susceptible to be taken into account as reflection points that appeal to the intellect.

The victim's version must find support in further proof, especially that of technical nature (as related, for example, to Gynecology, Psychology, Proctology, etc.), that helps discover the existence or non-existence of conditions or material traces on the body of the victim that characterize those who have suffered from sexual assault.

On such precedents I intend to present a case I came to know about and solved recently as a member of the court²; this, with no other pretense than expressing my point of view (debatable, of course). I think my opinion will improve the debate that I believe will arise around sexual offense issues and the consideration of their proving data, especially concerning the victim's version and the growing emphasis on human rights, which, without detracting from their practical objective of “protecting certain especially important individual interests”³ assist anyone involved in a criminal investigation, including the accused.

I also want to point out that regardless of the decision taken on this particular case, I have no intention of creating any sort of controversy. I will only try to present how (from my perspective) it would be possible to approach, during the analysis, the narrative of the affected part in a specific case.

¹ Appendix to the Judicial Weekly of the Federation 1917 – 2000. (2000, pg. 85). Jurisprudence 123, Volume II, Criminal Matters, stating: “SEXUAL OFFENSES, VALUE OF THE OFFENDED DECLARATION CONCERNING. In the case of sexual offenses, what is being mentioned by the offended person gains special relevance, since this type of illicit act is refractory to direct proof.”



The victim's version must find support in further proof, especially that of technical nature (as related, for example, to Gynecology, Psychology, Proctology, etc.) that helps discover the existence or non-existence of conditions or material traces on the body of the victim that characterize those who have suffered from sexual assault.

So, during the execution of the issue in reference⁴ the majority considered that when the victim's testimony was incomplete, as the result of omitting expressing the issue investigated during the first declaration, the fact was that such behavior caused "social representation's inability to immediately recover any evidence to support the statement". In other words, we can infer that this omission translated into the cause generated that in this case not many evidentiary items remained.

The issue was raised by the following situation: on the day of the events, the complainant, declaring before the investigative organ, mentioned that the active subject, aside from stealing some of her belongings, fondled both her breasts, and introduced his right hand into her pants at zipper level to touch her vagina with his fingers (sexual abuse). Nevertheless, three days later it was mentioned that the individual actually inserted his fingers into the vagina and anus (which constitutes rape). The victim argued that she didn't mention any of this before because her mother was present during the first declaration, causing her to be ashamed. Beside, the victim also said, she didn't want to worry her mother.

I consider that to evaluate the story of the aggravated person, that is, to decide whether it is strong or not in the conditions listed (a central issue, because it might determine whether it is feasible to check with greater force if there is other data that could corroborate testimony- even though this last issue is not the subject I will address, as I will limit myself to exposing how, in my understanding, the victim's statement should be weighted). Furthermore, we should also consider if the victim's given reasons for not having exposed the actual facts sustain themselves objectively. Thus, it is convenient to reflect on the following:

The sexual offense commented directly undermines the dignity of the affected woman, because by the typical behavior mentioned not only is sexual freedom violated, but also her physical, psychological and moral integrity; hence the legal rights protected in the type of illicit in question are precisely liberty and sexual security of the person.

Women's right to dignity, physical, psychological and moral integrity have been recognized in subsections b) and e) of article 4 of the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women (Convention of Belém do Pará), which establishes:

² Second Collegiate Court in Legal Matters of the First Circuit.

³ Beitz, Charles. (2012, pg. 13) *La idea de los derechos humanos*, Madrid: Ed. Marcial Pons.

⁴ Direct Protection 325/2013 resolved by majority, the author being a dissident.

⁵ Sentence of August 31, 2010, paragraph 95.

⁶ Article 4, of the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women. (Convention of Belém do Pará).

⁷ Meneses, Marco A., *Modelos de selección y designación de jueces. Su incidencia en el Estado Constitucional (Un esbozo al Poder Judicial de la Federación de México)* Thesis sustained for the Constitutional Justice and Guardianship of Fundamental Rights specialization of the University of Pisa, Italy.



“Article 4. Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and consecrated freedoms by the regional and international instruments over human rights. These rights include, among others: [...] b. the right of respect to her physical, psychic and moral integrity; [...]e. the right of respect to the dignity of her persona and protection of her family; [...]”.

The rights in question are granted to women under this international instrument, in the face of the evident violence to which they are subject in different sectors of society, derived from historically unequal relations between her and man; a situation which was recognized in the preamble of the convention, where the following was mentioned:

“RECALLING the Declaration of the Eradication of Violence against Women, adopted by the Twenty-fifth Delegate Assembly of the Inter-American Women's Commission, and asserting that violence against women transcends all sectors of society regardless of class, race, ethnic group, income level, culture, education, age or religion negatively impacts its own bases; [...]”.

This motivation was even readdressed and a elaborated upon in the Woman's Fourth World Conference Report, in which, after analyzing the advances and updates of such conventions the following was expressed: “D. Violence against women. [...]. Violence against women is aggravated by social pressures, such as being ashamed to report certain actions; a woman's lack of access to information, legal assistance or legal protection; [...]”.

It must be recognized that the aforementioned cultural and social context continues to permeate women's development; that is, there is still clear inequality with men, and unfortunately our country is no exception. If this is true, then it logically follows that, if a woman becomes a victim of any sexual offense, she becomes immersed in the social pressure that stigmatizes her in those kind of events, a social pressure that causes the affected person to withdraw into herself at the mere thought of denouncing crimes like this, as it was acknowledged in this report.

In response to these issues, I believe that the circumstances alleged by the passive, in the sense that in her first statement she did not denounce all the details around the crime because she felt ashamed and also inhibited by the constant presence of her mother, whom she did not want to grieve further are objectively credible because they find support in the aforementioned historical, cultural and social context in which women operate – even more so in the case of sexual attacks- in which, as highlighted, what weighs on the victim is not only the offense to her dignity as a person and her right to privacy, but the social stigma that becomes clear as soon as the criminal event is alleged. Therefore I think it's unfeasible,

since I do not find any justification, to hold against her the fact that in its first manifestation she did not expose the event which is matter of this analysis; especially considering that she initially did outline a sexual assault against herself, reiterating at all times the mechanism employed by the active.

Note that the contextualization of the victim's statement has been a subject of reflection of the Inter-American Court of human rights, as derived from the case Rosendo Cantú and other vs. Mexico, where he said: “the fact that the victim did not indicate that she had been raped in the two first visits should be contextualized in the circumstances of the case and the victim... at the discretion of the Court, having responded that she had not been raped when she was questioned by the first doctor and not having indicated sexual violation by military personnel during the next medical visit, do not discredit her statements about the existence of rape. Finally, that omission may be due to not having felt safe or confident enough to talk about what had happened”.

In such conditions, at the supranational level, the Inter-American Court together with reports like the one mentioned, have justified the silence of the affected victim due to issues derived from the historical, cultural and social context in which women develop. Therefore, subtracting force under the conditions reflected; i.e., bypassing a reality that represses, is detrimental to the rights of dignity, physical, mental and moral integrity of women⁶; then, it goes even further, pointing out that attributing such behavior to insufficient evidence in the process would blame the victim instead of finding fault with the investigative authority's lack of diligence, and at the same time reproach the affected persons for the omission, all of which is obviously justified, in my view.

Judicial function in the legal paradigm, called Constitutional Democratic State, in which our country is immersed, is established as a central axis in human rights protection, so it requires greater efforts and arguments in its decisions; the judge has to strive “to select principles and objectives from specific issues, and based on them, rationally build his/her decisions, in order to meet society's expectations and validate his or her very reason to exist: acting as a protector of rights”⁷. Let's not forget that the judge's legitimacy lies in his daily work.

Therefore, I think that the veil that covers sexual offenses can be established and objectively raised by contextualizing each topic, unless it involves setting facts aside. It should only be considered as another element supporting the healthy criticism and reasonability which jurisdictional operators must employ in making their decisions. ■

***Magistrate Irma Rivero Ortiz:** Magistrate of the Second Auxiliary Panel in Legal Matters of the First Circuit.

FROM FEMINISM TO EQUALITY

By Magistrate Mayra González Solís*

Philosophically, feminism puts the spotlight on female creativity, ethics and logic, questioning the neutrality of Science and man's status as an exemplary being. Since the end of the sixties women demanded both autonomous spaces of their own in a world physically and symbolically dominated by men, and the acknowledgment of their collective demands as females¹.

The early stages of feminism focused on emancipation and liberation; in fact, one of the great achievements of this movement was women's suffrage. Despite its undeniable contribution, feminist ideology could not survive with its radical postulates: If an androcentric world was suspect, wasn't it absurd to replace it with a gynocentric perspective? Thus in a dialectical process between androcentrism and feminism, there emerged a new philosophical perspective that finally has addressed many fields (cultural and social, academic and political, etcetera), based on the importance of reaching gender equality in those spaces for men and for women.

The definition of gender should be viewed from two perspectives. Firstly, "as a symbolic construction or as a social relationship", according to Henrietta Moore². Linda McDowell³ for her part, adds that both these aspects are inseparable. This is so, comments the author, because what society considers as proper behavior for men or women influences the idea it has of what should be considered masculine or feminine and what the correspondent attitude for the respective genders should be (despite age differences, class, race or sexuality). Secondly, these expectations change according to place and time. The notion of a practically universal, untouchable and unalterable ideal of femininity (or, I would also add, of masculinity), are only possible in an icon or a hallowed image; in any other case,



Illustration: Daniel Esqueda Media / Ángel Sánchez

established ideas change over time and space.

This has much to do with the Mexican context, in which historically- especially before the 19th century- it was almost universally accepted that Mexican women should be submissive towards men. Just to exemplify, women's complete economical dependence on men and exclusive female responsibility for domestic chores were highly thought of. Therefore, both men and women, for many years, conducted themselves in ways that fit into such ancestrally defined ideals.

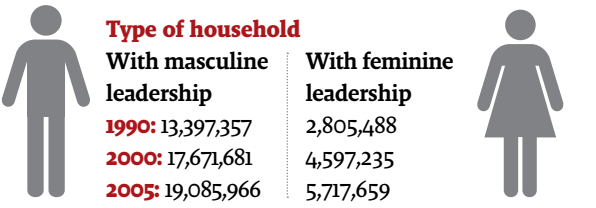
Further examples of this may be found in stereotypes forged in the Mexican Revolution, as was the case of the "adelitas", whose participation was limited to serving their men, feeding them, giving birth to their children, satisfying their sexual requirements, etcetera. But "adelitas" were

never taken into consideration when major decisions of any kind were made. Another example of our idiosyncrasy is portrayed in the stereotypes usually projected during the Golden Age of Mexican Cinema: But for certain exceptions such as the roles "La Doña" (María Félix) played, women were completely dependent on the fate their parents or husband dictated.

However, these ideas have not remained absolute and fixed in time (although it must be noted that we have not reached the equality of gender we aspire to). In truth, every day we can see a more active female participation in the workplace and more male involvement in household activities and childcare⁴.

These conceptual and structural movements require that both the legislator and the jurist continue updating legal institutions, either by legislative or by interpreta-

From the Population, Home and Household graph, corresponding to the item of household leadership from 1990 to 2005, an increase of 30% may be appreciated in masculine leadership; while the increase in feminine leadership during that same period was 51%.



tive and jurisprudential means, respectively, so that the Law continues to meet one of its goals, the harmonious coexistence of society. Even beyond that, the Law might be a balancing factor in the inequality generated by the irrational or unreasonable differential treatment derived from gender stereotypes and sexually based social prejudices.

While it is crucial to achieve gender equality so that men and women have equal access to employment, academia and any other opportunities to develop fully, such equality will only be achieved to the extent in which roles played in the family and social environment become complementary, acknowledged as socially valuable, and endowed with equal legal significance, as only the Law can make a standard imperative through its restraining force and impact or act as vehicle for a social change. Although it is doubtlessly important to eliminate sexist language in legal standards, that will not be enough to transform reality. It is essential to implement these standards for structural and material change in the way men and women relate.

Thus (to cite only two examples), until the Law does not recognize domestic work and childcare as formal jobs, as valuable as any other task performed in other productive areas of society, or deal with discriminatory acts that are legally difficult to prove (such as potential employers demanding medical proof that female applicants aren't pregnant) the fact is that we cannot talk about true gender equality. ■

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¹ **Feminismo.** (Nov. 8, 2013). *Diccionario de Filosofía Latinoamericana* (electronic version). México: UNAM. Retrieved from <http://www.cialc.unam.mx/pensamientoycultura/biblioteca%20virtual/diccionario/feminismo.htm>

² **Moore, H. in McDowell, Linda (2009).** *El género en el Derecho, ensayos críticos.* (pg.6). Ecuador: Ministerio de Justicia y Derechos Humanos.

³ Id.

⁴ **Confronted with INEGI (Instituto Nacional de Estadística y Geografía) data.** (Sept. 6, 2013). *Población, Hogares y Vivienda: jefatura en el hogar de 1990 a 2005.* México: INEGI. Retrieved from: <http://www3.inegi.org.mx/sistemas/sisept/default.aspx?t=mhogi7&s=est&c=26508>
<http://www3.inegi.org.mx/sistemas/sisept/default.aspx?t=mhogi6&s=est&c=26506>

Gender Equality Inter-institutional Committee

Joint effort for equality

Por **Mónica Maccise Duayhe***

The Federal Judiciary’s Gender Equality Inter-institutional Committee, based on a commitment made by its three integrating instances, guarantees the full, non-discriminatory exercise of fundamental rights and liberties, effectively instituting the principle of equality and promoting the creation of free violence working environments.

This Committee arose from the creation of Gender Equity Commissions in the Federal Judiciary Counsel, the Mexican Supreme Court, and the Electoral Tribunal of the Federal Judicial Branch, in 2007, 2008 and 2010, respectively. Once these commissions were established, Administrative Units were implemented in the Federal Judiciary’s three bodies to promote the incorporation of gender perspective in jurisdictional and administrative tasks.

Subsequently, in May 2010, these gender committees or commissions agreed to create the Federal Judiciary’s Gender Equality Inter-institutional Committee, which would be integrated by Daniel Francisco Cabeza de Vaca Hernández, Federal Judiciary Counselor; María del Carmen Alanís Figueroa, Magistrate of the Electoral Tribunal of the Federal Judicial Branch, and by Committee president Minister Olga Sánchez Cordero, on behalf of the Mexican Supreme Court.

INTEGRATION

This Committee is composed, aside from its three formal integrants, by the Technical Secretariat led by the Mexican Supreme Court’s Gender Equality Unit head, and the Adjunct Technical Secretariats, led by the Administrative Units responsible for gender issues at the Federal Judiciary’s three instances:

- » The Supreme Court’s Gender Equality Unit
- » The Federal Judiciary Counsel’s General Directorate of Human Rights, Gender Equity and International Affairs
- » The Coordination to Institutionalize Gender Perspective at the Electoral Tribunal of the Federal Judiciary

At its sessions, the Committee welcomes the representatives of institutions and strategic organizations in the gender equality field, such as the UN Entity for Gender Equality and the Empowerment of Women (UN women), Mexico’s National Women’s Institute and the Mexican Association of Judges, among others; as well as those Judicial Branch instances strategic to the institutionalization of gender perspective, such as the Federal Judiciary Institute, the Federal Institute of Public Defenders and experts from different academic institutions and NGOs.

OBJECTIVES AND OPERATION

The Committee’s fundamental objectives are:

- » Coordinating efforts to unify the planning criteria of the strategy to institutionalize gender perspective in the Federal Judiciary.
- » Following up and evaluating gender equality related actions and projects executed by each of the three instances integrating the Judicial Branch.

Additionally, its activities are focused on promoting co-operation among its three integrating instances to achieve their working programs’ objectives; establishing ties with the Executive and Legislative Branches (at both Federal and state level) and with public or private national and international organisms dealing with gender equality and human rights.

Since its installation, in 2010, the Committee meets four times a year, and eventually has extraordinary meetings. To date, the Committee has held 14 ordinary sessions and 2 extraordinary sessions.

In its sessions, the Committee discusses and approves the activities involving gender to be performed by its three integrating instances; listens to advances in the development of their working plans; fosters actions that establish ties among these; detects urgent measures that must be implemented and proposes working tools and methodologies to institutionalize gender perspective.

MAIN ACHIEVEMENTS

Up till now, the Inter-institutional Committee has guaranteed effective coordination of its three integrating instances and the timely exchange of good practices.

For example, several joint events have been conducted. During 2012 and 2013, the Committee organized the Combat Against Labor Violence Against Women in Mexico: Progress and Challenges forum, with academics and experts from different international organizations, as well as civil servants of both genders; the International Sentences on Gender Equity and Human Rights Seminar, organized on Human Rights Day, and an event to commemorate International Women’s Day, carried out on February 6, 2014, at Claustro de Sor Juana University.

There has been joint planning for a virtual training course to implement intercultural gender perspective in the field of justice administration at a federal level, and Federal Judiciary participation in certain events is planned for the Summit of Indigenous Peoples America, which will take place this year. These important projects arose from discussions on the structural barriers that indigenous people, villages and communities face when accessing justice, which worsen when women are involved.

Finally, almost four years after being established, the Federal Judiciary’s Gender Equality Inter-institutional Committee maintains its commitment with measures implementation that guarantee substantive equality between women and men, and with the creation of violence and discrimination free working environments. ■

****Mónica Maccise Duayhe:** Head of the Gender Equality Unit of the Supreme Court of Justice.*

Review

Vulnerable group access to justice

This book is part of “Voices on Justice and Gender” collection edited by the Mexican Supreme Court with the intent of bringing to readers novel concepts of justice and human rights, as they are viewed from the perspective of those who administer justice.

The book authors are Alejandro de Jesús Baltazar Robles, Antonio Ceja Ochoa, David Israel Domínguez, María de Jesús García Ramírez, Rodrigo Jiménez Sandoval, Pablo Vicente Monroy Gómez and Lilia Mónica López Benítez, all of whom collaborated with Magistrate Graciela Rocío Santes Magaña*.

In this issue, we hear the voices of five female and male Mexican federal judges, as well as that of a Costa Rican expert, addressing the obstacles that certain groups in vulnerable situations face when attempting to access justice; in this particular case, the spotlight is on women and disabled people.

Gender equity is the issue on which the authors focus this time, committed to questioning and reflecting upon gender violence, access to justice for lower income women, protective measures and human trafficking. On the other hand, they propose the creation of mechanisms that facilitate access to justice for disabled people and indigenous women, as well as protective measures for human rights.

This literary work proposes that access to justice should not only be a mere declaration of anyone’s possibility to approach the system designed for conflict resolution in each country’s legal system, but an acknowledgement of admittance to set justice as a human right involving the State’s duty to provide a public service, as well as the exercise of such a right by the State’s inhabitants.

As a human right, access to justice must be a public service that the State should guarantee to both female and male inhabitants of its territory without distinction as to race, color, language, religion, sexual orientation, political or other opinions, national or social origin, economic situation, or any other statuses. ■