The Rights of Women in Comparative Constitutional Law

Through a comparative analysis involving 13 countries from Africa, America, Asia and Europe, this book provides an invaluable assessment of women's equality at the global level.

The work focuses on formal constitutional provisions as well as the substantial level of protection women's equality has achieved in the systems analysed. The investigations look at the relevant gender-related legislation, the participation of women in the institutional arena and the constitutional interpretation made by constitutional justice on gender issues. Furthermore, the book highlights women's contributions in their roles as judges, parliamentarians, activists and academics, thus increasing the visibility of their participation in the public sphere.

The work will be of interest to academics, researchers and policy-makers working in the areas of Constitutional Law, Comparative Law, Human Rights Law and Women's and Gender Studies.

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The Rights of Women in Comparative Constitutional Law

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The authors dedicate this volume to the women and men who are struggling for affirming gender equality around the world

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9 Gender Equality and Women's Rights in Mexico

From a "Gendered Constitutional and Legislative Framework" to "Pandemic" Violence against Women

Irene Spigno

1 Introduction

Gender equality and women's rights in Mexico exist in a highly conflicting situation. According to the data taken from quantitative analysis studies, we can see that gender equality is almost a reality in Mexico. Several constitutional provisions explicitly reference gender equality and women's rights (Articles 1, 4, 6, 35, 41, 94 and 123), some referring explicitly to "gender equality" (Articles 1, 6, 41 and 123). In addition, the legislative framework is fairly complete and well assessed. Among other things, Mexico has approved the General Law on Women's Access to a Life Free of Violence (LGAMVLV, from its name in Spanish *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*)[1] and the General Law for Equality between Men and Women,[2] which provides for a high standard of protection for women's rights. Mexico signed the Convention on the Elimination of All Forms of Discrimination Against Women in 1980 and ratified it one year later, without any reservations.[3]

Mexico also ratified the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women ("Convention of Belém do Pará") in 1998.[4] As far as the presence of women in public spaces is concerned, there are currently 250 women out of a total of 500 members in the Chamber of Deputies, and 62 women out of a total of 128 members in the

1 See *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, published in the Official Gazette of the Federation on 1 February 2007.
2 See *Ley General para la Igualdad entre Mujeres y Hombres*, published in the Official Gazette of the Federation on 2 August 2006.
3 MAIER E., *Convenios internacionales y equidad de género: Un análisis de los compromisos adquiridos por México*, in Papeles de población, 13, 53, 2007, 175–202.
4 See WAGNER, M.C., *Belém Do Pará: Moving Toward Eradicating Domestic Violence in Mexico*, in Penn State International Law Review, 22, 2003, 349. See also VALDEZ SOLIS, M., *Implicaciones y alcances de la firma de la convención interamericana para prevenir, sancionar y erradicar la violencia contra la mujer "Convención de Belem do Para" (1994) – caso México*, in Revista Jurídica Derecho, 10, 14, 2021, 20–41.

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Senate.[5] Both chambers of Parliament have specific commissions to deal with gender issues.[6]

However, Mexico has never had a female president.[7] In the Cabinet, there are 8 women out a total of 19 ministers.[8] An analogous situation is found within the Supreme Court of Justice of the Nation, where to date,[9] there are only 4 women[10] sitting out of a total of 11 judges.

However, if one scratches below the surface, it is possible to identify a rather alarming picture, especially as far as the data on violence against women is concerned. The highest number of femicides ever recorded in Mexico's history was registered in 2021.[11] Between 2020 and 2021, 416 women were kidnapped and another 957 were reported to be victims of human trafficking. In 2021, a new historical record was set for the number of rape crimes recorded, with 21,188 complaints, which is 28 per cent more than in 2020 (16,544).[12]

Furthermore, 86 per cent of the national territory is subject to an alert on gender violence against women,[13] for femicide and for the disappearance of

5 The data refers to the LXV Legislature for the term 2021–2024.

6 In the Chamber of Deputies there is the Equity and Gender Commission established in 1997, while in the Senate there is the Commission for Gender Equality (which was preceded by the Gender Equity Commission).

7 However, for the first three years of the current presidency of Andrés Manuel López Obrador, the position of Secretary of Government was occupied by a woman, Olga Sánchez Cordero.

8 This data is up to date as at May 2022. At that date, the women who made up the presidential cabinet were Rosa Icela Rodríguez, Secretary of Security and Citizen Protection; Ariadna Montiel Reyes, Secretary of Welfare; María Luisa Albores González, Secretary of the Environment and Natural Resources; Rocío Nahle, Secretary of Energy; Tatiana Clouthier, Secretary of the Economy; Delfina Gómez Álvarez, Secretary of Public Education; Luisa María Alcalde Luján, Secretary of Labor and Social Welfare; and Alejandra Frausto Guerrero, Secretary of Culture.

9 January 2023.

10 They are: Ana Margarita Ríos Farjat, Norma Lucía Piña Hernández, Yasmín Esquivel Mossa, Loretta Ortiz Ahlf. Since the Supreme Court got its new structure and configuration in 1994, it has had 27 people in the position of judge, of which 21 have been men and only 6 have been women (22 per cent): in addition to the female judges already mentioned, only Olga Sánchez Cordero and Margarita Beatriz Luna Ramos previously sat on the Supreme Court bench. On the other hand, the Court has had 7 different presidents since 1995 and no woman has ever been elected as president of the Supreme Court.

11 According to the data provided by the *Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública* (SESNSP) in 2021, 1,006 feminicides occurred (in the same period, up to 2,747 murders of women were registered as "intentional homicides"). In 2016 there were 647; in 2017, 766; in 2018, 917; in 2019, 973; and in 2020, 978: see PÉREZ, M., *Feminicidios han crecido 121%*, in El Economista, 9 March 2022. Available at: https://www.eleconomista.com.mx/politica/Mujeres-exigen-un-alto-a-la-violencia-que-padecen–20220309-0001.html.

12 See GALVÁN M., *#8M | 20 datos sobre la violencia contra las mujeres en México*, in Expansión Política, 7 March 2022. Available at: https://politica.expansion.mx/mexico/2022/03/07/datos-sobre-la-violencia-contra-las-mujeres-mexico.

13 The alert on gender violence against women is a unique mechanism for the protection of the human rights of women in the world, established in the General Law on

women and girls. In 2021 and 2022, requests to access the National Network of Shelters for female victims of gender violence increased by 55.59 per cent. In 2021, they served 45,490 women, girls and boys who were survivors of gender violence.[14] Violence is also strongly related to inequality and social and economic discrimination.[15] Women are also victims of economic and labour discrimination. Approximately 21.2 million women were excluded from the labour market at the end of 2021; only 4.6 million were directly affected by unemployment, the rest (13.8 million) simply did not have the opportunity to seek employment at all due to the burden of domestic and care tasks.[16]

In Mexico, women are also victims of the criminal system. 49 per cent of women in prison have been convicted for crimes related to drug trafficking and have faced disproportionate sentences, since their participation in criminal organizations is often minor.[17]

Thus, the life of a woman in Mexico is very difficult. This conflicting reality might be more understandable if analysed under a comparative constitutional paradigm. In this chapter we will first analyse the historical and constitutional context underlining how gender equality and women's rights have been entrenched in the Mexican Constitution and relevant legislation, and highlighting the reasons for this. Secondly, we will explore how the Mexican Supreme Court of Justice of the Nation (SCJN) protects gender equality and women's rights, focusing particularly on the main arguments, criteria, principles and tests

Women's Access to a Life Free of Violence. It consists of a set of emergency government actions to confront and eradicate femicide violence and/or the existence of a grievance that prevents the full exercise of women's human rights, in a given territory (municipality or federal entity) and extends to cases of violence against women exercised by individuals or the community itself (Article 22 of the General Law on Women's Access to a Life Free of Violence). Its objective is to guarantee the safety of women and girls, the cessation of violence against them and/or to eliminate the inequalities produced by legislation or public policy that aggravates their human rights (Article 23 of the General Law on Women's Access to a Life Free of Violence). In 2021 alone, the Ministry of the Interior issued six Gender Violence Alerts in states and municipalities, bringing the total to 25 mechanisms at the national level in 22 states. See VALDEZ JIMÉNEZ, E.I., *Interpretación, implementación y retos: activación de la Alerta de violencia de género contra las mujeres en México*, in Journal of Feminist, Gender and Women Studies, 11, 2021, 15–25.

14 SAYDI NÚÑEZ, C., *Violencia contra las mujeres y feminicidio íntimo a la sombra del Covid-19. Los efectos perversos del confinamiento*, in Política y Cultura, 55, 2021, 99–119.

15 On the relationship between inequality, violence and gender violence against women in Mexico see SPIGNO, I., *Gender Violence Against Low-Income Women in Mexico. Analysis of the Inter-American Doctrine*, in Rivista Diritti Comparati, Special Issue I, 2019, 167–193.

16 GUTIÉRREZ-MARTÍNEZ, I., and OLIVAS-LUJÁN, M.R, *Equality and Nondiscrimination Employment Legislation in Mexico: Evolution and Effectiveness by Gender and Age*, in KLARSFELD, A. *et al.* (eds.), *Research Handbook on New Frontiers of Equality and Diversity at Work*, Edward Elgar Publishing, 2022.

17 VILLANUEVA MAYORAL, D.A., *Mujer y crimen: Las variables que atraviesan la criminalidad femenina en México*, in Vox Juris, 40, 2, 2022, 166.

developed by constitutional judges who have dealt with gender equality and women's rights issues. Finally, we will assess whether the Mexican constitutional system offers proper constitutional protection for gender equality and women's rights.

2 The Constitutional and Legal Context

The current Mexican Constitution was enacted in 1917 and is the product of many factors. First of all, it was introduced after the Mexican Revolution, a complex civil war that, unlike the Bolshevik revolutions of the Russian Empire of 1917 and the Social Democratic revolution of the German Empire of 1918, was not directed against autocratic empires, but took place in a republic which had been established with one of the most liberal constitutions in the world, that of 1857. The starting point for the Mexican Revolution was opposition to the *Porfiriato*[18] both because of political issues, such as the case of the non-reelection of the president[19] and also because of social issues, primarily related to the so-called *agrarian problem.*[20] Women played a prominent role in the Mexican Revolution. It was common for women to serve as *soldaderas*", cooking, washing and marching alongside the men, often taking their children with them. They also fought on the battlefield.[21]

The 1917 Constitution is also the product of the Mexican constitutional tradition[22] which is composed, on the one hand, of an important liberal component that

18 The *Porfiriato* is that period of Mexican history corresponding to the dictatorship of Porfirio Díaz. It lasted, although not continuously, from 1876 (the year of Benito Juárez's death) to 1911, when the Revolution forced him to renounce power. The *Porfiriato* was characterized by a mainly liberal economic policy and a dictatorial social policy. Social and political tensions eventually led to the Mexican Revolution: see TENORIO TRILLO, M., and GÓMEZ GALVARRIATO, A., *El Porfiriato*, Fondo de Cultura Económica, 2019.

19 See RÍOS VEGA, L.E., and SPIGNO, I. (dirs.), ESQUIVEL ALONSO, Y., and DÁVILA AGUILAR, C.A. (coords.), *La reelección en América Latina en el siglo XXI*, Tirant lo Blanch, 2021.

20 It should be noted that during the *Porfiriato*, Mexico experienced an extreme variant of the liberal conception of private property through the concentration of large tracts of land in the hands of the republican bourgeoisie and the proletarianization of significant parts of the rural population who became less and less happy with their lives. On the *agrarian problem* see URQUIOLA, J.I., *Historia de la cuestion agraria mexicana: Siglo XIX*, Juan Pablos Editor, 1989.

21 See OVIEDO Y PÉREZ DE TUDELA, M.D.R., *Mujeres de la revolución mexicana/Mujeres ante la revolución mexicana*, in LORENTE MEDINA, A., and DE NAVASCUÉS, J., *Narrativa de la Revolución Mexicana: realidad histórica y ficción*, Verbum Editorial, 2011, 147 ff.

22 A set of fundamental principles can be deduced from the constitutional text. They have been affirmed since independence and have been reflected in three constitutional texts: that of 1824 with which Mexico politically organized the new State, that of 1857, the product of the reform that reflected the triumph of the liberals over the conservatives and that of 1917, the result of the Mexican Revolution: see DE LA MADRID HURTADO, M., *La Constitución de 1917 y sus principios políticos fundamentales*, in VALADÉS, D., and GUTIÉRREZ RIVAS, R. (coords.), *Economía y Constitución. Memoria del IV Congreso Nacional de Derecho Constitucional*, Tomo IV, Universidad Nacional Autónoma de Mexico, 2001, 41–42.

began to be developed in the latter stages of the colonial period,[23] and, on the other, of a nationalist conception of sovereignty. In this Mexican constitutional tradition, women were almost invisible.

The current version of the constitutional text of 1917, which to date[24] has undergone more than 700 amendments that have profoundly changed the original structure of the text, is a Constitution that has evolved in line with the rapid changes in the social dynamics and the internationalization of law which has required a continuous adaptation of norms, structures and institutions.[25] Thanks to this process, women started to be a presence in the constitutional text and in the constitutional culture.

Although the original version of the Mexican Constitution recognized the right to equality and contained a series of obligations that aimed to correct historical injustices related to it – such as slavery or labour exploitation – it ignored women, placing them in a position of invisibility, despite the significant role they played both in Independence and the Revolution.

This absence and invisibility of women, reflected also in their absence from the Constituent Congress,[26] was hidden behind the apparently gender-neutral language of the 1917 Constitution, which made no distinction based on sex or gender.

The only explicit reference contained in the constitutional text to women was in Article 123.[27] It is there that the Constitution stops referring to the generic man – the individual to whom the rights and freedoms were assigned – and refers specifically to women in terms of establishing a prohibition on carrying out unhealthy or dangerous work (for women and those under the age of 16, Article 123, section II). In the same way, it prohibited them from carrying out industrial night work and from being in commercial establishments after ten o'clock at night. Lastly, it prohibited women from performing physical work that required "considerable material effort", three months before giving birth and forced them to rest for the first month post-delivery, guaranteeing their right to their full salary and to keep their jobs (Article 123, section III).

In short, in the Mexican Constitution of 1917, women were largely invisible, and where they did get mention, this was only in the context of beings requiring special protection from certain types of jobs, from certain working hours and

23 DE LA MADRID HURTADO, M., *Constitución, Estado de derecho y democracia*, Universidad Nacional Autónoma de México, 2004, 9 ss.

24 April 2021.

25 However, it has been highlighted how, in reality, these changes also reflect the inability of the Constitution to fully comply with its normative role: it would suggest a different functionality that points to structural problems related to education and the legal and political culture of the society that in turn depends on the general conditions of economic and social development of the country: see DE LA MADRID HURTADO, M., *Constitución, Estado de derecho y democracia*, cited n. 23, 9–10.

26 SANCHEZ AGUILAR, J.B., *La integración del Congreso Constituyente de 1917*, in Historia Mexicana, 66, 3, 2017, 1271–1322.

27 DE LA CUEVA, O.L., *El artículo 123 Constitucional. Surgimiento, naturaleza, preceptos fundamentales y retrocesos en su esencia*, in Alegatos, 100, 2018, 603–624.

during and after pregnancy. Furthermore, Article 123 guaranteed – which was quite revolutionary for the time – that when they performed the same work as men, they would receive equivalent remuneration (Article 123, section VII).

Given the invisibility of women in the 1917 Constitution, the real constitutional history of Mexican women began a few decades later thanks to the impetus generated both by the feminist movements[28] but also thanks and especially to the developments in international law.

The first major constitutional reform for women was published in 1953, the year in which the right of women to vote and be voted for at the federal level[29] (at the state level – and more specifically in the state of Yucatán – the right to vote for women was foreseen as early as 1922)[30] was introduced.

Five years later, women were able to vote for the first time in a presidential election. This data may be seen as somewhat paradoxical, since despite the fact that Mexico was the only country in Latin America to have a far-reaching revolutionary movement, it was also one of the last to incorporate women in electoral life.[31] Moreover this exclusion occurred without any constitutional foundation, since the constitutional text limited citizenship – and the right to vote – to only two assumptions: age – which, in turn, depended on marital status – and nationality, without specifying anything about sex/gender. The exclusion of women did not have any explicit constitutional basis. Article 34, like practically all the other articles relating to freedoms and rights, was written in the neutral gender. It defined citizens by referring to Mexicans. In constitutional logic, women were included in this articulation.[32]

28 See MITCHELL, S.E., and SCHELL, P.A. (eds.), *The Women's Revolution in Mexico, 1910–1953*, Rowman & Littlefield, 2007.

29 ESCANDÓN, C.R., *La participación política de la mujer en México: del fusil al voto 1915–1955*, in Boletín americanista, 1994, 155–169.

30 The recognition of women's right to vote began at the state level. The first Mexican state to do so was Yucatán, where women's right to vote was provided for in the state Constitution of 1922, which was then followed by San Luis Potosí in 1923 and Chiapas in 1925 (Yucatan – in municipal and state elections – San Luis Potosí – only municipal elections – and Chiapas – state elections). The state of Yucatan has been one of the most active and fertile grounds for feminist movements, primarily because of its geographical position which favoured the arrival of news of the first European and American suffragist feminist movements, but also thanks to an important political factor, the presence of the interim governor Salvador Alvarado, author of an important piece of legislation based on ideological concepts of a liberal matrix, but also an important social project. Feminist congresses were held during his tenure. CORTINA G. and QUIJANO, A., *Los congresos feministas de Yucatán en 1916 y su influencia en la legislación local y federal*, in Anuario Mexicano de Historia del Derecho, 10, 1998, 159–192, 170.

31 In Latin America, women had been recognized as having the right to vote since the 1920s: in 1927 in Uruguay; in 1929 in Ecuador and Puerto Rico; in 1932 in Brazil; in 1934 in Cuba; in 1939 in El Salvador; in 1942 in the Dominican Republic; in 1945 in Panama and Guatemala; in 1947 in Argentina and Venezuela; in 1949 in Chile and Costa Rica; in 1952 in Bolivia; in 1953 in Mexico; in 1955 in Peru, Honduras and Nicaragua; in Colombia in 1957; and in Paraguay in 1961.

32 This ambiguity was pointed out by a deputy of the Constituent Congress, Félix Palavicini: cf. *Diario de los Debates del Congreso Constituyente 1916–1917*, Instituto

Later, in February 1965, the reform of Article 18 of the Constitution recognized the specific needs of women in prison by allowing them to serve their sentences in places separate from those intended for men.[33] A few years later, in 1969, Article 30 of the Constitution was reformed in order to benefit Mexican mothers whose children were born abroad, by allowing them to be considered Mexican by birth, regardless of the nationality or identity of the father.[34]

The most important constitutional reform for the benefit of women took place in 1974,[35] when through the reform of Articles 4, 5, 30 and 123, men and women in Mexico were given equal rights, duties and opportunities in multiple aspects of national life.[36]

By then, Mexico had already committed to serving as the venue for the First World Conference on Women in 1975.[37] Consequently, the legal system had to be completely amended. The reform to Article 4 of the Constitution ensured that men and women were to be equal before the law. It also established the protection of the organization and development of the family, in addition to ensuring the right to decide in a free, responsible and informed manner, on the number and spacing of children. This reform had no substantive effects, since it did not change the *de facto* gender inequality. In fact, it was more equal only from a formal point of view, because although equality was declared, the socio-cultural gender differences that make women unequal with men and that placed them on a plane of inferiority were not recognized.[38]

The reform to Article 5 of the Constitution replaced the term "man" with that of "person", so that the rights enshrined in said article were not understood to be

Nacional de Estudios Históricos de la Revolución Mexicana, 2 vols, 1985, 1–80, cited in TUÑÓN, E., *¡Por fin … ya podemos elegir y ser electas!*, INAH, 2002, 35. This warning was also given by the same Supreme Court of Justice of the Nation in 1947, when it stated that in "Article 34 of the Political Constitution, which indicates the requirements to be citizens, […] there is no requirement to belong to a certain sex" (despite this, it pointed out quite naturally, that the limit was found in the Electoral Law of Federal Powers). Mujeres pueden ser notarios, *Tesis Aislada de la Quinta Época de la Segunda Sala de la Suprema Corte de Justicia de la Nación*, in Semanario Judicial de la Federación, XCI, 1967 (*Registro Número* 321210).

33 FUENTES, J.C.G., and MARTÍNEZ, A.G., *El nacimiento de la reinserción como fin de la pena en México*, in Revista Mexicana de Ciencias Penales, 3, 9, 2019, 133–146.

34 MARTÍN, N.G., *Ley de nacionalidad*, in Boletín Mexicano de Derecho Comparado, 33, 98, 2000, 873–894.

35 See *Decreto que Reforma y Adiciona los Artículos 4o., 5o., 30 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en relación con la Igualdad Jurídica de la Mujer*, published in the Official Gazette of the Federation on 31 December 1974.

36 Cf. BERNAL GÓMEZ, B., *La mujer y el cambio constitucional en México. El Decreto de 31 de diciembre de 1974*, in CARPIZO, J., and MADRAZO, J. (coords.), *Memoria del III Congreso Nacional de Derecho Constitucional (1983)*, UNAM, 1984, 297.

37 CHEN, M.A., *Engendering World Conferences: The International Women's Movement and the United Nations*, in Third World Quarterly, 16, 3, 1995, 477–494.

38 VARELA ZÚÑIGA, M.D.R., *Los derechos de las mujeres en el Centenario de la Constitución Política de los Estados Unidos Mexicanos*, in De Política, 10, 2019, 21–35.

reserved exclusively for men, so that no one may be forced to perform personal work without fair compensation.

In Article 30 of the Constitution, it was established that foreigners who marry a national will be considered Mexicans, provided that they establish their domicile within the country. The reform of Article 123 was of great importance in recognizing female participation in the workforce. Among the great labour rights provided for, the following stand out: that during pregnancy women could not carry out jobs that pose a danger to their health; that they would receive breaks before and after childbirth during which they would receive their full salary and keep their job and their rights; that they would receive extraordinary breaks while breastfeeding; that employers had an obligation to prevent accidents and guarantee the health and life of the workers and of the product of conception in the case of pregnant women; that the job placement service must be carried out under equal conditions and that priority should be given to those who represented the only source of income in their family and, finally, that childcare services would be granted.

The 1980s were characterized by the emergence of larger national and international women's movements and strong pressure from the international community. In particular, Mexico signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and ratified it the following year. The entry into force of CEDAW in the Mexican legal system generated an important paradigm shift because up to that point the legal transformations that had been carried out were exclusively formal.[39] Before CEDAW, there was no real commitment to change multiple rules – not always legal, mainly social – that ultimately affected equality. This is precisely what CEDAW sought to influence: the objective of intervening in culture and tradition was to modify those stereotypes (Article 5 CEDAW).[40]

The 1990s were a very important moment for the advancement of women's rights at both the inter-American and international levels: in 1994 the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (known as the Belem do Pará Convention) was approved. A year later, in 1995, the Fourth International Women's Conference was held in Beijing, China. From the latter emerged the Beijing Declaration and Platform for Action, which spoke for the first time of the gender perspective and its mainstreaming in all public policies. In 1998, Mexico ratified the Convention of Belém do Pará and in the same year recognized the contentious jurisdiction of the Inter-American Court of Human Rights, which suggests that some of the legislative measures adopted by Mexico have been driven by the need to comply with the reparatory measures required by the Inter-American Court of

39 RODRÍGUEZ HUERTA, G., *La Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer (CEDAW)*, Comisión Nacional de los Derechos Humanos, 2012.

40 HOLTMAAT, R., *CEDAW: A Holistic Approach to Women's Equality and Freedom*, in HELLUM, A., and SINDING AASEN, H., *Women's Human Rights. CEDAW in International, Regional and National Law*, Cambridge University Press, 2013, 95–124.

the Mexican State, in its decisions on gender violence[41] for which – since 2009 with the decision of the *Campo Algodonero*[42] – Mexico has been recognized as being internationally responsible.

41 On this point see SPIGNO, I., *La vocación transformadora de la reparación del daño con perspectiva de género. Breves reflexiones sobre la jurisprudencia interamericana en los casos contra México*, in CAMARILLO GOVEA, L.A., and ROUSSET SIRI, A.J. (coords.), *Proteger y reparar: aportes de la jurisdicción interamericana*, Universidad Autónoma de Baja California, 2021, 71–92.

42 Mexico has been declared internationally responsible for gender violence in five cases. The first time was in 2009 with the *Case of González et al. ("Cotton Field") v Mexico*, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs). On that occasion, the Court declared the international responsibility of the Mexican State for actions and omissions in the disappearance and subsequent death of three young women whose bodies were found in a cotton field in Ciudad Juárez on 6 November 2001. On this case, see SPIGNO, I., González y otras ("Campo Algodonero") vs. Estados Unidos Mexicanos *[2009]. La obligación de garantizar, respetar y reparar derechos y libertades con perspectiva de género y el (in)cumplimiento del Estado mexicano*, in RÍOS VEGA, L.E., and SPIGNO, I. (dirs.), ROBLES GARZA, M.Y., and ROMÁN GONZÁLEZ, E. (coords.), *Estudios de casos líderes interamericanos. Vol. XIII. México ante la Corte Interamericana de Derechos Humanos: a 20 años de la aceptación de su competencia contenciosa*, Tirant lo Blanch, 2021, 143–165. Less than a year later, Mexico was declared internationally responsible for the violation of several rights and freedoms recognized in the American Convention on Human Rights in the *Case of Fernández Ortega et al. v Mexico*, Judgment of August 30, 2010 (Preliminary Objections, Merits, Reparations and Costs) and the *Case of Rosendo Cantú et al. v Mexico*, Judgment of August 31, 2010 (Preliminary Objections, Merits, Reparations and Costs). Both cases refer to events that took place in the state of Guerrero in 2002. Inés Fernández Ortega and Valentina Rosendo Cantú were two young Me'phaa indigenous women who were victims of sexual violence by the military. The cases are of special relevance because they are the first ones in which the Inter-American Court qualifies rape and sexual violence as torture, in addition to analysing the intersectionality with regard to the issue of discrimination, examining how different categories interact in these cases: gender, race, age and poverty. On these cases see, respectively, MARTINÓN QUINTERO, R., and WENCES, I., *Impunidad y violencia de género. El caso* Fernández Ortega y otros vs. Estados Unidos Mexicanos *[2010] de la Corte Interamericana de Derechos Humanos*, in RÍOS VEGA, L.E., and SPIGNO, I. (dirs.), ROBLES GARZA, M.Y., and ROMÁN GONZÁLEZ, E. (coords.), *Estudios de casos líderes interamericanos. Vol. XIII. México ante la Corte Interamericana de Derechos Humanos*, cited, 195–231; and ROBLES GARZA, M.Y., *El cumplimiento por el Estado mexicano de la sentencia de la Corte Interamericana de Derechos Humanos:* Rosendo Cantú y otra vs. Estados Unidos Mexicanos *[2010]*, in RÍOS VEGA, L.E., and SPIGNO, I. (dirs.), ROBLES GARZA, M.Y., and ROMÁN GONZÁLEZ, E. (coords.), *Estudios de casos líderes interamericanos. Vol. XIII. México ante la Corte Interamericana de Derechos Humanos*, cited above, 233–271. In 2018, Mexico was declared internationally responsible in the case of *Case of Women Victims of Sexual Torture in Atenco v Mexico*, Judgment of November 28, 2018 (Preliminary Objection, Merits, Reparations and Costs), for the sexual violence, rape and torture committed against 11 women during various operations carried out by municipal, state and federal elements in 2006, in San Salvador Atenco, State of Mexico. For an analysis of this case, see FLORES FERNÁNDEZ, L.Z., and ALVARADO ARIAS, D.L., *Caso Mujeres víctimas de tortura sexual en Atenco vs. Estados Unidos Mexicanos [2018]*, in RÍOS VEGA, L.E., and SPIGNO, I. (dirs.), ROBLES GARZA, M.Y., and ROMÁN GONZÁLEZ, E. (coords.), *Estudios de casos líderes interamericanos. Vol. XIII. México ante la Corte*

After the approval of the Millennium Development Goals in 2000, Mexico took on a commitment to work for gender equality, which translated into important constitutional and legislative reforms. On 7 April 2000, Article 4 of the Constitution was reformed once again, in order to establish the right of girls and boys to satisfy their need for food, health, education and healthy recreation as an integral part of their development.[43]

The following year, an important reform concerning women's rights was implemented. In January 2001, the amendment to Article 1 of the Constitution enshrined the prohibition of all forms of discrimination based on ethnic or national origin, gender, age, different abilities, social status, health conditions, religion, opinions, preferences, marital status or any other factor that violates human dignity and has the purpose of annulling or undermining the rights and freedoms of individuals. These reforms were then followed by the Law of the National Institute of Women[44] and the Federal Law to Prevent and Eliminate Discrimination.[45]

Then, in August 2001, with the reform of Article 2 of the Constitution,[46] the right of indigenous peoples to self-determination and autonomy was recognized and guaranteed. This reform was of great importance to indigenous women, because it guaranteed their participation in the election of authorities or representatives for the exercise of their own forms of internal government on an equal

Interamericana de Derechos Humanos, cited above, 341–373. See also SPIGNO, I., and RUZ DUEÑAS, F.G., *Evolución de la jurisprudencia interamericana en materia de tortura sexual contra las mujeres:* López Soto vs. Venezuela *[2018] y* Mujeres Víctimas de Tortura Sexual en Atenco vs. Estados Unidos Mexicanos *[2018]*, in RÍOS VEGA, L.E., and SPIGNO, I. (dirs.), RUZ DUEÑAS, F.G. (coord.), *Estudios de casos líderes interamericanos. Vol. XX. La jurisprudencia interamericana más relevante de 2018 a debate*, Tirant lo Blanch, 2021, 137–184. Finally, the Court declared Mexico internationally responsible in the *Case of Digna Ochoa and Family Members v Mexico*, Judgment of November 25, 2021 (Preliminary Objections, Merits, Reparations and Costs), for the serious irregularities committed in the context of the investigation of the death of the human rights defender Digna Ochoa for the violation, among others, of Article 7.b of the Convention of Belém do Pará, since the investigation was carried out with no gender perspective: on this case see MALDONADO NIETO, E.A., *Comentario a la sentencia del caso Digna Ochoa y familiares Vs México pronunciada por la Corte Interamericana de Derechos Humanos*, in Revista de la Facultad de Derecho de México, 72, 282, 2022, 491–516.

43 See the *Decreto por el que se declara reformado y adicionado el artículo 4o. de la Constitución Política de los Estados Unidos Mexicanos*, published in the Official Gazette of the Federation on 7 April 2000.

44 See the *Ley del Instituto Nacional de la Mujer*, published in the Official Gazette of the Federation on 12 January 2001.

45 See the *Ley Federal para Prevenir y Erradicar la Discriminación*, published in the Official Gazette of the Federation on 11 June 2003.

46 See the *Decreto por el que se aprueba el diverso por el que se adicionan un segundo y tercer párrafos al artículo 1o., se reforma el artículo 2o., se deroga el párrafo primero del artículo 4o.; y se adicionan un sexto párrafo al artículo 18, y un último párrafo a la fracción tercera del artículo 115 de la Constitución Política de los Estados Unidos Mexicanos*, published in the Official Gazette of the Federation on 14 August 2001.

basis to men. It was also established that the authorities should promote the incorporation of indigenous women, by supporting productive projects, protecting their health, granting incentives to promote their education and their participation in decision-making relating to community life.[47]

The most important laws to be implemented regarding women's human rights were the General Law for the Equality between Women and Men;[48] the General Law on Women's Access to a Life Free of Violence (which has already been mentioned)[49] and its Regulations;[50] and the Law to Prevent and Punish Trafficking in Persons,[51] which was later replaced by the General Law to Prevent, Punish and Eradicate Crimes Regarding Trafficking in Persons and for the Protection and Assistance of Victims of these Crimes.[52]

The final important constitutional reform in terms of women's rights was the reform published on 6 June 2019, which concerned gender parity. The objective of this reform was to guarantee gender parity in the three branches of government – executive, legislative and judicial – as well as in the autonomous constitutional bodies.[53]

Furthermore, in Article 41 of the Constitution, it was established that the appointment of the head secretaries of the Executive Power must be done on the basis of parity.[54] The right of people and communities with an indigenous population to elect their representatives on city councils on a principle of gender parity was also recognized (Article 2).[55] In relation to ensuring parity at the municipal level, first, political parties were forced to apply the gender principle equally and, secondly, it was established that city councils should be comprised of an equal number of male and female members.

47 GALVÁN, J.A.G., *La reforma constitucional en materia indígena*, in Cuestiones Constitucionales, 7, 2002, 253–259.

48 See the *Ley General para la Igualdad entre Mujeres y Hombres*, published in the Official Gazette of the Federation on 2 August 2006.

49 See *supra* n. 1 and n. 13. See also LAGARDE Y DE LOS RÍOS, M., *Por los derechos humanos de las mujeres: la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, in Revista Mexicana de Ciencias Políticas y Sociales, 49, 2007, 143–165.

50 See the *Reglamento de la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, published in the Official Gazette of the Federation on 11 March 2008.

51 See the *Ley para Prevenir y Sancionar la Trata de Personas*, published in the Official Gazette of the Federation on 27 November 2007.

52 See the *Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos*, published in the Official Gazette of the Federation on 14 June 2012.

53 See the *Decreto por el que se reforman los artículos 2, 4, 35, 41, 52, 53, 56, 94 y 115; de la Constitución Política de los Estados Unidos Mexicanos, en materia de Paridad entre Géneros*, published in the Official Gazette of the Federation on 6 June 2019. See VÁZQUEZ CORREA, L., *Reforma constitucional de paridad de género: rutas para su implementación*, Senado de la República, 2019.

54 With this reform, inclusive language with a gender perspective was also introduced (see Articles 4, 35, 52, 53, 56 and 94 of the Mexican Constitution).

55 On indigenous women's political rights see REY MARTÍNEZ, F., *Derechos políticos de las mujeres indígenas en México*, in Cuestiones constitucionales, 31, 2014, 119–138.

The incorporation of gender parity in the Mexican legal and constitutional framework has been the result of a long journey, which began in 1990,[56] and in which electoral justice has played a fundamental role.[57]

3 The Supreme Court of Justice of the Nation and the Constitutional Interpretation of Gender Equality and Women's Rights

The judiciary has played a very important role in the protection and development of women's rights[58] (even before the aforementioned reforms).[59] More specifically, the SCJN has included the gender perspective as a form of guarantee for women and girls, devoting special attention to the rights of indigenous women[60] (who as noted were constitutionally invisible until the constitutional reform of August 2001),[61] and progressively deconstructing the traditional conception of women and their roles in society and family based on power relations,[62] with an explicit call on the legislator[63] and

56 See SPIGNO, I., and GONZÁLEZ BRIONES, K.V., *El principio de la paridad de género como un piso mínimo*, in *Diálogos sobre la Igualdad Sustantiva y la Violencia Política contra las Mujeres en Razón de Género y su Impacto en la Democracia*, INE, México, forthcoming.

57 See OTÁLORA MALASSIS, J.M., *La evolución del principio constitucional de la paridad de género en la jurisprudencia*, in Quid Iuris, 31, 2016, 31–51.

58 The federal judiciary has also ruled on the issue of the prohibition of discrimination: see *Tesis Aislada*: 2a. CXVI/2007; *Tesis*: XI.1o.A.T.4 CS, January 2016; *Tesis Aislada*: 1a. CLX/2015.

59 *Tesis Aislada* of the Third Chamber of the SCJN, under the heading, Fifth Periodo, Semanario Judicial de la Federación, t. CXXIX, August 1956, p. 642. However, these were isolated cases since in 1994 (*Contradicción de tesis* 5/92, 28 February 1994) the SCJN had ruled on the existence of violence within marriage, stating that if the spouse violently imposed sexual intercourse, this was not a crime of rape, rather it was the improper exercise of a right, for the purposes that the institution of marriage then had, such as the procreation of the species. This criterion was reversed in November 2005 when the SCJN ruled that the criminal legislation of the states that allowed the marital exception to the crime of rape was unconstitutional, as it violated the right to sexual freedom and the personal integrity of women: see *Varios* 9/2005-PS, 16 November 2005.

60 *Expediente Varios* 1396/2011, 11 May 2015, p. 88 and *Tesis Aislada* num. 1a. XLI/2014 (10a.) 1 December 2017.

61 See n. 46.

62 On this subject see *Amparo Directo en Revisión* 1184/2003, 22 October 2003, where the SCJN declared the unconstitutionality of Article 220 of the Civil Code for the state of Hidalgo according to which the woman could manage a legal company only with the consent of their husband or in the absence or impediment of the latter, on the basis that it violated the guarantee of legal equality provided in Articles 1 and 4 of the Constitution by placing married women on a plane of inequality in relation to their spouse, by preventing them from exercising a right that they could enjoy, undermining the legal sphere of one in favour of the other, and without such a distinction that has any objective basis. In *Tesis Aislada* XCV/2012 (10a.), the SCJN established that, although traditionally, the justification of the civil norms that grant preference to the mother in the granting of guardianship and custody of minors was based on a preconceived idea, under which, the woman enjoyed a specific ability to care for children. Gender was a determining factor in the distribution of functions and

authorities in general to act with a gender perspective in mind, with the aim of combating stereotyped and invisibilizing arguments for the full and effective exercise of the right to equality.[64]

An important judicial doctrine issued by the SCJN refers to the incorporation of the gender perspective in order to guarantee women and girls effective and equal access to justice and care (both at the investigative level and trials of cases of gender-based violence against women).This case law has probably also been driven by the reparation measures required by the Inter-American Court following the *Campo Algodonero* ruling, implementing the decisions issued in the *Fernández Ortega and others* and *Rosendo Cantú and another*, cases in which the Mexican state was asked to take several measures to make structural changes to solve the serious problem of systematic violence against women.

In 2013, the SCJN published the first edition of the *Protocol to Judge with a Gender Perspective* with the objective of formalizing an analytical method that would incorporate gender in the analysis of contentious issues. Thus, it constituted a first exercise of reflection on how cases in which gender has a dominant role in the controversy should be judged, and of consideration of the differentiated impact on the people who participate in it, particularly women and girls.

The protocol was approved at a time when there were still no SCJN precedents – nor even judgments and resolutions of international bodies – that would explain or develop what judging from a gender perspective implied. In this respect, it was a document that cited sources of constitutional rank, but its contents lacked jurisprudential development and application to specific cases.

Initially, the gender perspective was included as a duty to be carried out by judges,[65] but it began to be conceived of as an obligation on all jurisdictional bodies with the *Amparo Directo en Revision* 2655/2013, a decision issued by the First Chamber of the SCJN a few months after the protocol's publication which represented the first criterion in which the constitutional judge established the methodological basis for making a judgment using a gender perspective.

From then on, the SCJN was the protagonist in the construction of an authentic constitutional doctrine on human rights and gender that gradually permeated the rest of the federal judicial power. The original protocol was a fundamental trigger, but it is also true that the discussion has evolved and moved further and further away from that initial development. The Court has been

activities, which entailed a clear social domination of men over women, who were conceived only as mothers and housewives who had to remain in the family home and ensure the care and well-being of children.

63 See *Tesis*: 1a./J. 55/2006, 75.

64 *Amparo Directo en Revisión* 554/2013, 25 March 2015. This is the case of the femicide of Mariana Lima Buendía, the first decision of the Supreme Court in a case of femicide. In this case, the Court established that "the duty to investigate becomes more relevant when it comes to the death of a woman in a context of violence against women".

65 *Amparo Directo* 12/2012, 12 June 2013, 33–35.

applying the gender perspective in different matters, generating a deep transformation of institutions that, little by little, have abandoned their anchorage in the civil codes of nineteenth-century influence, to feed on constitutional standards that question, among other things, the paradigm of the ideal family model, the conceptualization of care work as unpaid work and the relevance of free development of the personality in divorce cases.[66]

Other SCJN case law that has referenced domestic matters includes[67] the order of surnames,[68] the assessment of the testimonial evidence of victims of sexual harassment,[69] the right of imprisoned mothers to live with their children,[70] the burden of proof in the dismissal of pregnant women,[71] compensation for damage in cases of family violence,[72] the right to social security for domestic workers,[73] maternity leave and unjustified dismissal,[74] the preference of the man over the woman in managing properties[75] and the application of the gender perspective in the cessation of conjugal society.[76]

The gender perspective has also been key in a recent pronouncement of the SCJN[77] in which it was declared unconstitutional to criminalize abortion in an absolute manner. This was the first time in which the Supreme Judge ruled in favour of guaranteeing the right of women and pregnant people to decide whether to have an abortion, without facing criminal consequences. This result, achieved in 2021, had been preceded by different Court rulings. In 2002 the Court ruled in the *Acción de inconstitucionalidad* 10/2000[78] in the matter of eugenic abortion promoted against the reform of the Penal Code of the then Federal District (now Mexico City), by which an acquittal excuse was established for the crime of abortion. when the foetus presents genetic or congenital alterations of such severity that they could put its survival at risk. In the aforementioned case, the highest court ruled that the absolutory excuse based on genetic or congenital malformations was constitutionally valid, since the contested norm did not authorize the deprivation of life of the product of conception, but only contemplated the possibility that the crime of abortion not be sanctioned.

66 *Amparo Directo en Revisión* 5339/2015, 20 May 2015.
67 *Amparo Directo en Revisión* 1754/2015, 14 October 2015.
68 *Amparo en Revisión* 208/2016, 19 October 2016.
69 *Amparo Directo en Revisión* 3186/2016, 1 March 2017.
70 *Amparo en Revisión* 644/2016, 8 March 2017, and *Acción de inconstitucionalidad* 61/2016, 4 April 2017.
71 *Contradicción de Tesis* 422/2016, 22 March 2017.
72 *Amparo Directo en Revisión* 5490/2016, 7 March 2018.
73 *Amparo Directo* 9/2018, 5 December 2018.
74 *Amparo Directo en Revisión* 5139/2018, 14 November 2018.
75 *Amparo en Revisión* 1079/2018, 10 April 2019.
76 *Amparo Directo en Revisión* 7134/2018, 21 August 2019.
77 *Acción de Inconstitucionalidad* 148/2017, 7 September 2021, promoted by the Attorney General of the Republic, demanding the invalidity of Articles 195, 196 and 224, section II of the Penal Code of the State of Coahuila de Zaragoza, contained in Decree 990, published in the local Official Gazette on 27 October 2017.
78 *Acción de Inconstitucionalidad* 10/2000, 30 January 2002.

On 28 August 2008, the SCJN resolved *Acción de Inconstitucionalidad* 146/2007 *y su acumulada* 147/2007, in which it declared valid the reform approved by the Legislative Assembly of the Federal District to the Penal Code and the Law of Health of said entity, through which voluntary abortion was decriminalized within the first 12 weeks of pregnancy and public health institutions were instructed to provide medical and counselling services in support of this.[79]

In the decision *Acción de Inconstitucionalidad* 148/2017 issued on 7 September 2021 which was made unanimously by ten votes, it was declared unconstitutional to criminalize abortion in an absolute manner. More specifically, the Court declared the invalidity of Article 196 of the Penal Code of Coahuila, which provided for a prison sentence for a woman who voluntarily performed an abortion or to whoever made the woman have an abortion with her consent, since it violates the woman's right and of pregnant women to decide. The Supreme Court understood that the product of pregnancy deserves protection that increases over time, as the pregnancy progresses. However, it specified that this protection cannot ignore the rights of women and pregnant persons to reproductive freedom. Therefore, the plenary established that absolutely criminalizing the interruption of pregnancy is unconstitutional.

The Court extended its decision and reasoning to Article 198 of the Penal Code of Coahuila, in a section that prevented woman from being assisted by health personnel in a voluntary abortion. Likewise, it extended its decision and reasoning to portions of Article 199 that criminalized abortion and limited to 12 weeks the possibility of abortion in case of rape, insemination or artificial implantation.

Having reached a majority that exceeded eight votes, the ruling of the Court applies to each and every judge in Mexico; both federal and local. From now on, when resolving future cases, they must acknowledge that the criminal regulations of the federal entities that criminalize abortion in an absolute manner are unconstitutional, as are the criminal types that do not contemplate the possibility of interrupting the pregnancy in a period close to implantation, or the rules that only provide for the possibility of abortion as acquittal excuses, since in these cases the conduct is classified as a crime, even if no penalty is imposed. Finally, the Court invalidated Article 224, section II, of the local Penal Code, which established a lesser penalty for the crime of rape between spouses, concubines and civil partners, than the penalty for rape in general, on the basis that it is discriminatory, especially against women.

This is obviously a historic decision in the fight for the rights and freedoms of women, particularly the most vulnerable. With this unanimous criterion, the Supreme Court confirmed once again that its only commitment is to the Constitution and the human rights that it protects.

4 Final Remarks: Do Gender Equality and Women's Rights Receive Effective Protection in Mexico?

Despite the important advances Mexican constitutionalism has made in recent years, Mexico still owes a significant debt to women. First of all, despite the

79 *Acción de Inconstitucionalidad* 146/2007 *y su acumulada* 147/2007, 28 August 2008.

progress and measures implemented, the current situation in the country is worrying. According to data from the National Urban Public Security Survey (ENSU from its name in Spanish *Encuesta Nacional de Seguridad Pública Urbana*),[80] in the December 2019 edition, 99.7 per cent of harassment, sexual harassment and rape crimes in Mexico go unreported. According to the 2021 National Census of State Justice Prosecution (CNPJE, from its name in Spanish *Censo Nacional de Procuración de Justicia Estatal*), the crime of domestic violence (which is considered an approximation to violence against women) registered an extremely high frequency in 2020, second only to theft. In addition, it was the only crime that had increased by 5.3 per cent between 2019 and 2020, which could be attributed to the period of confinement due to COVID-19 during 2020, as by staying longer in their homes with other members of their family, women were more exposed to violence by their aggressors. Crimes against women (that is, those crimes in which women are victims in the majority of cases include crimes of femicide, sexual abuse, sexual harassment, rape/apparent rape, statutory rape, trafficking in persons and gender violence in all its modalities) registered in terms of investigations, open investigations and preliminary investigations initiated in 2020 add up to a total of 273,903, representing 14.8 per cent of all crimes registered in Mexico (out a total of 1,856,805). Of these, it stands out that 80.4 per cent correspond to crimes of domestic violence. This numerical data is not really accurate, since the State does not provide reliable information on which to base an understanding of the magnitude of the problem of gender violence.[81]

Even so, with the little data that is available, the picture is worrying and very bleak regarding gender violence against women. It is also very concerning that there is still a fairly high number of reparation measures issued by the Inter-American Court of Human Rights with reference to cases of gender-based violence against women which are pending compliance. It is true that the Mexican State has taken and implemented actions which are in some way related to the decisions on gender violence against women, which constitute important steps on the road to guaranteeing the right of women to a life free of violence. An example of this is the incorporation of section VII of Article 52 into the General Law of Access for Women to a Life Free of Violence, which provides for the right of women victims of any type of violence to "be valued and educated free of behavioral stereotypes and social and cultural practices based on concepts of inferiority or subordination",[82] and section II of Article 45, which establishes the responsibility of the State to "develop programs that promote the culture of a life free of violence against women and respect for their dignity".[83]

The Justice Centers for Women (CJM from its name in Spanish *Centros de Justicia para las Mujeres*) were created to comply with the obligations established

80 See: INEGI, *Encuesta Nacional de Seguridad Pública Urbana*, México, 2019. Available at: https://www.inegi.org.mx/programas/ensu [Accessed on 15 July 2020].

81 ARNAIZ ZHURAVLEVA, O. (coord.), *Impunidad feminicida. Radiografía de datos oficiales sobre violencia contra las mujeres*, México, 2020.

82 Published in the Official Gazette of the Federation on 28 January 2011.

83 Ibid.

in terms of the care and prevention of violence against women; and various courses and programmes were developed in relation to the diligent and effective investigation of cases of sexual violence against women, which include applying a gender perspective.[84] These measures have allowed the Mexican State to begin to generate strategies to combat the problem of gender-based violence against women in the country, especially in terms of care and access to justice for victims, on the basis of which action protocols have been developed for the authorities that deal with this type of case, as well as training courses and campaigns that contribute to the cultural and structural change that this type of violence requires.

However, the human rights crisis that gender-based violence represents in Mexico is very serious. Although judgments have made progress on the issue of gender-based violence, thanks to the transformative work of the Inter-American and the SCJN case law – particularly with regard to reparations – the current scenario of problems in Mexico shows that the actions of the State are still insufficient.

Perhaps, due to the transformative approach taken to the situation of serious human rights violations in the Latin American continent, we have charged the courts (both the Inter-American Court and the SCJN) with an excessive responsibility – which in part should not be their responsibility at all – that of ensuring that the states and all the authorities in the system are guaranteeing human rights and are complying with said measures. However, given the inactivity of the latter, the judicial system appears to be ineffective in this role and has little scope for action if wider strategies are not considered that could strengthen the regional and national protection system to force state authorities to comply with reparation measures and to sanction them in the event that they do not do so.

We could also reflect on the true meaning of the transformative work of the jurisprudence and rethink the foundations of the mechanisms for supervising compliance with the reparation measures. What is evident, and this is demonstrated by the four decisions in which the Inter-American Court has declared the international responsibility of the Mexican State for gender-based violence against women, is that the judicial system cannot function without a collaborative attitude on the part of the State, which begins when the existence of gender-based violence against women is recognized as a problem of a structural and systematic nature that still persists and about which there is still much to be done. The Mexican debt to women for gender violence remains very high.

84 On this point see SPIGNO, *La vocación transformadora de la reparación del daño con perspectiva de género. Breves reflexiones sobre la jurisprudencia interamericana en los casos contra México*, cited n. 41.