

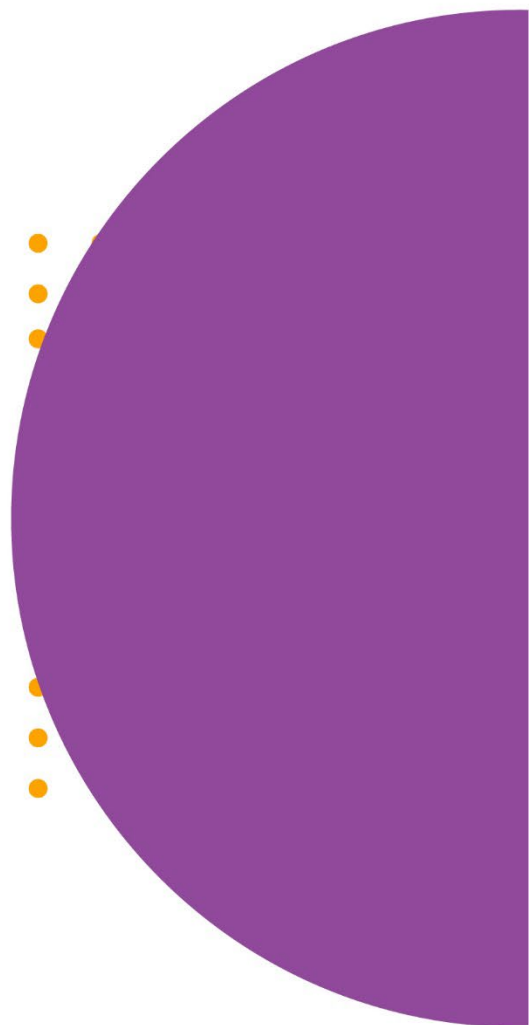
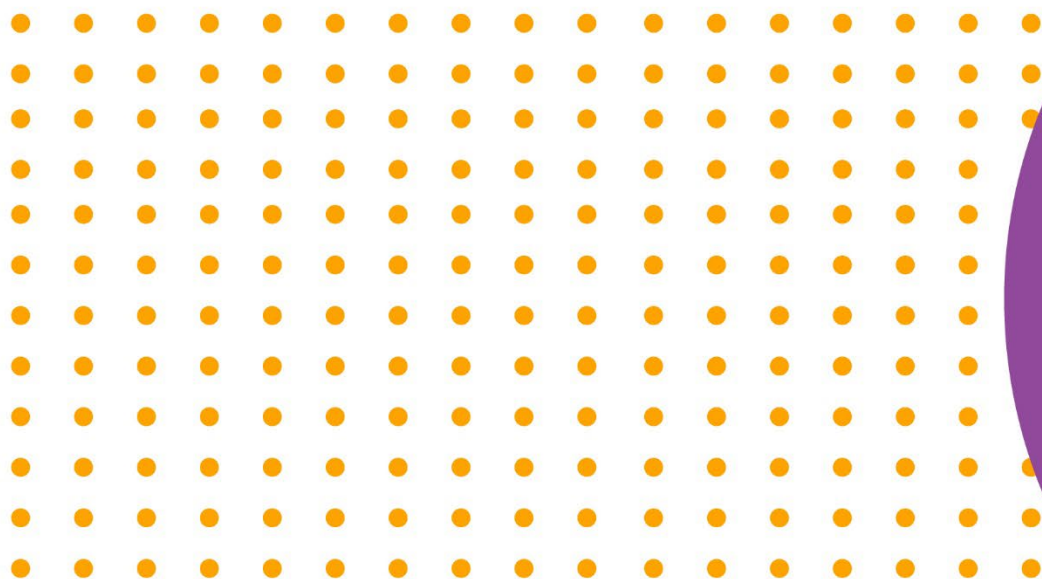


TRIBUNAL ELECTORAL
del Poder Judicial de la Federación



Red Mundial
de **Justicia Electoral**

Guide to judge with a
GENDER
PERSPECTIVE
in electoral matters



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Guide to judge with a **gender perspective** in electoral matters

Gender Equality Observatory



Acknowledgments

The Guide to Judging with a Gender Perspective in Electoral Matters is a collective work that reflects the joint effort made by members of the Electoral Tribunal of the Federal Judiciary, UN Women, the Venice Commission, the Secretariat for the Strengthening of Democracy of the OAS, International IDEA, UNDP and the University of California at Berkeley. Dialogue and harmony in working together were the principles that guided our activity in the elaboration of this work.

The contributions of the people who participated in its drafting were always aimed at strengthening its content and providing a global vision of the issues addressed. Our most sincere acknowledgement to them.

Presentation

This four-step guide to judging with a gender perspective arises from the need to provide mechanisms to those who impart electoral justice, in order to make decisions with a perspective of maximum protection of human rights where the gender category is involved. Hence, within the Gender Equality Observatory of the Global Network on Electoral Justice, at the proposal of its chair, the idea of drafting the document arose.

During its elaboration, the work involved an important effort due to the complexity of finding common points among the national legal systems of the countries that participated in this organization. For its integration, we took into account rulings of national and international courts, analyzed good practices of different countries, specialized doctrine and national manuals where the gender perspective has been applied in other matters.

It is worth noting that this is the first guide for judging with a gender perspective in electoral matters, so we can affirm that it is an unprecedented work. Although it takes up some general lines of protocols or manuals on other matters, focuses on the specific field of the protection of the political and electoral rights of women and other gender identities.

The objective of this document is to provide tools for judges to use, on a daily basis, the gender perspective as an analytical method and to guarantee the political and electoral rights of women without risks or affectations to their dignity. This is because the implementation of measures to protect women's rights is an obligation that we, the authorities, cannot avoid.

Thus, given the increase in cases of discrimination and violence against women who seek to exercise their rights of participation and access to public office, as well as the complexity of the issues due to the variables derived from them and the resistance of the patriarchal system, it is essential that there be a methodology to assist in the identification and diagnosis of the facts, in the analysis of the applicable law, to argue and make decisions that protect the rights of women with an international standard, eliminating stereotypes and cultural and social barriers that prevent them from exercising their rights.

Thus, today we make this guide available to you so that it becomes a simple and agile working tool that can be used by judges and, in turn, can be consulted by any other person who requires it, including women's rights advocates or other users or victims of violence.

Our expectations of this tool are based on resolving possible doubts and practical problems that may arise in the study of a case, as well as enriching the vision of the judges in order to identify situations where there are imbalances of power, contexts of violence or inequality.

For this reason, in this project we placed special emphasis on presenting the methodology in a simple and accessible language that can be used by any judge, regardless of the specificities of the national legal system in which they find themselves.

The idea is to analyze legal problems with violet glasses, where the contexts of inequality are evidenced and from there, the necessary legal measures are detected and adopted to achieve substantive or material equality.

We start from a transformative vision of law, where legal operators can have an impact on the dismantling of the patriarchal system, the empowerment of women and the achievement of parity democracy free of violence.

This contribution gathers accumulated jurisdictional experience, case-law and doctrinal development in the field, with the final objective of accelerating the modification of social and institutional practices that make effective judicial protection of women's rights effective in all countries, through these four steps that assist the judicial function.

These are minimum elements that, if taken into account by legal operators, will yield visible results in the fight against gender-based discrimination and violence.

No effort is too little in our duty to dismantle and eradicate inequalities and violence, no person should be left behind in the exercise of their rights, so I invite you to consult and apply this guide and, above all, to act with sensitivity and empathy in these cases.

Justice Mónica Aralí Soto Fregoso
Chair of the Gender Equality Observatory of the GNEJ

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Abbreviations

UNHCR. United Nations High Commissioner for Refugees.

ACHR. American Convention on Human Rights (Pact of San Jose).

EU CFR. Charter of Fundamental Rights of the European Union.

ECHR. European Convention on Human Rights.

IACHR. Inter-American Commission on Human Rights.

ICJ. International Court of Justice.

CNDH. [as per its Spanish acronym] National Human Rights Commission.

IACHR. Court. Inter-American Court of Human Rights.

CPEUM. [as per its Spanish acronym] Political Constitution of the United Mexican States.

American Declaration. American Declaration of Rights and Duties of Man.

HR. Human Rights.

ESCR. Economic, Social and Cultural Rights.

IHRL. International Human Rights Law.

DOF. [as per its Spanish acronym] Official Gazette of the Federation.

UDHR. Universal Declaration of Human Rights.

GVM. General Victims Law.

OAS. Organization of American States.

NGOs. Non-Governmental Organizations.

UN. The United Nations.

PGR. [as per its Spanish acronym]. Office of the Attorney General.

ICCPR. International Covenant on Civil and Political Rights.

ICESCR. International Covenant on Economic, Social and Cultural Rights.

PSS. Protocol of San Salvador.

SCJN. [as per its Spanish acronym]. Supreme Court of Justice of Mexico.

IACHRS. Inter-American Human Rights System.

TCE. [as per its Spanish acronym] Electoral Court of Ecuador.

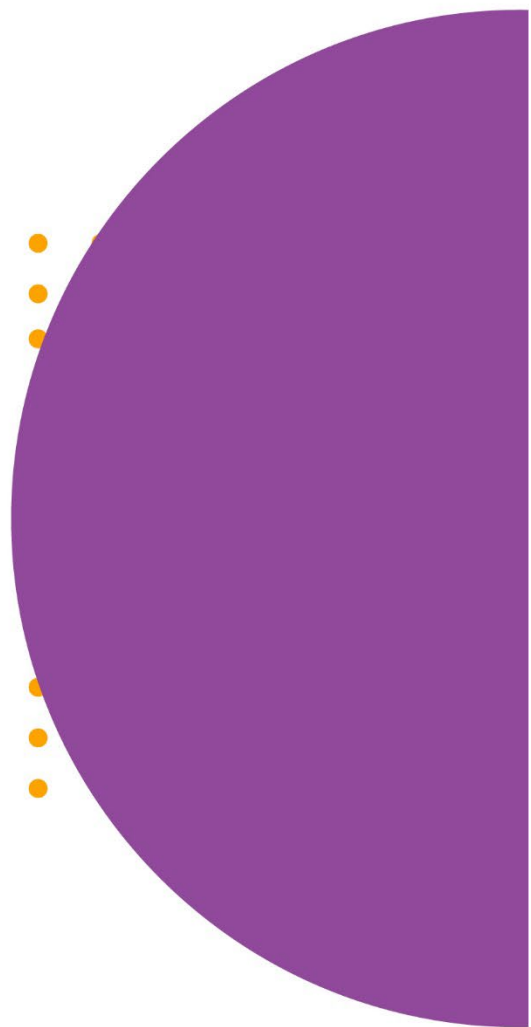
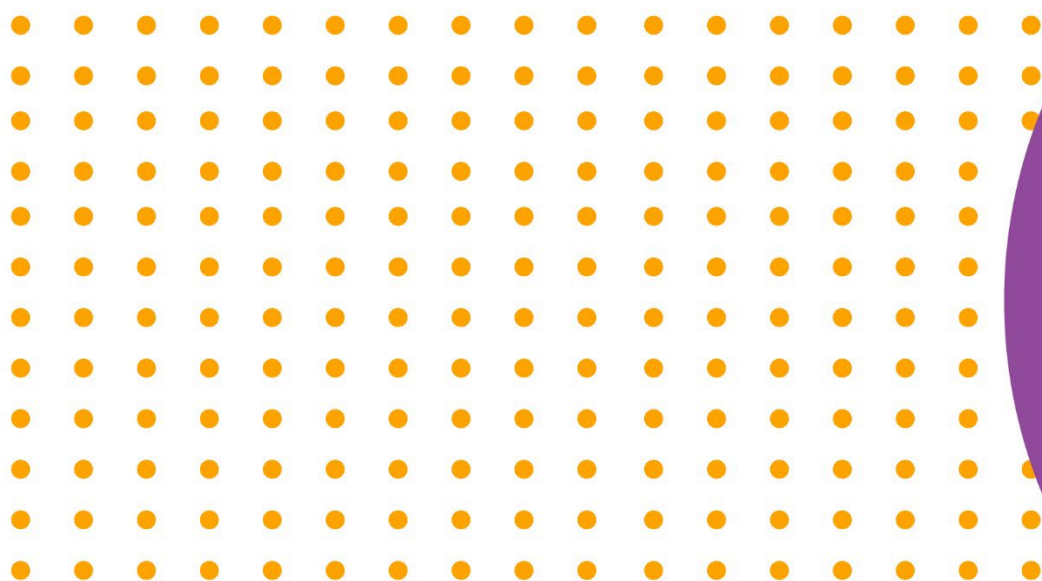
ECtHR. European Court of Human Rights.

TEPJF. Electoral Tribunal of the Federal Judiciary of Mexico.

ITCs. Information and Communication Technologies.

FTAs. Free-Trade Agreements.

TPP. Trans-Pacific Partnership.





I. Situational fact analysis

Initially, the plot of the situations, motives and circumstances of the typical electoral unlawful concept is to be determined and interpreted. The organization and structures related to the incident at hand must be established.

The user must identify the participation of the State and persons who intervened in the event(s) to attribute the relevant liability.

Keywords: Facts, violet, lens, context, concurrence of unlawful situations, inequality, discrimination and/or violence, degrees of participation.

1.1. Violet Lens: The essential Lenses for legal analysis

Analyzing the legal problem with a violet lens constitutes a metaphor to conduct a critical study of Law based on gender relations, in order to highlight the inequality that women experience daily in the exercise of their rights, specifically, those of political nature. By analyzing a case, through this tool, it is possible to adopt an empathetic vision that facilitates identifying the discrimination and subordination women face every day.

By examining legal issues with a violet lens, the judge¹ will be able use a gender perspective in the electoral field, to identify how the commission of the facts and the application of the Law are based on diverse inequalities derived from preserving the roles and stereotypes that have structurally forged the relationships between women and men in society, as any behavior that translates into discrimination constitutes human rights violations that must be identified and eradicated so as to achieve substantive equality within the framework of democracy.

Gender perspective and the use of a violet lens are related concepts, as they allow identifying patriarchal ideas and androcentrism as bases that promote discrimination and inequality between genders and, with it, the reinforcement of inequality in social structures. From this perspective, it is justified that the approach and resolution of cases in electoral matters should take a look through said perception.

Judging with a violet lens associated with the gender perspective fosters a new approach and a new conception of the world that welcomes and prioritizes the needs of women and deconstructs those of men. Therefore, if adopting a position based on the violet lens is a way to ensure that women achieve equality in any of its dimensions, nothing prevents it from becoming an obligatory practice in the jurisdictional duty and that of the people in charge of protecting human rights.

1.2. Identification and diagnosis

At this stage, the judge shall confirm:

¹ It is important that the electoral judgment is carried out by the electoral tribunals or courts due to their specialty and relevance to act on the subject.

- *That the requirements to file an electoral claim have been met, according to the regulatory parameters and relational environment.*

Compliance with the legal provisions, as well as ancillary regulations, will be reviewed considering international provisions and standards. In the event the plaintiff fails to meet the formalities, this will not lead to injustice or lack of access thereto, as the judging authorities know the law and are the ones to enforce it.

To achieve this measure, compliance with the procedural requirements to file a claim within the regulatory parameters will be analyzed objectively and impartially.

The context ² framing the facts will also be examined. To do so, the causes of the actions or inactions will be analyzed, by identifying the scenarios and/or situations at the national or local level. In this phase, institutional, political, social, religious, cultural factors, *inter alia*, will allow establishing the positions held by the parties to the electoral conflict, their relationships, as well as determining the symbols, customs, forms of communication, which will be some of the factors to be weighed in the analysis.

Along these lines, the context perspective, in theory, is an analytical tool that allows identifying a series of facts, behaviors or discourses that constitute the framework in which the phenomenon under analysis takes place in a specific time and space. Hence, using the context as an analysis tool leads to perceive a certain event in a comprehensive way, without isolating it from other concurrent events.

² Theory considers *context* as an analytical tool that allows identifying a series of facts, behaviors or discourses that constitute the framework in which a certain phenomenon under analysis takes place in a specific time and space. Hence, using the context as an analysis tool leads to perceive a certain event in an comprehensive way, without isolating it from other concurrent events from the social scenario. Consequently, *acontextual analysis*, based on theory, is a methodology that, in essence, assumes that certain events may acquire different connotations when they are studied in isolation or when the circumstances of their environment are considered; which allows considering a multiplicity of significant factors based on the hypotheses that may be held, that revolve around a certain event to enable its adequate understanding (In: Karina; Robles, Jose Ricardo; Saavedra, Yuria; Serrano, Sandra; and Vazquez, Daniel, *Derechos humanos y contexto: herramientas propuestas para documentar e investigar. Manual de Análisis de Contexto para Casos de Violaciones a los Derechos Humanos*. [Human Rights and Context: Proposed Tools to Document and Investigate. Context Analysis Manual for Cases of Human Rights Violations], Mexico, 2017, International Bar Association's Human Rights Institute and Latin American Faculty of Social Sciences (FLACSO), pages 34 to 36.)

This, as it allows identifying the underlying gender stereotype and the type of relationship there is between the alleged victim and the accused party, allowing the judge to have tools to diagnose the case that has been submitted for their consideration.

Contextual analysis assumes that certain events may acquire different connotations when they are studied in isolation or when the circumstances of their environment are valued, which allows considering a multiplicity of significant elements based on the hypotheses that may be held, that revolve around a specific event to enable its adequate understanding.

When judging from a gender perspective, analyzing the context implies assessing and analyzing in greater depth all those characteristics and circumstances under which the specific case unfolds, i.e., the current historical, social and cultural situation in which the parties have been found, where the events have taken place, if they come from remote communities, have with limited resources or belong to ethnic groups, settlements characterized by violence or subjugation towards women and all those elements that in some way could have a particular effect on the case.

1.3. Defining the issue, target population and objectively benefited population

The judge must assess, including, but not limited to, the elements below:

a) The environment where the alleged electoral infraction takes place.

Assuming a position knowing sociopolitical aspects, as well as analyzing the conflict with data collection, will support the evaluation of the case and lead to developing arguments and a decision based both on circumstantial and legal grounds. When conducting an assessment, it will be relevant to incorporate statistical³, historical and social

³ Jesús C García, *Petitioner v. The Honorable Ray Alan T Drilon* case, Presiding Judge, Regional Trial Court-Branch 41 Case No 179267, 25 June 2013 Supreme Court of the Philippines, analyzed the social context with statistical data from the Philippine National Police – Women and Children Protection Center (WCPC) on Violence Against Women (2004 – 2011) by claiming the historical inequality between women and men based on academic sources, social research and interpreting the law. It is worth noting that the United Nations recognizes violence against women as a human rights problem and approved its Resolution 48/104 Declaration on the Elimination of Violence against Women on December 20, 1993, declaring that "violence against women is

data on the phenomenon of submission and systematic exclusion to which social groups are subordinated, to make the situation of the person being considered individually visible, by integrating an excluded group; not only from the idea of non-discrimination⁴, but also of the segregationist and exclusionary treatment that would further develop the situation of the marginalized group⁵.

b) The person(s) whose rights are violated.

It starts from the idea of safeguarding the identity of the victim and/or complainant reporting a violation to their rights, as the intimacy and privacy of the plaintiff are to be protected by using acronyms when processing the case⁶ thus, in the rulings or notifications, as well as in the operative section that contains any information that could identify the promoting party are to be avoided. Based on the foregoing, the victim's address, or location where the events took place and, overall, any personal data that may be considered sensitive or which disclosure would cause them to be identified may also be omitted.

In this phase, suspect categories are to be considered, i.e., all those conditions that generate the possibility of a situation of inequality and discrimination, when they constitute the differentiated treatment received by certain people, those who benefit

a manifestation of **historically unequal power relations between men and women**, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men."

⁴ Ripples International *et al.* v. the Inspector General of the National Police Service *et al.* case Africa. *This does not look very clear: which Court judged this case?* In this judgment the various types of discriminations are analyzed, namely, sex, age; as well as lack of agility of the Kenyan police as it failed to conduct prompt, effective, proper, and professional investigations of claims of sexual abuse against the girls (represented by Ripples Int.) violating the right to equal protection and a life free of violence. The ruling analyzes "international law emphasizing that sexual abuse and gender-based violence, as well as the **lack of investigation by the State of complaints involving such violence, constitute gender discrimination**". <http://theequalityeffect.org/160-girls-update-august-2013/>.

⁵ Saba, Roberto, "(Des)igualdad Estructural" [Structural (In)equality], in Roberto Gargarella and Marcelo Alegre (coordinators), *El derecho a la igualdad. Aportes para un constitucionalismo igualitario*, [The right to equality. Contributions for an egalitarian constitutionalism], Buenos Aires, 2007, Lexis Nexis, pages 166 and 167.

⁶ The use of alphanumeric codes when registering complaints will protect the physical, psychological, and material identity of the complainant as well as their employment status and family integrity.

objectively. Thus, conditions such as language, ethnicity, disability, sex, age, are parameters of inequality that a judge is to analyze and observe⁷.

Another factor is to determine if complainants have attention networks for this type of cases, which may be at the level of civil society, and if there are areas and/or personnel in public institutions that support this type of actions, such as the Ombudsman Office, Electoral Ombudsman Office, Public Defenders Office.

This will allow identifying levels of discrimination and inequality⁸ that may occur in the processes subject to evaluation, and in what phases of the electoral cycle these occur will be analyzed in detail to determine the conditions under which reported electoral actions or inactions take place.

There are some key questions, which, depending on each case, and if asked from the very beginning when the case becomes known to the judge, these come in handy to identify, in the first place, the possible relations of power, inequality or subordination

⁷ Saba, Roberto. The elusive border between justice and politics. <https://www.scjn.gob.mx/re-laciones-institucionales/sites/default/files/page/2021-03/Roberto%20Saba.pdf>. August 24, 2022.

⁸ Inter-American Court. Atala Riffo and girls v. Chile case Judgment of February 24, 2012. The case refers to the international responsibility of the State for the discriminatory treatment and arbitrary interference in the private and family life of Karen Atala Riffo, due to her sexual orientation, in the judicial process that resulted in the removal of the care and custody of her daughters. The Court observed that the disciplinary investigation and the extraordinary visit (...) are based on the legal provisions (...). As one of the purposes of the visit is to inquire about the sexual orientation of Mrs. Atala based on press articles, a differentiated treatment to the detriment of Mrs. Atala took place as her sexual orientation was incorporated as an investigative issue in the disciplinary process as well as her relationship with a person of the same sex, although the disciplinary investigation began with legal grounds, and did not finish with a disciplinary sanction against Mrs. Atala for her sexual orientation, this fact was arbitrarily investigated, which constitutes an interference with her right to a private life, which also impacted on her professional sphere. Therefore, the State is responsible for the violation of her right to privacy, recognized in Section 11.2 related to Section 1.1 of the American Convention, to the detriment of Karen Atala Riffo. The **principle of equality before the law, equal protection before the law and non-discrimination is referred**. The Court precedent also states that at the current stage of the evolution of International Law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens* (rules of mandatory law). The Court reiterates that, while the general obligation of Section 1(1) refers to the duty of the State to respect and safeguard "without discrimination" the rights contained in the American Convention, Section 24 protects the right to "equal protection of the law." In other words, said article prohibits discrimination in law or in fact, not only with regard to the rights enshrined in said treaty, but also with regard to all laws approved by the State and their application.

between the parties to a process as well as to define the situations in which the fact occurs.

Some questions to identify these situations are, including but not limited to, the following:

1. Who does what?

It helps determine who is the victim or plaintiff, and who is the aggressor or accused; and leads to the identification of the person whose right has been violated and the person who is identified as responsible party. The purpose of this question is to specify, among other things, whether it is a man or a woman, a minor, a member of an indigenous community or if they are a person with a disability, or under any other circumstance that may put it in a situation of vulnerability.

2. How is justice accessed, what resources or means are available to access justice?

It outlines the elements available to access resources or possibilities, including access to justice⁹.

3. Who is entitled to what?

It identifies the disputed entitlement or, in the electoral case, the formal entitlement so as to effectively safeguard the rights of those persons who, being entitled to them, cannot adequately prove their effective enjoyment.

4. Who is responsible for what?

It determines who is required to prevent, protect, or do something in relation to someone's rights. Who is accused for having carried out an unlawful conduct in the public or private sphere that affected someone's protected right.

5. Who is in control of what?

It allows assuming a position in relation to the fact that, in personal relationships, the element of control or subordination is power.

6. Who decides what?

It describes to what extent power is linked to participation, citizenship and democracy as authority and accountability.

7. Who gets what?

⁹ National Gender Commission of the Judicial Branch -CNGRJ- *Equity Criteria for an Administration of Justice with a Gender Perspective*. Bogota, June 2011.

It details the way in which the distribution of benefits follows a principle of equity that must be observed, i.e., that whoever has less receives more.

8. **Why? What caused the situation?**

It allows taking a comprehensive approach to a fact, putting it in a context and carrying out an analysis of a situation taking into account the law, rules, and customs, as well as a historical narrative that may help understand certain practices or behaviors.

1.4. Government agents and external agents

- *To review and compare violated rights - electoral procedural investigation.*

In this phase, the judge will clearly establish who is the victim, who (people and institutions) had the duty to protect the claimed rights; as well as determining the concurrence of the violated rights to ensure electoral justice.

Therefore, carrying out the electoral procedural investigation will entail ensuring the timeliness, agility, and immediacy of the jurisdictional duty to resolve the case.

Some fundamental questions to ask on government agents and external agents are:

1. **Who is responsible for what?**

Determining who is required to prevent, protect, or do something in relation to someone's rights. Who is accused for having carried out an unlawful conduct in the public or private sphere. Whether they are government agents (government institutions), or external agents (citizens or political parties).

2. **Who is in control of what?**

In personal relationships the element of control or subordination is power. Therefore, it is key to establish this power relationship between the victim and the perpetrator.

3. **Who decides what?**

Identifying to what extent power is linked to participation, citizenship and democracy as authority and accountability.

4. **Who gets what?**

The distribution of benefits follows a principle of equity that must be observed, i.e., that whoever has less receives more.

5. Why? What caused the situation?

It contributes to taking a comprehensive approach to a fact, putting it in a context and carrying out an analysis of a situation taking into account the law, rules, and customs, as well as a historical narrative that may help understand certain practices or behaviors.

1.5. Analyzing the facts

Facts are analyzed with the intent of determining the degree and condition of gender-based inequality of the parties (discrimination or subordination).

1. **As for the subjects involved**, identifying if there is an unbalanced power relationship and the person who is in a situation of vulnerability or formal, material and/or structural inequality.
The situations caused based on stereotypes or manifestations of sexism in the process will be reviewed.
2. **On the facts that gave rise to a resolution or judgment**, the facts without discriminatory stereotypes, social prejudices and based on the context of inequality that take place will be analyzed and interpreted.

1.5.1. 1st Level. Overview

The judge will identify particular circumstances of the parties to the process, with the aim of finding situations of inequality, discrimination, or subordination of a certain sector in a case, through the analysis of the following:

- a. To identify in the narrative of the parties the behaviors and conduct that lead to a conflict and the people who took part.
- b. Circumstances of time, manner, and place.
- c. To identify possible situations of violence (physical, verbal, psychological, economic, political, sexual, etc.).
- d. Petitions by the parties
- e. Rights claimed to be violated.

1.5.2. 2nd Level. Context

The analysis of the context implies the visualization of women in their reality. To do so, the intersection of several clauses or natural conditions (sex, age, ethnic origin, race, color, disability, etc.) and social conditions (religion, opinion, sexual preferences, gender, marital status, etc.)¹⁰ will be taken into consideration, which, by coinciding and overlapping with each other, lead to scenarios of inequality, discrimination and subordination that hinder the effective exercise of their rights and prerogatives.

In the case of gender-based political violence, it must be taken into account that its manifestations are not only produced during the development of the electoral processes, specifically, in the electoral campaign period, since it also occurs prior to the request for registration of candidacies, in the internal disputes that take place within the political parties and among the persons who aspire to be registered; and even after taking office, to the point that the performance of the functions of public service is blocked.

To determine the degree and condition of inequality, discrimination, or subordination between the parties for reasons of gender, the judge must analyze the general and particular context of the facts in which the conflicts or behaviors that led to the dispute and the parties thereof.

a) General Information.

- a. Identification of one or several social problems where the dispute lies (emphasis on gender-based discrimination, inequality, or subordination).
- b. To analyze the conflict based on the spatiotemporal conditions under which the event at hand took place or is taking place (compilation of statistical or descriptive data of the population).

b) Private information of people.

- a. Identity characteristics: sex, gender, and/or gender expressions, sexual orientation/preference; age, specific cultural identification, disability status, nationality, language, religion, marital status.

¹⁰ Cfr.: LEMAITRE, Julieta: "Legal fetishism", conference, in <https://www.youtube.com/watch?v=XkrF111hY5c>

- b. Review of particular context conditions: economic and patrimonial condition, level of formal education, employment status, main activities, financial /care dependents, health condition, existence of support networks.

All these factual elements will serve as the basis for considering whether we are facing a gender-based political violence case or situation derived from any clause that results in a situation of discrimination, inequality, or subordination.

Once the judge defines that the judicial decision will address a gender issue, they may resort to other criteria that will help them in a differentiated way to solve the dispute and case

For instance, in the “Cotton Field” ruling, the Inter-American Court considers that, in cases of violence against women, art. 7 b of the Convention of Belem do Pará, imposes “obligations reinforced” on the duty of due diligence to prevent, investigate and punish violence against women¹¹.

What determines whether or not the gender perspective should be applied in a case or process is the existence of asymmetric power situations or from contexts of structural inequality based on sex, gender, or people's sexual preferences/orientations.

To achieve this task, the following premises must be taken into account:

- The purpose of Law is to combat asymmetric power relations and inequality schemes that determine the design and execution of people's life projects.
- The jurisdictional duty has an invaluable potential for the transformation of formal, material, and structural inequality. Judges are agents of change in the design and execution of people's life projects.
- The mandate of equality eventually requires from those who administer justice, an exercise of deconstruction of the way in which the Law has been interpreted and applied.

For this reason, the European Institute for Gender Equality makes certain recommendations on judging with a gender perspective, including: to analyze the national and international spheres to obtain information and identify the possible obstacles that

¹¹ Ibero-American Judicial Summit Guide.

women could face when accessing national courts and international justice; to identify and disseminate resources and remedies, as well as good practices to facilitate women's access to justice and make recommendations to improve any situation that puts them at a disadvantage by trying to achieve equal justice at the national and international levels¹².

¹² JUSTICE. POLICY AREA, <https://eige.europa.eu/gender-mainstreaming/policy-areas/justice>.



II. RIGHTS

(Determination of the applicable law)

2.1. Determination of the applicable law

This section will go over how Applicable Law is determined, dealing with cases that need to be judged with a gender perspective in favor of women, recognizing women diversity from the perspective of intersectionality.

The intersectional perspective is a fundamental tool for the recognition and definition of the applicable right, since the identification of the natural circumstances (inherent to the person) and social circumstances (related to her environment) that converge in a specific way in each woman who comes before an authority, leads to the description of the factors of inequality, discrimination and subordination that afflict her and, as a consequence, to the selection of the rights that have been transgressed.

In order to judge with a gender perspective, it is necessary to begin with the analysis of the facts and, based on this, resort to the provisions that are useful or relevant to the case, as well as those that materialize some asymmetric power relationship, which, of course, makes it essential to have various useful tools to analyze the applicable law, maintaining a critical stance in relation to the conventional, regional or local regulatory framework, depending on the case, because if judging with a gender perspective requires noting the differences, stereotypes and asymmetric relationships of power,¹³ how is it that we rely on the Law, if it also establishes and picks up gender elements?

Undoubtedly, the core objective of judging with this perspective lies in identifying gender roles present in the Law, to use it and create, from there, egalitarian orders or provisions.

Accordingly, this mechanism is aimed at identifying the existence of a power relationship based on gender, so as to then mainstream the gender perspective¹⁴ when reviewing the facts and the means of conviction, the application of the provisions and developing the arguments to solve the case.

¹³ Miranda, D. *et al.*. *Asymmetry, power and gender construction, a way to achieve equality?* Journal of Political and Strategic Studies. ARTICLE Volume 7, no. 1, 2019. Available at: <https://revistaepe.utem.cl/articulos/asimetria-poder-y-construccion-de-genero-un-camino-para-conseguir-igualdad/>.

¹⁴ OIT. Instruments for gender equality. Available at <https://www.ilo.org/public/spanish/bureau/gender/newsite2002/about/defin.htm>.

In this context, the tools to identify the person and the context in which they are immersed are essential to apply this method, to the extent that judging from a gender perspective in favor of women implies the application of a series of international treaties and regional on human rights and, some specifically linked to gender issues.

Thus, so as to comply with the mandate of judging with a gender perspective, it is key that the judge is aware of the situations of vulnerability or context of inequality linked to it so as to, if applicable, evaluate the differentiated impacts of the provisions and question their neutrality based on the right to equality,¹⁵ which is achieved, to a large extent, with the use of the tools below.

2.2. Tools to determine the applicable law

Below are each of the four tools that are deemed basic and appropriate to define the Applicable Law¹⁶, free of aspects involving a discriminatory treatment to the detriment of women, due to gender issues.

2.2.1. Gender-based

When analyzing the case, it must be defined whether the events surrounding it happened due to the mere fact of a person being a woman. Accordingly, the question to investigate and solve the case with a gender perspective should be raised as follows: *What happened is, directly or indirectly, based on gender?*¹⁷

If the answer is 'Yes', then the case must be judged from a gender perspective, while the core point is to find out the reason why a woman is immersed in a certain problem. Is due to the mere fact of being a woman? In which case, gender should be considered as a cross-cutting issue that guides the analysis of the case¹⁸.

¹⁵ Inter-American Institute of Human Rights. Basic tools to integrate the gender perspective in organizations that work on human rights. Available at: <https://www.corteidh.or.cr/tablas/25753.pdf>.

¹⁶ Idem.

¹⁷ Rookie. A. Gender Tools for International Financial Observers. Gender Action. Available at: https://www.genderaction.org/publications/Toolkit_Espanol.pdf.

¹⁸ Research methodologies and gender analysis: United Nations International Research and Training Institute for the Advancement of Women (UN-INSTRAW)

Thus, the answer sought with the core questions is one that allows identifying gender roles and the probable existence of an asymmetric power relationship, which of course would lead to only those cases where the cause or origin of what happened is related to the mere fact of a person being a woman or to a gender-based reason.

So, since the matter is a *gender-based* issue, the next step would be to identify the way in which this operates in similar cases, as the purpose is to identify the existence of a general situation of inequality in where the affected person may be in, as, in general, cases of oppression or inequality are part of a complex differentiated scheme, tending to preserve the segregation of women for gender-based reasons.

2.2.2. Gender-based violence

This type of violence is caused merely by the gender of people. Particularly, in the case of women, it should be considered that article 1 of the *Inter-American Convention to Prevent, Punish and Eradicate Violence against Women* defines it as *any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or the private sphere*.

Accordingly, it is clear that gender violence may be psychological, sexual, and physical¹⁹, and may take place:

- a) In the family, domestic entity, or any interpersonal relationship, because the aggressor agent and the woman share or have shared the same address; it includes rape, maltreatment, and sexual abuse, *inter alia*;
- b) In the community, when caused by any person, including torture, rape, human trafficking, sexual abuse, sexual or workplace harassment in the workplace or educational institutions, health institutions or any other place, to name a few; and
- c) Wherever, whenever it is perpetrated or tolerated by the State or its agents.

¹⁹ UN WOMEN. <https://www.unwomen.org/es/what-we-do/ending-violence-against-women/faqs/types-of-violence#:~:text=Violencia%20contra%20mujeres%20y%20ni%C3%B1as%20en%20el%20%C3%A1mbito%20privado,-Este%20tipo%20de&text=Abarca%20cualquier%20acto%20f%C3%ADsico%2C%20sexual,las%20mujeres%20a%20escala%20mundial.>

The identification of gender-related violence allows evaluating the case, and this is especially useful in terms of arguments and reparations.²⁰

Accordingly, the identification of gender-based violence constitutes a central factor in the case, even when what is being decided is not gender-based violence as such, since at all times, acts of violence must be considered as a cross-cutting issue of the case, as they are the ones that could trigger or condition the interesting facts of the case, or else, since the determination that is to be issued may depend on them.

Therefore, the tool is useful to measure each issue and the consequences it entails, as strictly speaking, the identification of gender violence has a decisive impact on the way in which issues are analyzed, as it requires developing an argument based on its existence, and to address its effects, specifying that the presence of all gender-based violence must be considered in all cases, as it is a cross-cutting issue that is pervasive in all aspects of women's daily lives.

Thus, judging from a gender perspective requires placing a person in the individual and social context, so that the disputed facts are interrelated with a scheme of subordination as it belongs to a sector, in the understanding that what happened to that person is due to the fact that she belongs to a traditional and historically subordinate group and thus, it is up to the authority trying the case to make that connection.

2.2.3. Stereotypes Identification

Traditionally, through gender stereotypes, certain roles are assigned to people based on their sex²¹.

Hence, the assignment of certain stereotyped roles to women may still be noted, where they are socially expected to behave in a certain way, unlike men, given that addressing

²⁰ NATIONAL AUTONOMOUS UNIVERSITY OF MEXICO. THE COST OF VIOLENCE AGAINST WOMEN IN MEXICO. UNIVERSITY PROGRAM OF GENDER STUDIES. MINISTRY OF INTERIOR. NATIONAL COMMISSION TO PREVENT AND ERADICATE VIOLENCE AGAINST WOMEN. 2016. Available at: https://oig.cepal.org/sites/default/files/el_costo_de_la_violencia_contra_las_mujeres_en_mexico.pdf.

²¹ Inter-American Institute of Human Rights. Basic tools to integrate the gender perspective in organizations that work on human rights. Available at https://www.iidh.ed.cr/iidh/media/1829/herramientas_integrar_genero_ddhh-2008.pdf. Page 175.

the issue of generic stereotypes entails referring to a consolidated set of beliefs linked to the personal characteristics of women and men.

This way, the interpretation of law does not escape gender stereotypes, because these cascade into everything related to human life, including the development of law, so, in this case, the use of this tool consists of identifying and breaking down the stereotypes present in the legal codes, to prevent them from guiding the decision of a case and, with it, the perpetuation of gender roles²².

Symptoms or indicators of stereotyping include:

- Category-based judging, e.g., assessing a woman's leadership potential based on her membership in the women's social group and not on her proven abilities as a leader;
- Evaluating qualifications or credentials based on tangentially relevant information; for instance, evaluating a woman based on her social skills, rather than her business skills;
- Selective perception and interpretation; for instance, interpreting a woman's aggressiveness as evidence that she may be difficult to deal with and
- Extreme judging or evaluation based on limited evidence; for instance, assuming a woman was late for a meeting because she was looking after her children, when, in fact, she was late because of a doctor's appointment²³.

²² Cook, R. & Cusak, S. Gender Stereotyping: Transnational Legal Perspectives, University of Pennsylvania Press, 2009. Available at https://www.law.utoronto.ca/utfl_file/count/documents/reprohealth/estereotipos-de-genero.pdf.

²³ Fiske, Susan T. et al. Social Science Research on Trial: Use of Sex Stereotyping Research in Price Waterhouse v. Hopkins. In: American Psychologist No. 46 (1991), p. 1050-1051

2.2.4. Re-characterization of the law²⁴

This tool emerges from understanding rights, from equality to determine if certain provisions, or a legal concept, are capable of incorporating women into the legal discourse.²⁵

Thus, re-characterizing implies interpreting the legal provisions and the rights in such a way that they incorporate women in their just reality, within the legal discourse, to the extent that it broadens the interpretation base of the rights as well as of any legal concept, to understand the particular conditions of a social sector.

Therefore, this tool may be applied to any human right and any provision, since all of them, without exception, may —and must— be re-characterized so as to recognize the prevailing structural inequality and, thereby, protect the rights of women. The redefinition of the right requires an intersectional approach, in order to cover more broadly the different causes that hinder a woman's exercise of her rights.

Accordingly, when a case must be judged with a gender perspective, it is essential to review the applicable regulations, look at the entire Law to assess whether it should be re-characterized, and not only attend Law enacted exclusively for the protection of women's rights, since whether it is necessary to reinterpret the Law to incorporate this aspect into the legal discourse is to be evaluated.

In other words, the rights violated or that are intended to be protected by a court ruling must be read in terms of gender without having to resort to the rights or institutions designed exclusively for women, as it must be based on the principle that all Law is applicable and useful to protect the prerogatives and fundamental rights of women, as long as they are interpreted and applied from a gender perspective, taking into account, therefore, that the real challenge is to incorporate the reality of women in the legal discourse and the interpretation of the law.

²⁴ Cook, R. J. (1997) Introduction: the way forward, In Rebecca Cook (comp.). Women's human rights. Bogota: Profamily.

²⁵ Knowledge and Justice Magazine. Judge with a gender perspective: From theory to practice. National School of the Judiciary, Dominican Republic. vol. 1, no. 19, 2021

The development of common law on fundamental rights has gone from a generality that standardized differences to specificity that highlighted said differences to finally reach the egalitarian assessment of said differences²⁶.

This way, the first international treaties on human rights addressed these in general, without going over the issues they entail in disadvantaged sectors, which resulted in an interpretation that left out the interrelation of these violations with women's human rights, or the particularities that should have been adopted based on structural disadvantage, so that by standardizing all social groups, their discriminatory situation was actually reinforced.

This led to creating specific international treaties, aimed particularly at women, children, people with disabilities, *inter alia*, where the violations of the human rights of groups in a situation of vulnerability were recognized in detail and specifically, which, in the end, lead to an undesirable effect, characterized by isolating the rights of women in certain entities, thus generating the erroneous idea that the fundamental rights of women are enshrined only in some treaties, and not in all of them²⁷.

This is how we got back to the universality of human rights, although interpreted from the particularities and contexts of the different social groups, thus consolidating the re-characterization of rights, so that all of them these are applied to everyone, without distinction, but considering the disadvantage and conditions they may be in thus, achieving a gender-based differentiated impact.

²⁶ Falk, A. Relationship of gender differences in preferences to economic development and gender equality. Research article. Science. 2018. Available at: <https://www.science.org/doi/10.1126/science.aas9899>.

²⁷ Morales Simón, José Ignacio (Coordinator). *Nuevas perspectivas hacia la renovación de las prácticas de enseñanza de derechos humanos* [New Perspectives towards the Renewal of Human Rights Teaching Practices], 2021, pages 17 and 18. https://escuelajudicial.cjf.gob.mx/publicaciones/2022/Editoriales/Libro%20completo_DDHH_RV_141221.pdf

2.3. Compilation of International human rights ²⁸ and political-electoral treaties

In the context above, below, a general proposal of international legal instruments and tools in the field of human rights and, even, some a little more linked to the fundamental prerogatives of people in political or electoral matters, and some reference documents are listed in Annex II.

2.4. Judgments applicable to the case

This section lists a series of rulings with a gender perspective, on electoral matters, issued by various national jurisdictional bodies. This compilation is merely illustrative, so as to exemplify the use of useful tools to judging with a gender perspective.

Gender parity - Argentina

Case File CNE 6713/2016/CA1²⁹

The case refers to the fact that in the composition of the National Board of Directors of the political organizations provisions on gender equality are violated (Law 24,012, which refers to Law 23,298, art. 3° item b), as it is made up of fourteen members, and the minimum number of female members imposed by Law is five (Decree 1246/00), while only three have been included, in the appellant's word, in an undisputed statement proven by the information from the National Registry of Political Groups of said Court. Furthermore, political parties play an essential role in building an inclusive democratic system that allows women to participate on an equal footing with men in politics and within their organizations.

²⁸ See Abbreviations.

²⁹ National Electoral Chamber, Argentina, 2016, available at <http://ojoparitario.com.ar/wp-content/uploads/2019/11/6713-2016-CA1.pdf>.

Gender-based Violence within parties - Argentina

*Judgment "Radical Civic Union et al./challenge of an act by a party.
Case file CNE 392/2021/CA130*

The case analyzes the case of party members and authorities suspended from the party position they held, by "the men of the party, [who] have punished them for an opinion... expressed in safeguarding the gender perspective", by not complying with the female quota and gender equality in terms of its members. To this end, they were sanctioned in such a way that they were prevented from resorting to any higher instance to review their ruling, which resulted in a discriminatory conduct.

This ruling reveals the importance of establishing actions to avoid discrimination and gender-based violence within political parties, as well as [...] prevention mechanisms to identify and prevent cases that affect women when accessing to and developing their political life. Therefore, the detailed analysis by the judges defined that as part of the progressive action of the State, the latter shall remove obstacles to enable a greater participation, as well as prevent discrimination from reoccurring within the parties in clear disregard of the provisions that protect gender equality in the exercise of political rights.

Rotation of candidacies - Bolivia

*Resolution No. 201/2000
National Electoral Court*

The resolution issued by the National Electoral Court was challenged in the Constitutional Court. The basis of the Electoral Court was that although the political party complied with the participation of women by 30% in the lists of their candidacies, it failed to comply with another legal provision on rotation. Political parties tried to modify their credentials, and simulate a technical error, and wanted to change names from male to female names, e.g., Avelino Rojas Huallpa to Avelina Rojas Huallpa [in Spanish, names ending in -a are for women]. The Constitutional Court declared the appeal filed unfounded and lists were annulled.

³⁰ National Electoral Chamber, Argentina, 2021, available at <https://www.diariojudicial.com/public/documentos/000/102/824/000102824.pdf>. August 31, 2022.

Case: Political organizations / Gender equity - Colombia
Judgment C-490/1131

The Constitutional Court reviews the bill through which rules of organization and operation of political parties and movements, of electoral processes, are adopted. In this regulation, aspects related to gender equity are subject to study. Facing a change of text in-between one chambers, including in the principle of gender equity the various sexual options, whereby this matter is related to the issues that remained present during the different stages of the legislative process, which is why such modifications are compatible with the Constitution and do not violate the principle of normative unity.

Assignment of roles to the Vice Mayor of the Lepanto City Hall - Costa Rica
Judgment No. 3803-E1-201732

The purpose of the appeal for electoral protection filed was to protect the effective exercise of the position of the Vice Mayor of the district (...), in the face of a series of arbitrary actions that, according to the appellant, were carried out by the Mayor of that municipal council in her detriment. The appellant asked that the Mayor be ordered to respect her, to stop discrediting her as a popularly elected public official, and to assign her roles that are consistent with the hierarchy of her position.

The Court declared that the writ of amparo was well founded and ordered the Vice Mayor to have a role assigned forthwith in accordance with the dignity and hierarchy of her position. Moreover, the defendant was warned that in the future he should refrain from engaging in behaviors such as those that led to admitting the appeal and ordered the district entity to pay damages and procedural costs.

³¹ Constitutional Court, Colombia, 2011, available at <https://www.corteconstitucional.gov.co/sentencias/2011/C-490-11.rtf>.

³² Supreme Electoral Tribunal, Costa Rica, 2017, available at https://www.tse.go.cr/juris/relevantes/3803-E1-2017.html?zoom_highlight=consulta+exped.

*Case: Removal of the Vice Mayor by resolution of the Paltas City Hall
Judgment No. 026-2022-TCE33*

The Vice Mayor was removed from her duties by the collegiate body of the Paltas City Hall for carrying out tasks of monitoring municipal management, prior to a request by the Mayor. This way, gender-based political violence took place and the TCE ordered the suspension of the Mayor's of participation rights and imposed a fine on her in the amount of ten thousand six hundred twenty-five USD (\$10,625.00), in accordance with the § 1, section 279 of the Democracy Code, payable within thirty days, warned that, in case of failing to make such payment, these would be collected by coercive means.

Likewise, it was pointed out that, for the purpose of complying with the imposed sanction, the National Electoral Council should be notified so that the suspension of the rights of the defendant be registered; and to the Ministry of Labor, so that the respective removal is registered. Reparation measures included public apologies, at the expense of the accused, which would be published in the newspaper with the largest circulation within five (05) days. Publication of the full content of the judgment on the municipal website for a period of thirty (30) days.

In addition, training on gender-based political violence was arranged for the Municipality to give it to the general public and the municipal servants of the decentralized bodies. All these reparation measures will be fulfilled prior to archiving the case, after confirmation by the TCE.

³³ Electoral Tribunal, Ecuador, 2022, available at https://apps.tce.gob.ec/jml/bajar/Sentencias/1589bc_SENTENCIA-026-22-220422.pdf.

Financing of Political Organizations - France
Constitutional Council. Decision No. 2010-618³⁴

Section 1 of the Constitution allows the law to promote equal access for women and men in elections, so that political parties and groups contribute both to the expression of suffrage and the implementation of parity, to be ensured through the modulation of economic aid granted to political organizations. However, to comply with the principle of equality, this adjustment must meet objective and rational criteria. For this reason, the Constitutional Council decided to stop calculating the amount of public aid to political parties and groups based solely on the results of the legislative elections and current candidacies of both sexes in all the departments of the region.

Representation, gender quotas - Italy
Judgment No. 422. Year 1995³⁵

It was defined under conditions of equality of women in public life and in representative positions, by putting constitutional values at stake, inter alia, the access of women and men to elective positions on equal terms, the freedom of election of citizens, the unitary nature of political representation. The amendment to section 51 of the Constitution was embraced as a suitable shift to ensure constitutional coverage for an electoral system with gender quotas to achieve a balanced representation of both sexes, [...] an electoral system for the seats assigning system.

This way, the State was required to promote equality between citizens of both sexes, through specific provisions that ensure equal opportunities between men and women, highlighting the need to balance out the different interests and constitutional values involved.³⁶

³⁴ Constitutional Council, France, available at <https://www.federalismi.it/AppIOpen-FilePDF.cfm?artid=27022&dpath=document&dfile=23072014165603.pdf&content=%2D%2C%2B%2BSentenza%2Bn%2E%2B618%2F2010%2C%2BFrancia%2B%2D%2BConseil%2Bconstitutionnel%2B%2D%2Bin%2Bmateria%2Bdi%2Bautonomie%2Bterritoriali%2B%2D%2Bstatisti%2Beuropei%2B%2D%2Bdocumentazione%2B%2D%2B>.

³⁵ Constitutional Court, Italy, 1995, in <<https://www.giurcost.org/decisioni/1995/0422s-95.htm>>.

³⁶ Tania Groppi and Irene Spigno, *La representación de género en Italia* [Gender Representation in Italy], Electoral Tribunal of the Federal Judiciary, Mexico, 2011, available at <https://tecnologias-educativas.te.gob.mx/RevistaElectoral/content/pdf/a-2011-04-008-149.pdf>.

Iliatenco Case – Mexico, annulment of elections due to gender-based political violence against a candidate

SUP-REC–1861/2021³⁷

In the ruling by the TEPJF, it was proven that the gender-based political violence perpetuated against the candidate, whereby her ability to occupy a government office for being a woman was ruled out, was decisive for the election results, after an analysis was carried out with a gender and intersectionality perspective, as it was an indigenous woman candidate, where the concatenation of sufficient elements was noted, although the intellectual or material responsibility attributable to the people who committed the gender-based political violence was not proven, as the acts were carried out anonymously thus, there was no direct culprit. The existence of messages such as the ones below was proven: "Women do not know how to govern", "no woman in power" and "no elder woman in power", in the outskirts of the municipality.

The difference in votes between the first and second place was 0.97% (fifty-three votes).

Gender-based political violence had a negative impact on the victim in exercising her right to be elected, since it placed her in a disadvantageous situation that transcended the outcome of the election, simply because she was a woman.

The elements above proved that the gender-based political violence that led to widespread and decisive violations violated the constitutional principles, questioning the certainty of the election and actively influenced the result obtained, since said irregularities are sufficient for the hypothesis of nullity related to fully proven serious irregularities to take place, which cannot be repaired, which consequences impacted on the election day.

³⁷ Available at http://contenido.te.gob.mx/Informacion_judiccial/sesion_publica/ejecutoria/sentencias/SUP-REC-1861-2021.pdf

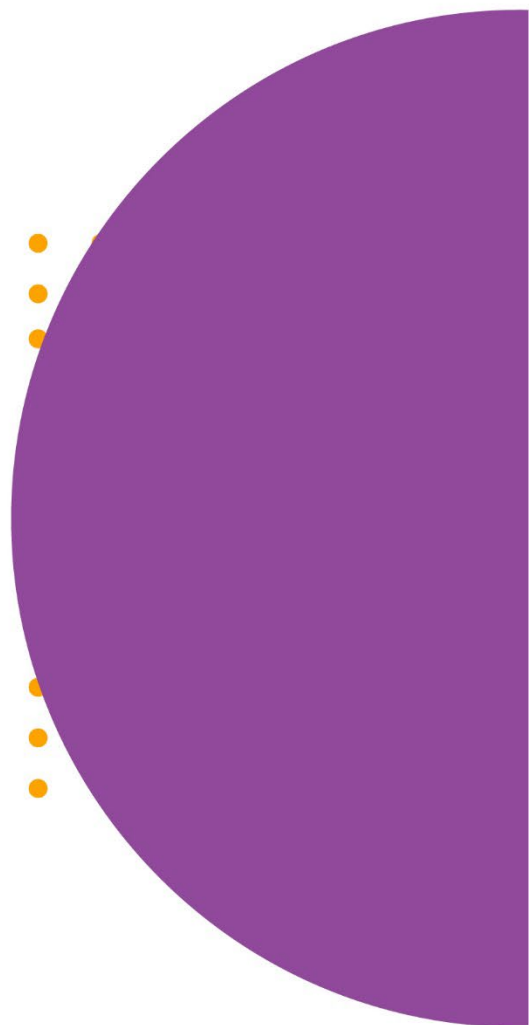
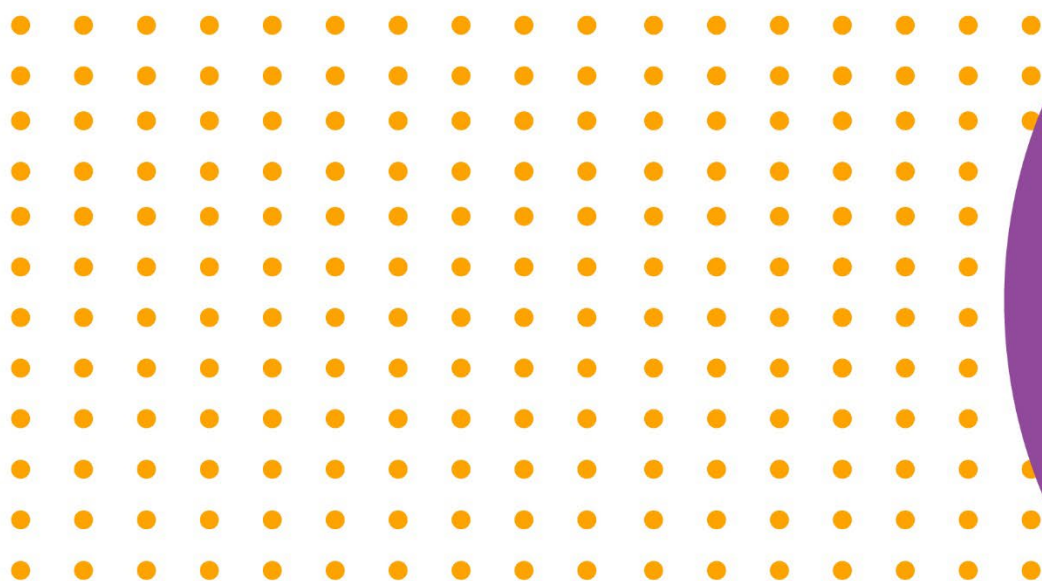
Staatkundig Gereformeerde Partij v. the Netherlands Case - Gender-based Political Violence by denying women's political participation ³⁸

In its ruling, the ECHR reiterated that democracy was the only political model that provides for the advancement of gender equality; and States are prevented from promoting the role of men as primary and that of women as secondary. The case defined that political parties, in their statutes, specify that women may be members and candidates thereof.

Therefore, the fact that no woman has expressed her desire to run for elections as a candidate for the applicant party should not lead to a denial of her right to political participation.³⁹

³⁸ European Court of Human Rights, 2012, available at <https://hudoc.echr.coe.int/fre?i=002-5581>.

³⁹ The Inter-American Commission on Human Rights in Report No. 61/22 of April 24, 2022 stated that: "The right of political participation generates the obligation for the State to create favorable conditions to ensure people that those activities related to the designation of their rulers or in the state political formation are to be conducted" (cf. Report cit., petition 1287-19, amicable composition report, Roberto Molina Barreto, Zury Mayte Ríos Sosa and MWR Guatemala, Approved by the Int. Human Rights Commission on 04/24/22).





III. Giving arguments with a gender perspective

This section will identify the argumentative tools that will serve as support to hand down resolutions with a gender perspective, which will make it possible to make the elements outlined above visible, in such a way that any gender bias is eliminated in the examination of the facts, evidence and Law, which will be portrayed in the rationale and motivation of a resolution or judgment.

3.1. Identifying the key content of the human rights involved

When referring to the essential content of human rights, it is necessary to evoke the idea of the foundation of the essential prerogatives of harmed people both concerning their individual and social aspects. In this case, the intersectional approach provides a wide reference of the possible causes that obstruct a woman's exercise of her rights as an individual or as part of a social group.

Without the need to carry out a theoretical analysis on the subject, it is possible to conclude that this content is linked to the idea that there are rights to which everyone is entitled just for being humans; therefore, human dignity is an essential human right⁴⁰ that must be safeguarded by all States.

This way, when cases that are related to suspicious categories are tried, it is necessary to identify, first, the rights involved and their basis and foundation, to understand what has to be protected or safeguarded with its application.

That is, once the parties in dispute and their context have been identified, the rights in conflict, and the good, benefit, authorization, etc. (essence of law) that the positive Law seeks to protect are to be identified. If the positive Law is in accordance with human rights and the nature of the human need it seeks to protect, then it is a fair law and, therefore, valid. But if the Law is postulated against that provision, it is necessary to use other argumentative tools that allow interpreting the provision under study and, where appropriate, applying a reasonableness test to the specific case.

To carry out this interpretation, as for the gender perspective, the starting point will be premise that we are dealing with a group in a situation of vulnerability with respect to

⁴⁰ The recognition of dignity, as a human right, is supported by the precedents below: 2a./J. 73/2017 (10a.), entitled "HUMAN DIGNITY. LEGAL ENTITIES DO NOT ENJOY THAT RIGHT", available at: *Gazette of the Judicial Weekly of the Federation*, book 43, June 2017, Volume II, p. 699; 1a./J. 37/2016 (10a.), entitled: "HUMAN DIGNITY. IT CONSTITUTES A LEGAL STANDARD THAT PROVIDES FOR A FUNDAMENTAL RIGHT FOR THE BENEFIT OF PEOPLE AND IT IS NOT JUST A SIMPLE ETHICAL DECLARATION", available at: *Gazette of the Judicial Weekly of the Federation*, book 33, August 2016, Volume II, p. 633; and VI.3o.A. J/4 (10a.), entitled: "RIGHT TO HUMAN DIGNITY. IT IS INHERENT TO NATURAL PERSONS AND NOT TO LEGAL ENTITIES", available at: *Judicial Weekly of the Federation and its Gazette*, Book XXIII, August 2013, Volume 3, p. 1408; as well as in court opinion I.10o.A.1 CS (10a.), entitled: "HUMAN DIGNITY. IT CONSTITUTES A FUNDAMENTAL RIGHT WHICH IS THE BASIS OF OTHER CONSTITUTIONALLY AND CONVENTIONALLY RECOGNIZED HUMAN RIGHTS", available at: *Federation Judicial Weekly Gazette*, Book 54, May 2018, Volume III, p. 2548.

which it is essential that the State respects, protects and safeguards the adequate exercise of their rights. Hence, said provision must be in accordance with the universal rights of human dignity, equality, and non-discrimination, by applying the progressiveness and *pro persona* principles⁴¹.

3.1.1. General human rights obligations

When arguing, it is necessary for the judge to be aware that there are general obligations in terms of human rights, which are the guiding principles to promote, respect, protect and safeguard the rights granted to people; which are analyzed from the specific right whose protection is sought⁴².

As for the obligation to perform, the judge is a person who shall be especially careful not to violate, directly or indirectly, the rights or freedoms recognized in international treaties, national constitutions, and local laws, in favor of a disadvantaged group.

The obligation to protect the rights of individuals⁴³ implies preventing all kinds of violations of human rights. This obligation goes beyond simple respect, since it is an action aimed at ensuring that the group in a disadvantaged situation discontinues to suffer the ravages of discrimination or violence due to their gender.

Likewise, so as to safeguard human rights from this perspective and to prevent the violation of people's prerogatives, whoever judges shall consider whether to issue the measures that may be necessary for the case, in such a way that the free and full exercise of these rights is ensured.

In this regard, CEDAW Recommendation 33, on justiciability, proposes that, (among other recommendations), all obstacles to women's participation in all bodies and at all levels of justice systems be confronted and eliminated, by taking even temporary

⁴¹ Castañeda. M. THE PRO PERSONA PRINCIPLE. EXPERIENCES AND EXPECTATIONS. National Human Rights Commission, Mexico, 2014. Available at: https://www.cndh.org.mx/sites/default/files/documentos/2019-05/libro_principioProPersona.pdf.

⁴² Cook, R. & Cusak Simone. Gender Stereotypes. Transnational Legal Perspectives. University of Pennsylvania Press, 2009, p. 10. Available at: https://www.law.utoronto.ca/utfl_file/count/documents/reprohealth/estereotipos-de-genero.pdf.

⁴³ Idem, page 106.

measures in matters of public representation and reviewing the rules on the burden of proof to ensure equality between the parties⁴⁴.

It is a positive attitude by the State so as to improve the conditions that women have historically faced because of the structural inequality caused by the gender social order⁴⁵.

3.1.2. Weighting of the human rights involved

In some cases, it will be necessary to weigh up the rights involved⁴⁶. To do this, the existing power asymmetries amongst the parties will be taken into account.

In order to give full effectiveness to the essential content of human rights, even using the components of suitability, necessity, and proportionality *stricto sensu* as per the laws, the scope of the rights facing the imposed limitations will recognize the gender-based inequalities amongst the parties⁴⁷, which should be considered when conducting said weighting.

If we were to assume that Law is neutral⁴⁸, it will be necessary to consider the scope and ensure that the exercise of rights is ensured without discrimination, based on a

⁴⁴ Items f) and g). <https://www.acnur.org/fileadmin/Documentos/BDL/2016/10710.pdf>.

⁴⁵ Idem, page 107.

⁴⁶ To learn more about weighting, please read: Alexy, Robert, "*Derechos Fundamentales, ponderación y racionalidad*" [Fundamental Rights, Weighting and Rationality], in: *THE SPANISH CONSTITUTION IN THE EUROPEAN CONSTITUTIONAL CONTEXT*. (Segado Fernandez, Francis, Editor), Ed. Dykinson, Madrid, 2003. Document available at: [file:///D:/OneDrive%20-%20Tribunal%20Electoral%20del%20Poder%20Judicial%20de%20la%20Federaci%C3%B3n/alfredo.garcia/Downloads/05112007115213.alexyesp%20\(1\).pdf](file:///D:/OneDrive%20-%20Tribunal%20Electoral%20del%20Poder%20Judicial%20de%20la%20Federaci%C3%B3n/alfredo.garcia/Downloads/05112007115213.alexyesp%20(1).pdf)

⁴⁷ Gender inequality is an issue that has been addressed by different authors and authorized human rights bodies, for instance: Bobbio, Norberto (1993). "I. *Igualdad*" [Equality] in *Igualdad y Libertad* [Equality and Freedom]. Barcelona, Paidós, pages. 53 -70; 3. Ferrajoli, Luigi (2010). "*El principio de igualdad y la diferencia de género*" [The Principle of Equality and Gender Difference], in Cruz Parceró, Juan A. and Rodolfo Vázquez, (coords.), *Debates constitucionales sobre derechos humanos de las mujeres* [Constitutional Debates on Women's Human Rights], Mexico, SCJN-Fontamara, pages. 1-27; Office of the High Commissioner for Human Rights, *General Comment number 18 (Non-discrimination)*m 37 Period of Sessions, 1989, available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2001/1404.pdf>; *inter alia*.

⁴⁸ The foregoing, without neglecting the feminist criticisms of the neutrality of Law. For further study on the subject, please refer to: Nash Rojas, Claudio, "*Estudio introductorio: derechos humanos y mujeres, teoría y práctica*" [Introductory Study: Human Rights and Women, Theory and

comprehensive analysis. Therefore, the gender perspective implies judging by taking into account imbalance situations caused by gender that discriminate and prevent equality amongst people; which leads to the administration of justice with a gender perspective operating as a rule of thumb and emphasizing those situations where we are before groups of special vulnerability⁴⁹. Therefore, the implementation of this specialized approach when administering justice must be carried out even at the court's own request⁵⁰, i.e., without the express request of the reporting party.

3.1.3. Evaluation of differentiated impact

In order to properly provide a proper reasoning of a case, it is recommendable that the standard rationale that is more protective of persons who are in a situation of inequality is reflected in the argumentation, which implies clearly pointing out the reasons why the application of the Law to the specific case results in a differentiated impact to the detriment of one of the parties due to discrimination or violence.

To do this, one may ask certain questions:

- In what context did the events take place?
- What aspect of the person's legal sphere is being undermined?
- What is the relationship between the alleged violation of the right and gender?

Practice"; Fries Monleón, Lorena y Lacrampette Polanco, Nicole, "Feminismos, género y derecho" [Feminisms, Gender and Law]; and Zúñiga Añazco, Yanira, "Mujeres, ciudadanía y participación política" [Women, Citizenship and Political Participation], in: *Human Rights and Women: Teoría y Práctica* [Theory and Practice], (Nicole Lacrampette P., editor) University of Chile, Law School, Center for Human Rights; Chile, 2013, 341 p.

⁴⁹ On judging with a gender perspective, please refer to: Lagarde, Marcela, "El género. 'La perspectiva de género', [Genre. 'The Gender Perspective'], in *Género y feminismo. Desarrollo humano y democracia* [Gender and Feminism. Human Development and Democracy], Ed. horas y HORAS, Spain, 1996, pages. 13-38; and Facio, Alda, "Metodología para el análisis de género del fenómeno legal" [Methodology for the Gender Analysis of the Legal Phenomenon] in: *El género en el derecho: ensayos críticos* [Gender in Law: Critical Essays], Quito, Ecuador, Ministry of Justice, and Human Rights, 2009, pages. 181-224.

⁵⁰ Judging with a gender perspective is established as an obligation of those who administer justice, in view of the fact that this analytical tool is intended at the effective achievement of the rights to equality and non-discrimination, which are recognized in the provisions of various international instruments of human rights: 3 of the International Covenant on Civil and Political Rights; 24 of the American Convention on Human Rights; III of the Convention on the Political Rights of Women; 4, items f) and j), of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women; and 3 of the Convention for the Elimination of All Forms of Discrimination against Women.

- Is the Law unequal directly or as a result in the specific case?
- What effects does the application of the rule have in neutral terms?

To prove that there is differentiated impact from the gender category, it is necessary to argue what are the consequences that an action, inaction, or provision causes in a victim and thus, what are the actions aimed at seeking a fair and egalitarian resolution, based on the context of inequality.

This differentiated impact analysis is a different way of approaching human rights in terms of equality and non-discrimination⁵¹. For instance, in the Rosendo Cantú *et al.* v. Mexico case⁵², on sexual violence committed by members of the armed forces, the Inter-American Court recognized the impact this act had caused on the victim and stated that the sexual violence and the lack of access to justice had violated the right to personal integrity of her children and her husband.

Likewise, in the Atala Riffo and girls v. Chile case⁵³, the Inter-American Court pointed out that it is necessary to assess in each case whether there are behaviors that have a negative impact on the well-being and development of children, far from gender prejudices and stereotypes.

Thus, an argument with a gender perspective will reveal the impact of the laws drafted in neutral terms but that in their application have a negative impact on the rights of groups in situations of vulnerability, or preconceived ideas or gender stereotypes, so as to avoid replicating such issues in the administration of justice⁵⁴.

⁵¹ To learn more on differentiated impact that certain facts cause in the exercise of human rights, see: Inter-American Court. *Espinoza González v. Peru* case. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2014, § 222; and Inter-American Court. *Yarce et al. v. Colombia* case. *Preliminary Objections, Merits, Reparations and Costs* Judgment of November 22, 2016, § 243.

⁵² Inter-American Court. *Rosendo Cantu et al. v. Mexico* case. Preliminary Objection, Merits, Reparations and Costs. Judgment dated August 31, 2010. Series C No. 216

⁵³ Inter-American Court. *Atala Riffo and girls v. Chile* case. *Merits, Reparation and Costs*. Judgment dated February 24, 2012. Series C No. 239

⁵⁴ To learn more about this topic, see: Facio, Alda. "Metodología para el análisis de género del fenómeno legal" [Methodology for the Gender Analysis of the Legal Phenomenon] in: *El género en el derecho: ensayos críticos* [Gender in Law: Critical Essays], Quito, Ecuador, Ministry of Justice, and Human Rights, 2009, pages. 181-224.

3.2. Application of argumentative tools

In order to resolve the conflicts raised by the parties, it is possible to resort to traditional argumentative tools, by granting them an approach of maximum protection of the human rights of women and other groups in a gender-based vulnerable situation.

3.2.1. Pro Persona principle⁵⁵

This is an applicable selection principle that implies that the choice of Law must meet the criterion that best favors an individual, so that, in the event there is a difference between the scope or known protection between different sources, the one that protects the person the most or the one that implies less restriction is to be prioritized⁵⁶.

Accordingly, as for gender perspective, the *pro persona* principle implies that the person who administers justice shall prioritize the application of a provision that grants a greater benefit to a person or group in a disadvantaged situation or that grants them a greater benefit.

For instance, in judgment SUP-REC-1414/2021 and related rulings⁵⁷ issued by the Mexican Electoral Tribunal of the Federal Judiciary, female members of various feminist groups appealed the resolution issued by the national electoral administrative authority whereby the appointment of deputy seats was made by the principle of proportional representation by failing to comply with the principle of parity established in the Federal Constitution. Although the procedural laws provided for that an appeal had to be filed within forty-eight hours following the end of the session where said resolution was approved, the Court ruled that, since those who challenged it were citizens acting on their own behalf as members of women's groups, they could not be present in said

⁵⁵ To learn more about this topic, see: Pinto, Mónica, "El principio pro homine." [The Pro Homine Principle]. "Criterios de hermenéutica y pautas para la regulación de los derechos humanos" [Hermeneutic Criteria and Guidelines for the Regulation of Human Rights], in Abregú, Martín, *La aplicación de los tratados sobre derechos humanos por los tribunales locales* [The Application of Human Rights Treaties by Local Courts], Buenos Aires, 1997, Center for Legal and Social Studies), pages 163-172.

⁵⁶ See Protocol to Judging with a Gender Perspective of the Supreme Court of Justice of Mexico, 2015.

⁵⁷ Electoral Tribunal of the Federal Judiciary, *Judgment: Appeal for Reconsideration SUP-REC-1414/2021 and related rulings*, Mexico City, August 29, 2021.

session, as was the case with political parties and candidates; hence, so as to maximize access to justice, this term could be made more flexible for these plaintiffs.

3.2.2. Compliant interpretation⁵⁸

Along with the *pro persona* principle, compliant interpretation is based on the principle of preservation of the law; thus, the judge must avoid, to the extent possible, an insurmountable contradiction between the Law to be applied and the and the human rights contained in the constitutional order⁵⁹ and international treaties.

Therefore, the application of Law must be in accordance with the content of the Constitution of a country and the international treaties it is a signatory to, seeking the broadest protection for people and the greatest exercise of human rights.

Compliant interpretation, as an argumentative tool, is effective in the case of women's human rights, since the legal provisions must adjust to the content under the Constitution, hence the interpretation thereof must be in accordance with the rights of equality and non-discrimination, which results in a benefit for women and people of sexual diversity, among other groups in a situation of vulnerability.

⁵⁸ It is worth mentioning that the German Constitutional Court applied or recognized for the first time a writ of interpretation in accordance with their Constitution in the following terms: "A law should not be declared null if it were possible to interpret it in a manner compatible with the Constitution, as it must be assumed not only that a Law is compatible with the Constitution, but also that this presumption states the principle based on which, in case of doubt, an interpretation must be made in accordance with the Constitution". (BVerGE, 266(282). The Swiss Federal Court has repeatedly stated that "in the abstract control of constitutionality, a provision of cantonal law is to be rendered null and void only if it does not make an interpretation in accordance with the Constitution" (BGE 109, 207). The first time the United States Supreme Court expressed the principle that a Law cannot be declared unconstitutional if there is no clear evidence that it is inconsistent with the Constitution, dates back to 1796 in the minority vote by Judge Samule Chase in the *Hylton v. United States* case. The golden age of interpretative decisions occurs after World War II; first in Austria and in the Bavarian Constitutional Court and later in the German Federal Constitutional Court itself (Fernández Cruz, José Ángel, *La interpretación conforme con la Constitución: una aproximación conceptual* [Interpretation in accordance with the Constitution: a Conceptual Approach], in: *Ius et Praxis*, vol. 22, no. 2, Chile, 2016, pages 153-187 Document available at: <https://www.redalyc.org/pdf/197/19751022006.pdf>).

⁵⁹ For further study on this point, please refer to: Ezquiaga Ganuzas, Javier, "Sobre 'Inconstitucionalidad y Derogación'" [On 'Unconstitutionality and Repeal'], in: *Discusiones* [Discussions], Number 2, Bahía Blanca, Argentina, 2001, pages 65 to 78. Document available at: <file:///D:/OneDrive%20-%20Tribunal%20Electoral%20del%20Poder%20Judicial%20de%20la%20Federaci%C3%B3n/alfredo.garcia/Downloads/sobre-inconstitucionalidad-y-derogacion.pdf>

For instance, the principle of interpretation according to the Constitution of the entire legal system demands, for the case at hand, the need to interpret the procedural provisions in the most favorable sense to exercise the right to effective judicial protection, especially when access to resources is not at stake, but rather access to jurisdiction, to favor a judgment on the merits of the dispute, as per the appropriate and standard content of said law, which when applied to official governmental acts, integrates more specifically, the right of whoever files a claim for the Judiciary to try the official government acts that had a negative impact on them, so as to evaluate the lawfulness of said acts, and that they fully abide by Law⁶⁰.

3.2.3. Constitutional control⁶¹ and conventionality⁶²

Their purpose is to verify that the challenged provision or the one that was applied to the challenged act, fits the parameter of constitutional or conventional regularity specific to human rights.

A method implies that, if a provision does not admit a compliant interpretation in a broad or strict sense, it will be subject to a proportionality test, which legally legitimate purpose, need, suitability and proportionality to achieve it are confirmed, and in the event a satisfactory solution is not found under the system, its non-enforceability is decreed; to favor the gender perspective to the extent that it allows removing from the regulatory framework (so that it is not applied to the specific case), those provisions that may be contrary to the human rights of women.

Even when, for different reasons, some provisions that are contrary to human rights or that in some way undermine the rights of women to access public office under equal conditions or to live a life free of violence, among other rights, subsist in secondary legislation; the application of this tool gives judges the possibility of directly applying

⁶⁰ Cfr.: Spanish Constitutional Court, Judgment: STC 76/1996, April 30, 1996, legal grounds, 7th.

⁶¹ For further study on constitutional control models in general, please refer to: Amaya, Jorge Alejandro, "Capítulo III. Modelos y sistemas" [Chapter III. Models and systems], in: *Control constitucional*, [Constitutional Review], 2nd ed., Astrea, Buenos Aires, 2015. pages 89 to 103. Available at: <https://www.pj.gov.py/ebook/monografias/extranjero/constitucional/Jorge-A-Amaya-Control-Constitucionalidad-2da-Ed.pdf>

⁶² Ferrer Mac-Gregor, Eduardo, "El Control Difuso de convencionalidad en el Estado Constitucional" [The Diffuse Control of Conventionality in the Constitutional State], in: *Alegatos* [Pleadings], Year 2013, Number 11, Spain, pages 27 to 39. Available at: <http://urbeetius.org/wp-content/uploads/2017/11/43-129-1-PB.pdf>

the provisions under the Constitutions and international treaties ratified by their countries.

3.2.4. Probative assessment with a gender perspective

As for evidentiary assessment, the presence of stereotypes or procedural imbalances in the assessment of the evidence, arguments of the parties and their claims will be examined.

To judge from a gender perspective, the following questions come in handy:

- Does evidence meet the requirements established by Law to produce it and assess it?
- Is it necessary to be more flexible when admitting and evaluating the evidence based on the context of inequality, disadvantage, and subordination the parties are in?
- Is the evidence included in the file relevant to prove the impact of gender on the reported facts or contested act?
- Are tests useful and adequate to evidence the gender impact that is intended to be proven?

As it may be seen, at first, collecting evidence will lead to checking whether the evidence in the file is sufficient and useful to prove a situation of gender-based inequality or it is necessary to produce further evidence, such as initiating proceedings for further production of evidence, so as to make the imbalance between the parties visible.

This attitude by the judge in no way breaks the principle of procedural balance; on the contrary, it means that, when judging with a violet lens, the aim is to generate equality between the parties that, initially, are in different situations for reasons of power, discrimination, or violence.

Secondly, for the evidentiary evaluation, the case arguments will necessarily have to confirm whether the condition of vulnerability of one of the parties due to gender is taken into account or not and that stereotypes are not being included.

For instance, in different judgments by the Mexican TEPJF, the reasoning has been that the evaluation of evidence in cases of political gender-based violence against women must be carried out with a gender perspective, in such a way that it the burden to prove the facts is not transferred to victims⁶³ since acts of gender-based violence occur in private spaces where only the victim and her aggressor are present, while in public spaces, their commission tends to go unnoticed.

This particular situation leads, exceptionally, to the reversal of the burden of proof to the complained party, since it is a case of discrimination. It is about maximizing the rights of women in a context of structural discrimination and by noting between the parties an asymmetric power relationship around the evidentiary proximity of the fact.

3.2.5. Application of the re-characterized right in relation to the facts

The re-characterization of Law⁶⁴ means that the provisions for the solution of the case will be applied by reinterpreting the content that has traditionally perpetuated gender-based discrimination and inequality, by even implementing differentiated treatment but that allows addressing such structural distinctions, while the purpose of this interpretative tool is addressing inequalities⁶⁵.

The interpretation of the law in a favorable way for women⁶⁶ implies that, so as to apply the Law in cases that involve judging from a gender perspective, once the essential

⁶³ This criterion is related to the so-called "dynamic burden of proof", which sometimes makes it possible to impose on the procedural subject who may be in better conditions or in a more favorable position the burden to contribute with the evidence that may be necessary to prove or clarify of the disputed facts (Civil Annulment Chamber, Supreme Court of Justice, Judgment: 76001-3103-015-2001-00049-01, Bogotá, Colombia, December 7, 2012).

⁶⁴ For further study on the recharacterization of Law, please refer to: Rebecca Cook, "Introducción: el camino a seguir" [Introduction: The Way Forward] in Rebecca Cook (compilation), *Derechos humanos de la mujer*, [Human Rights of Women], Colombia, Profamilia, 1997, p. 9.

⁶⁵ EQUIS *Justicia para las Mujeres, Metodología para el análisis de las decisiones jurisdiccionales desde la perspectiva de género* [EQUIS Justice for Women, Methodology for the Analysis of Jurisdictional Decisions from a Gender Perspective] Mexico, 2017, p. 18.

⁶⁶ This obligation derives from the provisions of article 3 of the Convention on the Elimination of All Forms of Discrimination against Women, which provides for as follows: "States Parties shall take in all fields, and in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, with a view to safeguarding the exercise and enjoyment of human rights and fundamental freedoms on equal terms with men."

content of the human right whose protection is sought has been noted, the interpretative criterion that ensures the principle of equality, promotes the political participation of women and eliminates any historical or structural discrimination based on gender will be adopted in such a way that the useful effect of the interpretation of said regulations and their purpose is not restricted⁶⁷ considering that, in general, the substantive normative provisions are formulated in neutral terms for both genders.

This way of enforcing the law makes sense if despite the enormous conventional, constitutional, and legal framework that has been adopted by the different countries, focused on non-discrimination and the right to live a life free of violence, the existence and application of these provisions in common terms has not resolved the situation that in fact prevents certain groups from effectively enjoying their rights.

This way, the human rights of women and other groups in vulnerable situations are made visible, so that the reinterpretation of rights encompasses a gender dimension and how it impacts its exercise, by avoiding hermeneutic criteria such as literalness, hierarchy, and specialty, by prioritizing the *pro persona* principle and a compliant interpretation.

This re-characterization of the Law means proposing an application and interpretation that is closer to the principle of equality without neglecting the principle of certainty and lawfulness.

3.2.6. Legal analysis with a gender perspective

Empathy is the ability to understand the feelings and emotions of others, by putting oneself in a relatable situation. It is an indispensable skill for human beings, considering that all life takes place in complex social contexts.

Its social nature makes the recognition and understanding of the mental states of others, as well as the ability to share them and respond appropriately to them, important

⁶⁷ Accordingly, precedent 11/2018 entitled provides for that: "GENDER PARITY. THE INTERPRETATION AND APPLICATION OF AFFIRMATIVE ACTIONS MUST SEEK THE GREATEST BENEFIT FOR WOMEN", Electoral Tribunal of the Federal Judiciary, Mexico.

or more important than the ability to understand and respond appropriately to natural social contexts⁶⁸.

Therefore, an analysis that seeks to start from an empathic approach will be based on the fact that, in the case of litigation in which the central point consists of elucidating the violation of political-electoral rights, the mainstreaming of the gender perspective is key, as it means making visible and taking into account the environment of inequality between genders; appreciate in its real dimension, the power relations and the imbalance in which they are framed; and guide the electoral jurisdictional intervention to achieve equality in the exercise of political rights of both women and men.

Empathy as an assessment parameter requires law-enforcers to develop the ability to place themselves in the situation of the parties to a process.

The foregoing means that the judge will be able to understand that the harmed person demands access to their rights so as to achieve substantive equality in the specific case, which implies analyzing the case not only from a regulatory standpoint, but from a socio-cultural one, with the purpose of identifying biases of inequality in the exercise of political rights and finding the situation that leads to specific distinctions and stating it in its rulings⁶⁹.

This will be key to develop reparation measures that translate into specific actions or measures that contribute to achieving parity democracy and eradicating inequality.

Raising awareness on disputes related to the rights of women in the electoral field constitutes a duty that judges have to develop and apply where appropriate.

This way, placing any situation of structural discrimination where women are victims in all spheres is crucial; and, from there, criteria are built to eradicate the obstacles that have created inequality through judgments that include broad reparation measures to achieve equal conditions in the enjoyment of political-electoral rights.

⁶⁸ For further study on the subject please refer to: Lopez, Mariana Beatriz; Aran Filippetti, Vanessa; Richaud, Maria Cristina; Empathy - from Automatic Perception to Controlled Processes, in: *Avances en Psicología Latinoamericana*, [Advances in Latin American Psychology], vol. 32, no. 1, 2014, p. 37-51, available at: <https://www.redalyc.org/pdf/799/79929780004.pdf>

⁶⁹ Muñoz Zapata, Adriana Patricia, "Empathy: A Univocal Concept?", in: *Katharsis*, No. 16, July-December 2013, Envigado, Colombia, p. 125.

To carry out this empathic analysis with a gender perspective, certain steps when presenting arguments are to be taken:



3.2.6.1. Evidencing any identified inequalities⁷⁰

From the case arguments, a key part of the success of justice with a gender perspective focuses on the reasons given to showcase the inequalities between the parties for this reason, how they resulted in a negative impact on the victim or person in a situation of vulnerability due to the general and particular context in which it operates and how the application of the rules in neutral terms harms them in such a way that it makes it impossible for them to exercise their rights under equal conditions⁷¹. The intersectional approach is a basic tool for this purpose.

This means that it is necessary to answer the following questions:

- What context of imbalance due to issues of power, discrimination or violence is applicable to the case?
- What is the differentiated impact on the person or group in a disadvantaged situation?

⁷⁰ Esperanza, Silvia L, Judging with a gender perspective, Corrientes, Argentina, May 17, 2021. Material. Available at: <http://www.ceprocesales.org/files/doctrinas/2021-05/pdf/101-1621859896.PDF>

⁷¹ Alda Facio refers that not paying attention to inequalities between the sexes derives from the fact that the gender variable is not considered relevant, based on the belief that men represent all of humanity and, consequently, "his experience, interests and needs are the same as those of women or, worse yet, that theirs are not important enough to be taken into account" (Facio, Alda, "Metodología para el análisis de género del fenómeno legal" [Methodology for Gender Analysis of the Legal Phenomenon] in: *El género en el derecho: ensayos críticos*, [Gender in Law: Critical Essays], Quito, Ecuador, Ministry of Justice and Human Rights, 2009, page 207 and 208).

- What stereotypes or acts of discrimination are found in the case?

Accordingly, the reasons given in the content of the resolution recognizing these inequalities or imbalances serve as support, strengthen the decision and the taking of measures to close the inequality gaps or the generation of violence.

3.2.6.2. Combating stereotypes or inequalities in rules, actions or evidence⁷²

The authorities are required to adopt and carry out the necessary actions and measures to avoid any imbalance between the parties. Thus, the application of the previously outlined argumentative tools constitutes an essential element so that, in the proceedings, Law enforcement and the evaluation of the evidence eliminate any gender-related bias from the parties.

Likewise, by re-characterizing the Law and evaluating evidence from a gender perspective, the elimination of structural barriers in the access to justice of women and disadvantaged groups that, otherwise would perpetuate the patriarchal system.

3.2.6.3. Preventing revictimization⁷³

Recommendation 35 of the CEDAW Committee⁷⁴ provides for that, in relation to the obligations of the States in matters of political violence for reasons of gender against women, they may be held liable for actions or inactions by state and non-state agents.

In the first scenario, the actions, or inactions by the officials of the Executive, Legislative and Judicial Branches are included, who shall refrain from performing any act or practice of direct or indirect discrimination against women and ensure that the authorities and public institutions act in accordance with that obligation; for which case the diversity of women and the risks of interrelated forms of discrimination (intersectionality) will be taken into account.

⁷² Silvia L. Esperanza, *Op. cit.*

⁷³ Silvia L. Esperanza, *Op. cit.*

⁷⁴ *Cfr.: Committee for the Elimination of Discrimination against Women (CEDAW), General recommendation no. 35 on gender-based violence against women, which is related to the general recommendation no. 19, CEDAW/C/GC/35, July 26, 2017, §§ 30 and 32.*

For this purpose, the recommendation above proposes various protection, respect, and safeguarding measures to favor the establishment of mechanisms to combat violence.

In this framework, the authorities will ensure that when a person who has been subjected to discrimination or gender-based violence comes into contact with them, becomes the victim of unfair treatment again or is criminalized for the same fact or act that she intends to report or to sue.

To avoid this issue, the principle of the best interests of the victim and that of due diligence are the guiding principles for the issuance of any official governmental action for this type of case.

3.2.6.4. Precedents on gender perspective

The application of the Law by judges results in precedents that help build a State that respects human rights.

Giving arguments with a gender perspective leads to handing down solid determinations and establishing precedents in terms of gender equality, leading to the extension of criteria are extended beyond the specific case analyzed. Accordingly, the importance of the precedent related to the gender perspective argumentation lies in the fact that "they pave the way for future similar cases and encourage other judges to apply it"⁷⁵-

To the extent possible, the judiciary must advance in safeguarding the human rights of women in such a way that, as a result of the interpretation of the specific cases that are submitted to its jurisdiction, precedents of vital relevance are established for the transformation of Law and its application in future cases to favor these groups.

This, as a preventive measure to prevent future violations of human rights for the same reasons.

⁷⁵ Supreme Court of Justice of Mexico, "*Protocolo para juzgar con perspectiva de género*" [Protocol for judging with a gender perspective], Mexico, 2005, p. 74, 137, 138).

3.2.6.5. Inclusive language⁷⁶

Language is a key factor that determines cultural and social attitudes thus, the use of inclusive language in terms of gender matters promotes equality and combats prejudice for this reason⁷⁷. Given that the way to communicate Law is through judgments, the process of choosing the right words determines an implicit assessment or conceptualization of each situation⁷⁸.

UNESCO highlighted that there is a wide variety of linguistic resources and tools for the effective use of inclusive language. The elimination of the masculine use in a generic way to designate people or the masculine plural to refer to mixed groups of people where another gender or genders are obviously present, in addition to the masculine, is a useful tactic to foster an inclusive use of language. Likewise, when referring to both genders, it is also recommended to alternate the order between the feminine and the masculine, avoiding the use of the masculine forms always in the first position⁷⁹.

This way, the use of this type of language implies that the masculine is no longer the reference for a group of people where both women and men are present, i.e., it means avoiding the preponderance of one gender over the other. Hence, the judgments written from this approach recognize the existence of a population group traditionally excluded from the public sphere⁸⁰.

⁷⁶ For further study on the subject please refer to: *GENDER-NEUTRAL LANGUAGE in the European Parliament*, 2018, available at: https://www.europarl.europa.eu/cmsdata/187095/GNL_Guidelines_ES-original.pdf

⁷⁷The United Nations. Gender inclusive language, website: <https://www.un.org/es/gender-inclusive-language/#:~:text=Por%20%E2%80%99Clenguaje%20inclusivo%20en%20cuanto,sin%20perpetuar%20estereotipos%20de%20g%C3%A9nero.>

⁷⁸ Protocol to Judging with a Gender Perspective, SCJN, Mexico, 2015.

⁷⁹ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Guidelines on Gender-Neutral Language*, p. 4. Document available at: <https://www.ac-nur.org/5fa998834.pdf>

⁸⁰ United Nations Educational, Scientific and Cultural Organization (UNESCO), "III. Employment [in Spanish] of the masculine noun to refer to a group", in: *Guidelines on Gender-Neutral Language*, 1999, p. 9 to 12. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000114950>



IV. DECISIONS

The response or solution expressed, as a consequence of a demand that raises the transgression of political-electoral rights to the detriment of a woman, is configured as the quintessential work of the person dispensing justice.

4.1. Determinations during trial substantiation

One of the guiding principles in the decision-making of jurisdictional rulings in electoral matters is celerity⁸¹, which is due to the fact that the stages of the electoral processes are governed by short terms⁸², in addition to the fact that, at the conclusion of each phase, the acts or resolutions adopted in each of them acquire the quality of final, definitive and unassailable⁸³. In this sense, the adoption of precautionary and protective measures, as well as the final rulings or resolutions, must be issued as soon as possible, since celerity is a condition for safeguarding the life and personal integrity of women, especially in cases in which acts of violence have been accused.

During the trial substantiation or appeals, jurisdictional bodies issue resolutions through which they decide on the various requests made by the parties or even issue them informally to push the procedure forward. In addition, the publicity of sentences from an institutional transparency approach, including protection and reparation measures, to exemplify that there is a due process and that there are sanctions in case the political rights of women are violated.

It is worth mentioning that the doctrine has classified rulings as interlocutory and final or on the merits. The first ones are those that resolve any incident that may arise during trial; the latter are those that decide the merits of the dispute.

⁸¹ For more information on the principle of celerity, consult: Jarama Castillo, Z. V., Vázquez Chávez, J. E., & Durán Ocampo, A. R., "The principle of speed in the general organic code of processes, consequences in the audience", en: *University and Society*, Vol. 11 N°. 1: Science, Technology and Innovation in Higher Education from the University of Cienfuegos (January-March/2019), pp. 314-323; Callegari, J. A. "Procedural speed and reasonable duration of the process", in: *Journal of Law and Social Sciences*, No. 5, Institute of Legal Culture and Masters in Legal Sociology, Argentina, October 2011, pp. 114-129; Díaz, J.C., "Reflections on the principles of speed, impartiality and efficiency in the General Code of the Process", in: *Legal CUC*, Vol. 16, No. 1, 2021, January-December 2020, pp. 407-44.

⁸² Regarding the stages of the electoral processes, it is suggested to consult: Marván Laborde, María, "Electoral Process", in: *Electoral Dictionary*, Vol. II L-Z, IIDH/CAPEL and TEPJF, Costa Rica-Mexico 2017, pp. 869-880.

⁸³ Cf.: Thesis XL/99, with title: "ELECTION PROCESS. ASSUMPTION THAT THE PRINCIPLE OF DEFINITIVENESS OF EACH OF ITS STAGES ENABLES THE IRREPARABLENESS OF THE ALLEGED VIOLATIONS COMMITTED IN A PREVIOUS STAGE (LEGISLATION OF THE STATE OF TAMAULIPAS AND SIMILAR)", available at: Electoral Justice. Magazine of the Electoral Tribunal of the Judicial Power of the Federation, Supplement 3, Year 2000, pages 64 and 65.

Next, reference will be made to the precautionary measures that are resolved through interlocutory rulings, and to the protection measures, which may be issued both in interlocutory resolutions and in rulings on the merits.

4.1.1. Precautionary measures⁸⁴

In order to observe an effective judicial protection and with due process, the parties to a process require protection of their rights. Thus, they have the right to ask the courts grant them the necessary protection and resolve or prevent conflicts in a timely manner.⁸⁵

Doctrine refers to a *differentiated protection* as a right of the parties to a proceeding before the State, so as to make the process lawful, and find a correlation between the procedural instruments and the substantive law, whereby two types of protection have been defined, specific or compensatory protection, which refers to the content; and the preventive or repressive protection, related to its timeliness⁸⁶.

Preventive safeguard is aimed at preventing damage; it intends that whoever is potentially capable of provoking it, stops carrying out all those behaviors that have the ultimate possibility of being illegal, or to require some form of precaution that eliminates the possibility of the damage taking place, for instance, by requesting to do or stop doing something, i.e., a behavior in particular, regarding an obligation that has not been performed, but that has not yet caused said damage or is even less; i.e., in a precautionary way, imminent damage is prevented through a request⁸⁷.

⁸⁴ For further study on the subject please refer to Arias Ramírez, Bernal, “Las medidas provisionales y cautelares en los sistemas universal y regionales de protección de los derechos humanos” [Provisional and Precautionary Measures in the Universal and Regional Systems for the Protection of Human Rights], in: *IIHR Journal*, Inter-American Institute of Human Rights, Vol. 43, 2006, pages. 79 to 158.

⁸⁵ Birgin, Haydée and Gherardi, Natalia (coordinators); The safeguard of access to justice: empirical and conceptual contributions, collection “Género, Derecho y Justicia” [Gender, Law, and Justice] No. 6, available at: <https://www.corteidh.or.cr/tablas/28920.pdf>

⁸⁶ Zela Villegas, Aldo, *La Tutela Preventiva de los Derechos: Una Introducción* [The Preventive Protection of Rights: An Introduction], available at: <https://revistas.pucp.edu.pe/index.php/themis/article/view/9116/9527>.

⁸⁷ As described in the terms above by Manuel Atienza and Juan Ruiz Manero. Cfr. ATIENZA, Manuel and RUIZ MANERO, Juan. *Ilícitos atípicos. Sobre el abuso del derecho, el fraude a la ley y la desviación del poder*. [Atypical offenses. On the abuse of a right, of law and power]. Madrid, Trotta, 2000.

Accordingly, preventive protection lies not only in ceasing to carry out a behavior that causes damage, but also in taking sufficient precautionary measures so that this damage is not caused, without being punitive in nature, as it aims to avoid behaviors that may ultimately be illegal for being carried out against an obligation or although it is prohibited by law.

Therefore, preventive safeguarding translates into a protection to fight the risk that the illegal action or inaction continues or is repeated, so as to prevent illegal acts, i.e., an action or inaction that violates the applicable Law.

Preventive protection is based on the existence of rights, principles and values that need real protection, while it is necessary that all personal rights have real protection, which is not only limited to stopping damaging acts, but implies to take the necessary measures to prevent an illegal conduct so as to prevent risking the right or principle, that illegal acts are not carried out or to prevent that activity from happening again.

The instrumental nature of precautionary measures allows them to be considered as means that directly protect the obligations or prohibitions established in the substantive laws, in which the appearance of verisimilitude is no longer linked to any existing individual right, but rather with the protection of fundamental, individual, or collective rights, and with the principles established in the Constitution⁸⁸.

In accordance with the foregoing, the Inter-American Court of Human Rights has considered that the purpose of the precautionary measures is to protect the rights at apparent risk until the dispute has been solved. Their purpose is to ensure the effectiveness of the judgment that resolves the merits of the dispute, so as to prevent the disputed right from being violated and to be able to enforce it; their protective nature, aims to avoid irreparable damage and preserve the exercise of human rights⁸⁹.

⁸⁸ In addition to the authors above, see PEDRAZ, E. *El proceso cautelar en la Nueva Ley del Enjuiciamiento Civil* [The precautionary process in the New Law of Civil Procedure], Volume II, in Doctrine and jurisprudence, number 36, week (6 to 12-XII-2000) and VÁSQUEZ SOTELO, JL, *Ejecución provisional y medidas cautelares* [Provisional execution and precautionary measures], in "El Proceso Civil y su Reforma" [The Civil Process and its Amendments], Martín Espino, JD (coordinator), Colex, Madrid, 1998.

⁸⁹ Precautionary measures: practice as a safeguard to respect fundamental rights and preventing irreparable damage, available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/decisiones/mc/sobre-cautelares.asp>

Likewise, it has been established that precautionary measures are a jurisdictional guarantee of a preventive nature, which is two-folded. On the one hand, precautionary, as they are aimed at preserving a legal situation, and on the other hand, protection, as they protect human rights with the purpose of preventing damage of irreparable nature⁹⁰.

Furthermore, the Mexican TEPJF has considered that precautionary measures are instruments that may be ordered by judges within the scope of their duties, at the court's request or that of an interested party, so as to preserve the subject matter of the dispute and avoid irreparable damage to the parties or the society during the substantiation of a process⁹¹.

These measures are provisional decisions characterized by being ancillary, since the determination made is not its end in itself, in addition to the fact that they are summary due to the fact that they are processed within a short time period.⁹²

Taking into account the danger in the delay in the resolution of the proceedings, its purpose is to temporarily make up for a lack of final ruling, ensuring its effectiveness. For this reason, these measures, are aimed at ensuring the existence of a right that may become impaired in the view of the holder, in which case, they turn out to be an instrument not only of being another decision, but also of public interest, as they seek to restore the violated legal system, by temporarily suspending an allegedly unlawful situation⁹³.

⁹⁰ Inter-American Court, *Provisional Measures related to the Republic of Trinidad and Tobago. James et al. case*, April 2009, c. § 6; and for further information, please refer to the Yare I and Yare II Capital Region Penitentiary Center (Yare Prison) case, request for provisional measures filed by the IACHR related to the Bolivarian Republic of Venezuela, resolution by the Inter-American Court of Human Rights of March 30, 2006, whereas 5 and Carpio Nicolle et al. v. Guatemala case, provisional measures, resolution of July 6, 2009, whereas 16.

⁹¹ Jurisprudence 14/2015 "PRECAUTIONARY MEASURES . THEIR PREVENTIVE NATURE", available in the Gazette of Jurisprudence and Court Opinions on Electoral matters, Electoral Tribunal of the Federal Judiciary, Year 8, Number 17, 2015, pages 28, 29 and 30, and: <https://www.te.gob.mx/IUSEapp/tesisjur.aspx?idtesis=14/2015&tpoBusqueda=S&sWord=medidas,cautelares>.

⁹² Chacón Rojas, Oswaldo and Natarén Nandayapa, Carlos Faustino, *Precautionary Measures in Accusatory Criminal Proceedings*, Mexico, Technical Secretariat of the Coordination Council for the Implementation of the Criminal Justice System, Ministry of Interior, 2014, pages 18-25).

⁹³ Court opinion: P./J. 21/98, entitled: "PRECAUTIONARY MEASURES. THEY DO NOT CONSTITUTE PRIVATIVE ACTS; THEREFORE, TO GRANT THEM, BEING HEARD IN TRIAL IS NOT A CONDITION", available at: Judicial Weekly of the Federation and its Gazette, Volume VII, March 1998, p. 18.

The requirements to be met to grant precautionary measures are:

I. The possible violation of a right, whose protection is requested in trial or appeal.

II. The well-founded fear⁹⁴ that, while effective judicial protection is achieved, the factual circumstances that are required to obtain a favorable resolution for a the right which violation is claimed disappear⁹⁵.

Precautionary measures are justified if there is any right that requires provisional and urgent protection, due to its violation or its imminent realization. Thus, these measures are intended to prevent the said impact from becoming greater while the proceeding in which the existence of such right will be defined continues⁹⁶.

This, in accordance with what is known in the doctrine as the appearance of verisimilitude, related to the well-founded fear that while effective protection arrives, impact on the right awaiting a determination on the merits becomes irreparable⁹⁷.

Thus, through the adoption of precautionary measures, rights are protected in those cases where the illegal action by the person who caused the initiation of a proceeding is apparently and initially proven, as the appearance of verisimilitude to an objective and serious probability, related to the entitlement to the right whose protection is requested in order to rule out that the request may be unfounded or questionable; and the danger in delay lies in the probable irreparability of the right of the party requesting

⁹⁴ ACCESS TO JUSTICE AS A SAFEGUARD OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS. SURVEY ON THE STANDARDS SET BY THE INTER-AMERICAN HUMAN RIGHTS SYSTEM. <https://www.cidh.oas.org/countryrep/accesodesc07sp/accesodescv.sp.htm>. August 2022.

⁹⁵ Electoral Tribunal of the Federal Judiciary, *Judgment: appeal for reconsideration SUP-REP-217/2015*, Mexico City, Mexico, January 7, 2015.

⁹⁶ Accordingly, the Spanish Constitutional Court emphasized in ruling 197 of 1998 that the right to judicial protection assumes a benefit from the competent body that must protect the activity of the right, by virtue of the authority vested in right holders who are legitimately empowered to resort to the jurisdictional bodies to file a claim for a dispute resolution, and that the judges and courts grant effective judicial protection therein.

⁹⁷ Calvet Botella, Julio, Civil Precautionary Measures, in: Newsletter of the Ministry of Justice (doctrinal studies)], Year 2003, Year 57, Number 1935, Spain, pages 445-457.

the precautionary measure, for the time that may elapse before a resolution on the merits is issued⁹⁸.

When dealing with gender-related disputes, for instance, in matters related to gender-based political violence, it is necessary that the precautionary measures issued are aimed at protecting women in their situation as victims, with greater emphasis on the principles of non-victimization, as well as preferential treatment in favor of the victim.

Therefore, the authorities competent to issue precautionary measures must not use instruments or procedures that may worsen the victims' situation, make it impossible for them to enjoy and exercise their rights, or risk suffering further harm.

When issuing the precautionary measures, it is necessary to assume that the statements made by the allegedly harmed person are true, as well as the irreparability of the facts that may potentially harm the dignity of a woman; this, when the authority lacks evidence that distorts the probability of damages to the detriment of the alleged victim, in accordance with what has been claimed by her, in relation to the veracity of the facts, their nature and the damages that may result therefrom⁹⁹.

Consequently, granting precautionary measures may be based on the existence of indications that show that, in reality, the facts of a complaint are likely to harm the victim; this, as the issuance of the precautionary measures is based on the statements of those who request them and not on the conviction of the existence of the facts and the grounds of the legal claim, since it is only intended to provisionally protect the rights with the purpose to prevent irreparable damage, given that when issued preliminarily,

⁹⁸ Please refer to: I/A HR Court, case of the Capital El Rodeo I and El Rodeo II Prison Facility, provisional measures related to Venezuela, Court order of February 8, 2008, whereas 8; Inter-American Court, Bámaca Velásquez case, provisional measures regarding Guatemala, Court order of January 27, 2009, whereas 45; Inter-American Court, Fernández Ortega *et al.* case. Provisional measures regarding Mexico, Court order of April 30, 2009, whereas 5; Inter-American Court of Human Rights, Milagro Sala case, request for provisional measures regarding Argentina, resolution of the Inter-American Court of Human Rights of November 23, 2017, whereas 5.

⁹⁹ Case of Nadege Dorzema *et al.* v. Dominican Republic" judgment of October 2012, § 40, 228, 228-238. referring to the "disproportionate impact of provisions, actions, policies or other measures that, even when they are or appear to be neutral in their wording, or have a general and undifferentiated scope, result in negative effects for certain vulnerable groups." On the other hand, in the "Átala Riffo and Niñas v. Chile case", pages 221 and 222, establishes that "It is possible that whoever has established the provision or practice is not aware of these practical consequences and, in such a case, the intention to discriminate is not essential and a reversal of the burden of proof is admissible."

at the beginning of the procedure, the authority does not have the relevant evidence to carry out an in-depth study of the issue.

Therefore, to grant precautionary measures, it is necessary to take into account the plausibility of the facts and the right, as well as the risk in delay, insofar as preventive protection constitutes a defense that may be filed to contest the danger that possibly contrary facts to the Law, take place again or continue and thus, rights are violated, taking into account that there are principles and prerogatives that need particular, real, pertinent, and effective protection. For this reason, in order to ensure their broader protection, the issuing authority shall authorize prevention measures.

Accordingly, when the authorities become aware of situations where any assumption that gender-based political violence against women may take place, it is necessary that they take the relevant measures and report them to the various competent authorities so that they assist in preventing that rights continue to be violated.

For instance, the case where someone who is part of a collegiate electoral body reports that, for being women, the rest of the members of the body itself are carrying out acts to hinder their work, for which they request precautionary measures to cause them to cease, and in appearance of verisimilitude this would be the right way to go, as precautionary measures must be granted so that such actions cease provisionally, while the merits are resolved.

4.1.2. Protection measures

The legal framework for protection measures related to gender issues may be found, among other regulations, in various international treaties¹⁰⁰.

Indeed, article 1 of the American Convention on Human Rights (Pact of San José) provides for that the States Parties undertake to respect the rights and freedoms recognized therein and to ensure the free and full exercise of the persons who are within

¹⁰⁰ From the international legal instruments that make up the International Human Rights Law, the American Convention on Human Rights (known as the Pact of San José), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol, as well as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (also known as the Convention of Belem do Pará).

its jurisdiction, without discrimination¹⁰¹ by reason of sex; likewise, article 2 of the same convention provides for that States Parties undertake¹⁰² to adopt the necessary measures to make such rights and freedoms effective.

On the other hand, article 2, item c), of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), provides for that the States Parties agree to follow by all appropriate means and without procrastination, a policy aimed at eliminating discrimination against women; therefore, they undertake to establish the legal protection of their rights and ensure, through the national courts and other public institutions, the effective protection of women against any act of discrimination¹⁰³.

Along the same lines, article 3 of CEDAW provides for that the States Parties shall take in all spheres, particularly in the political, social, economic, and cultural spheres, all appropriate measures to ensure the full development and advancement of women, with the purpose of protecting their exercise and enjoyment of human rights and fundamental freedoms on equal terms with men.

¹⁰¹ Equality and the prohibition of discrimination are the two cornerstones of legal systems and the culture of lawfulness. The violation of the right to non-discrimination is the basis for the violation of many others. Discriminatory behaviors are based on negative evaluations of certain groups or people. In other words, discrimination is based on the existence of a social perception, whose characteristic is the considerable loss of prestige of a person or group of people, in the eyes of others. These negative perceptions have consequences in how these people are treated, in the way they see the world and experience social relations as a whole. All of this impacts on people's opportunities and, consequently, in the exercise of their rights and in the realization of their capacities". (*Badilla, Ana Elena and Torres García, Isabel, The protection of women's rights in the Inter-American Human Rights System, available at https://catedraunes-codh.unam.mx/catedra/SeminarioCETis/Documentos/Doc_basicos/5_biblioteca_virtual/4_sistema_regional/4.pdf*).

¹⁰² This obligation implies the duty of the States Parties to organize the governmental apparatus and, overall, all the structures through which the exercise of public power may be manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, States must prevent, investigate, and punish any violation of the rights recognized by the Convention" (I/A H.R. Court, Velásquez Rodríguez Case, Judgment of July 29, 1988, § 166).

¹⁰³ The purpose of protection measures is to provide care, security, and integrity to people who are in a situation of risk. Within the scope of the universal system for the protection of rights, the duty of the State to ensure the protection of every person by adopting the required protection measures to protect both their life and their personal integrity stands out. As for the regional system for the protection of fundamental rights, the Inter-American Court of Human Rights has extended the scope of the need for protection (see judgment issued in the Gómez López v. Guatemala case) for those cases where damage threats put the moral integrity of people at risk.

Likewise, article 7, item b), of said Convention provides for that States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, ensure that they are able to hold public offices at all government levels.

In turn, article 4 of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belem do Pará), in article 4 items b) and j), provides for that every woman has the right to recognition, enjoyment, exercise and protection of all human rights and freedoms enshrined in international instruments, including the right to have their physical, mental and moral integrity respected, and the right to have equal access to public positions in their country as well as to participate in public affairs, including decision-making roles.

As for the case of Mexico, international regulations are supplemented with national laws; The General Law on Women's Access to a Life Free of Violence, provides for that protection orders are acts of urgent application based on the best interests of the victim, and are essentially precautionary and protective, and are to be granted by the competent authority immediately after the facts that probably constitute offenses involving violence against women are known to it¹⁰⁴.

From the referred regulations, it is possible to conclude that Signatory States of said treaties:

¹⁰⁴ Within the framework of performance of the Mexican State obligations, one of the fundamental actions that the country and the states must carry out is the granting of protection orders, to preserve the integrity of both direct and indirect victims. Protection orders are a legal mechanism designed to protect the victim from any type of violence, especially to prevent violence from escalating as it may culminate in the violent death of women. Facing situations of risk to the life and integrity of women, the State must ensure that its structure responds effectively and in a coordinated manner to enforce the terms of the protection orders, which are intended to compel the aggressor to refrain from harassment, intimidation, threats, harm or endangering the life and integrity of women. As gender-based violence against women is a human rights issue that affects society as a whole, each country is responsible for providing protection to women, ensuring the enjoyment of their human rights, and allowing them to live a life free of violence. Currently, various regulatory instruments provide for protection orders, including the General Law on Women's Access to a Life Free of Violence, as well as civil and family codes, and the National Code of Criminal Procedure. *National Human Rights Commission. Protection orders and the right of women to a life free of violence (National Panorama 2018).*

I. Are required to recognize, respect, and ensure the exercise of the human rights of women recognized in international instruments, on equal terms with men, without any gender-based discrimination.

II. Women have the right to physical, mental, and moral integrity, as well as to access and occupy public positions at all government and decision-making levels.

III. State bodies are to dictate the measures to protect said rights, in those cases where acts of violence against women may be taking place.

It is worthwhile noting that it is reasonable that, despite the fact that a judgment has been previously handed down, the protection measures granted by the state bodies are maintained for as long as the victims need them; for instance, because their physical integrity is at risk¹⁰⁵.

Such a conclusion is aligned with the obligations adopted by the States when signing international agreements on the recognition, protection, and safeguard of the human rights of women in conditions of equality with men, among which is the right to physical, psychic, and moral integrity as well as access to and holding of public offices at all government and decision-making levels.

For instance, the case of a woman who reports gender-based political violence specifically due to the fact that she is a woman, or a person or group of people asks her to resign from the public office of popular election that she holds, threatening her physical integrity or that of her family in case of not doing so. For this reason, the complainant requested protection measures; if under the appearance of verisimilitude, the complaining party is right thus, protection measures are to be granted, which, *inter alia*, may be ordered by the competent security authorities, so that they provide protection to the reporting party and her family.

¹⁰⁵ See Carpio Nicolle case on Guatemala, provisional measures, judgment by the Inter-American Court of Human Rights of July 6, 2009, whereas 14, and Juan Sebastián Chamorro *et al.* related to Nicaragua, adoption of urgent measures for the benefit of Deisy Tamara Dávila Rivas and her family nucleus, within the framework of the provisional measures adopted in the Juan Sebastián Chamorro *et al.* case related to Nicaragua, resolution of the President of the Inter-American Court of Human Rights of July 19, 2021, whereas 20.

4.2 Final Proceedings determinations

The final proceedings determinations are issued when the merits of the dispute are resolved, i.e., when the final ruling is issued.

4.2.1. Scope of rulings

Upon issuing the ruling that resolves the dispute between the parties, if the court determines that the party filing the lawsuit or appeal is right, it will determine the consequences and scope of the ruling.

In electoral matters, when dealing with gender-related cases, the consequences of the judgments handed down by the courts shall benefit women at all times, with the aim of achieving material equality, not only formal equality, and ending discrimination against women that have been targeted in patriarchal societies, including, of course, their political sphere.

An example of the scope of the rulings of the electoral tribunals, is ordering political parties to ensure the real participation of women in managerial positions and, therefore, gender parity when making up their decision-making bodies, in which case, even if the parties' statutes fail to establish the obligation to comply with internal parity across their different bodies, including those of command, they shall be required to perform it, to abide by the obligations assumed by the Signatory States of international treaties that ensure women substantive equality and their actual political participation¹⁰⁶.

In this regard, the resolution adopted in case 1/2022 by the Second Electoral Court of the Metropolitan Region of Chile is also illustrative, deciding on the elections of board

¹⁰⁶ This criterion was sustained under the court precedent by the TEPJF entitled and providing for as follows: "GENDER PARITY. POLITICAL PARTIES ARE REQUIRED TO PERFORM THIS OBLIGATION WHEN MAKING UP THEIR GOVERNING BODIES.- From the systematic interpretation of sections 1, 4 and 41, part I, § 2, of the Political Constitution of the United Mexican States; section 3, § 3 and section 37, § 1, item e), of the General Law of Political Parties as well as section 36, subsection IV, of the General Law for Equality between Women and Men, it may be inferred that political institutes are to ensure the effective participation of both genders in the integration of their management bodies as well as to promote equal representation among women and men within their internal structures. Therefore, although the internal regulations of the political parties do not provide for gender parity or do not expressly define it, they are required to observe it in the integration of said bodies, since it is a constitutional provision that ensures the effective participation of women." Available at www.te.gob.mx.

members of Colegio de Abogados A.G. [Lawyer Bar] in 2021, the provisions of the Election Regulations which provides for that lists are to be developed on a parity basis, which not observed, including its transitory regulation that provides for that gender correction must be applied to elected candidates for four years, from 2021 to 2024.

The resolution was adopted under a gender perspective, rights approach and the conventionality block applicable in the matter, applying the principles of "pro-participation", "progressiveness" and "prohibition of regression", which "stem from a fundamental human right which is based on ensuring the protection of equal access to the full and effective participation of women and equal opportunities for leadership at all decision-making levels in political, economic and public life", with the aim of achieving substantive equality of women and men in political participation, whether exercising active or passive suffrage, and ultimately achieving parity in participation and representation, as it is an inescapable requirement of contemporary democratic systems, confirming in this case, that the Law should have been applied and that it should be applied in the next elections and, on the other hand, correcting what happened in the appealed proceeding, or ordering to make a gender-based correction in the list, where it was possible to make said correction, without the need to render the electoral process null and void¹⁰⁷.

Another example is resolution 34/2020 of the General Inspectorate of Justice of Argentina, which established the obligation to integrate the directories, administration and control bodies of foundations, civil associations, simple associations, state companies and mixed corporations, with majority state participation, those that carry out capitalization and savings operations, those that operate concessions or public services and the holding companies of all these corporations, with the same number of men and women members¹⁰⁸.

Likewise, Courts are required to establish all alternative, necessary and appropriate measures to ensure that their rulings are enforced so as to be able to ensure the fundamental right to effective judicial protection.

¹⁰⁷ Resolution 1/2022, available at <http://secretariadegenero.pjud.cl/index.php/repositorio-sentencias/48-repo-matriz/materias/electoral/328-07-04-2022-reclamacion-electoral>

¹⁰⁸ Available at <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-34-2020-340720/texto>

For instance, indigenous communities that are governed by their own regulatory system, if this system does not provide for the payment of wages to those who are part of the municipal authority, in the event that gender-based violence is exercised against women who are members of the the city council, such as not being given the means to fulfill the tasks entrusted to them by reason of their position, a ruling of this nature may be enforced, as an alternative measure, ordering that they are paid a compensation for the time they would have held the position, as a compensation, even more so if the men who make up the council are being paid.

On the other hand, in the event political parties fail to observe the principle of parity when registering their candidate applicants, the ruling may be enforced so as to cancel the registration of the candidates of a non-compliant party.

Indeed, in electoral processes, particularly in the election preparation stage, candidates are to be registered (both political parties and independent candidates). The purpose of such registration is for the competent authority to review that candidates meet the requirements set forth in the law, and in the event that this is the case, to grant them such registration. Moreover, that citizens know who are the candidates who will be contending in the electoral process.

In the event a political party fails to observe the rule that provides for the joint nomination of candidates, if these are disputed, the ruling may be enforced and order the cancellation of the registration of the candidates of the non-compliant party, to deter such kind of conduct that hinders the achievement of material equality between men and women.

4.2.2. Comprehensive reparation measures

Comprehensive reparation includes the different ways in which state bodies may perform¹⁰⁹ the obligations derived from their responsibility arising from human rights

¹⁰⁹ It is a principle of International Law, that court precedents have considered "even a general conception of Law", that failure to perform an international obligation that has caused damage entails the duty to adequately repair it (Inter-American Court, Velásquez Rodríguez v. Honduras case. Damage Repair and Costs. Judgment dated July 21, 1989. Series C No. 7, § 25)

violations, including compensation, rehabilitation, restitution, and non-repetition measures¹¹⁰.

The Inter-American Court of Human Rights has determined that reparation may be achieved in different ways, according to the following

“Repairing the damage caused for not performing an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring to the previous situation. If this is not possible, it is up to the international court to determine a series of measures to, in addition to protecting the violated rights, repair the consequences caused by the violations produced as well as establishing the payment of an indemnity as compensation for the damages caused.”¹¹¹.

Taking into account that the consequences of judgments shall be the restitution of violated rights of people, if this is not materially possible, it is necessary to opt for some different measure of reparation; for instance, the rehabilitation, compensation and/or the assurance of non-repetition, considering the constitutional and conventional duty to achieve full reparation for those who have obtained a favorable judgment.

In Mexico, the General Victims Law provides for that comprehensive reparation includes measures of restitution, rehabilitation, indemnity, compensation, and assurances of non-repetition, at its individual, collective, material, moral and symbolic levels. Likewise, said Law defines the concepts of reparation measures as follows.

Restitution seeks to return the victim to the situation prior to the commission of the crime or the violation of their human rights.

¹¹⁰ A fundamental precedent related comprehensive reparation is the 2005 United Nations Resolution on the basic principles and guidelines on the right of victims of gross violations of international human rights law and serious violations of international humanitarian law to file remedies to obtain reparations, stating as follows: “in accordance with domestic and international law, and taking into account the circumstances of each case, victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law should be provided appropriately and proportionately to the seriousness of the violation to the circumstances of each case, full and effective reparation... in the following forms - restitution, indemnity, rehabilitation, compensation and assurance of non-repetition” (principle no. 18)

¹¹¹ Trujillo Oroza v. Bolivia case. Damage Repair and Costs. Judgment of February 27, Series C No. 92, § 61.

Rehabilitation seeks to make it easier for the victim to cope with the effects suffered due to the punishable act or human rights violations.

Compensation must be granted to the victim appropriately and proportionally to the seriousness of the punishable act committed or the human rights violation suffered and taking into account the circumstances of each case. This will be granted for all damages, impact and economically assessable losses that are the consequence of the crime or the violation of human rights.

Restoration seeks to recognize and restore the dignity of the victims. Non-repetition measures seek to ensure that the punishable act or the violation of rights suffered by the victim does not happen again.

It is important to point out that the Inter-American Court of Human Rights has considered that judgments are an important reparation measure¹¹². This measure may be appropriate as a form of recognition of the violation of human rights, which will depend on the particularities of each dispute, although it does not rule out the possibility of ordering other different measures.

Therefore, one of the effects of the lawsuits or remedies must be the comprehensive reparation of the violated right, as States are required to ensure this, in accordance with the provisions of said international agreement¹¹³.

For instance, in the case of gender-based political violence by using insults related to the complainant's status as a woman, reparation measures may consist of, *inter alia*, giving her at least a public apology.

In the *González ("Cotton Field") v. Mexico* case. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009; the Court stated that: *The concept of "full restitution" (restitutio in integrum) implies restoring to the previous situation*

¹¹² Inter-American Court. *Suárez Rosero v. Ecuador* Case. Damage Repair and Costs. Judgment dated January 20, 1999. Series C No. 44, § 72.

¹¹³ For instance: COMPREHENSIVE RECOVERY AND RESTITUTION OF FAMILY LINKS, I/A HR Court, in the *Fornerón and daughter v. Argentina* case. REHABILITATION (treatment or medical and psychological assistance). Inter-American Court, in the *Barrios Altos, Cantoral Benavides and Durand and Ugarte v. Peru* case. COMPENSATION, I/A Court HR, *Villagrán Morales et al. v. Guatemala* case. PUBLICATION OR DISSEMINATION OF JUDGMENTS. Inter-American Court, *Barrios Altos, Cantoral Benavides and Durand and Ugarte v. Peru*.

and the elimination of the consequences caused by such violation as well as an indemnity as compensation for the damages caused [...]. Reparations must be intended to transform said situation, in such a way that they have an effect not only restorative but also corrective. However, restoring back to the same structural situation of violence and discrimination is not admissible. Furthermore, the Court recalls that the nature and amount of the ordered reparation depend on the damage caused both materially and immaterially. Reparations cannot imply enrichment or impoverishment for the victim or family members and must be directly related to the reported violations. One or more measures may repair a specific damage without these being considered a double repair¹¹⁴.

Now, at the international level, handing down a ruling may seem like the end of a process, but generally speaking, in international human rights matters, the Ministry of Foreign Affairs is responsible for supervising and enforcing rulings¹¹⁵.

4.2.3. Ruling follow-up

In addition, it is noteworthy that institutional transparency¹¹⁶ is a fundamental indicator related to the quality of government acts and decisions, and a basic assumption for citizens to access information from which they exercise their political participation in decision-making. In this sense, the publicity of all jurisdictional decisions acquires a special relevance, which leads the public to know the meaning of the agreements and sentences, as well as the imposition of sanctions and the taking of measures in the event that have transgressed political rights to the detriment of women.

4.2.4. Follow-up of sentences

Through the jurisdictional process, the State enforces the Law against acts or inactions that violate it, which is carried out through the rulings issued by the courts, which are constrained to enforcing them, in those cases where the required party fails to

¹¹⁴ <https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo4.pdf>. August 2022.

¹¹⁵ <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>. P.254. August 2022.

¹¹⁶ Organization of American States (OAS). Department for Effective Public Management. Report: "Access to public information, a right to exercise other rights", May, 2013, 41 p. Document available at: <https://www.oas.org/es/sap/dgpe/concursoinformate/docs/cortosp8.pdf>

voluntarily abide by them, while the right to effective judicial protection would be violated if it were not possible for the jurisdictional bodies to enforce rulings.

Even so, doctrine suggests that enforcing rulings is the most important phase of the proceedings, given the importance that the parties to a proceeding achieve that the right that a ruling declared in their favor materializes in their legal scope; therefore, it is up to the jurisdictional bodies to oversee its proper observance and enforce a ruling in case of failure to abide by said ruling¹¹⁷.

The right to effective judicial protection is not limited to declaring a right in a ruling, but also to achieve its compliance, for which the courts must remove any barrier that may prevent it, as they are authorized to do so.

It should be clarified that judgments require the parties, individuals, or State instrumentalities, even with regard to the latter, despite the fact that they have not been identified as liable parties, given that it is key is to determine whether, due to their statutory duties, they are authorized to carry out acts aimed at observing the rulings. In accordance with the foregoing, see an example of compliance with rulings: a case where a ruling orders the reinstatement in a position held by a woman who, due to gender-based political violence against her, was deprived of occupying a position to which she was elected by popular vote or forced to resign, and the authorities required to voluntarily reinstate her in her position fail to do so, the courts must require compliance with this order, thus removing all obstacles that may prevent it, and requiring said authorities and their hierarchical superiors to comply with it, by resorting to any coercive actions that may be suitable.

As for the Inter-American Court, overseeing compliance with both precautionary measures and resolutions is provided for.

Compliance with the precautionary measures is evaluated periodically, at the request of the court or of a party, in order to maintain, modify or remove them.¹¹⁸ When verifying them, follow-up measures may be taken, such as requesting relevant information

¹¹⁷ Flores Díaz, Irma, Compliance and Enforcement of an Amparo Judgment, available at: <https://archivos.juridicas.unam.mx/www/bjv/libros/11/5337/3.pdf>

¹¹⁸ Section 25, §§ 9 and 10, of the IACHR Regulations.

from the interested parties on any matter related to the granting, observance, and validity of measures¹¹⁹.

As for the overseeing phase on compliance with the judgments by the Inter-American Court, it involves the following actions¹²⁰.

- a. Periodically request information from the State on the activities carried out to comply with the order.
- b. Obtain the remarks from the Inter-American Commission on Human Rights, the victims, or their representatives.
- c. Evaluate, if reported by the State, if the order was complied with.
- d. Guide the State actions so that the orders by the regional court under the ruling are followed.
- e. Call an overseeing hearing in the event States fail to comply with their reporting duty.

In any case, the adoption of any type of decision will be made from an intersectional approach, with the objective that the solution granted, based on the law, will allow for a broader dismantling of the realities that lead to inequality, discrimination and subordination of women, either individually or as a group.

¹¹⁹ See Resolution on precautionary measures 32/2022, precautionary measures No. 1051-20 Identified members of the El Faro Digital Newspaper on El Salvador, July 8, 2022 (Follow-up, Extension and Removal); Resolution 11/2022, precautionary measure no. 150-19 Concepción Palacios maternity hospital ON Venezuela February 27, 2022 (follow-up); Resolution on precautionary measures 112/2021, precautionary measures No. 412-17, Families from the Laguna Larga community on Guatemala, December 31, 2021 (Follow-up); Resolution on precautionary measures 102/2021, precautionary measures No. 882-17 and 284-18, Tzotzil families from twenty-two communities identified in the municipalities of Chalchihuitán, Chenalhó and Aldama in the state of Chiapas on Mexico, December 15, 2021 (Follow-up); Resolution on precautionary measures 88/2021, precautionary measures No. 405-09 and 112-16 Berta Isabel Cáceres, her immediate family, COPINH members and others on Honduras, November 15, 2021 (Follow-up).

¹²⁰ Pursuant to sections 33, 62.1, 62.3, 67 and 68.1 of the American Convention on Human Rights, 24 and 30 of the Statute, and 31.2 and 69 of its Regulations

V. Recommendations

- **Concept – Methodology**

The protection of political-electoral rights is a topic that generates great interest in citizens and in the public sector.

Overall, there is knowledge on political participation, from the understanding of terms and the application of said concepts without the extent reviewed in this document.

Open jurisdictional enforcement with a gender perspective in electoral matters is an issue that must be broadened, known, and disseminated with urgency to achieve Parity Democracy.

- **Experiences**

Latin America turns out to be the region with the most initiatives developed in the field of protecting the political rights of women, basically with the enforcement of protocols, research work, guides, or manuals.

The progress made in this area by Mexico, Costa Rica, Argentina and Bolivia, among other countries, is relevant in terms of issuing criteria for judging with a gender perspective or how the standards derived from the interpretation of human rights are transformed into effective practice by the corresponding bodies at the electoral jurisdictional level.

The progresses made that contributed to the development of this guide are highlighted. It is relevant to bring out that, from public institutions, these types of actions are fostered so that these result in the application of a timely administration of justice and according to the current parameters for open justice.

- **Dissemination and training**

When developing this guide, references and jurisprudential information were reviewed, which shows the need to train electoral justice personnel in these perspectives as well as in other topics such as values, parity democracy and inclusion.

In addition to training, the necessary dissemination of judgments or resolutions in these areas is expressed; therefore, the progress made will lead to replicating experiences in other countries and/or continents.

Actions to develop, for example, a table of contents of electoral decisions with a gender perspective, will allow to have an open data tool to expand the applicability of reviewed parameters.

The analysis of inclusion, of substantive equality between women and men as an inexcusable international requirement, and of the need to ensure that women and men are equal in all aspects of their lives; as well as parity as a constitutional mandate; the identification of legal provisions on equality; on the right to a life free of violence; and the existence of a Law against discrimination, will allow States to establish conditions so as to enable the full exercise of women's political rights without any sort of discrimination or exclusion. This goes hand in hand with an inclusive anti-discriminatory electoral Law, with a gender approach.

Given the above, it is essential to train the jurisdictional electoral body to help it apply this type of methodology.

- **Institutional duties**

When it comes to political-electoral participation and political representation, there are various aspects in which public institutions must intervene. At the same time, the duties of the various entities must be well defined, and effective levels of coordination are to be established so as to ensure, defend and protect rights.

Promote electoral amendments that ensure gender parity and/or affirmative actions to encourage greater representation and female political participation.

States must design inclusive open electoral public policies, with a strong recognition of responsibility, with innovations, accessibility, and use of technological advantages, based on their national contexts.

Electoral bodies must work on formats, applications or specific action protocols in the electoral field that allow establishing the relevant steps in accordance with their

internal laws and in compliance with the international regulations signed and ratified by each country.

Furthermore, it is key that each country puts training processes on the electoral jurisdictional actions in place for people related to violence against women in political life; thus, the electoral resolutions in this domain handed down with a gender and intersectional approaches, and court precedents on violence against women in political life are key to protect fundamental rights and thus, promote and strengthen parity democracy.

VI. Annex I

Glossary

This section is intended to present and explain some concepts that are relevant to judging with a gender perspective or, where appropriate, to make arguments based on said perspective. Dimensions and categories are sorted out alphabetically, so the order of appearance in no way reflects any degree of importance or transcendence. The concepts exposed portray the vision of authorized bodies of human rights and gender as well as academic works.

6.1. Right to equality

When answering said question: What is the right to equality? The UNHCR points out that this concept was coined in the UN Universal Declaration of Human Rights¹²¹. This reference is correct, since in the preamble of this international instrument adopted in 1948, where the peoples of the United Nations have reaffirmed in the Charter [of the United Nations] their faith in equal rights between men and women is argued, which is later reaffirmed by recognizing in its article 1 that "All human beings are born free and equal in dignity and rights [...]."

As per this provision, the Inter-American Court of Human Rights sustains that "The concept of equality stems directly from the unity of nature of the human race and is inherent to the essential dignity of the person", for which it is inadmissible to treat human beings differently based on facts other than their unique and identical nature¹²². Furthermore, the European Court of Human Rights analyzes the very nature of the right to equality, to understand it as the prohibition of different discriminatory treatment¹²³.

¹²¹ UN Refugee Agency (UNHCR), What is the right to equality? Document available at: <https://eacnur.org/es/actualidad/noticias/historias-de-vida/derecho-la-igualdad#:~:text=El%20concepto%20del%20derecho%20a,humanos%20en%20el%20art%C3%ADculo%201>. Last visit on August 15, 2022.

¹²² Inter-American Court of Human Rights, *Advisory Opinion OC-4/84: "AMENDMENT PROPOSED TO THE POLITICAL CONSTITUTION OF COSTA RICA RELATED TO NATURALIZATION"*, January 19, 1984, § 55.

¹²³ To learn more about the subject, please review the decisions by the European Court of Human Rights, handed down when resolving the following matters - *relating to certain aspects of the laws on the use of languages in education in Belgium*, Judgment of July 23, 1968, available at: <https://hudoc.echr.coe.int/eng?i=001-57525>; the *Luedicke, Belkacem and Koç* case.

The right to equality as a primary concept has been approached from various angles, which take into account the position in which the human person is found and the sense in which its recognition is required. This aspect justifies taking into account some categories of equality, as part of the set of tools that may be used to judging with a gender perspective.

6.1.1. Gender equality

This concept refers to the equal rights, responsibilities, and opportunities of people. This category of equality does not mean that they become equal, but that their rights, responsibilities, and opportunities will not depend on whether they are men or women. It implies that the interests, needs, and priorities of both are taken into account, and that the diversity of the different groups of individuals is recognized. Gender equality is not just a women's issue, as it fully involves and commits both sexes; in view of the fact that equality among them is considered both a human rights issue and a condition precedent and indicator of people-centered sustainable development¹²⁴.

6.1.2. Equality of opportunities

According to the World Bank, *equality of opportunities* seeks to level the playing field so that gender, race or ethnicity, place of birth, family background, and other characteristics that are beyond a person's control do not influence their outcomes. Therefore, success in life should depend on their decisions, effort, and talent, not on their circumstances at birth¹²⁵. This perspective of equality focuses on the full development of the powers and skills of each person.

Judgment of November 28, 1978, available at: <https://revistas.unav.edu/index.php/persona-y-derecho/article/view/34199/28803>; and the *Rasmussen* case. Judgment of August 28, 1984, available at: http://webcache.googleusercontent.com/search?q=cache:Nf3SXO_CeQ8J:hu-doc.echr.coe.int/app/conversion/docx/pdf%3Flibrary%3DECHR%26id%3D001-165122%26file-name%3DCASE%2520OF%2520RASMUSSEN%2520v.%2520DENMARK%2520-%2520%255BSpanish%2520Translation%255D%2520summary%2520by%2520the%2520Spanish%2520Cor-tes%2520Generales.pdf%26logEvent%3DFalse&cd=1&hl=es-419&ct=clnk&gl=mx.

¹²⁴ Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women (OSAGI), available at: <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm> Last visit on August 15, 2022.

¹²⁵ World Bank, *LAC Equity Lab: Equality of opportunities*, available at: <https://www.worldbank.org/en/topic/poverty/lac-equity-lab1/equality-of-opportunities>

6.1.3. Equality of outcome

It is the logical completion of substantive or *de facto* equality. These results may be of a quantitative or qualitative nature, i.e., they may manifest themselves in the fact that, across different fields, women enjoy rights in almost equal proportions as men, have the same income levels, there is equality in decision-making and political influence and that women live free from acts of violence¹²⁶.

6.1.4. Structural or social equality

Structural equality stems from the fact that, in society, there are certain groups that have been systematically excluded from the enjoyment and exercise of their rights, and that it is the duty of the State to prevent this situation from deepening, as well as to reverse the effects of historical marginalization¹²⁷.

Structural or social equality is a fundamental piece to judging with a gender perspective, based on the disadvantages and subordination that affect a social group¹²⁸. Furthermore, individual equality is the foundation to study discrimination stereotypes and situations.

6.1.5. Legal or formal equality (*de jure*)

Formal equality assumes that equality is achieved if legal or other provisions treat men and women in a neutral manner. Accordingly, States must respect the principle of equality provided for by Law and before the law. Thus, whoever performs the lawmaking role must observe the principle of equality provided for by Law, ensuring that legislation promotes the equal enjoyment of economic, social, and cultural rights by men

¹²⁶ Committee for the Elimination of Discrimination against Women (CEDAW) *General recommendation No. 25, on article 4, § 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*. Document available at: [https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(Spanish\).pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(Spanish).pdf)

¹²⁷ Marianne González Le Saux and Óscar Parra Vera, "Conceptions and Equality Clauses in the Jurisprudence of the Inter-American Court. Related to the Apitz Case," in *IIHR Journal*, no. 47, Costa Rica, 2008, p. 132. Document available at: <https://www.corteidh.or.cr/tablas/r23826.pdf>

¹²⁸ For further study on the subject, please refer to: Young, Iris. Marion, *Justice, and the politics of difference*. Princeton University Press, 1990.

and women. Regarding the principle of equality before the law, it must be observed by the administrative and jurisdictional bodies, with the conclusion that law shall be applied equally to men and women.¹²⁹ The equality of persons before the law (*de jure*), is formally recognized in various international legal instruments that recognize human rights.

6.1.6. Substantive equality (*de facto*)

It deals with the effects of legal provisions and others, and practice, and tries not to maintain, but to alleviate the unfavorable situation certain groups are in. The substantive equality of men and women will not be achieved solely by enacting laws or adopting principles that are *prima facie* indifferent to gender. Hence, it is recommended that national authorities take into account that laws, principles, and practice may set aside inequality between men and women or even perpetuate it, if they do not take into account the existing economic, social, and cultural inequalities, especially those persons who suffer from these¹³⁰.

6.2. Tools to address the gender perspective

Gender perspective, as an analytical category to argue and/or judge, will allow analyzing, describing, and questioning the foundations of inequalities built from the differences between women and men. For this reason, it requires developing a set of instruments.

Below are some of the tools that are considered relevant for adopting a gender perspective approach.

¹²⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 16, *The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (article 3), §§ 7 and 9. Document available at: https://conf-dts1.unog.ch/1%20spa/tradutek/derechos_hum_base/cescr/00_1_obs_grales_cte%20dchos%20ec%20soc%20cult.html#GEN16

¹³⁰ Committee on Economic, Social and Cultural Rights, Op. cit., General Comment No. 16, §§ 7 and 8.

6.2.1. Due diligence

Item c) of section 4 of the Declaration on the Elimination of Violence against Women, urges States to "proceed with due diligence in order to prevent, investigate and, in accordance with national legislation, punish all acts of violence against women, whether they are acts perpetrated by the State or by private individuals". Accordingly, the concept of due diligence serves as a criterion to determine whether or not a State has performed its obligation to combat violence against them or not.

Although the due diligence provisions have tended to be limited to responding to violence against women once it has occurred and, moreover, has focused on adopting measures, it is important to bear in mind that the provision of due diligence also refers to a more general obligation of prevention, in particular the obligation to transform the patriarchal structures and values that perpetuate and consolidate gender-based violence. Another challenge when combating violence against women is to apply existing human rights Laws to ensure that the root causes and consequences of gender-based violence are addressed at all levels, from domestic to transnational. The several forms violence against women takes as well as the fact that it frequently occurs at the intersection of different types of discrimination, makes it necessary to adopt multifaceted strategies to prevent it and combat it¹³¹.

6.2.2. Intersectionality

Intersectionality¹³² is a basic concept to understand the scope of the general obligations of the States that have signed the Convention on the Elimination of All Forms of Discrimination against Women. Sex- and Gender-based Discrimination against women is inextricably linked to other factors that affect them, such as race, ethnic origin, religion or belief, health, status, age, social class, caste, sexual orientation, and gender

¹³¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, the rule of due diligence as an instrument for the elimination of violence against women, E/CN.4/2006/61, January 20, 2006, §§ 14 to 16 Document available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/53/PDF/G0610353.pdf?OpenElement>

¹³² For further study on the subject please refer to: Crenshaw, Kimberlé W., *On Intersectionality: Essential Writings*, The New Press, New York, NY, 2017.

identity. Sex- or Gender-based Discrimination may affect women of some groups to a different extent or in a different way than men¹³³.

The Constitutional Court of Colombia points out that the grounds of discrimination, such as race, sex or political orientation, do not unfold in an isolated manner in social relations, but are usually found in the same person or group, deepening the disadvantages they are in¹³⁴; and that, given the collision of various components of inequality, the concept of intersectionality has been implemented, which allows, on the one hand, to understand the complexity of the situation and, on the other, to adopt the appropriate and necessary measures to achieve respect, protection and safeguarding their rights¹³⁵.

6.2.3. Non-revictimization and personal data protection

A *victim* is that person who has suffered damages, individually or collectively, including physical or mental injuries, emotional suffering, economic losses or substantial impairment of their fundamental rights as a result of actions or inactions that constitute a violation of rights; and will be considered as such, regardless of whether the person responsible for the violation has been identified, arrested, tried or convicted as well as the family or other relationship that may exist with the victim. Moreover, the term *victim* includes their immediate family members or dependents, and people who have suffered damages when intervening to help them or to prevent their victimization. Accordingly, court and out-of-court actions will take gender into account in order to avoid re-victimization or stigma of victims¹³⁶.

¹³³ Committee for the Elimination of Discrimination against Women (CEDAW). Draft General Recommendation No. 28 on Section 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/GC/28. December 16, 2010, § 18. Document available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CEDAW_Recomendaci%C3%B3n_General_28_ES.pdf

¹³⁴ Constitutional Court. Judgment T-141 of 2015. MP. Maria Victoria Calle Correa.

¹³⁵ Constitutional Court. Judgment T-448 of 2018. MP. Antonio José Lizarazo Ocampo.

¹³⁶ Committee against Torture, General Comment No. 3_ *Implementation of article 14 by States Parties*, CAT/C/GC/3, December 13, 2013, §§ 3 and 33. Available at: <http://docstore.ohchr.org/Self-Services/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskvE%2BTuw1mw%2FKU18dCyrYrZ>

6.2.4. Patriarchy

maintained through regimes, habits, customs, daily practices, ideas, prejudices, laws, and social, religious, and political institutions that define and spread a series of roles where the bodies of women are overseen, misappropriated, and controlled, and they are not allowed to enjoy full equality of opportunity and rights¹⁴⁰.

6.2.5. Gender biases

The word "bias" derives from the verb "to have a bias", which "means to cut something diagonally, or to twist something in one direction". When gender biases are based on false beliefs, such as gender stereotypes, generally directed towards the goals and interests of the male sex, situations of discrimination that tend to harm the right to equality of certain people take place¹⁴¹.

6.2.6. Sex and gender

Stricto sensu, this term sex refers to the biological differences between men and women; to their physiological characteristics, to the sum of the organic or anatomical characteristics that define the spectrum of people as 'women' and 'men' or to the biological construction that refers to the genetic, hormonal, anatomical and physiological characteristics on the basis of which a person is classified as 'male' or 'female' at birth¹⁴².

The Inter-American Court of Human Rights made a remark that this term only establishes subdivisions between men and women, so it does not recognize the existence of other categories that do not fit the woman/man binary.

¹⁴⁰ Spanish Commission for Refugee Aid (CEAR), *Patriarcado* [Patriarchy], available at: <https://dictionary.cear-euskadi.org/patriarchy/>

¹⁴¹ Gimeno Presa, Ma. Conception (2020). "Sesgos de sexo y género en el derecho" [Sex and gender biases in the Law] in: *Libre Pensamiento: Dossier Sexo y Poder* [Free Thought -Dossier Sex and Power], No. 105, Madrid, Winter 2020/2021, pages 44 and 45.

¹⁴² OAS, Permanent Council of the Organization of American States, Committee on Juridical and Political Affairs. Sexual Orientation, Gender Identity and Gender Expression: some Terminology and Relevant Laws. Study carried out by the Inter-American Commission on Human Rights, OAS/Ser.G. CP/CAJP/INF. 166/12, April 23, 2012, § 13. Available at: https://americalatinagenera.org/wp-content/uploads/2014/06/cidh_estudio_sobre_os_ig_y_eg_terminos_y_estandares.pdf

On the other hand, gender is defined as “the social meanings placed on the biological differences between the sexes. It is an ideological and cultural product, although it is also found in the field of physical practices; in turn, it impacts on the outcome of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and the enjoyment of rights within the family and in public life. [...] It helps to understand the social structure of people's identity based on their gender and the unequal structure of power linked to the relationship between the sexes”¹⁴³.

It should be noted that the category "gender" is used imprecisely as a synonym for feminism, as we tend to refer to "gender perspective" when referring to the perspective of women and, in social analysis and bureaucratic systems, it replaces the variable “sex”¹⁴⁴.

6.2.7. Raising awareness

Raising awareness or ‘sensitizing’, in its literal sense, is defined as the ability to experience sensations from the senses. Raising awareness on gender implies that the people who design, implement, and execute programs and public policies, i.e., those who try cases, administer, prepare budgets, make decisions, define labor contracting guidelines, among other activities of the institutional tasks, open their eyes and see, hear, smell, taste and touch the reality and the issues gender inequalities entail.

Hence, raising awareness stands as an essential tool to create awareness, through reflection, and address hidden or naturalized aspects in power relations between people and social groups. As a learning strategy, it is an awareness-raising activity that removes indifferent attitudes towards a social issue, promotes action and seeks to question prejudices through insights and knowledge.

When applied to gender, awareness seeks to reflect on what is "feminine" and "masculine", their asymmetries, and inequalities to foster processes of change both at the

¹⁴³ 1999 World Survey on the Role of Women in Development: Globalization, Gender and Work, United Nations, New York, 1999, p. 8.

¹⁴⁴ Barbieri, M. Teresita De. “Certezas y malos entendidos sobre la categoría género” [Certainties and misunderstandings about the gender category], in *Estudios básicos de derechos humanos* [Basic human rights studies], Volume 4, San José, CR: IIDH, 1996 Available at: <https://biblioteca.corteidh.or.cr/tablas/a11991.pdf>

personal and institutional levels, with a view to shaping policies, programs, and projects from an equality approach for women and men¹⁴⁵.

6.2.8. Subordination

It takes place in the social arena as a power relationship characterized by the dominance of one of the parties and the dependence of another, where hierarchy derives from a social construction (gender) rather than natural differences (sex).

It is noteworthy that a gender stereotype refers to a preconception of attributes, behaviors or characteristics possessed or roles that are or should be performed by men and women, respectively, and it is possible to associate the subordination of women to practices based on gender stereotypes, socially dominant and socially persistent, conditions that worsen when stereotypes are portrayed, implicitly or explicitly, in policies and practices, particularly in the reasoning and language of authorities¹⁴⁶.

6.2.9. Mainstreaming

"Gender mainstreaming" is a term adopted at the 1995 World Conference on Women in Beijing.

Mainstreaming the gender perspective is the process of assessing the implications for men and women of any planned action, whether it be in the legislation, policies, or programs, in all areas and at all levels. It is a strategy to ensure that the concerns and experiences of women, as well as those of men, are an integral part in the development, implementation, monitoring and evaluation of policies and programs in all political, economic, and social spheres, so that women and men may benefit from them

¹⁴⁵ National Women's Institute, Methodological guide for gender awareness: An educational tool for training in public administration. *La sensibilización en Género* [Raising Awareness on Gender Issues], Vol. 1, Mexico, 2008, page 15. Available at: http://cedoc.inmujeres.gob.mx/documentos_download/100972.pdf

¹⁴⁶ Cfr.: Inter-American Court, *González et al. v. Mexico* case ("Cotton Field"), Judgment of November 16, 2009, § 401; and I/A HR Court, *Velásquez Paiz et al. v. Guatemala* case, Judgment of 19 November 2015, § 180.

equally and inequality is not perpetuated. The ultimate goal of this integration is to achieve gender equality¹⁴⁷.

6.2.10. Political violence

Political violence is a type of gender violence, “understood as the actions, behaviors and/or physical, psychological, sexual aggressions committed by a person or group of people, directly or through third parties, against women candidates, elected, designated or in exercise of the political-public function, or against his family, to shorten, suspend, prevent or restrict the exercise of his position or to induce or force him to carry out, against his will, an action or incur in an omission, in the performance of their duties or in the exercise of their rights”¹⁴⁸.

6.3. State general obligations

The human rights instruments adopted at the regional or universal level establish the responsibility of the state authorities in cases where the violation of this type of rights arises, from their failure to perform their obligations. Even, in some cases, the State may be held liable, in the face of acts committed by individuals, to the extent that its duties to adopt measures of prevention and protection of individuals in their interactions with each other are conditioned to being aware of a situation of real and immediate risk to a person or group and to the reasonable possibilities of preventing or avoiding said risk¹⁴⁹.

6.3.1. Safeguarding

The obligation to *safeguard* implies the state duty to organize the entire government apparatus and, in general, all the structures to exercise the public power, in such a

¹⁴⁷ United Nations Economic and Social Council (ECOSOC) (1997), *Chapter IV: Mainstreaming the gender perspective into all policies and programs in the United Nations System*. A/52/3, September 18. Available at: <https://www.ilo.org/public/spanish/bureau/gender/newsite2002/about/defin.htm>

¹⁴⁸ Article 7 of Law No. 243, against Harassment and Political Violence against Women.

¹⁴⁹ Inter-American Court of Human Rights, *Pueblo Bello Massacre v. Colombia* case. Merits, Reparation and Costs. Judgment dated January 31, 2006. Series C No. 140, § 123.

way that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, States must prevent, investigate, and punish any violation of human rights and also seek, if possible, the restoration of the violated right and, where appropriate, reparation for the damage caused by the violation of these rights. This obligation to safeguard the free and full exercise of human rights is not terminated with the existence of a set of rules aimed at making their enforcement possible, but rather shares the need for a government action so as to ensure the existence, in reality, of an effective protection of the free and full exercise of human rights¹⁵⁰.

6.3.2. Protecting

Protecting human rights, especially the civil and political rights established in the Convention, starts from the affirmation of the existence of certain inviolable attributes of a human that cannot be legitimately undermined by the exercise of public power. These are individual spheres that the State cannot violate or in which it may only penetrate to a certain extent. Thus, in the protection of human rights, the concept of restriction to the exercise of state power is necessarily established¹⁵¹.

6.3.3. Observing

The “obligation to observe” means that States are required to refrain from interfering with the enjoyment of rights by both individuals and groups. It entails the prohibition of certain acts of Governments that may impair the enjoyment of rights¹⁵².

6.4. Statutory human rights principles

International human rights treaties, as well as constitutional and legal instruments all over the world, stem from certain supreme values that seek the coexistence of people

¹⁵⁰ Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras* case, Judgment of July 29, 1988, §§ 166 and 167.

¹⁵¹ Inter-American Court of Human Rights. (*The word "laws" in Section 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, § 21.

¹⁵² Office of the United Nations High Commissioner for Human Rights, *Human Rights: Handbook for Parliamentarians*, No. 26, 2016, page 34. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf>

and the achievement of the highest life expectancies. Although human rights are based on different statutory principles to judging with a gender perspective, at least, those that are explained below are essential.

6.4.1. Dignity¹⁵³

Human dignity is the right whereby humans are valued as individuals and social persons, with particular characteristics, for the simple fact of being human beings. Dignity also assumes the right to be considered for themselves and for self-fulfillment, which lies in the possibility of choosing a profession, expressing our ideas, and respecting other people. Aspects such as humiliating treatment, all forms of discrimination or inequality are contrary to dignity¹⁵⁴.

6.4.2. Equality and non-discrimination

The Inter-American Court of Human Rights points out that, at the current stage of the evolution of International Law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*; and that the legal framework of national and international public order lies on this principle and cascades throughout the entire legal system¹⁵⁵.

Equality, as an ideal of human beings, is the antonym of discrimination.

¹⁵³ Dignity entails multiple meanings and approaches. For further study on the subject, please refer to: Atienza, Manuel, *Sobre la dignidad humana* [On human dignity], Edit. Trotta, 2022; Bier, Peter, *La dignidad humana* [Human Dignity] Herder, 2018; De Koninck, Tomas, *et. al.*, *Dignidad Humana: Presupuesto Fundamental de los derechos humanos* [Human dignity - Fundamental human rights assumption], Ed. Res Pública, 2016; Nebreda Pérez, Joaquín María, *Dignidad humana* [Human Dignity] *Crisis ética de nuestra civilización* [Ethical Crisis of our Civilization], Edit. Almuraza, 2022; Bloch, Ernest, *Derecho Natural y dignidad humana* [Natural Law and Human Dignity], Biblioteca Jurídica Aguilar, 1980; *inter alia*.

¹⁵⁴ Cfr.: UNHCR, "Dignity", in: Human Rights: article 1, equality, freedom and dignity. Available at: https://eacnur.org/blog/derechos-humanos-articulo-1-tc_alt45664n_o_pstn_o_pst/#::~text=La%20dignidad%20humana%20es%20el,simple%20hecho%20de%20ser%20personas.

¹⁵⁵ Cfr. Advisory Opinion OC-18/03, § 101; *Espinoza Gonzales v. Peru case. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated November 20, 2014. Series C No. 289, § 216; *Atala Riffo and girls v. Chile case. Merits, Reparations and Costs*, § 79; *Duke v. Colombia case. Preliminary Objections, Merits, Reparations and Costs*, § 91; *I.V. v. Bolivia case. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated November 30, 2016. Series C No. 329, § 238, and *Flor Freire v. Ecuador case*, § 109.

The United Nations reminds that discrimination against women violates the principles of equal rights and respect for human dignity, which makes it difficult for women to participate, under the same conditions as men, in the political, social, economic, and cultural life of their country, which constitutes an obstacle to increasing the well-being of society and the family and that hinders the full development of the potential of women to serve their country and humanity.

Accordingly, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, by women, irrespective of their marital status, on the basis of equality of men and women¹⁵⁶.

6.5. General human rights principles

Human rights, as universal mandates recognized in various international and national systems, are governed by basic principles, of a general nature, which in no way may be overlooked or avoided when exercising them, when a violation thereto is proven, or when measures that may impact on its exercise are designed.

6.5.1. Indivisibility and interdependence

To differentiate between these two principles, in the words of Sandra Serrano, the prefix *inter* means "between" or "in the middle", while the prefix *in* indicates "denial", in such a way that the word 'interdependent' conveys a link among rights and the word 'indivisible' denies any separation amongst them.

Accordingly, human rights are interdependent insofar as they establish reciprocal relationships amongst them and are indivisible insofar as they should not be taken as isolated or separate elements, but rather as a whole. Interdependence suggests the extent to which the enjoyment of a particular right or group of rights depends for their

¹⁵⁶ Cfr.: Preamble and article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, New York, USA, December 8, 1979. Document available at: https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw_SP.pdf

existence on the exercise of another right or a group of rights. Furthermore, indivisibility denies any separation, categorization, or hierarchy amongst human rights. The core aspect of this criterion is that States are not authorized to protect and safeguard a certain category of human rights in violation of one another, as they all deserve the same attention and urgency¹⁵⁷.

6.5.2. Progressiveness

The principle that economic, social and cultural rights are to be achieved progressively in no way means that governments have no immediate obligation to strive for their full realization. The basis of the principle of progressive realization of rights is that governments assume the obligation to ensure conditions that, in accordance with the material resources of the State, allow gradual and constant progress towards their fullest realization.

Furthermore, the progressive development of rights is not limited to economic, social, and cultural rights only. The principle of progressivity is inherent in all human rights instruments as these are developed and expanded. Human rights treaties frequently include provisions that implicitly or explicitly provide for the expansion of the rights contained therein. The expansion method may rely on the direct enforcement of the provisions established in the treaty itself, or through amendments or additional protocols that supplement, elaborate or perfect the rights already established in a treaty¹⁵⁸.

The principle of progressivity of human rights, as an objective of public policies and jurisdictional work, entails the non-regression of human rights recognized in the Constitution and International Instruments, since they may not be diminished, circumvented or eliminated. The progressivity of rights constitutes "...a mandate for the

¹⁵⁷ Serrano, Sandra, "Los estándares internacionales de los derechos humanos: un sistema de derechos en acción" [International Human Rights Laws: A Rights System in Action]; In: COLECCIÓN DE TEXTOS SOBRE Derechos Humanos [COLLECTION OF Human Rights TEXTS], Mexico, CNDH, 2015, p. 17 and 18.

¹⁵⁸ Inter-American Commission on Human Rights, Organization of American States, "CHAPTER V. FIELDS IN WHICH MEASURES MUST BE TAKEN TO GIVE GREATER VALIDITY TO HUMAN RIGHTS, IN ACCORDANCE WITH THE AMERICAN DECLARATION OF RIGHTS AND DUTIES OF MAN AND THE AMERICAN CONVENTION ON HUMAN RIGHTS", in: *Annual Report 1993*, OAS/Ser.L/V/II.85, February 11, 1994, Washington, DC Available at: <https://www.cidh.oas.org/annualrep/92eng/TOC.htm>

public authorities, by virtue of which no law, public policy or jurisprudence may diminish a previously recognized right, nor deprive people of acquired conditions of protection or place them in conditions of marginality and/or vulnerability”¹⁵⁹.

6.5.3. Universality

It is one of the top principles codified in International Law during the 20th century, the core idea of the Universal Declaration of Human Rights and a fundamental aspect of the entire human rights system. Universality greatly improves the lives of all human beings all over the world and promotes equality, dignity, and rights.

Universality means that all human beings are entitled to the same human rights simply because for being human beings, regardless of where they live, who they are, or their particular situation or characteristics. Universality must be understood to be closely linked to the following fundamental principles of human rights - interdependence, indivisibility, equality, and dignity. In practice, it is an essential tool for the United Nations Human Rights System, the various regional human rights mechanisms, and human rights defenders around the world¹⁶⁰.

6.5.4. Political gender-based violence against women

The Convention on the Elimination of all Forms of Discrimination against Women¹⁶¹, as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém Do Pará",¹⁶² are the international and regional references for the definition of gender-based political violence against women.

¹⁵⁹ Constitutional Court of Ecuador Judgment 017-17-SIN-CC.

¹⁶⁰ Report of the Special Rapporteur in the field of cultural rights, *Universality, cultural diversity, and cultural rights*, § 1 and 2. Available at: <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/N18/237/68/PDF/N1823768.pdf?OpenElement>

¹⁶¹ Adopted by the United Nations Organization in the city of New York, United States of America, on December 18, 1979. Document available at: <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

¹⁶² Adopted by the Organization of American States in the city of Belém do Pará, Brazil, on June 9, 1994. Document available at: <https://www.oas.org/juridico/spanish/tratados/a-61.html>

On this basis, the Inter-American Commission of Women of the Organization of American States formulated the Declaration on Violence and Political Harassment against Women¹⁶³ and the Inter-American Model Law to Prevent, Punish and Eradicate Violence against Women in Political Life¹⁶⁴. This law states that:

"It should be understood as 'political violence against women' any action, conduct or omission, carried out directly or through third parties that, based on their gender, causes harm or suffering to one or more women, and that has the purpose or result of impairing or nullifying the recognition, enjoyment or exercise of their political rights.

Political violence against women may include, among others, physical, sexual, psychological, moral, economic or symbolic violence."

The referred Model Law was an important regional trigger, which led different countries in the Americas to present legislative initiatives with the purpose of incorporating provisions related to political violence against women into their domestic law¹⁶⁵.

¹⁶³ Approved by the Follow-up Mechanism of the Belém do Pará Convention, at the Sixth Conference held on October 15, 2015, in Lima, Peru. Document available at: <http://www.oas.org/es/mesecvi/docs/declaracion-esp.pdf>

¹⁶⁴ Approved by the Follow-up Mechanism of the Belém do Pará Convention, at the Sixth Conference held on October 15, 2015, in Lima, Peru. Document available at: <http://www.oas.org/es/mesecvi/docs/declaracion-esp.pdf>

¹⁶⁵ For more information, please consult: Albaine, Laura, *Violencia contra las mujeres en política en América Latina: mapeo legislativo y proyectos parlamentarios (Violence against women in politics in Latin America: legislative mapping and parliamentary projects)*. UN Women, Organization of American States/Inter-American Commission of Women, 2020. Document available at: https://lac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documentos/Publicaciones/2020/10/Violencia%20contra%20las%20mujeres%20en%20politica%20en%20A_Amy%20Rosa%20Esther%20Rice-comprimido%20%281%29.pdf

Annex II

International treaties and human rights and political-electoral documents

- *Aproximación a una ruta pedagógica, preventiva e institucional para la atención de la violencia contra mujeres en política en razón de género* [Approach to a pedagogical, preventive, and institutional route for the attention of violence against women in politics on the basis of gender]¹⁶⁶.
- *Criterios de equidad para una administración de justicia con perspectiva de género* [Equity criteria for an administration of justice with a gender perspective]¹⁶⁷.
- Jurisprudence Booklets of the Inter-American Court of Human Rights¹⁶⁸.
- *Cuaderno / Buenas prácticas para incorporar perspectiva género en las sentencias* [Booklet / Good Practices to Incorporate a Gender Perspective in rulings]¹⁶⁹.
- *Cuaderno de buenas prácticas para juzgar con perspectiva de género* [Notebook of Good Practices to Judging with a Gender Perspective]¹⁷⁰.
- *Enfoque de género en la actuación letrada. Guía práctica para la abogacía.* [Gender Approach in Legal Action. Practical Guide for the Legal Profession]¹⁷¹.
- Standards for the Protection of the Human Rights of Women: Necessary Tools for the Defence of Women's Political Participation¹⁷².
- Gender and Judging at the International Criminal Court: Lessons from 'feminist judgment projects'¹⁷³.

¹⁶⁶ National Electoral Council, Colombia, 2020, available at <https://www.cne.gov.co/images/cartillas-cne/vcmp.pdf>.

¹⁶⁷ National Gender Commission of the Judicial Branch of the Republic of Colombia, 2011, available at https://www.salapenaltribunalmedellin.com/images/doctrina/libros01/criterios_de_equidad_para_una_administracin_de_justicia_con_perspectiva_de_genero.pdf

¹⁶⁸ Inter-American Court of Human Rights, available at <https://www.corteidh.or.cr/publicaciones.cfm>

¹⁶⁹ Technical Secretariat for Gender Equality and Non-Discrimination, Judicial Branch of Chile, available at http://secretariadegenero.pjud.cl/images/stignd/CBP/CBP_30052019_HR1.1.pdf.

¹⁷⁰ Center for Economic Research and Teaching, Council of the Federal Judiciary, 2014, available at https://www.academia.edu/45492529/Cuaderno_de_buenas_pr%C3%A1cticas_para_juzgar_con_perspectiva_de_g%C3%A9nero.

¹⁷¹ Spanish Law Foundation, Spain, 2017, available at <https://www.abogacia.es/wp-content/uploads/2017/12/GUIA-ENFOQUE-DE-GENERO-3.pdf>.

¹⁷² Inter-American Commission of Women of the Organization of American States and UN Women, 2020, available at <https://www.oas.org/en/mesecvi/docs/MESECVI-EstandaresProteccion-EN.pdf>.

¹⁷³ Cambridge University Press, 2020, available at <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/abs/gender-and-judging-at-the-international-criminal-court-lessons-from-feminist-judgment-projects/3EEC0909D4F60045B7734DB125C42F0D>.

- Gender Stereotyping and the Judiciary: A Workshop Guide¹⁷⁴.
- *Guía de criterios de actuación judicial frente a la violencia de género* [Guide on the Criteria for Judicial Action against Gender-Based Violence]¹⁷⁵.
- *Guía interactiva de estándares internacionales sobre derechos de las mujeres* [Interactive Guide to International Standards on Women's Rights]¹⁷⁶.
- *Guía para administración de justicia con perspectiva de género* [Guide for Administration of Justice with a Gender Perspective]¹⁷⁷.
- *Guía para el Poder Judicial sobre estereotipos de género y estándares internacionales sobre derechos de las mujeres* [Guide for the Judiciary on Gender Stereotypes and International Standards on Women's Rights]¹⁷⁸.
- *Guía para el uso de lenguaje y comunicación incluyente, no sexista y accesible en textos y comunicados oficiales del TEPJF* [Guide for the Use of Inclusive, Non-Sexist and Accessible Language and Communication in TEPJF Official Documents and Communications]¹⁷⁹.
- *Guía para la aplicación sistemática e informática del "Modelo de incorporación de la perspectiva de género en las Sentencias"* [Guide for the Systematic and Computerized Application of the "Model for Incorporating the Gender Perspective in Judgments"]¹⁸⁰.

¹⁷⁴ Office of the United Nations High Commissioner for Human Rights, 2020, available at https://www.ohchr.org/sites/default/files/GenderStereotyping_EN.pdf.

¹⁷⁵ General Council of the Judiciary, Spain, 2013, available at <https://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/Guias-y-Protocolos-de-actuacion/Guias/Guia-de-criterios-de-actuacion-judicial-frente-a-la-violencia-de-genero--2013->.

¹⁷⁶ Supreme Court of Justice of Argentina, available at https://www.csjn.gov.ar/om/guia_ddmm/index.html.

¹⁷⁷ Council of the Judiciary, Ecuador, 2018, available at <https://www.funcionjudicial.gob.ec/www/pdf/Gu%C3%ADa%202018genero.pdf>.

¹⁷⁸ Inter-Agency Gender Group of the United Nations System in Uruguay, Uruguay, 2020, available at <https://www.gub.uy/sites/gubuy/files/inline-files/Gu%C3%ADa%20para%20el%20Poder%20Judicial.pdf>.

Electoral Tribunal of the Federal Judiciary, Mexico, 2020, available at https://www.te.gob.mx/publicaciones/sites/default/files/archivos_libros/Gui%C3%A1%20para%20el%20uso%20de%20lenguaje%20y%20comunicacio%C3%A9n%20incluyente.pdf

¹⁸⁰ XVIII Ibero-American Judicial Summit, Colombia, 2015, available at <http://www.cumbrejudicial.org/productos/97-edicion-xviii-2014-2016/915-guia-para-la-aplicacion-sistemica-e-informatica-del-modelo-de-incorporacion-de-la-perspectiva-de-genero-en-las-sentencias>.

- *Guía práctica contra la violencia doméstica y de género* [Practical Guide against Domestic and Gender Violence]¹⁸¹.
- *Herramienta jurisprudencia de género de las Altas Cortes* [Gender Jurisprudence Tool for the High Courts]¹⁸².
- *Herramienta para la aplicación de estándares jurídicos sobre los derechos de las mujeres en las sentencias* [Tool for the Application of Legal Standards on the Rights of Women in Judgments]¹⁸³.
- *Herramienta para la incorporación de los derechos humanos y la perspectiva de género en la elaboración de sentencias relativas a delitos de femicidio y otras formas de violencia contra la mujer* [Tool for the Incorporation of Human Rights and Gender Perspective in the Elaboration of rulings Related to Femicide and Other Forms of Violence Against Women]¹⁸⁴.
- *Hoja de ruta para el acceso a la justicia de las mujeres víctimas de violencia de género* [Roadmap for Access to Justice for Women Victims of Gender Violence]¹⁸⁵.
- Inter-American Model Law on the Prevention, Punishment and Eradication of Violence Against Women in Political Life¹⁸⁶.
- *Lineamientos de atención y protección a las mujeres víctimas de violencia sexual, para la rama judicial* [Guidelines for Care and Protection of Women Victims of Sexual Violence, for the Judicial Branch]¹⁸⁷.

¹⁸¹ General Council of the Judiciary, Spain, 2005, available at <https://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/Guias-y-Protocolos-de-actuacion/Guias/Guia-practica-contr-la-violencia-domestica-y-de-genero--2005->.

¹⁸² Judicial Branch; Superior Council of the Judiciary, Colombia, 2020, available at <https://lector.ramajudicial.gov.co/SIBD/VIDEOTECA/Publicaciones/00000000/51813/index.html>.

¹⁸³ Council of the Judiciary, Ecuador, 2017, available at <https://www.funcionjudicial.gob.ec/www/pdf/HERRAMIENTA-genero.pdf>.

¹⁸⁴ Office of the United Nations High Commissioner for Human Rights in Guatemala, UN, Guatemala, 2015, available at https://www.ohchr.org/Documents/Issues/Women/WRGS/Tool_DHVSG_alta.pdf.

¹⁸⁵ Judicial Council, Ecuador, 2022, available at https://www.undp.org/sites/g/files/zskgke326/files/migration/ec/pnud_Ec-hoja-de-ruta-acceso-a-justicia-violencia-genero_marzo-2022-apoyo-ciclo-electoral.pdf.

¹⁸⁶ Gender Equality Observatory for Latin America and the Caribbean, Economic Commission for Latin America and the Caribbean, OAS-UN, 2017, available at <https://www.oas.org/es/cim/docs/ViolenciaPolitica-LeyModelo-EN.pdf>.

¹⁸⁷ National Gender Commission of the Judicial Branch (CNGRJ); International Organization for Migration (IOM) - Mission in Colombia, Colombia, 2015, available at <https://repository.iom.int/bitstream/handle/20.500.11788/1294/COL-OIM0506.pdf?sequence=2>.

- *Lista de verificación / Herramienta virtual de apoyo para la identificación e incorporación de la perspectiva de género desde el enfoque diferencial en las sentencias* [Checklist / Virtual Support Tool for the Identification and Incorporation of the Gender Perspective from the Differential Approach in rulings]¹⁸⁸.
- *Manual para juzgar con perspectiva de género* [Manual for Judging with a Gender Perspective]¹⁸⁹.
- *Manual para la igualdad* [Handbook for Equality]¹⁹⁰.
- Manual for an Intersectional Administration of Justice with a Gender Perspective¹⁹¹.
- *Manual sobre los efectos de los estereotipos en la impartición de justicia* [Manual on the Effects of Stereotypes in the Administration of Justice]¹⁹².
- *Metodología para el análisis de decisiones jurisdiccionales desde la Perspectiva de género* [Methodology for the Analysis of Jurisdictional Decisions from a Gender Perspective]¹⁹³.
- *Modelo de incorporación de la perspectiva de género en las sentencias* [Model for Incorporating a Gender Perspective in Rulings]¹⁹⁴.
- Latin American Model Protocol for the Investigation of Gender-related Killings of Women (Femicide/Feminicide)¹⁹⁵.

¹⁸⁸ National Gender Commission of the Judicial Branch, Colombia, 2018, available at <https://lector.ramajudicial.gov.co/SIBD/VIDEOTECA/Publicaciones/00000000/2766//index.html>.

¹⁸⁹ UN Women and Swiss Cooperation in Bolivia, Bolivia, 2019, available at <https://obs.organojudicial.gob.bo/assets/archivos/publicacion/0d0f4e4eb96a179bf44a3e779eb23a.pdf>.

¹⁹⁰ Electoral Tribunal of the Federal Judiciary, Mexico, 2014, available at https://www.te.gob.mx/paridad_genero/media/pdf/68c5638a79ef6fe.pdf.

¹⁹¹ Inter-Institutional Committee for Gender Equality of the Federal Judiciary, Mexico, 2018, available at <https://es.scribd.com/document/504054262/Manual-Para-Una-Imparticion-Interseccional-de-Justicia-Con-Perspectiva-de-Genero>.

¹⁹² Supreme Court of Justice of Mexico, 2022, available at https://www.scjn.gob.mx/derechos-humanos/sites/default/files/Publicaciones/archivos/2022-03/Manual%20Estereotipos%20de%20imparticion%20de%20justicia_DIGITAL%20FINAL.pdf.

¹⁹³ EQUIS Justice for Women, Mexico, 2017, available at <https://equis.org.mx/wp-content/uploads/2018/02/Metodologia.pdf>.

¹⁹⁴ Permanent Commission on Gender and Access to Justice Ibero-American Judicial Summit, 2015, available at <https://escuelajudicialpoderjudicial.go.cr/Archivos/bibliotecaVirtual/otrasPublicaciones/Modelo%20de%20Incorporaci%C3%B3n%20de%20la%20Perspectiva%20de%20G%C3%A9nero%20en%20las%20Sentencias%20.pdf>.

¹⁹⁵ Office of the High Commissioner for Human Rights for Central America, UN, available at <https://lac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documentos/Publicaciones/LatinAmericanProtocolForInvestigationOfFemicide.pdf>

- *Políticas de igualdad de género del Poder Judicial de Costa Rica* [Gender Equality Policies of the Judicial Branch of Costa Rica]¹⁹⁶.
- *Protocolo de actuación frente al acoso sexual, al acoso por razón de sexo, al acoso discriminatorio y frente a todas las formas de acoso y violencia en la Carrera Judicial* [Action Protocol Against Sexual Harassment, Gender-Based Harassment, Discriminatory Harassment and against all Forms of Harassment and Violence in the Judicial Career]¹⁹⁷.
- *Protocolo de juzgamiento con perspectiva de género interseccional para la jurisdicción constitucional* [Judgment Protocol with an Intersectional Gender Perspective for the Constitutional Jurisdiction]¹⁹⁸.
- *Protocolo Iberoamericano de actuación judicial para mejorar el acceso a la justicia de personas con discapacidad, migrantes, niñas, niños, adolescentes, comunidades y pueblos indígenas* [Ibero-American Protocol on Judicial Action to Improve Access to Justice for People with Disabilities, Migrants, Girls, Boys, Adolescents, Indigenous Communities and Peoples]¹⁹⁹.
- *Protocolo para juzgar con perspectiva de género* [Protocol for Judging with a Gender Perspective]²⁰⁰.
- *Protocolo para juzgar con perspectiva de género* [Protocol for Judging with a Gender Perspective]²⁰¹.

¹⁹⁶ Gender Technical Secretariat of the Judicial Branch of Costa Rica, 2013, available at https://sitiooj.poder-judicial.go.cr/images/Documentos/Politica_igualdad_genero.pdf.

¹⁹⁷ Equality Commission, General Council of the Judiciary, Spain, 2016, available at <https://www.poderjudicial.es/stfls/TRIBUNALES%20SUPERIORES%20DE%20JUSTICIA/TSJ%20Comunidad%20Valenciana/PROTOCOLOS,%20CONVENIOS%20E%20INSTRUCIONES/FICHEROS/20160311%20Protocolo%20frente%20al%20acoso%20en%20la%20Carrera%20Judicial.pdf>.

¹⁹⁸ Plurinational Constitutional Court, Bolivia, 2021, available at <https://obs.organojudicial.gob.bo/assets/archivos/publicacion/0fdb096bf6f03df8c64025493d6b53dd.pdf>.

¹⁹⁹ Supreme Court of Justice of Mexico, 2016, available at http://migracion.iniciativa2025alc.org/download/19ALCc_Protocolo_Iberoamericano.pdf.

²⁰⁰ Supreme Court of Justice of Mexico, 2020, available at <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/protocolos/archivos/2020-11/Protocolo%20para%20juzgar%20con%20perspectiva%20de%20g%C3%A9nero%20%28191120%29.pdf>.

²⁰¹ Gender Committee of the Bolivian Judicial Branch, 2017, available at <https://tsj.bo/wp-content/uploads/2021/03/Protocolo-de-Genero.pdf>.

- *Protocolo para la atención de la violencia política contra las mujeres en razón de género* [Protocol for Dealing with Gender-Based Political Violence against Women]²⁰².
- Brasilia Regulations Regarding Access to Justice for Vulnerable People²⁰³.

²⁰² Electoral Tribunal of the Federal Judiciary, Mexico, 2019, available at https://www.te.gob.mx/publicaciones/sites/default/files//archivos_libros/Protocolo_Atenci%C3%B3n_Violencia_.pdf.

²⁰³ Permanent Secretariat of the Ibero-American Judicial Summit, 2008, available at <https://www.icj.org/wp-content/uploads/2018/11/Brasilia-rules-vulnerable-groups.pdf>