

Justice Without a Gender Perspective? The Case of Keren Ordóñez

Helena Varela Guinot

 <https://orcid.org/0000-0002-2166-2316>

Universidad Iberoamericana. México

E-mail address: helena.varela@ibero.mx

María Azucena Feregrino Basurto

 <https://orcid.org/0000-0003-0146-0482>

Universidad Iberoamericana. México

E-mail address: maferegrino@hotmail.com

Received: October 13rd, 2024

Accepted: April 30th, 2025

DOI: <https://doi.org/10.22201/ijj.24485306e.2025.1.19602>

Abstract: This article seeks to determine the extent to which judicial processes include a gender perspective, as well as the possible effects and instances of discrimination that accused women experience when it is absent. This research focuses particularly on analyzing the case of Keren Ordóñez, a young woman from Veracruz accused of kidnapping whose criminal proceedings did not protect her right to equality in criminal action and justice. The theoretical-methodological approach taken starts from a gender perspective in line with the critical feminist stand that proposes denouncement as the way to eradicate gender oppression. Among the findings, it is demonstrated that Keren's case was not considered with a gender perspective, on the contrary, it was an act of discrimination that violated her right to access justice under conditions of equality.

Keywords: gender; equality; human rights; access to justice; gender perspective.

Resumen: Este artículo busca conocer en qué medida se juzga con perspectiva de género en los procesos judiciales, así como las posibles afectaciones y situaciones de injusticia que experimentan las mujeres imputadas cuando no se hace así. Particularmente, se centra en el análisis del caso de Keren Ordóñez, una mujer joven originaria de Veracruz acusada de secuestro, en cuyo proceso penal no se garantizó su derecho a la igualdad en la acción penal e impartición de justicia. El enfoque teórico-metodológico parte de una perspectiva de género congruente con el compromiso crítico feminista que, a través de la denuncia, busca proponer acciones que erradiquen la opresión por género. Entre los resultados, se observa que en el caso de Keren fue

omitida la metodología para juzgar con perspectiva de género, lo que constituyó un acto de discriminación que vulneró su derecho de acceder a la justicia en condiciones de igualdad.

Palabras clave: género; igualdad; derechos humanos; acceso a la justicia; perspectiva de género.

Summary: I. *Introduction*. II. *Methodological Considerations*. III. *Criminal Action from a Gender Perspective*. IV. *The Case of Keren Ordóñez from a Gender Perspective*. V. *Conclusions*. VI. *References*.

I. Introduction

Access to justice is understood as people's ability to reach a fair and effective solution to their conflicts through the appropriate legal and judicial procedures. Hence, the perspective in this context goes beyond a merely formalistic vision, which focuses solely on "access to jurisdiction per se, that is, to the study of merely technical or procedural aspects and/or the administration of justice".¹ Instead, it is necessary to consider aspects of material or substantive justice, as well as everything regarding the design, evolution and interpretation of laws. In this light, it becomes an essential human right that guarantees the effective exercise and protection of legally recognized rights.²

In this regard, it should be borne in mind that the justice administration system is the last frontier where citizens perceive whether their rights are effectively respected and guaranteed; hence the urgent need to facilitate and uphold, not only access to justice, but effective access to it.³

The lack of a gender perspective in access to justice is a major obstacle for women to exercise this right. Mexico's 2011 constitutional reform on human rights recognized this shortcoming, which led to establishing the obligation to guarantee equality between women and men in all public policies and government actions, including the administration of justice. It became clear that assumed equal treatment was not enough, but the underlying inequities that historically placed women at a disadvantage had to be recognized. Thus, a legal framework was created to prevent systematic violations of the right to justice on the basis of gender, especially in cases in which women are victims of gender violence.

¹ DANIELA HEIM, MUJERES Y ACCESO A LA JUSTICIA, 15 (Didot, 2016).

² Jorge Marabotto Lugaro, *Un derecho humano esencial: el acceso a la justicia*, ANUARIO DE DERECHO CONSTITUCIONAL LATINOAMERICANO, 291, 295 (2003).

³ Juan Méndez, *El acceso a la justicia, un enfoque desde los derechos humanos*, in ACCESO A LA JUSTICIA Y LA EQUIDAD: ESTUDIO EN SIETE PAÍSES DE AMÉRICA LATINA 17 (Banco Interamericano de Desarrollo/Instituto Interamericano de Derechos Humanos, 2000).

This work highlights the importance of studying the criminal action taken against women when they are accused of committing a crime. Historically, women who commit crimes have been subjected to a punitive system designed for men that, imbued with patriarchal ideology, “has ended up treating them with greater harshness and severity”,⁴ so that women are treated differently from men during criminal proceedings. A 2020 study by the Reinserta organization found that female Mexican prisoners serve “a sentence of approximately 23 years”, whereas “in the case of men, it is approximately 17 years”.⁵ In addition, “short sentences are more frequent in the case of men (5 years) than in the case of women (25 years)”.⁶ Similar data is seen in the entire Latin American region, as presented in the most recent Inter-American Commission on Human Rights (IACHR) report on *Women Deprived of Liberty in the Americas*, which draws attention to the effects of incarceration both directly on the prisoners and on their families.⁷

Similarly, Mexico’s National Human Rights Commission (CNDH) reported that the life stories of women deprived of liberty are marked by various forms of stigmatization, criminalization and violence under “the patriarchal social system [...] that permeate[s] the social and institutional structures and persist inside prisons, denying them opportunities for work, training, health and freedom of personality”.⁸ This condition is even worse after changes in their legal status and incarceration, as they face renewed discrimination, prejudice and violence (which includes being abandoned by their family or partner and social repudiation in general), “from the most subtle [form] to the most serious, which has had an impact on their physical and mental health and, in some cases, even led to loss of life”.⁹

Women generally (and surreptitiously) receive greater punishment than men because women transgress the standards twice. Not only do they break the law, but they also go against their socially assigned gender role.¹⁰ Therefore, they are stigmatized and are on the receiving end of other sanctions while in the criminal system.¹¹ In other words, prejudices stemming from social systems and their historical context judge women harder because they have violated statutory law

⁴ Libardo Ariza & Manuel Iturralde, *Mujer, crimen y castigo penitenciario*, 12(24) POLÍTICA CRIMINAL, 731, 737 (2017).

⁵ REINSERTA, DIAGNÓSTICO SOBRE LA PERCEPCIÓN DEL DESEMPEÑO DE LA DEFENSORÍA PENAL EN MÉXICO 66 (2020), <https://reinserta.org/>

⁶ *Id.*

⁷ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. MUJERES PRIVADAS DE LIBERTAD EN LAS AMÉRICAS (2023).

⁸ COMISIÓN NACIONAL DE DERECHOS HUMANOS (CNDH), INFORME DIAGNÓSTICO SOBRE LAS CONDICIONES DE VIDA DE LAS MUJERES PRIVADAS DE LA LIBERTAD DESDE UN ENFOQUE INTERSECCIONAL 9 (2022).

⁹ *Id.* at 5.

¹⁰ Teresa Salazar & Blanca Elisa Cabral, *Miradas de género a la criminalidad femenina*, 22 REVISTA VENEZOLANA DE SOCIOLOGÍA Y ANTROPOLOGÍA 64, (2012).

¹¹ LIDIA CASAS BECERRA ET AL., LA PERSPECTIVA DE GÉNERO EN LA DEFENSA DE MUJERES EN EL

and the law of “feminine nature.”¹² Moreover, in an attempt to correct their failure to follow conventions, women are treated as children under the pretense of moral protection from authorities and prison agents in an attempt to justify their need for excessive control over the women.¹³

Part of this stigma implies that crimes committed by women are considered abnormal or aberrant, leading to “stereotypes” involving “the naturalization of inequality” and “biologicistic premises”.¹⁴ When a woman acts outside her established social role by breaking the rules and acting as a man traditionally would, the stereotypes of feminine weakness or submission do not fit in with the collective imagination of criminality; thus, her punishment in the eyes of society is harsher than a man’s would be in a similar case.¹⁵

This situation leads to “greater punishment against women for acting against social expectations and the patterns built around them.”¹⁶ While some crimes can be minimized when committed by men, they are seen with greater severity when attributed to women. This discretionary characteristic is usually upheld by the very design of criminal codes, which do not fully comprehend or address differences on the basis of gender. Studies in other geographical places¹⁷ assert that the increased number of prison sentences for women tend to respond to indirect discrimination derived from the limited freedom criminal codes include to apply the law from a gender perspective.

As Salazar and Cabral note, “the crucial question is not why are there women who do not comply with the law? But rather, why does the same society that knowingly tolerates male offenses continuously punishes and debases female transgressions?”¹⁸

Based on these considerations, it is necessary to analyze the extent to which cases are judged from a gender perspective, as well as the possible effects and instances of injustice accused women experience when it is not considered. This issue is examined here within the context of a specific case that exemplifies the limitations of the Mexican justice system, namely the case of Keren Selsy Ordóñez Hernández, a woman from Veracruz, who, at age 19, was deprived of

NUEVO SISTEMA PROCESAL PENAL CHILENO: UN ESTUDIO EXPLORATORIO, (Facultad de Derecho Universidad de Portales, 2004).

¹² Norma Fuller, *La perspectiva de género y la criminología: una relación prolífica*, 8 TABULA RASA, 97, 110 (2008).

¹³ *Id.*

¹⁴ Julia Méndez, *Criminología feminista. Una revisión bibliográfica*, 39 ASPARKÍA. INVESTIGACIÓN FEMINISTA, 233, 253 (2021).

¹⁵ NURIA ARTOLA, LAS MUJERES COMO VICTIMARIAS: LA REALIDAD DE LA CRIMINALIDAD FEMENINA (unpublished undergraduate dissertation, Universidad del País Vasco/Euskal Herriko Unibertsitatea/Zuzenvide Fakultatae) (2022).

¹⁶ *Id.*, at 20.

¹⁷ See Albert Pedrosa, *¿Discrimina el Código Penal español a las mujeres?* 16 REV. ESPAÑOLA DE INVESTIGACIÓN CRIMINOLÓGICA, 1, 22 (2018); See also Alicia Alonso Merino, *Mujeres y privación de libertad en Chile. Dimensiones de lo punitivo y discriminaciones*, 35 REVISTA DE DERECHO, 79, 94 (2018).

¹⁸ Salazar & Cabral, *supra* note 9, at 244.

her liberty and forced —under duress and torture— to sign a confession of having participated in a kidnapping, which resulted in a 50-year prison sentence.

The case was basically analyzed by reviewing her file, provided by the Miguel Agustín Pro Juárez Human Rights Center (Centro Prodh) with Keren's authorization. Additionally, two unstructured interviews were conducted with Keren Ordóñez in the Apizaco prison on March 9, 2023, and on April 4, 2024, so as to identify specific details of the events. Lastly, Keren Ordóñez's mother was interviewed via telephone on April 11, 2024.

The work presented here is organized as follows: The first section presents some methodological aspects that explains how this study was carried out. Then, the most important elements to analyze criminal proceedings from a gender perspective are given. Based on these considerations, the Keren Selsy Ordóñez Hernández case is provided, focusing on how the system failed to address special circumstances tied in with gender issues. The conclusions highlight the importance of having a justice system that operates with such a perspective.

II. Methodological Strategy

To explore this issue, we need to start by establishing a research methodology with a gender perspective that is consistent with the researchers' feminist commitment to the experiences of women who have been systematically excluded from the political stances, which seeks change to the *status quo* by identifying inequitable gender-based relations.¹⁹ As Marcela Lagarde says, analysis with a gender perspective “detracts from the patriarchal order; it explicitly criticizes the harmful, destructive, oppressive and alienating aspects that are produced by a social organization based on inequality, injustice and the political hierarchy of people based on gender.”²⁰ To this end, two components were fundamental to methodological strategy: first, it centered on women's experiences, which were then used as a starting point to analyze the case and identify vulnerable conditions (through interviews conducted with Keren and her mother). Second, law is not seen here as an impartial field, and therefore, the case analysis involves identifying and showing up gender biases.

It is essential, then, to use a feminist research method that, as Delgado argues, allows for adhering “to some premises of critical methods, such as detecting, uncovering or exposing existing beliefs that limit or restrict human freedom”²¹ to discover and question the prevalent forms. Therefore, it is necessary to clarify what gender implies and understand “the processes that people undertake to

¹⁹ See Gabriela Delgado, *Metodología de la investigación con perspectiva de género*, in METODOLOGÍA DE LA INVESTIGACIÓN. LA VISIÓN DE LOS PARES, 17, 38 (María de Lourdes Velázquez and Olivia Mireles coords., 2008).

²⁰ MARCELA LAGARDE, GÉNERO Y FEMINISMO. DESARROLLO HUMANO Y DEMOCRACIA 3 (Horas y Horas, 1996).

²¹ Delgado, *supra* note 18, at 35.

adapt or integrate themselves into social institutions as active, thinking and feeling beings.”²² This analysis is based on Alda Facio’s methodological proposal, which establishes six steps to analyze legal texts with a focus on raising awareness about female subordination and identifying sexist traits that influence how women are perceived by society.²³

Black, Chicano and Indigenous feminist contributions propose adopting a gender perspective with an intersectional approach; i.e., bearing in mind that the gender variable does not have an isolated effect but intersects with other variables that, in turn, explain conditions of exclusion and discrimination. Race, social class, and sexual orientation are some of the lines of oppression that are intertwined with gender.

Taking an intersectional perspective means recognizing that gender discrimination is comprised of not only the disadvantages that women experience in patriarchal structures that assign power and privilege according to sexist criteria, but also the coexistence of other systems of subordination that create differences among women and put some women in positions of particular marginalization and social exclusion.²⁴

Intersectionality is based on the understanding that discrimination has multiple dimensions and that a combination of them does not have a simply cumulative effect but rather gives rise to markedly different conditions of vulnerability. Intersectional analysis “address[es] the manner in which racism, patriarchy, class oppression and other systems of discrimination create inequalities that structure the relative positions of women” within specific historical, social and political contexts with the pressing need to recognize the “unique individual experiences resulting from the coming together of different types of identity”.²⁵ This perspective is fundamental to the case analyzed here, especially when considering Keren’s vulnerability as a young woman in a precarious economic situation facing a complicated postpartum period.

Finally, it should be noted that this article arises from a report prepared for the Centro Prodh, which has defended Keren Ordóñez since September 2022. The center asked the authors to gather documentary evidence on gender per-

²² “Gender is understood as the differentiated situations that women and men experience due to institutionalized cultural patterns and that determine instances of discrimination, oppression, subordination and sexism that in most cases negatively affect women.”, *Id.*, at 18.

²³ A more detailed description of the six steps can be found at ALDA FACIO, CUANDO EL GÉNERO SUENA, CAMBIOS TRAE. UNA METODOLOGÍA PARA EL ANÁLISIS DE GÉNERO DEL FENÓMENO LEGAL 75-110 (ILANUD, 1992).

²⁴ María Caterina La Barbera, *Interseccionalidad*, 12 EUNOMÍA. REVISTA EN CULTURA DE LA LEGALIDAD, 191, 195 (2017).

²⁵ Association for Women’s Rights in Development (AWID). *Interseccionalidad: una herramienta para la justicia de género y la justicia económica*, 9 DERECHOS DE LAS MUJERES Y CAMBIO ECONÓMICO, 1, 2 (2004).

spective to be included as part of their defense.²⁶ After reviewing the literature on access to justice from a gender perspective (which served to theoretically frame the research), the judicial casefile, with all its relevant documentation, was meticulously examined. This approach required listening to Keren Ordóñez's own voice to understand the context surrounding the events, identify aspects of her life with clear evidence of gender inequality and recognize other circumstances that could explain the turn of events conditioned by the lack of gender perspective and other shortcomings, omissions and even crimes perpetrated at the time of her arrest and imprisonment. Hence, in-depth interviews were conducted with both Keren and her mother to hear, in their own words, how they experienced the events and how they look back on them after almost nine years since Keren was first deprived of her liberty and separated from her daughter, a baby who was barely a month old at the time.

The interviews, carried out on March 9, 2023, and April 4, 2024, took place in the Apizaco prison. Due to the prison's security measures, cell phones and recording devices were not permitted inside, so there is no word-for-word transcript of the interviews. In addition, prior to preparing the expert opinion, it was essential to gain Keren's trust in order for her to speak openly, which is difficult to do in prison. For these reasons, creating a safe space for Keren was given priority over methodological rigor in terms of recording of the interview. For similar reasons, we chose not to record the telephone interview with Keren Ordóñez's mother, which took place on April 11, 2024. Even then, all the information reported here has been borne out by Keren Ordóñez herself to ensure that it coincides with the information she shared.

Thus, the analysis—the results of which will be presented later—was based on two fundamental methodological approaches: socio-legal contextualization with an intersectional perspective stemming from the interviews; and a critical analysis of the text of the first verdict of Keren's trial which made it possible to identify gender stereotypes.

III. Criminal Action with a Gender Perspective

This section addresses the elements of theoretical analysis to better understand the meaning of criminal action from a gender perspective. First, the concept and the definitions given by judicial institutions are presented, followed by an explanation of certain fundamental considerations to grasp the concept itself. A key aspect identified during this research is that critical analysis calls for an interdisciplinary approach since legal arguments alone are insufficient, and complementary sociological or psychological points of view are needed to tackle the complexity of this issue in particular.

²⁶ More specific details about the case will be provided later.

1. The Administration of Justice from a Gender Perspective

We start from the idea that gender perspective in the administration of justice “can be defined as a judicial methodology for legal conflict resolution, contextualized and in accordance with the *pro homine* principle to find fair solutions to situations of gender inequality. The sexual difference is legally important when there is a detrimental gender-related distinction, exclusion or restriction”.²⁷

This approach is rooted in the feminist and human rights movements that gained strength in the 20th century by highlighting gender inequalities in various facets of society, including the justice system. Likewise, international organizations like the United Nations played a decisive role in promoting a gender perspective in the administration of justice. Instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, required member countries to improve women’s access to justice. As a result, laws and policies were created at national levels in an effort to guarantee gender equality and protect the rights of women and other gender minorities. The IACHR *Report on Measures to Reduce the Use of Pretrial Detention in the Americas* establishes the basic criteria of what gender perspective means:

A gender perspective also means taking account of the special situation of the risk of violence in all its expressions, including physical, psychological, sexual, economic, obstetric and spiritual, among others, as well as the fact that most such incidents end in impunity. [...] The States should also include an intersectional and intercultural perspective that takes into consideration the possible aggravation and frequency of human rights violations due to factors such as race, ethnicity, age, or economic position.²⁸

Yet one more issue that is fundamental in the case analyzed here has to do with the specific roles that have been traditionally assigned to women, such as care-giving tasks. So much so that, as the Report states, the incarceration of women “spells severe consequences for their children and other persons under their care”.²⁹ One last item highlighted here is the fact that women are frequently subjected to physical, sexual and psychological violence, including torture perpetrated or tolerated by the State or its officials, personnel, agents

²⁷ Gloria Poyato i Matos, *Juzgar con perspectiva de género: una metodología vinculante de justicia equitativa*, 2 IQUAL. REV. DE GÉNERO E IGUALDAD, 1, 19 (2019).

²⁸ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS (CIDH), INFORME SOBRE MEDIDAS DIRIGIDAS A REDUCIR EL USO DE LA PRISIÓN PREVENTIVA EN LAS AMÉRICAS 135-136 (2017).

²⁹ *Id.* at 138. It should be noted that the IACHR recommends considering other measures than prison, taking into account elements such as: “a) women’s unique and historically disadvantaged position in society, b) their history of victimization; c) the absence of aggravating factors in the commission of the offense, and d) the differentiated and incremental impact of custodial measures on persons under their care.” *Id.*, at 138 and 139.

and institutions. This provides further proof that States do not comply with the obligations established in the Belém do Pará Convention.³⁰

Studies, such as that of Feria-Tinta (2007), have shown that women who suffer such violations “were completely under the power of State agents, absolutely defenseless, and had specifically been harmed by State security agents”.³¹ Examples of these violations include the sexual violence that women under the constant observation of men experience; prolonged solitary confinement measures that particularly affect inmates who are mothers; the lack of adequate pre- and postnatal medical care; unhealthy detention conditions that go against their human dignity; no consideration given to women’s physiological needs and the refusal to provide personal hygiene products.³² This includes the obligation to provide special arrangements for detained women who are menstruating, pregnant, or in postpartum or those accompanied by children. Neither are their specific physiological, psychological, emotional and health and well-being needs considered.

This bias towards males, even more pronounced in prison systems because their being largely dominated by men, in all respects, hides the differentiated impacts of incarceration on women from view.³³

These obligations were embodied in the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (also known as the Bangkok Rules), the first instrument to devote attention to the children of women in prison, as well as the special conditions for women prisoners who are pregnant or breastfeeding.³⁴

Given the invisibility of women’s needs, as well as the discrimination and violence they face, these issues must be addressed from an intersectional approach that includes pregnant, postpartum and breastfeeding women.³⁵

The situation in Mexico is not much different from that of other countries in the region. Increasing demands for the incorporation of the gender perspective in the justice system led the Supreme Court of Justice of the Nation (SCJN) (with modifications made by the First Chamber) to publish the *Protocol to judge*

³⁰ ORGANIZACIÓN DE LOS ESTADOS AMERICANOS (OEA), CONVENCIÓN INTERAMERICANA PARA PREVENIR, SANCIONAR Y ERRADICAR LA VIOLENCIA CONTRA LA MUJER, (Convención de Belém do Pará, 1994).

³¹ Mónica Feria-Tinta, *Primer caso internacional sobre violencia de género en la jurisprudencia de la Corte Interamericana de Derechos Humanos: El caso del penal Miguel Castro Castro; un hito histórico para Latinoamérica*, 3 REVISTA CEJIL. DEBATES SOBRE DERECHOS HUMANOS Y EL SISTEMA INTERAMERICANO, 30, 38, 45.

³² *Id.*, at 39 and 40.

³³ *Id.*, at 33.

³⁴ OFICINA DE LAS NACIONES UNIDAS CONTRA LA DROGA Y EL DELITO, REGLAS DE LAS NACIONES UNIDAS PARA EL TRATAMIENTO DE LAS RECLUSAS Y MEDIDAS NO PRIVATIVAS DE LA LIBERTAD PARA LAS MUJERES DELINCUENTES (REGLAS DE BANGKOK, 2010).

³⁵ Feria-Tinta, *supra* note 30.

with a gender perspective in 2021.³⁶ With this, a methodology was established for judicial operators to hear cases with a gender perspective, based on six fundamental points:

- (i) Identify whether there are gender-related situations that give way to an imbalance of power between the parties to the dispute;
- (ii) Question facts and assess the evidence, discarding any gender stereotypes or prejudice, to detect detrimental situations caused by this;
- (iii) Sort the necessary evidence in a way that makes these situations visible, provided that the evidence is not enough to explain a situation of violence, vulnerability or discrimination on the basis of gender;
- (iv) Question the impartiality of the applicable law and evaluate the differentiated impacts of the proposed solution;
- (v) Apply the human rights standards of all the people involved; and
- (vi) Avoid the use of language based on stereotypes or prejudices and, in turn, endeavor to use inclusive language.

Although the document is intended for situations where women are victims of a crime, it also applies to cases where women are the alleged perpetrators of a crime as a way to ensure a fair trial. In addition to the presumption of innocence, this implies considering alternatives to incarceration, equal opportunities to present evidence and arguments, and the opportunity to be heard and have an adequate defense. Likewise, it is necessary to guarantee a gender perspective that takes into account the distinct situation of putting women at the risk of violence in all its forms, including physical, psychological, sexual, obstetric, etc.³⁷

2. Equality and Nondiscrimination

A 2013 United Nations Office on Drugs and Crime (UNODC) report³⁸ on the prison situation noted that the disregard for complying with the minimum standards for the administration of justice, set out in various international treaties, is the cause of arbitrary detentions, an excessive use of pretrial detention, excessively harsh sentences and the incarceration of innocent people. These circumstances particularly affect people who are vulnerable because of their social and economic condition, as well as those who face different forms of discrimination, as is the case of women. Furthermore, when poverty and lack of social support “are combined with a ‘tough on crime’ rhetoric and policies that call for stricter

³⁶ SCJN, PROTOCOLO PARA JUZGAR CON PERSPECTIVA DE GÉNERO 131-32 (2021).

³⁷ CIDH, *supra* note 27.

³⁸ UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC). HANDBOOK ON STRATEGIES TO REDUCE OVERCROWDING IN PRISONS 25 (2013).

law enforcement and sentencing, the result is invariably a significant increase in the prison population”.³⁹

The situation of violence and discrimination is exponentially aggravated when individuals are “deprived of their liberty and placed under the control of the State authorities”.⁴⁰ As held in the *Protocol to judge with a gender perspective*, one should avoid basing judicial decisions on gender stereotypes, such as assumptions about women’s behavior or their role in society. Instead, decisions should be based on objective evidence and a close analysis of the individual circumstances of the case.

A study by INMUJERES and the Instituto Veracruzano de las Mujeres points at a system of patriarchal oppression that deepens social inequalities, a condition that “is ignored by judicial operators and by the prison system both when sentencing and when dealing with those incarcerated in prison that does not identify individuals as subjects with rights but rather ignores their condition and gender status”.⁴¹

In this sense, gender perspective starts from the need to associate the principle of universality with the idea of equality, since, as Salazar suggests, “human rights guarantees are based on an ethical requirement and, at the same time, in a practical requirement that places the subject of the rights in a context and observes the need to interpret rights in terms of local needs”.⁴² In other words, the principle of equality obliges States to take into account the specific contexts and situations of the victims of discrimination so that they may be treated fairly.

With these principles in mind, a fundamental goal in judging from a gender perspective is to analyze the context of the inequalities and disadvantages in which women find themselves. If the woman being tried was a victim of gender violence either in the past or when the crime was committed, this may be a significant factor to understanding the motive for committing the crime. In any case, “a defense with a gender perspective is needed since [public defenders] often do not provide the background of the woman accused of committing a crime, thus precluding the judge from having the necessary elements to order a measure other than the deprivation of liberty or to ‘fight’ for a measure proportional to the circumstances of the accused”.⁴³

The sociocultural violence that women experienced before being deprived of their liberty can be a mitigating factor in criminal proceedings because it helps identify the violence underlying the crime. The narrative almost always

³⁹ *Id.*

⁴⁰ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS (CIDH), *supra* note 27, at 134.

⁴¹ INSTITUTO NACIONAL DE LAS MUJERES (INMUJERES) & INSTITUTO VERACRUZANO DE LAS MUJERES (IVM), ESTUDIO SOBRE LA SITUACIÓN DE LAS MUJERES PRIVADAS DE SU LIBERTAD EN VERACRUZ 114 (2016).

⁴² PEDRO SALAZAR, LA REFORMA CONSTITUCIONAL SOBRE DERECHOS HUMANOS. UNA GUÍA CONCEPTUAL 23 (Instituto Belisario Domínguez, Senado de la República, 2014).

⁴³ EQUIS, JUSTICIA PARA LAS MUJERES, METODOLOGÍA PARA EL ANÁLISIS DE LAS DECISIONES JURISDICCIONALES DESDE LA PERSPECTIVA DE GÉNERO 48 (2017).

shows that a man is the perpetrator, who then involves the woman in the events. Thus, when a gender perspective is absent in criminal proceedings, women are judged without any consideration given to the conditions prior to the crime, hiding the fact that the crime is usually related to extreme danger, necessity or disorders like Stockholm syndrome, learned helplessness, battered woman syndrome or posttraumatic stress. Therefore, as stated by *EQUIS. Justice for Women*, simply “limiting oneself to assess on a crime committed without considering the circumstances of the specific case ends up harming women more than men, since the characteristics of women accused of committing crimes are substantially opposite to the males, who are usually the perpetrators or instigators”.⁴⁴

IV. The Case of Keren Ordóñez with a Gender Perspective

1. Background

Keren Selsy Ordóñez Hernández was born in 1996 in Xalapa, Veracruz. Except for a short time when she lived with her partner’s mother, Keren had always lived with her parents in a context of poverty. She studied up to 11th grade. She worked for six months as manager at an internet café. Keren entered into a relationship with a young man and got pregnant.⁴⁵ After that, she devoted her time to doing the housework. On November 8, 2015, her daughter was born. Keren was 19 years old at the time. The delivery presented complications and after a C-section, the mother went through a difficult recovery.

For the first month after giving birth, Keren only left the house only for medical appointments, and always with her mother. During that time, the baby’s father did not live with Keren, nor did he cover the expenses derived from their daughter’s birth. However, on December 11, 2015, while still convalescing from childbirth, Keren decided to ask her ex-partner for child support. He finally agreed to meet her at an address a couple of blocks from where she lived to give her some money. Keren went to the appointment with her daughter, even though her family tried to dissuade her from going out at that time (approximately eight o’clock at night). According to her statement, Keren and her ex-partner were talking in the doorway of a house when Federal Police and Tlaxcala Ministerial Police vehicles (given that the events leading to the accusation happened in the state of Tlaxcala) arrived. Armed agents detained Keren’s ex-partner, another man at the scene, Keren and her baby.

The agents took the baby from her arms and put them both in an official vehicle without explaining the reason for the arrest. Once in the patrol car, Keren

⁴⁴ *Id.*, at 51.

⁴⁵ For confidentiality reasons, the names of the people involved in the case who have not given their express authorization to use their names have been omitted.

was subjected to beatings, strangulation and threats to hurt, kill or disappear her daughter.

As stated in the Court Ruling that gives an account of Official Letter of Collaboration FGE/OF/13888/2015 (10-Dec-15), the detainees were

Immediately transferred [...], together with the infant who we now know is called [...], as well as the now claimant [...] to the General Office of the Judicial Police of the State of Veracruz, in order to obtain their corresponding medical certificates, arriving at said General Office, approximately at 02:00 on December 12, 2015, and upon having finished the corresponding medical certification, we immediately transferred them to the state attorney's office facilities, leaving the General Office of the Judicial Police of the State of Veracruz [...] at approximately 03:00, arriving at these facilities at approximately 07:30 on December 12, 2015, and proceeding to carry out the corresponding legal processes for their presentation [before the authorities]. On the basis of the above, we left Keren Selsy Ordóñez Hernández, 19 years old [...] at their disposal. We also left the infant [...] at their disposal, for the necessary proceedings before the State of Tlaxcala System for the Integrated Development of the Family (DIF).

From the time of arrest to being brought before the Public Ministry of Tlaxcala, Keren and her baby had spent a total of 11 hours in solitary confinement and were subjected to more violence and human rights violations. During that time, Keren was interrogated about a kidnapping inside the house where her ex-partner was staying while officers continued to threaten harm to her daughter. After a while, she was forced to sign a fabricated statement in which she acknowledged having participated in the kidnapping and performing domestic tasks. Hours later, the judicial authorities delivered the baby to the Tlaxcala System for the Integrated Development of the Family (DIF), without informing any family member. Keren's daughter was away from her family for 12 days until her maternal grandmother managed to get her back.⁴⁶

On November 20, 2019, the Criminal Court of the Sánchez Piedras Judicial District, in Apizaco, Tlaxcala, ruled against Keren, sentencing her to 50 years in prison, for a crime she did not commit. Since then, it has been a long judicial process to have the sentence overturned. Over these years, twelve lawyers (six public defenders and six private) were involved with the case at one point or another, until the Prodh Center took over the case in September 2022. As a result of this journey, on September 27, 2021, the First Collegiate Court of the State of Tlaxcala granted Keren an *amparo* given that her procedural rights had been violated, and the proceedings were taken back to the investigation stage. At the time of writing, a ruling had not been issued, while Keren has been in jail for almost nine years. It should be noted that her ex-partner, being a minor at the

⁴⁶ Interview with Ciria Hernández, mother of Keren Ordóñez (April 11, 2024).

time, was sentenced to five years in prison and that since then, he has not had any contact with Keren, nor has he provided child support for their daughter.

2. Inconsistencies Found in Keren's Case

This section identifies the most important inconsistencies found after examining Keren Selsy Ordóñez Hernández's file, especially those that show the lack of a gender perspective in the administration of justice. The conviction states that the accusation is based on the fact that the circumstances of time, place and manner allegedly coincide. However, there are certain elements that make these circumstances suspect, especially given the failure to adopt a gender perspective at different stages of the criminal proceedings. According to the verdict, Keren was there when a woman who had been kidnapped ten days earlier was released. Even so, various omissions, contradictions and oversight in the investigation cast doubt on and call into question her participation in the events attributed to her, such as, the time of the arrest and whether she was inside or outside the house where the kidnapping victim was.

The accusation is mainly based on the testimonies of the abducted, the other two alleged perpetrators of the kidnapping and Keren herself. However, the accused's defense lies in the fact that her deposition was obtained by means of torture, such that her first self-incriminating statement should be thrown out because it was obtained under duress. The testimonies of the kidnapping victim and the other two people involved should only be taken into account, as long as their right not to incriminate themselves was respected.

The first inconsistency found is that the kidnapping victim never ratified her initial statement, which is not even signed. As will be seen later, this raises the question as to whether she truly identified Keren as someone involved in her kidnapping. In this first statement, she says that Keren was one of the people who took care of her, especially when the rest of her kidnappers went out: "[...] and Keren Selsy Ordóñez Hernández also arrived since she would come to take care of me when they went out to steal [...]"⁴⁷ However, the claim that the accused was her caregiver is exclusively based on the connection the abductee made between the sounds of a baby, which she claimed to have heard at some point during her captivity, and the person she believed was the mother of the child. Notably, the abductee never actually saw the accused, since at various points in the statement, she claims that whenever Keren was present, her head was covered so as not to be recognized: "but I would be sent upstairs with XXX so that I wouldn't see Keren Selsy Ordóñez Hernández" or "and I'd be covered with the blanket with which the photos were taken, so that I wouldn't see Keren Selsy Ordóñez Hernández".⁴⁸ This testimony draws an even greater contrast when she concedes that she did see the rest of the people in the house: "in this

⁴⁷ Keren Selsy Ordóñez Hernández, Causa Penal 696/2015, at fojas 268-270.

⁴⁸ *Id.*

regard, I could already identify them because my eyes were uncovered all the time”.⁴⁹ Likewise, it is important to note that the victim links Keren to her abduction at the time of her release, when the police arbitrarily pointed Keren out to her as her abductor.

Additionally, the medical examinations of the physical integrity of the other two people who allegedly took part in the kidnapping found that they presented injuries after their arrest.⁵⁰ Therefore, it is possible to infer that their statements might have been coerced.

Other inconsistencies in the statements revolve around the time Keren allegedly spent at the house where the kidnapping victim was being held captive. The victim stated that she had been brought to the house on December 4, 2015, that Keren’s ex-partner was always there, and that Keren came to take care of her when the others went out to commit thefts. On the other hand, Keren’s ex-partner declared that Keren had been going to that house daily since December 3, but that she stayed only until 4 or 5 in the afternoon. The other suspect did not mention Keren in his statement until he gave an account of what happened on December 10, shortly before the arrest. Meanwhile in her first statement, Keren said she went to the house in question for the first time on December 6.

Other facts that do not fit into the narrative should also be highlighted. On the one hand, it is suggested that the victim was supposed to be released shortly before her kidnappers’ arrest, but that this did not happen because several of them went on a pilgrimage: “and then XXX came upstairs really happy to tell me that they were not going to do anything to me, that they were going to let me go on Monday or Tuesday, and XXX and XXX began to planning to go on a pilgrimage on motorcycle to Xalapa”,⁵¹ as they allegedly did, which is why they were not at the house at the time of the arrest. However, it does not seem logical for the kidnappers to decide to desert the house where they kept the victim when they were about to release her.

On the other hand, all the statements of the law enforcement agencies that intervened in the release of the kidnapping victim mentioned that they found the house with the kidnapping victim by chance. They saw three people in the doorway, one of whom caught their attention because he was carrying a weapon and then drove away. The officers also heard someone (the victim) screaming for help. On the one hand, it is unthinkable that only two patrol cars could have found the victim’s whereabouts within two hours of a random search over a wide area covering several neighborhoods in the largest city and the capital of the state of Veracruz, home to approximately half a million inhabitants, when the only information they had was that the victim might be in that city. On the other hand, it is hard to believe that at that precise moment, the victim was

⁴⁹ *Id.*

⁵⁰ *Id.*, at fojas 230 and 231.

⁵¹ *Id.*, at fojas 268-270.

discovered calling for help after being held for 10 days. Lastly, it is particularly strange that none of the testimonies (neither the victim's nor the two male detainees) mention a third man (in addition to the two male detainees). In fact, the abductee claims to have been left alone with Keren and her ex-partner, while Keren does not mention the second detainee either. Moreover, none of the police vehicles went in pursuit of the armed person who fled the scene.

In summary, the arrest narrative itself presents various inconsistencies that cast doubt on the testimonies used to verify the circumstances that led to the charges filed against Keren.

3. Analysis of the Case from an Intersectional Perspective and Taking Context Into Account

In addition to addressing the discrepancies that arise in the narratives and testimonies that led to Keren's arrest and being charged, it is necessary to analyze the facts and evidence from a gender perspective, since judicial decisions are often influenced by biases derived from Keren's unfavorable position. To this end, three different moments will be analyzed: first, her circumstances prior to her arrest, to identify the specific issues that led to her being charged, emphasizing Keren's life circumstances; second, the moment of arrest; and, finally, what happened afterward.

As mentioned, judging with a gender perspective implies considering the context in which the arrest was made, as established by the IACHR in the Campo Algodonero case. The Court pointed out that while there may be diverse motives or perpetrators of violence, many cases of gender violence occur within the context of systematic discrimination against women.⁵²

At the moment of the arrest, Keren was automatically singled out and treated as a kidnapper, even though her very profile is at odds with this characterization. To make sense of this ambiguity, we will focus on aspects of her relationship with her ex-partner and the father of her child, as well as issues arising from a complicated postpartum and her socioeconomic level that, together, bring to light the vulnerability of her condition when she was arrested.

As noted above, Keren lived with her parents, siblings, nieces and nephews and helped with household chores while continuing with her schooling. Keren and her family lived most of their lives in poverty, lacking formal education, health care and adequate housing, as it was difficult for them to find jobs and bring in enough income to cover the family's needs.

After giving birth via C-section with later complications, she stayed at home to recover from the operation and take care of her daughter. The only time she went out after giving birth was for doctor's appointments, and her mother al-

⁵² CORTE INTERAMERICANA DE DERECHOS HUMANOS. CASO GONZÁLEZ Y OTRAS ("CAMPO ALGODONERO") VS. MÉXICO. Sentencia de 16 de noviembre de 2009. (Excepción Preliminar, Fondo, Reparaciones y Costas), at parr. 13.

ways went with her. Her daughter was born on November 8, which means that when the kidnapping in which she allegedly participated took place, the baby was only 24 days old. As discussed later, the people who detained Keren should have considered these circumstances to assess her presence at the scene of the crime from a gender perspective.

Keren was, in fact, a single mother. The baby's father was not taking responsibility for his daughter, and Keren had to face all the postpartum complications, in addition to the expenses to care for a baby, on her own. Although the child's father did visit, they were brief visits and did not reflect any special commitment to fatherhood. In an interview, Keren noted that their relationship was fraught with constant fights, he was very possessive, he constantly checked her cell phone, and he forced her to give him her *Facebook* profile password. On one occasion, the argument became heated and he raised his hand against her, shouting "I don't even know if she is my daughter." This accusation did not go any further because Keren's brother intervened.⁵³

The specific circumstances of Keren's life show how her autonomy and freedom were limited and restricted in a relationship based on control and subordination, where the man established the rules, leaving the woman at a clear disadvantage. It was he who decided when he would see Keren and his daughter; he kept an eye on Keren and decided with whom she could speak and with whom she could not; he decided to leave Keren with the full burden of raising a daughter alone. Under these circumstances, Keren's room to maneuver was negligible.

During the criminal proceedings, Keren stated that some of the issues pointed out by INMUJERES (2016) were reported, such as not taking into account the Keren's upbringing with sociocultural violence, not identifying the underlying violence, and ignoring her need of assistance.

At first, Keren paid the everyday expenses for the baby's care, but as the days and weeks went by, the situation became untenable, to the point that she asked the father of her child for support on December 11, 2015. Notably, he had not seen Keren and the baby for several days. This is another important fact because, although he did not contribute financially to care for their daughter, his presence was important for Keren. In an interview, she expressed her desire to "save their relationship" because she wanted her daughter to grow up with a father, which is why she accepted and abided by what he said.⁵⁴ It must be understood that this was the context that led Keren to leave her house with her daughter around eight o'clock at night, even though until that moment her only outings had been for medical appointments. She chose to do this, first, to obtain some money to buy diapers for her daughter and, second, so that he would not get upset but would keep in contact with them. The decision to go see him can only be understood in the context of her physical, emotional and financial con-

⁵³ Interview with Keren Ordóñez (March 9, 2023).

⁵⁴ *Id.*

dition. If these events had been examined from a gender perspective, Keren's situation of violence and dependency with her partner would have been discovered, and it could have explained why, despite being in the postpartum period, she was at the site of the events.

When the police arrived at the house where the abducted woman was, they should have wondered what a young woman with a newborn baby was doing there. They simply assumed that her presence (circumstances of place and time) automatically justified the circumstance of manner (i.e., that she participated in the criminal acts). This prevented them from understanding the objective and subjective context that explained her presence at the scene and gave way to a different explanation from that set out in the verdict. It was taken for granted that a woman is an extension of the couple and, therefore, if the man participated in committing a crime, the woman automatically did too. Under this logic, there was no reason to look into the specific circumstances that explained her presence.

As to the moment of her arrest on December 11, 2015, it should be noted that upon reaching the house where her ex-partner was, Keren was approached by armed men dressed in civilian clothes, who put her in a car and took her daughter away. The four men and two women who participated in the arrest have been identified.

There are inconsistencies between the information given and what was recorded in Keren Ordóñez's file (where it states that she was arrested on December 12, 2015, at 01:15 a.m. and that she was in the house where a woman was being held kidnapped) and what Keren herself and her relatives state (that it was hours before and that she was on the sidewalk, not inside the house).⁵⁵

As previously noted, Keren was treated from the outset as a member of a gang of kidnappers; her presence was automatically linked to her partner's being there and, therefore, they worked together.⁵⁶ However, the various circumstances and evidence at the time of the arrest were not taken into account, thus casting doubt on the legitimacy of the testimonies given at the time and compelling us to reassess the facts from a gender perspective. The most important aspects are detailed below.

On the one hand, the people who detained Keren never questioned her presence there, automatically assuming that, as the partner of the perpetrator, she had been implicated in the man's activities. At that time, Keren was denied identity and treated as simply an appendage of her partner.

⁵⁵ It should be noted that the Third District Court in the State of Tlaxcala recognized that she had been the victim of a prolonged detention without justification for approximately seven hours and forty-five minutes. Indirect *Amparo* 16/2016-V, Third District Court in the State of Tlaxcala, judgment of June 7, 2016 (*amparo* trial filed against the formal arrest warrant dated December 20, 2015).

⁵⁶ An example of the treatment Keren received from the moment of her arrest is how she was presented to the media as part of a group of kidnappers. See, for example, Indecimedia, *Cae banda de jóvenes secuestrados que aterrorizaba Huamantla*, (December 13, 2015).

If the people involved in the arrest had viewed it from a gender perspective, they should have wondered how a woman who had had a C-section a month before could have carried out the criminal acts attributed to her. Knowing what recovery means after such an intervention would have helped them question Keren's presence in front of the house where the abducted woman was. The fact that it was mostly men who participated in the arrest and that the operation was directed by men may explain why these questions were not raised.

On the other hand, Keren Ordóñez was subjected to acts of torture that were closely linked to her status as a woman. This point is decisive because the torture led her to sign a self-incriminating statement. Importantly, when she was detained and put into the car, the people who detained her started hitting her repeatedly in the belly. The beatings did not stop, even when she begged them not to do so and explained that she had recently had a C-section. In addition to the physical violence, there was also the psychological violence in the form of the threat that her daughter would be taken away, telling her that they could make her disappear and that nothing could be done about it because the girl had not been registered at the Bureau of Vital Statistics.⁵⁷ Keren was held in these conditions for hours, subjected to blows and threats that left her totally defenseless. Any act of torture is reprehensible, but using a newborn baby as a means to subdue the detained person should be enough to question the validity of the statement of a woman who ends up signing whatever she was asked to as a way to "save her daughter's life". In such circumstances, it is logical to think that her choices were limited and prompted by a superior interest, that of guaranteeing the well-being of her daughter. These facts explain why she signed the first testimony, where she admitted to having participated in the acts attributed to her and that ended up in a conviction.

Finally, it is important to consider other incidents that took place after the arrest and that further bear out criminal proceedings without a gender perspective, which in this case led to Keren's indictment without any consideration given to circumstances that would have freed her of all responsibility of the imputed acts.

First, the State failed in its responsibility to guarantee the well-being of Keren's daughter: on December 12, 2015, the baby girl was handed over to the DIF Legal Advocate, and Keren's family did not know her whereabouts for days. Moreover, the authorities registered the baby at the Bureau of Vital Statistics, and in doing so, the information about the child's father was omitted, thus allowing him to elude any responsibility in terms of child support. This situation continues to this day, leaving the child in conditions of genuine vulnerability. In this case, it was a clear violation of human rights, as the IACHR indications were not followed, in that a gender perspective implies taking caregiving into consideration. The decision to separate Keren from her daughter (to the extent of denying the family the opportunity to get her back for days) had

⁵⁷ Interview with Keren Ordóñez (March 9, 2023).

serious consequences for the physical and emotional health of both mother and daughter. Since Keren was not allowed to properly care for her daughter, her right to motherhood was denied her.⁵⁸ One of the aspects that came to light in the interviews with Keren and her mother was the enormous impact that the proceedings left on the lives of Keren, her mother (who had to take care of her granddaughter while already caring for her own mother and husband, in addition to having to follow up on the criminal proceedings) and her daughter. In all cases, the effects in terms of physical and emotional health are documented.⁵⁹

Another issue that must be emphasized is the defense Keren received from the onset of her detention, which suggests the absence of a gender perspective. As of January 2016, Keren had three defense attorneys, two of them public and one private. Two disquieting factors come together here: the first is that the three were men, making it more likely that they did not identify the specific situations of vulnerability and violence in Keren's life. The second is even more worrying: during the first weeks after the arrest, Keren and her ex-partner had the same public defender, which could mean a serious conflict of interest. Instead of privileging the woman's situation, the defense is built around that of the male partner: "Technical assistance for women usually upholds the discourse of the accused who conceals their partners' crimes, instead of pointing out the meaning of victimizing the woman and contrasting the situations between the codefendants".⁶⁰

With respect to the charges against Keren, there are sexist overtones in the way her participation in the acts of which she was accused was determined. Without considering the aforementioned contradictions about when Keren was at the house with the kidnapping victim, the role allotted to her in the kidnapping stands out: her job was to care for, prepare food, and play roles that are traditionally assigned to women. Furthermore, the victim's testimony mentions that when the other men who participated in the kidnapping were going to out to commit robberies, she was left in the care of Keren and her ex-partner. That is, Keren was assigned full responsibility for kidnapping even though the testimonies consigned her to a role that is removed from that of being involved in criminal activities. In this way, the judicial decision was based on gender stereotypes, according to which women's behavior is adapted to fit their socially assigned role. On the other hand, it is even more striking that although Keren

⁵⁸ In the judgment of the Case of *Gelman v. Uruguay*, the Inter-American Court of Human Rights points out the serious physical and psychological effects that violated the victim's right to liberty and personal integrity, when she remained with her daughter in a clandestine detention center, where the noise of the torture inflicted on other detainees was usually heard. See CORTE INTERAMERICANA DE DERECHOS HUMANOS. CASO GELMAN V. URUGUAY. SENTENCIA DE 24 DE FEBRERO DE 2011. (Excepción Preliminar, Fondo, Reparaciones).

⁵⁹ Interview with Ciria Hernández, Keren's mother (April 11, 2024) and with Keren Ordóñez (April 4, 2024).

⁶⁰ Cecilia Marcela Hopp, *Buena madre, buena esposa, buena mujer*, in GÉNERO Y JUSTICIA PENAL 36 (Julieta Di Corleto, comp., Didot, 2017).

was presumably responsible for caregiving tasks, the victim indicated in her testimony that she could see the faces of all of her kidnappers, except for Keren, and she never saw her face because it was always covered when present. Why could the abductee see the faces of all the male members of the gang but never that of the only woman who participated in the kidnapping, who was also the one who allegedly took care of her?

In the verdict, there are inconsistencies between the testimonies presented by Keren and her mother, and the original testimonies (some obtained under torture). In the ruling, the testimonies of the two women are not given any credibility based on the argument that the women were probably lying to defend themselves. This is also a form of gender discrimination since there is no compelling argument to justify why the testimonies of the two women are not considered, other than the fact that they are not to be believed.

Table 1 summarizes the irregularities in the Keren Ordóñez Case based on different sources that establish mechanisms for acting from a gender perspective:

Table 1. Irregularities in the Keren Ordóñez Case

SOURCE	HOW TO ACT WITH A GENDER PERSPECTIVE	IRREGULARITIES IN THE KEREN ORDÓÑEZ CASE
NATIONAL WOMEN INSTITUTE (INMUJERES)	Establish women as legal subjects, considering their gender status and situation	Keren’s specific vulnerability was not considered, not even her condition as a woman or, when analyzed from an intersectional perspective, her condition as a poor woman experiencing postpartum complications.
OAS	Prevent women from being subjected to physical, sexual and psychological violence (including torture)	During her detention, Keren was tortured, mainly by means of physical violence (blows to the stomach) and psychological violence (threats to hurt her daughter and even disappear the child). She was harmed because she was a woman, as she was viciously struck in the area of the C-section wound and threatened with harm to her daughter as a way to force her to sign false testimony.

SCJN (PROTOCOL TO JUDGE WITH A GENDER PERSPECTIVE) INMUJERES	Identify whether there are gender-related situations that give way to an imbalance of power and put one party at a disadvantage, and analyze the conditions of violence the accused has experienced, in order to guarantee effective and equal access to justice	The context of sociocultural violence and the underlying violence Keren suffered was not acknowledged. The conditions of violence Keren experienced were not analyzed. This included economic violence (the father of the child did not help with the expenses), psychological violence (control over of Keren's interactions), and even physical violence (when he raised his hand against her).
SCJN (PROTOCOL TO JUDGE WITH A GENDER PERSPECTIVE). INMUJERES	Question the facts and assess the evidence, discarding any gender stereotypes or prejudice, to detect detrimental situations for reasons of sex or gender.	It was taken for granted that Keren's presence in front of the house where the abducted woman was being held was automatically linked to her partner's presence and activities. The woman was denied her own identity and simply considered an extension of the man. Keren's state of necessity was not made known. This situation explained why she decided to leave her house the evening she was arrested.
SCJN (PROTOCOL TO JUDGE WITH A GENDER PERSPECTIVE)	If there is insufficient evidence to explain a situation of violence, vulnerability or discrimination on the basis of gender, sort the necessary evidence in such a way that makes these situations visible.	There was no investigation to address the contradictions in the case, or that would explain why a woman who had given birth barely a month before was in front of a house where a kidnapped woman had been held for ten days.
IACHR	Avoid basing judicial decisions on gender stereotypes.	Keren was assigned the role of caregiving (even though she was allegedly not involved in the gang's other criminal activities).
IACHR	Ensure equal opportunities to present evidence and arguments, to be heard and to have an adequate defense.	Keren's statement was dismissed, even though her first testimony was obtained under duress and torture. Her mother's testimony was not taken into consideration either. Neither woman was heard during the proceedings. The fact that her partner was being defended by the same defense lawyer was a clear conflict of interest and placed her at a disadvantage.

IACHR	Consider caregiving tasks.	Her daughter was taken from her, and her family was denied the possibility of getting her back for twelve days, leaving serious physical and emotional consequences for both the mother and the daughter.
-------	----------------------------	---

SOURCE: prepared by the author.

V. Conclusions

Beyond the failings of the justice system—which affects both men and women equally and is manifested in acts of torture, case backlog, the discarding of certain evidence, and more, the analysis of Keren Selsy Ordóñez Hernández’s case leads us to the following conclusions about the importance of judging from a gender perspective.

First, the judicial authorities that prosecuted Keren and issued a verdict on November 20, 2019, failed to apply the methodology for judging from a gender perspective, which constitutes an act of discrimination that violated her right to access justice under conditions of equality.

Second, during the criminal proceedings, sufficient elements were observed signaling Keren’s particular situation of vulnerability and subordination with respect to her ex-partner at the time of her arrest. The ones that most stand out are her health (she was recovering from a C-section performed 22 days before the date of the kidnapping victim’s abduction and 31 days after the date of her arrest) and the fact that she was breastfeeding and experiencing postpartum complications. Moreover, her family and economic situation also had bearing as a young unemployed woman and the mother of a one-month-old daughter (whom she had in her arms at the time of arrest) without financial independence or any financial support from the father of her child.

Finally, the above highlights the importance of judging with a gender perspective. In this case, doing so would have meant examining the facts of the case in more depth, especially why Keren was at the scene of the crime at the time of the arrest, and the gender-related conditions that led to her vulnerability and subordination. It would have implied evaluating the evidence for the prosecution; discarding the gender stereotypes assigned to Keren as a caregiver in the imputed crime; and questioning the impartiality of the applicable law, bearing in mind the disproportionate burden placed on Keren compared to the others who participated in the crime.

It is worth mentioning that at the time this research was under review, two significant events occurred. First, in September 2024, Keren was again sentenced to 50 years in prison, in a ruling that was also riddled with gender stereotypes—although this time the torture inflicted on Keren Ordóñez was at least

acknowledged. The second event took place in April 2025, when the Criminal and Specialized Chamber for Juvenile Justice of the Superior Court of Justice of Tlaxcala ruled on the appeal filed by Keren's defense, overturning the conviction and ordering her immediate release. Although a detailed analysis of this ruling falls outside the scope of this research, it is important to highlight how adopting a gender perspective in this case resulted in the original ruling being criticized for failing to consider Keren's conditions of vulnerability, while also casting doubt on the possibility of her active participation in the crime in view of her health conditions:

In this ruling, the authority concluded that the corresponding analysis would be conducted from a gender perspective, and in reviewing and evaluating the evidence for acquittal and the defendant's preliminary statement, her conditions of vulnerability were examined and granted the corresponding legal value they deserved.⁶¹

Judging with a gender perspective is no small thing. Keren was unfairly imprisoned for more than nine years and could hardly ever see her daughter. But this is not an isolated case. Keren's story is the story of many other women who, like her, are imprisoned for crimes they did not commit or for extremely harsh sentences handed down by a system that has been unable to identify particular conditions of vulnerability, discrimination and violence that are commonplace in the lives of these women. Since the 16th century, justice has been depicted as blindfolded, denoting that distinctions between people should not be made. However, what this article has shown is that justice is far from being delivered in the same way for everyone: the law has a marked male-oriented bias, and this has produced an androcentric system that considers (and judges) men and women differently. If we want to portray justice without a blindfold, it is necessary to perceive and understand the specific conditions women experience to ensure that the system respects all of their rights. This is precisely what the push to incorporate a gender perspective in access to justice aspires to achieve. It could mean the difference between a life in prison or a life of freedom for Keren and so many other women.

VI. References

- Libardo Ariza & Manuel Iturralde, *Mujer, crimen y castigo penitenciario*, 12(24) POLÍTICA CRIMINAL, 731, 737 (2017).
REINSERTA, DIAGNÓSTICO SOBRE LA PERCEPCIÓN DEL DESEMPEÑO DE LA DEFENSORÍA PENAL EN MÉXICO 66 (2020), <https://reinserta.org/>

⁶¹ TOCA PENAL 30/2024-3 (Traditional System), SALA PENAL Y ESPECIALIZADA EN ADMINISTRACIÓN DE JUSTICIA PARA ADOLESCENTES DEL TRIBUNAL SUPERIOR DE JUSTICIA DE TLAXCALA, 66.

- NURIA ARTOLA, LAS MUJERES COMO VICTIMARIAS: LA REALIDAD DE LA CRIMINALIDAD FEMENINA (unpublished undergraduate dissertation, Universidad del País Vasco/Euskal Herriko Unibertsitatea/Zuzenbide Fakultatea) (2022).
- Association for Women's Rights in Development (AWID). *Interseccionalidad: una herramienta para la justicia de género y la justicia económica*, 9 DERECHOS DE LAS MUJERES Y CAMBIO ECONÓMICO, 1, 2 (2004).
- LIDIA CASAS BECERRA ET AL., LA PERSPECTIVA DE GÉNERO EN LA DEFENSA DE MUJERES EN EL NUEVO SISTEMA PROCESAL PENAL CHILENO: UN ESTUDIO EXPLORATORIO, (Facultad de Derecho Universidad de Portales, 2004).
- Gabriela Delgado, *Metodología de la investigación con perspectiva de género*, in METODOLOGÍA DE LA INVESTIGACIÓN. LA VISIÓN DE LOS PARES, 17, 38 (María de Lourdes Velázquez and Olivia Mireles coords., 2008).
- María Caterina La Barbera, *Interseccionalidad*, 12 EUNOMÍA. REVISTA EN CULTURA DE LA LEGALIDAD, 191, 195 (2017).
- COMISIÓN NACIONAL DE DERECHOS HUMANOS (CNDH), INFORME DIAGNÓSTICO SOBRE LAS CONDICIONES DE VIDA DE LAS MUJERES PRIVADAS DE LA LIBERTAD DESDE UN ENFOQUE INTERSECCIONAL 9 (2022).
- CORTE INTERAMERICANA DE DERECHOS HUMANOS. CASO GONZÁLEZ Y OTRAS (“CAMPO ALGODONERO”) vs. MÉXICO. Sentencia de 16 de noviembre de 2009. (Excepción Preliminar, Fondo, Reparaciones y Costas), at parr. 13.
- COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS (CIDH), INFORME SOBRE MEDIDAS DIRIGIDAS A REDUCIR EL USO DE LA PRISIÓN PREVENTIVA EN LAS AMÉRICAS 135-136 (2017).
- CORTE INTERAMERICANA DE DERECHOS HUMANOS. CASO GELMAN V. URUGUAY. SENTENCIA DE 24 DE FEBRERO DE 2011. (Excepción Preliminar, Fondo, Reparaciones).
- EQUIS. JUSTICIA PARA LAS MUJERES, METODOLOGÍA PARA EL ANÁLISIS DE LAS DECISIONES JURISDICCIONALES DESDE LA PERSPECTIVA DE GÉNERO 48 (2017).
- Mónica Feria-Tinta, *Primer caso internacional sobre violencia de género en la jurisprudencia de la Corte Interamericana de Derechos Humanos: El caso del penal Miguel Castro Castro; un hito histórico para Latinoamérica*, 3 REVISTA CEJIL. DEBATES SOBRE DERECHOS HUMANOS Y EL SISTEMA INTERAMERICANO, 30, 38, 45.
- Norma Fuller, *La perspectiva de género y la criminología: una relación prolífica*, 8 TABULA RASA, 97, 110 (2008).
- ALDA FACIO, CUANDO EL GÉNERO SUENA, CAMBIOS TRAE. UNA METODOLOGÍA PARA EL ANÁLISIS DE GÉNERO DEL FENÓMENO LEGAL 75-110 (ILANUD, 1992).
- DANIELA HEIM, MUJERES Y ACCESO A LA JUSTICIA, 15 (Didot, 2016).
- INSTITUTO NACIONAL DE LAS MUJERES (INMUJERES) & INSTITUTO VERACRUZANO DE LAS MUJERES (IVM), ESTUDIO SOBRE LA SITUACIÓN DE LAS MUJERES PRIVADAS DE SU LIBERTAD EN VERACRUZ 114 (2016).
- MARCELA LAGARDE, GÉNERO Y FEMINISMO. DESARROLLO HUMANO Y DEMOCRACIA 3 (Horas y Horas, 1996).
- Cecilia Marcela Hopp, *Buena madre, buena esposa, buena mujer*, in GÉNERO Y JUSTICIA PENAL 36 (Julietta Di Corleto, comp., Didot, 2017).

- Indirect *Amparo* 16/2016-V, Third District Court in the State of Tlaxcala, judgment of June 7, 2016 (*amparo* trial filed against the formal arrest warrant dated December 20, 2015).
- Indecimedia, *Cae banda de jóvenes secuestros que aterrorizaba Huamantla*, (December 13, 2015).
- Jorge Marabotto Lugaro, *Un derecho humano esencial: el acceso a la justicia*, ANUARIO DE DERECHO CONSTITUCIONAL LATINOAMERICANO, 291, 295 (2003).
- Juan Méndez, *El acceso a la justicia, un enfoque desde los derechos humanos*, in ACCESO A LA JUSTICIA Y LA EQUIDAD: ESTUDIO EN SIETE PAÍSES DE AMÉRICA LATINA 17 (Banco Interamericano de Desarrollo/Instituto Interamericano de Derechos Humanos, 2000).
- Julia Méndez, *Criminología feminista. Una revisión bibliográfica*, 39 ASPARKÍA. INVESTIGACIÓN FEMINISTA, 233, 253 (2021).
- OFICINA DE LAS NACIONES UNIDAS CONTRA LA DROGA Y EL DELITO, REGLAS DE LAS NACIONES UNIDAS PARA EL TRATAMIENTO DE LAS RECLUSAS Y MEDIDAS NO PRIVATIVAS DE LA LIBERTAD PARA LAS MUJERES DELINCUENTES (REGLAS DE BANGKOK, 2010).
- ORGANIZACIÓN DE LOS ESTADOS AMERICANOS (OEA), CONVENCIÓN INTERAMERICANA PARA PREVENIR, SANCIONAR Y ERRADICAR LA VIOLENCIA CONTRA LA MUJER, (Convención de Belém do Pará, 1994).
- Albert Pedrosa, *¿Discrimina el Código Penal español a las mujeres?* 16 REV. ESPAÑOLA DE INVESTIGACIÓN CRIMINOLÓGICA, 1, 22 (2018); *See also* Alicia Alonso Merino, *Mujeres y privación de libertad en Chile. Dimensiones de lo punitivo y discriminaciones*, 35 REVISTA DE DERECHO, 79, 94 (2018).
- Gloria Poyato i Matos, *Juzgar con perspectiva de género: una metodología vinculante de justicia equitativa*, 2 IQUAL. REV. DE GÉNERO E IGUALDAD, 1, 19 (2019).
- PEDRO SALAZAR, LA REFORMA CONSTITUCIONAL SOBRE DERECHOS HUMANOS. UNA GUÍA CONCEPTUAL 23 (Instituto Belisario Domínguez, Senado de la República, 2014).
- Teresa Salazar & Blanca Elisa Cabral, *Miradas de género a la criminalidad femenina*, 22 REVISTA VENEZOLANA DE SOCIOLOGÍA Y ANTROPOLOGÍA 64, (2012).
- TOCA PENAL 30/2024-3 (Traditional System), SALA PENAL Y ESPECIALIZADA EN ADMINISTRACIÓN DE JUSTICIA PARA ADOLESCENTES DEL TRIBUNAL SUPERIOR DE JUSTICIA DE TLAXCALA, 66.
- UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC). HANDBOOK ON STRATEGIES TO REDUCE OVERCROWDING IN PRISONS 25 (2013).