



## GENDER STEREOTYPING AND THE FEDERAL JUDICIARY IN MEXICO

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**ABSTRACT.** *Despite many and important changes that have taken place in Mexican society in recent decades, women still face several obstacles to enjoying their rights effectively. Discrimination due to gender stereotyping is one of these obstacles. According to psychological research, stereotyping is part of individuals' cognition and socialization process, but it can be negative in certain circumstances. The main hypothesis of this article is that there is a lack of gender perspective and an inadequate application of international human rights standards by Collegiate Circuit Courts of the federal judicial branch in Mexico, since the use of gender stereotypes persists in the process of judicial argumentation. This situation prevents women from fully exercising their rights and constitutes a violation of International Human Rights Law. Therefore, the State, and specifically the federal judicial branch, should adopt the necessary measures to fulfill its international obligations.*

**KEY WORDS:** *Gender stereotypes, categorization or classification processes, right to non-discrimination, international obligations.*

**RESUMEN.** *A pesar de que en décadas recientes la sociedad mexicana ha sufrido cambios importantes, las mujeres aún enfrentan una serie de retos para el efectivo goce de sus derechos. Entre dichos retos está la discriminación basada en estereotipos de género. De acuerdo con investigaciones realizadas en el campo de la psicología, el acto de estereotipar es parte del proceso humano de socialización y cognición; sin embargo, puede ser negativo en circunstancias específicas. La hipótesis central de este artículo es que existe una falta de perspectiva de género y una inadecuada implementación de los estándares interna-*

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*cionales en materia de derechos humanos por parte de los tribunales colegiados de circuito del Poder Judicial de la Federación, puesto que la utilización de estereotipos de género persiste en el proceso de argumentación jurídica. Esta situación impide que las mujeres ejerzan plenamente sus derechos y constituye una violación al derecho internacional de los derechos humanos. Por lo tanto, el Estado, incluyendo el Poder Judicial de la Federación, debe adoptar las medidas necesarias para cumplir con sus obligaciones internacionales.*

PALABRAS CLAVE: *Estereotipos de género, procesos de categorización o clasificación, derecho a la no discriminación, obligaciones internacionales.*

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## I. INTRODUCTION

Despite significant social and legal progress, women in Mexico still face several challenges to effectively exercise their rights. One of such obstacles is discrimination caused by gender stereotyping. The elimination of this kind of discrimination is a key challenge.<sup>1</sup>

The main hypothesis of this article is that there is a lack of gender perspective and an inadequate application of international human rights stan-

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<sup>1</sup> Brief prepared by the International Reproductive and Sexual Health Law Programme (IRSHLP) & the Center for Justice and International Law (CEJIL) as Amici Curiae, Case of González et al. (“Cotton Field”) v. Mexico, I/A Court H.R. (2008), p. 2; bibliographic references quoted in the Amicus Brief: Organization of American States, Inter-American Commission on Human Rights, Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68 (2007), par. 150 [“Access to Justice”]; Yakin Ertürk, *Considering the Role of Men in Gender Agenda Setting: Conceptual and Policy Issues*, 78 FEMINIST REVIEW 3 (2004), SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 75 (Chicago Series in Law and Society, 2006).

dards by Collegiate Circuit Courts of the judicial branch as evidenced in the use of gender stereotypes that persists in the process of judicial argumentation, contributing to a situation that prevents women from fully exercising their rights. Discrimination can only be effectively suppressed and significant gender equality among individuals can only be reached insofar as we identify stereotypes, see how they materialize, analyze their implications and adopt measures to change them.<sup>2</sup> With this in mind, the primary goal of this article is to analyze the failure to apply international standards of the right to non-discrimination, expressly in the case of the State's obligation to adopt measures to modify gender stereotyping<sup>3</sup> in the Federal Judicial Branch's construction of the law. In particular, I will analyze resolutions from multiple civil law Collegiate Circuit Courts and demonstrate the reasons why women are adversely affected by stereotypes that recur in these courts.

## II. TERMINOLOGY

Before embarking on the formal analysis of the subject of this essay, I will define the main concepts. First, *gender* is an analytical category employed by a wide variety of theories and used in several ways and under various aspects.<sup>4</sup> Therefore, it is very difficult to create a single, comprehensive definition. The concept of gender may be understood as a way to analyze or study sexual differences or as a rank that classifies social structures.<sup>5</sup> According to Marta Lamas, "gender provides a way of decoding the meanings cultures confer to sexual differences and a way of understanding the complex connections among several types of human interaction."<sup>6</sup> It has also been defined as the meaning societies have historically attributed to the biological traits associated with sex.<sup>7</sup> Similarly, the United Nations (UN)

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<sup>2</sup> REBECCA J. COOK & SIMONE CUSACK, GENDER STEREOTYPING WOMEN: TRANSNATIONAL LEGAL PERSPECTIVES 18 (2009); Kwame Anthony Appiah, *Stereotypes and the Shaping of Identity*, 88 CAL. L. REV. 47, 52 (2000); MICHELLE O'SULLIVAN, STEREOTYPING AND MALE IDENTIFICATION: KEEPING WOMEN IN THEIR PLACE 185-201 (Christina Murray ed., Juta, 1994).

<sup>3</sup> Although gender stereotypes affect both women and men, my analysis will be mainly focused on the adverse effects to women.

<sup>4</sup> Mercedes Barquet, *Reflexiones sobre teorías de género*. *Hoy*, 11 UMBRALES 9, 23-31 (2002).

<sup>5</sup> *Id.* at 1.

<sup>6</sup> Marta Lamas, *Usos, dificultades y posibilidades de la categoría género*, 21 PAPELES DE POBLACIÓN 147-149 (1999).

<sup>7</sup> Luis Ortiz-Hernández, *La opresión de minorías sexuales desde la inequidad de género*, 22 POLÍTICA Y CULTURA 161-164 (2004); Irina Lazarevich *et al.*, *Tipologías de roles de género en estudiantes de la Universidad Autónoma Metropolitana Unidad Xochimilco*, 7 REVISTA DE CIENCIAS CLÍNICAS 152-153 (2006).

has understood gender as “the social meanings given to biological sex differences. It is an ideological and cultural construct but is also reproduced within the realm of material practices; in turn, it influences the outcomes of such practices.”<sup>8</sup> It should be noted that while “gender” has continuously been used to refer to women, the terms are not synonymous and should not be used as such. In this article, I will use the term gender without intending it as a synonym of woman.<sup>9</sup>

According to experts, *gender stereotyping* “is an overarching term that refers to a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, men and women respectively. It is a term that encompasses sex, sexual, sex-role, compounded and other forms of gender stereotypes.”<sup>10</sup> Various psychologists have classified stereotypes differently. Glick and Fiske categorize them into two groups: descriptive and prescriptive,<sup>11</sup> while Appiah catalogues them in three groups:<sup>12</sup>

- a) Statistical or descriptive stereotypes: those assigning one or several characteristics to an individual believing the trait(s) inherent to the group to which he/she belongs, having statistical correspondence, but not applicable to a specific, concrete case.
- b) False stereotypes, also known as prejudices.
- c) Normative or prescriptive stereotypes: those based on social ideas on how people should behave according to the social standards established for his/her gender.<sup>13</sup>

Stereotypes tend to easily reproduce themselves because their origin is both cultural and collective.<sup>14</sup> Research has shown that stereotypes are part

<sup>8</sup> The Secretary-General, Report of the Secretary-General on 1999 World Survey on the Role of Women in Development: Globalization, Gender and Work, submitted to the General Assembly, U.N. Doc. A/54/227 (Aug. 18, 1999), para. 16.

<sup>9</sup> The terms “gender” and “sex” are also used as synonyms, which is incorrect.

<sup>10</sup> Brief prepared by IRSHLP & CEJIL, *supra* note 1.

<sup>11</sup> Peter Glick & Susan T. Fiske, *Sex Discrimination: The Psychological Approach*, in *SEX DISCRIMINATION IN THE WORKPLACE* 159 (Faye J. Crosby et al. eds., Blackwell Publishing 2007).

<sup>12</sup> Appiah, *supra* note 2, at 47-48.

<sup>13</sup> Without calling them normative, many researchers specify that gender stereotypes are the “*should be’s*” societies create surrounding the sexes. These include a number of rules, beliefs and expectations for each gender. Ortiz-Hernández, *supra* note 7, at 165; Lazarevich *et al.*, *supra* note 7, at 153.

<sup>14</sup> Claire L’Heureux-Dubé, *Beyond the Myths: Equality, Impartiality and Justice*, 10 *JOURNAL OF SOCIAL DISTRESS AND THE HOMELESS* 89 (2001). On this point, Marta Lamas mentions that the origin of stereotypes is both collective and individual. See Marta Lamas, *La perspectiva de género*, *REVISTA DE EDUCACIÓN Y CULTURA DE LA SECCIÓN 47 DEL SNTE* 1, available at: <http://www.latarea.com.mx/articu/articu8/lamas8.htm>.

of the cognitive process of classification or categorization that helps deal with “the social complexity of the world;”<sup>15</sup> and therefore, they may surface unconsciously.<sup>16</sup> In addition, stereotypes are said to have another important role in an individual’s socialization processes: that of facilitating social identity, so that a person can feel that he or she is part of a group.<sup>17</sup>

An inherent characteristic of a stereotype is that it may lead to inaccurate or non-applicable generalizations to a group of people:<sup>18</sup> (1) when there is no analysis of individual characteristics to establish whether they correspond to the people they are attributed to,<sup>19</sup> (2) when the information at hand has been oversimplified<sup>20</sup> or (3) when the facts or their relevance have been wrongly interpreted.<sup>21</sup> Because it is clearly visible, sex is an easy way to classify people, thus explaining why these stereotypes are so common.<sup>22</sup> On the other hand, visual conceptions of people commonly arise from classifications from a mainly masculine perspective. For example, women are often classified as “fragile,” “soft,” dressed with care, exuding a moderate image, etc.

However, in general, stereotypes may prevent individuals from developing their potential as human beings.<sup>23</sup> Stereotypes may become discriminatory and negative under certain circumstances if they impose an unjustified burden on one or several individuals,<sup>24</sup> deny people benefits based on a consideration that does not apply to them, limit people’s ability to decide and lead their own lives,<sup>25</sup> or use distinctions, exclusion or restrictions to avoid recognizing or assuming rights and freedoms.<sup>26</sup>

With this in mind, the concept of *gender perspective* means recognizing that sexual difference is one thing and the set of established attributes, ideas, images and social prescriptions based on that sexual difference is another.<sup>27</sup>

<sup>15</sup> Brief prepared by IRSHLP & CEJIL, *supra* note 1, at 3; Blanca González Gabaldón, *Los estereotipos como factor de socialización en el género*, 12 COMUNICAR 79-80 (1999).

<sup>16</sup> Glick & Fiske, *supra* note 11, at 157.

<sup>17</sup> González Gabaldón, *supra* note 15, at 81; Ortiz-Hernández, *supra* note 7, at 167.

<sup>18</sup> Sophia R. Moreau, *The Wrongs of Unequal Treatment*, 54 U. TORONTO L. J. 291-298 (2004); American Psychological Association, In the Supreme Court of the United States: Price Waterhouse v. Ann B. Hopkins. *Amicus Curiae* Brief for the American Psychological Association, 46 AMERICAN PSYCHOLOGIST 1061, 1062-1064 (1991).

<sup>19</sup> Alice H. Eagly, *Few Women at the Top: How Role Incongruity Produces Prejudice and the Glass Ceiling*, in IDENTITY, LEADERSHIP AND POWER 81 (Daan van Knippenberg & Michael A. Hogg eds., SAGE 2003).

<sup>20</sup> American Psychological Association, *supra* note 18, at 1064.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Ortiz-Hernández, *supra* note 7, at 168.

<sup>24</sup> Appiah, *supra* note 2, at 47-48.

<sup>25</sup> Moreau, *supra* note 18, at 298-299.

<sup>26</sup> Brief prepared by IRSHLP & CEJIL, *supra* note 1, at 3.

<sup>27</sup> Lamas, *supra* note 14.

Having a gender perspective entails incorporating gender criteria<sup>28</sup> and the social demands for gender equality into “the routines and rules of public institutions.”<sup>29</sup> “A gender perspective looks at the impact of gender on people’s opportunities, social roles and interactions.”<sup>30</sup>

### III. CASE ANALYSIS: THE REPRODUCTION OF GENDER STEREOTYPES IN COLLEGIATE CIRCUIT COURT RESOLUTIONS

In 1991, the First Collegiate Court in Civil Matters for the First Circuit issued a judgment on writ of *amparo* 3536/88, by issuing an Opinion on “Sustenance. The Obligation of Women. An Interpretation of Article 164<sup>31</sup> of the Civil Code for the Federal District,” which states the following:

Although Article 164 of the Civil Code for the Federal District, [...] consistent with the constitutional principle of equality between men and women, establishes the rule that both spouses shall contribute financially to the upkeep of the home, their sustenance and that of their children; this provision shall be interpreted as meaning that a woman is only obligated to give a monetary contribution when it is proven that she receives compensation for her work or an income from her assets. If this is not the case, there is a presumption that she needs alimony, because it is a well-known fact that in today’s Mexican family she is the one in charge of keeping house and taking care of children, while the male is the one who works to provide the financial resources.<sup>32</sup>

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<sup>28</sup> Observatorio Ciudadano de Políticas de Niñez, Adolescencia y Familias, A. C., *Materiales y Herramientas Conceptuales para la Transversalidad de Género* 49 (Teresa Incháustegui & Yamileth Ugalde coord., Instituto de las Mujeres del Distrito Federal, 2004).

<sup>29</sup> *Id.* at 17.

<sup>30</sup> United Nations, Food and Agriculture Organization. *Agricultural Censuses and Gender Considerations - Concept and Methodology*, Chapter II *The Gender Perspective* (FAO 2001), available at: <http://www.fao.org/docrep/003/x2919e/x2919e00.htm#Contents>.

<sup>31</sup> Article 164 of Civil Code for the Federal District states: “Spouses shall financially contribute to the upkeep of the home, their sustenance and that of their children, as well as the education of their children, under the terms established by law, with no prejudice of dividing the burden in the form and in the proportion the spouses agree upon for this purpose, and according to their possibilities. The above does not apply to the spouse who is unable to work or has no assets of his or her own, in which case the other spouse will be fully responsible for these expenses”. Código Civil para el Distrito Federal [C.C.D.F.] [Civil Code for the Federal District], as amended, Federal Official Gazette [Gaceta Oficial, G.O.], January 22, 2010 (Mex.).

<sup>32</sup> The judicial decision is not fully published and the archives were not preserved by the Court. ALIMENTOS. OBLIGACIÓN DE LA MUJER. INTERPRETACIÓN DEL ARTÍCULO 164 REFORMADO DEL CÓDIGO CIVIL. Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts], *Semanario Judicial de la Federación VIII* [Weekly Federal Court

Collegiate Courts have brought up similar arguments many times. In 1996, the Eighth Collegiate Circuit Court in Civil Matters for the First Circuit rendered a decision on spouses' obligation to contribute to providing for the home. In this specific case, the Court stated that even before the 1974 amendment, the Civil Codes of 1870, 1884 and 1928 established that the husband should be the economic provider of the household and the wife was responsible for taking care of it and their children. The Eighth Collegiate Court declared that although the 1974 amendment aimed at equality between men and women, "those provisions shall be interpreted as meaning that the male is the spouse who works and is obligated to provide the financial resources for the support of the household and the woman is only obligated to provide an economic contribution when it is proven that she receives monetary compensation for her work [...]." Similarly, the Court reiterated the following in the resolution entitled "Sustenance. Under Article 164 of the Civil Code, a woman fulfills her obligation of contributing to sustaining a home by keeping house:"

[...] Regarding this the Supreme Court of Justice of the Nation believes that it is widely known that as a general rule in a Mexican family, the man provides the financial resources to sustain all the household expenses, while the woman contributes by keeping house, taking care of the children and managing the home. This situation originated in the limitations historically imposed on women in terms of their social, economic and cultural development, consequences of which may not be eradicated in all sectors of society but only over time even though the principle of equality between men and women before the law has been elevated to a constitutional level; that is, as long as equality, formally established by law, does not translate into a widespread practice. However, as the presumption derives from this, it shall persist until that situation no longer exists, provided there is no legal provision that states otherwise.<sup>33</sup>

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Report], Eighth Epoch, December 1991, Registry No. 220994, page 152(Mex.). Original text in Spanish: "Aunque el Código Civil para el Distrito Federal en su artículo 164, reformado por decreto publicado el treinta y uno de diciembre de mil novecientos setenta y cuatro, acorde con el principio constitucional de igualdad entre el varón y la mujer, establece la regla de que ambos cónyuges contribuirán económicamente al sostenimiento del hogar, a su alimentación y a la de sus hijos; tal disposición debe interpretarse en el sentido de que la mujer sólo está obligada a la contribución monetaria cuando se comprueba que obtiene remuneración por su trabajo o ingresos de sus bienes; de no ser así, existe la presunción de que necesita alimentos por ser hecho notorio que dentro de la familia mexicana actual, es ella la que se encarga del hogar y del cuidado de los hijos, mientras que el varón es el que trabaja para allegar los medios económicos".

<sup>33</sup> ALIMENTOS. DE ACUERDO CON LO DISPUESTO POR EL ARTÍCULO 164 DEL CÓDIGO CIVIL LA MUJER CUMPLE CON EL DEBER DE CONTRIBUIR CON EL SOSTENIMIENTO DEL HOGAR CUIDANDO DE ÉL. Tribunales Colegiados de Circuito [T.C.C] [Collegiate Circuit Courts], Semanario Judicial de la Federación y su Gaceta IV [Weekly Federal Court Report and its Gazette], Ninth Epoch, August 1996, Registry No. 201634, page

In my opinion and *irrespective* of the dispute, the First Collegiate Court's 1991 resolution raises the first question: If the legal provision in question (Article 164 of the Civil Code for the Federal District) establishes a shared economic obligation for *both spouses*, why did the Court only refer to *the woman*? In other words, why did the Court interpret the rule in such a way that *a woman* shall only be obligated to contribute financially when she can prove she receives monetary compensation for her work, and not that *both spouses* shall only be obligated to contribute financially when they can prove they receive monetary compensation for their work? While it is true that at least one spouse must work to support a household, except in the case of special circumstances, why did the Court associate the *woman* as the spouse that does not receive monetary compensation for her work? For me, the answer lies in the existence of gender stereotypes.

The second question that arises is whether it is truly "a well-known fact that in today's Mexican family, the woman is the one in charge of keeping house and taking care of the children while the male is the one who works to provide the financial resources?" What happens in the case of single-parent families? What about families in which the woman is the only person receiving payment for her work? Are there not homes made up of homosexual, transsexual, etc. couples? Ignoring this social diversity implies perpetuating traditional gender roles, which, as seen below, goes against the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

With regard to the interpretation given in the Eighth Collegiate Court's resolution of Article 164 of the Civil Code for the Federal District (1996), I believe it did nothing but return to the opinions held in the Civil Codes of the late 19th and early 20th centuries since after making mention of the 1974 amendment and its rationale, the Court issued a completely regressive interpretation by asserting that "the male is the one who works" and that "today's Mexican family, [the woman] is the one in charge of keeping house;" therefore, the presumption that she "needs sustenance" prevails,

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625 (Mex.). Original text in Spanish: "[...] Al respecto, la Suprema Corte de Justicia de la Nación ha considerado que es de sobra conocido que en la familia mexicana, por regla general, el hombre aporta los medios económicos para sufragar los gastos del hogar, en tanto que la mujer contribuye con el trabajo y el cuidado de la casa, la atención de los hijos y la administración doméstica. Esta situación se originó por las limitaciones que se han impuesto históricamente a la mujer para su desarrollo social, económico y cultural, cuyas consecuencias no pueden erradicarse en toda la sociedad sino con el transcurso del tiempo a pesar de haberse elevado a rango constitucional el principio de igualdad del hombre y la mujer ante la ley, es decir, mientras esa igualdad establecida formalmente en la ley no se traduzca en una realidad generalizada. Ahora bien, como la presunción emana de este hecho, debe subsistir hasta que esa situación real desaparezca, siempre que no exista alguna disposición legal expresa en contrario."



leaving the cases in which it is proven that the woman is compensated for her work as an exception.

In January 1999, the Fifth Collegiate Circuit Court in Civil Matters for the First Circuit issued a resolution entitled “Sustenance. The presumption of need it does not pertain exclusively to the female spouse” in which the court declared that the need of sustenance is not exclusive to women, but also benefits men.<sup>34</sup> Unfortunately, the Court’s interpretation did not overcome the stereotype of “today’s Mexican family” by observing that “as a general rule in the Mexican family, the man provides the financial resources to sustain all the household expenses.”<sup>35</sup>

The same court issued another resolution entitled “Sustenance. Is inadmissible when the husband claims it from his wife if, in addition to not being physically or mentally impaired to work, there is evidence that shows his lack of exertion to apply for a job,” the text of which is as follows:

It is true that one of the objects of marriage, as well as the basis for its preservation, is that regarding mutual support between spouses; an object that is closely related to the principle of the reciprocity of sustenance that implies that the spouse that provides sustenance also has the right to receive it; however, in the case in which there is evidence that the husband claiming sustenance does so because since they got married his wife had been the one providing it for both of them, that he is not physically or mentally impaired, that he is a professional having completed a university degree and is a relatively young person (34 years of age), the plaintiff’s claim is inadmissible because his object is to live or keep living at expense of his wife, which clearly contravenes the established schemes and warrants an exception to the obligation set forth in Article 302 of the Civil Code for the Federal District, which establishes that “spouses shall provide sustenance for each other” because in this case, it would not be fair to impose the obligation of providing sustenance to someone who has had the opportunity to do so through effort and work[,] and to benefit those who lack financial resources due to laziness or lack of exertion to look for a job for no justified reason. Additionally, it should be taken into account that there are no children in the marriage in question. Therefore, the excuse that he is in charge of keep-

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<sup>34</sup> ALIMENTOS. LA PRESUNCIÓN DE NECESITARLOS NO ES EXCLUSIVA DE LA CÓNYUGE MUJER. *Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts], Semanario Judicial de la Federación y su Gaceta IX [Weekly Federal Court Report and its Gazette], Ninth Epoch, January 1999, Registry No. 194864, page 824 (Mex.)*. Original text in Spanish: “[...] actualmente ya no se deja a cargo del marido la carga alimentaria, sino que se solidariza con la obligación de la mujer si ésta tiene posibilidades económicas. Por tanto, si bien sigue rigiendo la presunción de que la esposa necesita alimentos porque ordinariamente en la familia mexicana el hombre es quien aporta los medios económicos para sufragar los gastos del hogar, ello no excluye al hombre quien también tiene en su favor esa presunción de necesitar alimentos cuando precisamente los demanda [...].”

<sup>35</sup> *Id.*

ing house and educating the children and she is responsible for the financial issues cannot be accepted [...].<sup>36</sup>

According to the Fifth Court's reasoning, the plaintiff's claim was inadmissible since the husband "is not physically or mentally impaired [...], is a professional having completed a university degree and [...] is a relatively young person (34 years of age)." In contrast, the resolutions from the First and Eighth Courts did not state that the criteria to determine the wife's need for sustenance included her age, the existence of children, her level of education and any impairment to work (as the Fifth Court did with the non-working man); they simply justified their reasoning by basing it on characteristics that according to them pertained to "today's Mexican family," namely "the man works" and "the woman is responsible for keeping house and taking care of the children."

From my perspective, instead of performing an individualized analysis to substantiate their decisions, the First and Eighth Courts relied on descriptive and potentially normative gender stereotypes of women and men; namely that men work and women keep house and take care of children.<sup>37</sup> The First and Eighth Courts based themselves on the premise that, unlike men, women do not work and are therefore not compelled to provide fi-

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<sup>36</sup> ALIMENTOS. SON IMPROCEDENTES LOS QUE DEMANDA EL MARIDO A CARGO DE SU ESPOSA, SI ADEMÁS DE NO ESTAR IMPEDIDO FÍSICA NI MENTALMENTE PARA TRABAJAR, EXISTEN PRUEBAS QUE EVIDENCIAN SU FALTA DE APLICACIÓN AL TRABAJO. *Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts], Semanario Judicial de la Federación y su Gaceta IX [Weekly Federal Court Report and its Gazette], Ninth Epoch, January 1999, Registry No. 194865, page 825 (Mex.).* Original text in Spanish: "Es verdad que uno de los fines del matrimonio que además es base para su conservación, es el relativo al socorro mutuo entre los cónyuges; finalidad que se encuentra íntimamente relacionada con el principio de reciprocidad alimentaria que implica que el cónyuge que da alimentos tiene a su vez derecho a recibirlos; sin embargo, en el caso, donde hay evidencia de que el marido que demanda alimentos, lo hace porque desde que contrajeron matrimonio su esposa es la que había venido soportando la carga alimentaria de ambos; que no está incapacitado física ni mentalmente; que es profesionista por haber cursado una licenciatura y que es una persona relativamente joven (34 años), la pretensión del demandante es improcedente pues su intención es vivir o continuar viviendo a expensas de la esposa, lo cual evidentemente rompe los esquemas establecidos y amerita una excepción a la obligación derivada del artículo 302 del Código Civil para el Distrito Federal en el sentido de que «los cónyuges deben darse alimentos», pues en tal evento, no sería justo imponer la carga alimentaria a quien tenga posibilidades logradas gracias a su esfuerzo y trabajo y beneficiar a quienes carecen de posibilidades económicas debido a su pereza o falta de aplicación al trabajo sin razón fundada. A lo anterior debe agregarse el hecho de que en el matrimonio de que se trata no hay hijos, por lo que no puede afirmarse como pretexto que él se hace cargo de las labores domésticas y educacional de los hijos del matrimonio y ella de la cuestión económica [...]."

<sup>37</sup> There are also descriptive and potentially normative stereotypes of the family — a married heterosexual couple — not subject to analysis in this essay.

nancial support for the household. The ideas contained in the premise arise from the stereotype that women are housekeepers and men are breadwinners, which the Fifth Court advanced even further by reprimanding the husband who lives “at expense of his wife” if the couple had no children.<sup>38</sup>

I also believe there is an underlying prejudice subtly worded in the clause that establishes the exemption of contributing financially in the First and Eighth Courts’ resolutions. While the clause is absolutely unnecessary—since regardless of the nature of the dispute, there was no reason or justification to declare a relationship between gender and the lack of economic capacity for a monetary contribution—the presence of prejudice is observed in the answer to the following question: Why was the clause drafted to read “a woman is only obligated to give a monetary contribution when it is proven that she receives compensation for her work or an income from her assets” and not that “when it is proven that she works?” In my opinion, this wording points toward a paternalist view of women. Thus, she is considered to be in a passive position or with less authority vis-à-vis the words

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<sup>38</sup> Another resolution that illustrates the previous arguments comes from the Second Collegiate Circuit Court of the Sixth Circuit in 1994: “If it is not justified during the trial that the female spouse is engaged in a profession, a trade or in commerce, this leads us to think that she is in charge of keeping house and bringing up the children; therefore, financial support for sustenance cannot be imposed on her nor can the defendant’s income be distributed at a lower percentage since it is widely known that as a general rule in the Mexican family, men provide the financial resources to support the household, while women contribute to it by keeping house, managing the home and taking care of the children, even though the principle of equality between men and women before the law has been elevated to a constitutional level; that is, until this equality formally established by law does not become a reality, acknowledging that the married woman works and therefore receives compensation for her services or she has assets of her own, it cannot be assumed that a woman has the obligation of contributing to defray the costs of sustenance because this responsibility devolves upon the husband”. ALIMENTOS. MUJER CASADA NO DEBE PRESUMIRSE SU OBLIGACIÓN DE PROPORCIONARLOS, *Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts], Semanario Judicial de la Federación [Weekly Federal Court Report], Eighth Epoch, July 1994, Registry No. 211068, page 417 (Mex.)*. Original text in Spanish: “Si en el juicio no se justifica que la cónyuge ejerce una profesión, oficio o comercio, ello conduce a considerar que se dedica al manejo del hogar conyugal y a la educación de los hijos, por lo que no puede imponérsele la carga económica alimentaria, ni distribuir en menor porcentaje los ingresos del demandado; pues es de sobra conocido que en la familia mexicana, por regla general, el hombre aporta los medios económicos para sufragar los gastos del hogar, en tanto que la mujer contribuye con el cuidado de la casa, la administración doméstica y la atención de los hijos, pues a pesar de haberse elevado a rango constitucional el principio de igualdad del hombre y la mujer ante la ley, es decir, mientras esa igualdad establecida formalmente en la ley no se traduzca en realidad, acreditando que la mujer casada labora y por ende percibe como contraprestación a sus servicios un ingreso, o bien que tiene bienes propios, no se puede deducir que ésta tenga obligación de contribuir a sufragar las necesidades alimenticias pues esta obligación recae en el esposo.”

used to refer to a man's economic activity ("the male works"), since the man is considered as having an active and dominant position, which in turn suggests greater authority.

Additionally, the Eighth Court alleged that consequences of the limitations historically imposed on women "may not be eradicated in all sectors of society but only over time" and thus the presumption that women need sustenance "shall persist until that situation no longer exists." In my analysis, this assertion reflects a lack of knowledge of the State's international obligations under signed and ratified treaties (ratified even at the time of rendering this decision) because, as will be demonstrated, the State is obligated to adopt necessary measures to achieve gender equality and not simply restrict itself to the social changes that take place over time.

In the Appendix of 2000, the statements contained in the resolution of the First and Eighth Courts were again cited under the title of "Sustenance. Under Article 164 of the Civil Code, the woman fulfills her obligation of contributing to the support of a home by keeping house."<sup>39</sup>

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<sup>39</sup> ALIMENTOS. DE ACUERDO CON LO DISPUESTO POR EL ARTÍCULO 164 DEL CÓDIGO CIVIL LA MUJER CUMPLE CON EL DEBER DE CONTRIBUIR CON EL SOSTENIMIENTO DEL HOGAR CUIDANDO DE ÉL, *Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts]*, Addendum/Apéndice 2000, Vol. IC, Ninth Epoch, Registry No. 914214, page 411 (Mex.). Original text in Spanish: "El matrimonio es una institución de orden público por lo que la sociedad está interesada en su mantenimiento y sólo por excepción la ley permite que se rompa el vínculo matrimonial; de ahí que en los juicios de divorcio necesario sea preciso que la causal invocada quede plenamente demostrada a fin de que el tribunal pueda apreciar la gravedad del incumplimiento alegado que ponga de manifiesto el desprecio, desapego, abandono o desestimación del cónyuge actor o a sus hijos, y que haga imposible la vida en común. Según el artículo 162 del Código Civil los cónyuges están obligados a contribuir cada uno por su parte a los fines del matrimonio y a socorrerse mutuamente. Los efectos del matrimonio no son únicamente patrimoniales, sino que existen derechos y obligaciones de ambos cónyuges que se manifiestan en los deberes íntimos de la relación: de cohabitación, débito conyugal y fidelidad; y los no necesariamente personalísimos como son los de ayuda mutua y de asistencia. En el matrimonio debe prevalecer el interés siempre superior de la familia, por lo que en el caso se trata no sólo de una función biológica sino también de una función jurídica para dar cumplimiento a los fines del matrimonio, de acuerdo con el imperativo impuesto por el artículo 162 del Código Civil para que cada cónyuge contribuya por su parte a tales fines. Cabe destacar que uno de los deberes que impone el matrimonio es el de socorro y ayuda mutua que descansa siempre en la solidaridad de la pareja y tiene por objeto realizar los fines superiores de la familia. Una de las manifestaciones del derecho-obligación que se analiza es la relativa a la ministración de alimentos que la ley impone a los cónyuges; pero no se concreta exclusivamente a ese aspecto patrimonial, sino también a la ayuda de carácter moral y material que mutuamente deben dispensarse. Ahora bien, la obligación de dar alimentos supone la posibilidad económica del cónyuge deudor, debiendo los alimentos estar proporcionados justamente a esa posibilidad económica del que debe darlos y a la necesidad del que debe recibirlos. Al respecto el artículo 311 del Código Civil dispone que los alimentos han de ser proporcionados a las posibilidades del que debe darlos y a la

Three years later, the Second Collegiate Court in Civil Matters for the Sixth Circuit issued the resolution entitled “Sustenance. The husband’s obligation to provide sustenance does not cease if the woman works (Puebla State Law),” in which it was noted that, even though the female spouse works, the male spouse still has the obligation to provide sustenance:

Under the terms of Article 324 of the Civil Code of the State of Puebla, before the reforms of nineteen ninety-eight [*sic*], when the woman works and earns a salary or wages, she should contribute to sustain the home, that is, she must share that responsibility with the husband; notwithstanding, the latter’s obligation, stipulated in Article 323 of the same code, does not cease, but in any case is shared. Thus, it is incontrovertible that, even if the female

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necesidad del que debe recibirlos. Originalmente en los Códigos Civiles de 1870 (artículos 200 a 202) y de 1884 (artículos 191 a 193) el marido debía proteger y dar alimentos a la mujer, aunque ésta no hubiera llevado bienes al matrimonio, y la mujer debía atender lo doméstico, la educación de los hijos y la administración de los bienes y cuando la mujer tuviera bienes propios debía dar alimentos al marido, cuando éste careciere de aquéllos y estuviere impedido de trabajar. Con diferente redacción pero del mismo perfil fue adaptado ese contenido en el artículo 42 de la Ley sobre Relaciones Familiares, señalando que el marido debía dar alimentos a la mujer y hacer todos los gastos necesarios para el sostenimiento del hogar. El Código Civil de 1928 siguió los mismos lineamientos en su artículo 164. En la reforma publicada en el Diario Oficial de la Federación de treinta y uno de diciembre de mil novecientos setenta y cuatro, se modificaron los textos que hemos citado y aun cuando se dejaron latentes los principios, su redacción tiene la inspiración de la igualdad jurídica, política, económica y social de la mujer con el hombre, pues se establece a cargo de los cónyuges (tanto de él, como de ella) la contribución económica para el sostenimiento del hogar, su propia alimentación y la de sus hijos; sin perjuicio de distribuirse esas cargas en la forma y proporción que ellos convengan y de acuerdo con sus propias posibilidades. La causal de divorcio prevista en la fracción XII del artículo 267 del Código Civil para el Distrito Federal en relación con el artículo 164 del mismo código, si bien es cierto que surgió para ajustar la legislación a la realidad social a efecto de regularizar la situación jurídica y fáctica de la pareja; tales disposiciones deben interpretarse en el sentido de que el varón es el que trabaja y está obligado a allegar los medios económicos para el sostenimiento del hogar y la mujer sólo está obligada a la contribución económica cuando se compruebe que obtiene remuneraciones por su trabajo o ingresos de sus bienes; de no ser así, existe la presunción de que necesita alimentos por ser hecho notorio que dentro de la familia mexicana actual, es ella la que se encarga del hogar y del cuidado de los hijos y de esta forma cumple con su obligación prevista por el artículo 164 del Código Civil. Al respecto, la Suprema Corte de Justicia de la Nación ha considerado que es de sobra conocido que en la familia mexicana, por regla general, el hombre aporta los medios económicos para sufragar los gastos del hogar, en tanto que la mujer contribuye con el trabajo y el cuidado de la casa, la atención de los hijos y la administración doméstica. Esta situación se originó por las limitaciones que se han impuesto históricamente a la mujer para su desarrollo social, económico y cultural, cuyas consecuencias no pueden erradicarse en toda la sociedad sino con el transcurso del tiempo a pesar de haberse elevado a rango constitucional el principio de igualdad del hombre y la mujer ante la ley, es decir, mientras esa igualdad establecida formalmente en la ley no se traduzca en una realidad generalizada. Ahora bien, como la presunción emana de este

spouse earns an income by having a job, the husband continues to act as the person obligated to pay sustenance, as there is no legal provision that releases him from this obligation and, therefore, even though the female spouse performs a compensated activity, she is not excluded from the legal premise of requiring sustenance. Hence, the person obligated to pay sustenance must then justify by means of the evidence available to him that the salary paid is sufficient to meet [the obligation of providing sustenance].<sup>40</sup>

At first glance, one might think that the resolution shows a paternalistic view (and therefore a negative one) towards women, but in the search for an interpretation compatible with equality, we can also hypothesize that the obligation simply remains the same even when both spouses work in view of their duty to cooperate reciprocally and under equal conditions in sustaining the household and to mutually provide resources. However, I think the court was not clear enough in this respect. To reach its conclusion, the court merely mentioned “there is no legal provision that releases him from this obligation.” So, even with the opportunity to present weighty arguments to advance the issue of gender equality, the court based its resolution on limited and even potentially harmful arguments, given the prevailing gender stereotypes that define women as housekeepers and men as workers.

In July 2006, the Third Collegiate Court in Civil Matters for the First Circuit noted the following in the resolution entitled “Community property. Case in which property acquired by the male spouse who abandons the home later becomes part of said type of property:”

[...] when one of the spouses leaves the matrimonial domicile, ceases to contribute to the common funds and to collaborate in the household man-

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hecho, debe subsistir hasta que esa situación real desaparezca, siempre que no exista alguna disposición legal expresa en contrario.”

<sup>40</sup> ALIMENTOS. NO CESA LA OBLIGACIÓN DEL MARIDO DE PROPORCIONARLOS, EN EL CASO DE QUE LA MUJER TRABAJE (LEGISLACIÓN DEL ESTADO DE PUEBLA). *Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts], Semanario Judicial de la Federación y su Gaceta XVII [Weekly Federal Court Report], Ninth Epoch, June 2003, Registry No. 184226, page 915 (Mex.).* Original text in Spanish: “En términos del artículo 324 del Código Civil del Estado de Puebla, anterior a las reformas de mil novecientos noventa y ocho, cuando la mujer trabaja y obtiene un sueldo o ganancias, debe contribuir al sostenimiento del hogar, es decir, debe participar junto con el marido en dicha responsabilidad, por lo que la obligación de este último, que le da el diverso 323 del propio ordenamiento, no cesa, sino que en todo caso se comparte. Luego, es inconcuso que aun en el caso de que la cónyuge obtenga ingresos por contar con un trabajo, el marido mantiene el carácter de deudor alimentista, al no existir precepto legal que le libere de dicha obligación y, como consecuencia, la consorte, aunque desempeñe una actividad remunerada, no pierde la presunción legal de necesitar los alimentos, quedando a cargo del deudor, entonces, justificar con los elementos de prueba a su alcance que el salario devengado es suficiente para satisfacer el rubro de que se habla.”

agement, childcare, if any, and the administration of [household] assets, while the spouse who remains at the marital domicile, which in context of the Mexican social environment is usually the woman, continues to carry the burdens and expenses of providing for the home and the education of the children, if any [...].<sup>41</sup>

From my perspective, the comment “which in the context of the Mexican social environment is usually the woman” was absolutely unnecessary to the general argument and only contributes to reinforce potentially harmful gender stereotypes in the collective imagination. Fortunately, a month later, the Sixth Collegiate Court in Civil Law of the First Circuit took a step forward towards gender equality by stating that the roles or activities that spouses have in maintaining the home can no longer be understood from a traditional perspective. Specifically, the court held that the role of family caregiver “due to the very dynamics of life today can be attributed to both men and women interchangeably, since the devoting oneself to one’s home cannot be regarded from the traditional perspective that has prevailed for years in Mexican society.”

However, almost a year later (March 2007), there was an unfortunate setback when the Third Collegiate Court in Civil Matters for the First Circuit argued in writ of *amparo* 611/2006 that the burden of proof to refute the presumption that the female spouse requires sustenance falls upon the defendant because of the “social context” in which the wife is the one who takes care of the house and the children:

According to that set forth in Article 281 of the Code of Civil Procedure for the Federal District, in a civil trial, the parties must bear the burden of proof of their own claims. However, in case of a divorce which claims the compensation referred to in Article 289 Bis of the Civil Code and to prove that the woman devoted herself primarily to doing housework and, where appropriate, caring for the children for the duration of the marriage, the [female] plaintiff’s statement to this effect is sufficient evidence to constitute a presumption that requires a rebuttal by the [male] defendant since the social context cannot be overlooked and according to which it is a well-

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<sup>41</sup> SOCIEDAD CONYUGAL. HIPÓTESIS EN QUE FORMAN PARTE DE ELLA LOS BIENES ADQUIRIDOS POR EL CÓNYUGE QUE ABANDONA EL DOMICILIO CON POSTERIORIDAD A SU SALIDA. Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts], *Semanario Judicial de la Federación y su Gaceta XXIV* [Weekly Federal Court Report and its Gazette], Ninth Epoch, July 2006, Registry No. 174594, page 1377 (Mex.). Original text in Spanish: “[...] cuando uno de los esposos abandona el domicilio conyugal, deja de contribuir a la formación del fondo social y de colaborar en la dirección conjunta del hogar, de los hijos, si los hay, y de los bienes, mientras que el cónyuge que permanece en el domicilio conyugal, que en el medio social mexicano suele ser con mayor frecuencia, la mujer, continúa con las cargas o gastos para lograr el mantenimiento y educación de los hijos, en caso de que los haya [...]”

known fact that as a general rule, the woman is the one who, regardless of engaging in other activities, also devotes herself to the housework and the care of the children, if any, as it is widely known that this is a real and prevalent practice in today's society.<sup>42</sup>

In other words, after disregarding the rule that stipulates that the burden of proof lies with the parties as to their own claims, the court based its conclusion on gender stereotypes as did other courts in presumably similar cases during the previous decade. Nevertheless, as a result of the same case (*Amparo* 611/2006), the court issued another resolution entitled "Divorce. The concept of 'primarily' as required in Section II of Article 289 Bis of the Civil Code in force in the Federal District for the claim for the redress of damages:"

The use of the expression to devote oneself "primarily" to doing housework and, where appropriate, caring for the children to obtain the compensation referred to in Section II of Article 289 Bis, refers to housework carried out for longer periods and lengths of time than any other activity performed by the plaintiff spouse, which does not mean that the latter has only performed these activities, since the term "primarily" indicates a higher amount or percentage of one activity than another. Thus, said spouse may also devote part of her time to other activities, such as, among others, working to obtain a greater income, as it is a well-known fact that today's situation often requires that both spouses work to financially support the family.<sup>43</sup>

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<sup>42</sup> DIVORCIO. CARGA DE LA PRUEBA PARA DEMOSTRAR QUE EL DEMANDANTE SE DEDICÓ EN EL LAPSO EN QUE DURÓ EL MATRIMONIO, PREPONDERANTEMENTE AL DESEMPEÑO DEL TRABAJO DEL HOGAR Y, EN SU CASO, AL CUIDADO DE LOS HIJOS (ARTÍCULO 289 BIS, FRACCIÓN II, DEL CÓDIGO CIVIL PARA EL DISTRITO FEDERAL). Tribunales Colegiados de Circuito [T.C.C.] [Collegiate Circuit Courts], *Semanario Judicial de la Federación y su Gaceta XXV* [Weekly Court Report], Ninth Epoch, March 2007, Registry No. 173035, page 1675 (Mex.). Original text in Spanish: "De conformidad con lo dispuesto en el artículo 281 del Código de Procedimientos Civiles para el Distrito Federal, en el juicio civil las partes deben asumir la carga de la prueba de sus pretensiones; sin embargo, en el caso de divorcio en que se demanda la indemnización a que se refiere el artículo 289 Bis del Código Civil y con el objeto de probar que en el lapso de duración del matrimonio la mujer se dedicó preponderantemente al desempeño del trabajo del hogar y, en su caso, al cuidado de los hijos, basta únicamente con la afirmación de la demandante en ese sentido para que constituya una presunción que requiere ser desvirtuada por el demandado, debido a que no puede pasar inadvertido el contexto social, conforme al cual es un hecho notorio que por regla general es la mujer quien, con independencia de que realice otra actividad, se dedique además a las labores del hogar, al cuidado de los hijos cuando los hay, pues es por todos conocido que ésta es una costumbre real y vigente en la sociedad actual."

<sup>43</sup> DIVORCIO. CONCEPTO DE ACTIVIDAD "PREPONDERANTEMENTE" QUE EXIGE LA FRACCIÓN II DEL ARTÍCULO 289 BIS DEL CÓDIGO CIVIL VIGENTE EN EL DISTRITO FEDERAL. PARA QUE PROCEDA LA ACCIÓN INDEMNIZATORIA. Tribunales Colegiados de



It can be observed that in the first resolution, the court stated it is “a well-known fact that as a general rule, the woman is the one who, regardless of engaging in other activities, also devotes herself to the housework and the care of the children, if any, as it is widely known that this is a real and prevalent practice in today’s society,” while in the second resolution, the same court argued that the well-known fact is that circumstances often require that both spouses work. In my point of view and despite the statement in the second resolution regarding both spouses’ need to work, the fact that the court used a stereotypical argument in the first resolution, though not in the second one, is indicative of the courts’ persistent lack of clarity and awareness of gender stereotypes and their consequences.

Therefore, it is not surprising that in February 2009, another court yet again included in its legal reasoning a stereotyped and unnecessary explanation of the supposed generalization that women spend most of their time and effort doing housework. Namely, the Fourth Collegiate Court in Civil Matters for the First Circuit pointed out the following in the resolution entitled “Compensation to the spouse primarily devoted to keeping house, or caring for the children. Elements that should be addressed to set the corresponding percentage:”

Article 289 bis of the Civil Code for the Federal District [...] is based on the premise of recognizing a well-known fact, namely, that when one spouse, usually the woman, dedicates most of her time and effort to housework, and where appropriate, to caring for the children, she contributes financially and substantially to the accumulation of wealth within the marriage by doing this work [...].<sup>44</sup>

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Circuito [T.C.C.] [Collegiate Circuit Courts], *Semanario Judicial de la Federación y su Gaceta XXV* [Weekly Court Report and its Gazette], Ninth Epoch, March 2007, Registry No. 173034, page 1676 (Mex.). Original text in Spanish: “La utilización del vocablo dedicarse «preponderantemente» al desempeño del trabajo del hogar y, en su caso, al cuidado de los hijos, para poder obtener la indemnización a que se refiere la fracción II del artículo 289 Bis, se refiere a que el trabajo del hogar se haya llevado a cabo con mayor temporalidad y duración de manera destacada o superior que otra actividad realizada por el cónyuge demandante, lo cual no significa que éste únicamente haya desempeñado esas actividades, pues el término «preponderante» es indicativo de una cantidad o porcentaje superior de una actividad respecto de otra; por ende, dicho cónyuge puede, además, dedicar parte de su tiempo a otra actividad, como puede ser, entre otras, a trabajar para obtener ingresos mayores, pues es un hecho notorio que la realidad actual en muchas ocasiones exige que ambos cónyuges laboren para poder sostener económicamente a la familia.”

<sup>44</sup> INDEMNIZACIÓN AL CÓNYUGE DEDICADO PREPONDERANTEMENTE AL HOGAR, O AL CUIDADO DE LOS HIJOS. ELEMENTOS QUE DEBEN ATENDERSE PARA FIJAR SU PORCENTAJE. *Tribunales Colegiados de Circuito* [T.C.C.] [Collegiate Circuit Courts], *Semanario Judicial de la Federación y su Gaceta XXIX* [Weekly Federal Court Report and its Gazette], Ninth Epoch, February 2009, Registry No. 167914, page 1892 (Mex.). Original text in Spanish: “El artículo 289 Bis del Código Civil para el Distrito Federal, donde se

## IV. THE RECURRENCE OF GENDER STEREOTYPES AFFECTS WOMEN

Stereotypes determine perceptions about typical and acceptable roles for men and women in a society.<sup>45</sup> From birth, individuals are placed under the constant pressure of conforming to these roles.<sup>46</sup> Men and women are commonly perceived as opposite poles and each “pole” is associated with certain profiles and activities in such a way that there are more desirable features in one or another person depending on his/her sex.<sup>47</sup> In Mexico and the rest of Latin America, the social process of dichotomization of the sexes is clearly captured in two concepts: *machismo* and *marianismo*.<sup>48</sup> In general terms, the first one is related to the assumed expectation for men to be socially dominant while the second one alludes to women “being framed as self-sacrificing, submissive to her man, and a ‘good’ mother and wife,” in a clear reference to the religious figure of Mary.<sup>49</sup>

Men are commonly associated with professional success; they are assumed and expected to be competent, independent, active, competitive and very self-confident.<sup>50</sup> Meanwhile, women are usually associated with the home and family; they are considered dependent, delicate, weak, passive, emotional, incompetent and/or incapable of making decisions.<sup>51</sup> Moreover, when any psychopathological manifestation appears it is usually explained as a result of women’s reproductive function, that is, premenstrual syndrome, post-partum depression, menopause, etc.<sup>52</sup>

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otorga el derecho a cobrar tal indemnización (actualmente contenido en la fracción VI del artículo 267 del código citado), tiene como presupuesto el reconocimiento de un hecho notorio, consistente en que cuando uno de los cónyuges, generalmente la mujer, emplea la mayor parte de su tiempo y esfuerzos al cuidado y labores del hogar, y en su caso, de los hijos, con este trabajo contribuye económicamente y de manera importante a la acumulación de riqueza en el seno del matrimonio [...].”

<sup>45</sup> American Psychological Association, *supra* note 18, at 1065; Marta Lamas, *supra* note 14, at 1. For additional reference see MARCELA LAGARDE, *LOS CAUTIVERIOS DE LAS MUJERES: MADRESPOSAS, MONJAS, PUTAS, PRESAS Y LOCAS* (UNAM, 2007).

<sup>46</sup> Ortiz-Hernández, *supra* note 7, at 169.

<sup>47</sup> American Psychological Association, *supra* note 18, at 1064.

<sup>48</sup> DeSouza et al., *A Latin American Perspective on the Study of Gender*, in PRAEGER GUIDE TO THE PSYCHOLOGY OF GENDER 41 (Michelle Antoinette Paludi ed., Praeger Publishers 2004).

<sup>49</sup> *Id.* DeSouza, Baldwin, Koller and Narvaz state that there are some difficulties in defining *machismo* and *marianismo*. However, it is not the object of this essay to discuss them in depth, but rather to point out that gender stereotypes persist in Mexico and to identify their negative effects on women. See also Lagarde, *supra* note 45.

<sup>50</sup> *Id.*; Luis Ortiz-Hernández, *supra* note 7, at 165; Lazarevich et al., *supra* note 7, at 154.

<sup>51</sup> American Psychological Association, *supra* note 18, at 1064; González Gabaldón, *supra* note 15, at 80; Ortiz-Hernández, *supra* note 7, p. 165; Lazarevich et al., *supra* note 7, at 154; DeSouza et al., *supra* note 48, at 43; Lamas, *supra* note 14, at 1.

<sup>52</sup> María Asunción Lara, *Introducción*, in CÁLMESE, SON SUS NERVIOS, TÓMESE UN

In many social contexts, women are still expected to perform in the domestic area; thus, the binomial of women-home is often the “ideal” against which they are judged by society as well as by courts; if they fulfill this ideal, they are treated paternalistically and if not, they are treated with hostility.<sup>53</sup> As a result, women are subject to double or ambivalent sexism: on the one hand, they are treated benevolently if they are believed to have the characteristics “they should have” and perform in a context traditionally assigned or associated with women.<sup>54</sup>

However, if they intend to gain access to a space socially assigned to men, they may receive a different treatment or even be denied administrative positions with a high power for decision making,<sup>55</sup> since characteristics related to women or femininity are not favorable for success<sup>56</sup> and do not correspond to the characteristics that are socially identified with women.<sup>57</sup> If, on the contrary, they are perceived as women with manly features or apart from the traditionally feminine, even being successful leaders and recognized as such, they are considered as not adapted, aggressive, hostile or unpleasant.<sup>58</sup>

Consequently, stereotypes have been a recurrent reason for discrimination in human resources selection processes,<sup>59</sup> especially when women are candidates for positions usually held by men, even when they are equally or better qualified.<sup>60</sup> Many times, women are relegated to positions with lower salaries or those considered appropriate for their gender<sup>61</sup> or else they have to face harder evaluations than a man would in the same position, which in the medium and long term impedes their professional growth.<sup>62</sup> If a woman is professionally successful, there may be social explanations such as “good

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TECITO... LA SALUD MENTAL DE LAS MUJERES MEXICANAS (María Asunción Lara & V. Nelly Salgado de Synder eds., Editorial Pax 2002).

<sup>53</sup> American Psychological Association, *supra* note 18, at 1062 & 1065; Michelle O’Sullivan, *supra* note 2, at 190.

<sup>54</sup> Glick & Fiske, *supra* note 11, at 162; Deborah L. Rhode & Joan C. Williams, *Legal Perspectives on Employment Discrimination*, in *SEX DISCRIMINATION IN THE WORKPLACE* 246 (Faye J. Crosby et al. eds., Blackwell Publishing 2007); American Psychological Association, *supra* note 18, at 1066; Eagly, *supra* note 16, at 85.

<sup>55</sup> Rhode et al., *supra* note 54, at 246; American Psychological Association, *supra* note 18, at 1066; Eagly, *supra* note 19, at 85.

<sup>56</sup> Eagly, *supra* note 19, at 82.

<sup>57</sup> Glick & Fiske, *supra* note 11, at 162.

<sup>58</sup> *Id.*; Rhode et al., *supra* note 54, at 246; American Psychological Association, *supra* note 18, at 1066; Eagly, *supra* note 19, at 85.

<sup>59</sup> González Gabaldón, *supra* note 15, at 80.

<sup>60</sup> American Psychological Association, *supra* note 18, at 1066.

<sup>61</sup> O’Sullivan, *supra* note 2, at 189.

<sup>62</sup> Rhode et al., *supra* note 54, at 246; American Psychological Association, *supra* note 18, at 1066.

luck” or “hard work,” instead of acknowledging her success or the capabilities she has.<sup>63</sup>

According to psychological studies, ambivalent treatment is even more accentuated in pregnant women, who are seen as vulnerable creatures.<sup>64</sup> The fact that a working woman gets pregnant may generate negative perceptions about her professional performance since she is associated to emotional and irrational issues,<sup>65</sup> and is seen as a person that needs assistance.<sup>66</sup> Studies have shown that a pregnant working woman is not commonly perceived as someone eligible for promotion.<sup>67</sup> On the contrary, she may be subject to even higher evaluation standards than her non-pregnant colleagues or male partners —no matter if they are parents or not— or to other types of hostile treatment derived from negative reactions arising from her coworkers.<sup>68</sup> Finally, the work of a mother is considered ineffective since she is perceived as delicate, incompetent and out of her traditional role.<sup>69</sup>

In the area of reproductive health, women are also subject to stereotypes. One of the most evident and common stereotypes is the idea that motherhood is the supreme ideal for a woman and as such, will always be a priority over other matters, such as education, work or her own well-being.<sup>70</sup> Additionally, motherhood is socially perceived as a “natural” or intrinsic work for women,<sup>71</sup> which does not necessarily occur in the case of fatherhood. Procreation, motherhood and domestic life are considered the products of women’s instincts.<sup>72</sup> Along these same lines, the way children grow and develop is socially related to a woman’s success or failure; it is a standard

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<sup>63</sup> *Id.*

<sup>64</sup> Lamas, *supra* note 14, at 1.

<sup>65</sup> Rhode et al., *supra* note 54, at 246.

<sup>66</sup> Michelle R. Hebl et al., *Hostile and Benevolent Reactions Toward Pregnant Women: Complementary Interpersonal Punishments and Rewards that Maintain Traditional Roles*, 92 JOURNAL OF APPLIED PSYCHOLOGY 1499 (2007).

<sup>67</sup> *Id.* at 1499.

<sup>68</sup> Rhode et al., *supra* note 54, at 247; Hebl et al., *supra* note 66, at 1500.

<sup>69</sup> Rhode et al., *supra* note 54, at 248; Hebl et al., *supra* note 66, at 1500.

<sup>70</sup> Rebecca J. Cook & Susannah Howard, *Accommodating Women’s Differences under the Women’s Anti-Discrimination Convention*, 56 EMORY LAW JOURNAL 1043-1044 (2007); Karen March & Charlene E. Miall, *Reinforcing the Motherhood Ideal: Public Perceptions of Biological Mothers Who Make an Adoption Plan*, 43 CANADIAN REVIEW OF SOCIOLOGY & ANTHROPOLOGY 367, 367 (2006).

<sup>71</sup> Cook & Howard, *supra* note 70, at 1044; P. Choi et al., *Supermum, Superwife, Supereverything: Performing Femininity in the Transition to Motherhood*, 23 JOURNAL OF REPRODUCTIVE AND INFANT PSYCHOLOGY 167-168 (2005).

<sup>72</sup> Marcela Lagarde, *Identidad de género y derechos humanos. La construcción de las humanas*, available at <http://www.derechoshumanos.unlp.edu.ar/ddhh/areas.php?modulo=maestria&categ=128>, at 7.

measurement: if children grow and perform “positively,” then the woman is “successful,” thus fulfilling her role of a “good mother.”<sup>73</sup>

However, the stereotype of motherhood as a maximum ideal is detrimental for women insofar as it limits their capacity for making decisions that may conflict with the socially assigned role of mothers or future mothers,<sup>74</sup> while this stereotype of motherhood as “natural” work minimizes the effort involved in having and taking care of children.<sup>75</sup> Therefore, women experiencing the process of becoming mothers and who realize how difficult motherhood is, far from being the image represented by society, are susceptible of feelings of guilt and depression.<sup>76</sup> Likewise, women who decide to have children without being married, those who decide not to have children at all, those who give their child in adoption, those who have an abortion and those who are considered “bad mothers” are stigmatized by society,<sup>77</sup> probably even more harshly than in the case of men who are considered “bad fathers.”

Gender stereotypes may then turn into factors that prevent a woman from enjoying and exercising her rights and freedoms, starting with the right to equality and non-discrimination —Article 24 of the American Convention on Human Rights (ACHR),<sup>78</sup> Article 3 of the Protocol of San Salvador (PSS)<sup>79</sup> and Article 3 of the International Covenant on Civil and Political Rights (ICCPR)<sup>80</sup> —and the right to live free from violence (Article 6 of the Convention of Belem do Para).<sup>81</sup>

Gender stereotypes may also prevent an individual’s right to privacy —Article 11 of the ACHR and Article 17 of the ICCPR— if her capacity to decide her sexuality is limited. Regarding this point, the Human Rights Committee has upheld that the right to privacy “protects women’s control over their sexuality and reproductive functions.”<sup>82</sup>

<sup>73</sup> March & Miall, *supra* note 70, at 368; P. Choi et al., *supra* note 71, at 168.

<sup>74</sup> Cook & Howard, *supra* note 70, at 1044.

<sup>75</sup> *Id.*

<sup>76</sup> P. Choi et al., *supra* note 71, at 168.

<sup>77</sup> March & Miall, *supra* note 70, at 367; P. Choi et al., *supra* note 71, at 168; Cook & Howard, *supra* note 70, at 1047.

<sup>78</sup> Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

<sup>79</sup> Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, Nov. 17, 1988, O.A.S.T.S. No. 69.

<sup>80</sup> United Nations, International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>81</sup> Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem Do Para”, June 9, 1994, 33 I.L.M. 1534.

<sup>82</sup> Daniel O’Donnell, DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS. NORMATIVA, JURISPRUDENCIA Y DOCTRINA DE LOS SISTEMAS UNIVERSAL E INTERAME-

The effective exercise of the right to health -Article 10 of the PSS and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>83</sup> —may also be adversely affected if women do not have access to quality health care services, particularly, but not limited to, in matters related to sexual and reproductive life. Using the World Health Organization (WHO) definition of health —“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,”<sup>84</sup> this negative effect spreads. According to the National Council for the Prevention of Discrimination (CONAPRED, based on its Spanish acronym): “Stigmas towards women, generated by gender roles and the annulment of rights and freedoms, significantly undermine the right to sexual and reproductive health, lead to harassment, sexual abuse, exploitation, violation and femicides, this latter being the maximum expression of violence against women.”<sup>85</sup>

Gender stereotypes at work may be limiting factors for exercising the right to work and to just, equitable and satisfactory conditions of work —Articles 6 and 7, both of the PSS and of the ICESCR— which include “the right of every worker to promotion” and the right to “fair and equal wages for equal work, without distinction” (See Article 7 of the PSS).

At certain times, gender stereotypes may be factors that prevent women from exercising their right to judicial protection (Article 25 of the ACHR). For example, the Center for Justice and International Law and the International Reproductive and Sexual Health Law Programme of the Faculty of Law of the University of Toronto declared in the *Amicus* brief submitted to the Inter-American Court of Human Rights in the Case of González et al. (“Cotton Field”) v. Mexico that the inadequate response of state authorities had been influenced by stereotypes that placed women in a lower and subordinated position because they are young, poor and mostly migrants.<sup>86</sup> This was confirmed by the Inter-American Court as follows: “Bearing in mind the statements made by the State, the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the rea-

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RICANO 968 (2007). See also UN. Human Rights Committee. CCPR/C/21/Rev.1/Add. 10, General Comment No. 28 Article 3 - The equality of rights between men and women, (29 March 2000) par. 20.

<sup>83</sup> United Nations, International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>84</sup> Rebecca J. Cook, *Gender, Health and Human Rights*, 1 HEALTH AND HUMAN RIGHTS 350, 351 (1995).

<sup>85</sup> CONAPRED. Press release 083, Sexismos. Detonante de violencia contra las mujeres (2009), <http://www.conapred.org.mx/boletines1.html>.

<sup>86</sup> Brief prepared by IRSHLP & CEJIL, *supra* note 1, at 27 & 28.

soning and language of the judicial police authorities...<sup>87</sup> In view of the above, the Court declared that Mexico had violated, among other rights, the right to access to justice as enshrined in Articles 8.1 and 25.1 of the ACHR to the detriment of the victims' next of kin.<sup>88</sup>

#### V. THE OBLIGATIONS OF THE MEXICAN STATE TO ELIMINATE GENDER STEREOTYPES

Several international human rights instruments like the International Covenant on Civil and Political Rights and the American Convention on Human Rights guarantee the right to equality of all people. According to the Inter-American Court of Human Rights the right to equality and non-discrimination is a *jus cogens* norm, since "the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws."<sup>89</sup>

There are international treaties focused on protecting women's rights, including the right to non-discrimination, which address the issue of stereotypes throughout their texts. In the universal system of human rights we find the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence against Women.

As the Committee on the Elimination of Discrimination against Women states, the general interpretative framework of the CEDAW is included in Articles 1 to 5 and 24,<sup>90</sup> since the definition of discrimination and the core of States' obligations is therein.<sup>91</sup> The CEDAW specifically mentions the obligation to modify stereotypes and traditional roles in Article 5 clause a) and Article 19 clause c):<sup>92</sup>

##### Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and custom-

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<sup>87</sup> I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 401.

<sup>88</sup> *Id.*, para. 402.

<sup>89</sup> I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18 of September 17, 2003. Series A No. 18, para. 101.

<sup>90</sup> United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 25: Article 4, Paragraph 1, of the Convention (Temporary Special Measures), Thirtieth session (2004), para. 7.

<sup>91</sup> Cook & Cusack, *supra* note 2, at 205.

<sup>92</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Dec. 18, 1979, 1249 U.N.T.S. 13.

ary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

Besides this, CEDAW recognizes a series of rights applicable to different aspects of life (education, employment, health, family, etc.) that States are obligated to protect and enforce to achieve not only formal equality, but also substantive equality between men and women. In the context of labor, in particular on the ways women may be stereotyped, the following article is essential:<sup>93</sup>

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right to work as an inalienable right of all human beings;
- b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- c) [...] the right to promotion, job security and all benefits and conditions of service [...]

The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

CEDAW also includes a series of obligations associated with non-discrimination in the areas of health and reproduction, for example:<sup>94</sup>

Article 11

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities

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<sup>93</sup> United Nations, CEDAW, *supra* note 92.

<sup>94</sup> *Id.*



and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

To achieve widespread equality between men and women, through the CEDAW States committed themselves to guarantee the right to equality in their laws, to adopt all the necessary measures to eliminate discrimination, to establish the legal protection of women's rights, to abstain from engaging in discriminatory acts or practices, to take measures to eliminate discrimination from individuals or entities and modify or derogate discriminatory laws (See Article 2 of CEDAW). In the same way, Article 24 states:<sup>95</sup> “*States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.*”

The Committee on the Elimination of Discrimination against Women interpreted the obligations of States under the Convention as follows:<sup>96</sup>

1. [...] ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination —committed by public authorities, the judiciary, organizations, enterprises or private individuals —in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies.
2. [...] improve the de facto position of women through concrete and effective policies and programmes.
3. [...] address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

The Declaration on the Elimination of Violence against Women establishes that one of the measures to design a policy focused on eliminating violence against women is to adopt “all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women” (See Article 4).<sup>97</sup>

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<sup>95</sup> *Id.*

<sup>96</sup> United Nations, Committee on the Elimination of Discrimination against Women, *supra* note 90.

<sup>97</sup> United Nations, Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. Doc A/Res/48/104 (Dec. 20, 1993).

Likewise, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the “Convention of Belem do Para,” establishes that the right of all women to live free of violence includes the right “to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination” (See Article 6).<sup>98</sup> To this end, the above-mentioned Inter-American Convention obligates States through its Article 8:<sup>99</sup>

b) to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;

From my perspective, in spite of the existence of these international treaties, Mexican legislation seems to have been unaffected by international legal principles that require the adoption of measures to modify gender stereotypes, social and cultural patterns of behavior and designation of traditional roles according to sex. Although Mexico signed and ratified CEDAW and the Convention of Belem do Para over a decade ago, it was not until recently that legal measures were adopted to modify gender stereotypes. In fact, the CEDAW was signed in 1980 and ratified in 1981, and the Convention of Belem do Para was signed in 1995 and ratified in 1998. However, it was not until 2006 that the only national legal provision referring to stereotypes was included in the General Education Law, in effect since 1993, in which Article 8 declares:<sup>100</sup>

The criteria that will guide education provided by the State and its decentralized bodies —as well as all kindergarten, elementary and middle school education, teachers college and others offered by private schools for training basic education teachers— will be based on results of scientific advances; shall fight against ignorance and its effects, servitude, fanaticism, prejudices, stereotypes, discrimination and violence, especially [violence] against women, girls and boys, and shall implement State public policies aimed at ensuring analogous criteria among the three branches of government.

The General Act on Equality between Women and Men and the General Act on Women’s Access to a Life Free from Violence mention gender

<sup>98</sup> Organization of American States, “Convention of Belem do Para”, *supra* note 81.

<sup>99</sup> *Id.*

<sup>100</sup> Ley General de Educación [L.G.E.] [Education Law], as amended, Diario Oficial de la Federación [Federal Official Gazette, D.O.], July 13, 1993 (Mex.).

stereotypes; the first in Articles 17, 26, 41 and 42,<sup>101</sup> and the second in Articles 8, 17, 38, 45 and 52.<sup>102</sup> These acts were passed just a few years ago (2006 and 2007, respectively).

As to the adoption of other measures focused on eliminating discrimination against women, various programs stand out, such as the National Program for Incorporating Women into Development (1980), the National Program for Women 1995-2000, the National Program for Equal Opportunity and Non-Discrimination against Women (PROEQUIDAD) 2001-2006 and the National Program on Equality between Men and Women (PROIGUALDAD) 2008-2010.

The National Program for Incorporating Women into Development (1980) was designed as a “set of specific initiatives to promote a better social condition for women.”<sup>103</sup> Since this program was implemented 30 years ago and copies of it are unattainable, it is hard to determine whether the program mentioned gender stereotypes.

The National Program for Women (1995-2000) offered a diagnosis of women’s situations in different fields, such as health, education, poverty, old age, family, etc. According to this program, one of the challenges was avoiding the “endorsement of images of women that ignore the different roles they have in society.”<sup>104</sup> Therefore, it devoted an entire section to “Promoting the elimination of stereotyped images of women,” but instead of making a broader analysis of the way stereotypes work and their consequences, it merely said that images shown in the media and in educational material are stereotyped.<sup>105</sup> One of the strategies the program mentioned to do away with stereotypes was to implement “priority actions,” such as re-

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<sup>101</sup> Ley General para la Igualdad entre Mujeres y Hombres [L.G.I.M.H.] [Equality Law], Diario Oficial de la Federación [Federal Official Gazette, D.O.], August 2, 2006 (Mex.).

<sup>102</sup> Ley General de Acceso de las Mujeres a una Vida Libre de Violencia [L.G.A.M.V. L.V.] [Women’s Access to a Life Free From Violence Law], Diario Oficial de la Federación [Federal Official Gazette, D.O.], February 1, 2007 (Mex.).

<sup>103</sup> Comisión Nacional de los Derechos Humanos, Informe Especial sobre el Derecho de Igualdad entre Mujeres y Hombres (2007), <http://www.cndh.org.mx/lacndh/informes/espec/derIgualdad07/infEspec.htm> (search chapter II “Antecedentes”).

<sup>104</sup> National Program for Women (1995-2000), available at: <http://info4.juridicas.unam.mx/ijure/nrm/1/342/default.htm?s=iste> (search “folio 6373” in “Capítulo II”).

<sup>105</sup> The text in the appendix is as follows: “Messages promoted by media and those in curricular contents of education are very important reproductive mechanisms in our society. Many of these messages show partial, negative or stereotyped images of women. These entities may perform significant contributions by showing plural, balanced and non discriminatory images, helping to promote changes in attitudes and cultural patterns that prevent the participation and full development of women”. National Program for Women, *supra* note 104 (search “Numeral 10” in “Capítulo II”).

viewing the educational content in books, awareness campaigns, the promotion of plural images in the media and in government campaigns, etc.<sup>106</sup>

One of the specific objectives of the National Program on Equal Opportunities and Non-Discrimination against Women (2001-2006) was to promote a “balanced image of women, respectful of their differences and without stereotypes in cultural, sports and communication areas.”<sup>107</sup> The program recognized the importance of analyzing the “internal and external factors in schools that emerge from a social structure that excludes and discriminates against girls and women, and the indigenous population”<sup>108</sup> and that “elimination and rectification of differences are imperative to eliminate violence against women.”<sup>109</sup> Again, the Program emphasized the recurrence of gender stereotypes in the media and the need to promote educational material free of stereotypes.

Finally, the National Program for Equality between Men and Women (2008-2010) states that “the presence of stereotypes and social limitations on women’s autonomy and decision-making turn the issue of health care into an issue of gender.”<sup>110</sup> Action plan proposed for eliminating stereotypes in these situations include actions to:<sup>111</sup>

1.2.7. Advocate the elimination of sexist and discriminatory stereotypes and the use of inclusive language in the practices and social communication of public bodies, as well as in the electronic media and the press.

4.1.3. Increase the number of actions and programs to prevent violence in the family and in dating relationships between teenagers and young people, by implementing information mechanisms and campaigns to eradicate authoritarianism in the family, sexist roles and stereotypes, the use of violent conflict resolution, machismo and the social validation of the use of violence.

5.2. Eliminate sexist and discriminatory stereotypes from textbooks, teaching methodology, teaching materials and educational practices, in addition to professionalizing teachers in gender perspective and women’s human rights.

In June 2003, the Federal Government created the CONAPRED to “advocate policies and measures that contribute to cultural and social de-

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<sup>106</sup> National Program for Women, *supra* note 104 (search “Numeral 9” in “Capítulo V).

<sup>107</sup> National Program on Equal Opportunities and Non-Discrimination against Women PROEQUIDAD (2001-2006), [http://www.oei.es/genero/documentos/mex/Mexico\\_1.pdf](http://www.oei.es/genero/documentos/mex/Mexico_1.pdf) (at 37 & 50).

<sup>108</sup> PROEQUIDAD, *supra* note 107, at 35.

<sup>109</sup> *Id.* at 36.

<sup>110</sup> National Program on Equality between Men and Women PROIGUALDAD (2008-2010), available at: [http://cedoc.inmujeres.gob.mx/documentos\\_download/100919.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/100919.pdf) (at 13).

<sup>111</sup> *Id.*.

velopment and to increase social inclusion and guarantee the right to equality.”<sup>112</sup> The person heading the Sexual Diversity, HIV and AIDS Program for that body has publicly stated that “models of sexism and machismo that are reproduced in education and in the family are the foundations of a violent and unequal culture.”<sup>113</sup> One of the lines of action of CONAPRED’s National Program to Prevent and Eliminate Discrimination (2006) is to ensure the access to health care services “without prejudices based on stigmas or stereotypes”<sup>114</sup> for people who are HIV positive, people from indigenous groups and people in general regardless of their sexual preferences. Although this program does mention measures to achieve gender equality, no explicit reference is made to gender stereotypes. In a very general way, the action plan states: “assuring the access, continuance, treatment and conclusion of the educational system are not offered based on prejudices, stereotypes or stigmas, allowing discrimination of any kind.”<sup>115</sup>

In June 2009, the National Commission for the Prevention and Elimination of Violence against Women (CONAVIM) was created to design “an integrated and analogous policy for preventing, treating, punishing and eradicating violence against women, taking into account the political, legal, economic, social and cultural policies that give rise to violence, by means of implementing a Program that coordinates actions at the three levels of Government.”<sup>116</sup> At the “Public Policy and Gender” forum, the commissioner herself, Laura Carrera Lugo, declared that it is necessary “to develop strategies that allow [women] to overcome obstacles, prejudices and stereotypes” and that the forum “is an extraordinary opportunity to begin a discussion, to undertake and promote a new culture of equality, free of prejudices and sexist stereotypes in our workplaces.”<sup>117</sup> It is worth mentioning that by the time that this article was finished these strategies had not yet been disclosed.

In my opinion, in spite of the advances in International Human Rights Law and Mexico’s adoption of certain legal measures and other types of measures to modify current gender stereotypes and eliminate discrimination against women, these efforts have not been enough to bring about a

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<sup>112</sup> CONAPRED. What is it?, available at: <http://www.conapred.org.mx/acerca/acerca.html>.

<sup>113</sup> CONAPRED, *supra* note 85.

<sup>114</sup> National Program to Prevent and Eliminate Discrimination (2006), [http://www.catedradh.unesco.unam.mx/SeminarioCETis/Documentos/Doc\\_basicos/3\\_instrumentos\\_nacionales/18.pdf](http://www.catedradh.unesco.unam.mx/SeminarioCETis/Documentos/Doc_basicos/3_instrumentos_nacionales/18.pdf) (at 60 & 61).

<sup>115</sup> National Program to Prevent and Eliminate Discrimination, *supra* note 91, at 66.

<sup>116</sup> CONAVIM. Who are we?, <http://www.comisioncdjuarez.gob.mx/Portal/PtMain.php?nIdPanel=58>.

<sup>117</sup> CONAVIM. Press release No. 5-10/03/2010, <http://www.conavim.gob.mx/Portal/PtMain.php?nIdPanel=121&d=37>.

real change. Although changing social and cultural patterns is a task that is neither easy nor quickly accomplished, almost three decades after the CEDAW entered into force, gender stereotypes still prevail in many contexts and structural inequality still exists,<sup>118</sup> as seen in the resolutions discussed in the first part of this article and in the fact that stereotypical arguments or statements have not been overcome.

## VI. CONCLUSIONS

Stereotypes form part of the psychological process of cognition and socialization of individuals, but under certain circumstances they can be negative. Stereotypes tend to replicate themselves over and over again in cultural and social contexts in which the link between stereotyping and discrimination is ignored, in which stereotypes are considered harmless or, even if the consequences of using stereotypes are known —especially when related to the way they affect the exercise of rights and freedoms— they are not carefully dealt with. In my analysis, gender stereotypes in Mexico still prevail despite some considerable and important social changes that have been made in terms of gender roles and women's rights<sup>119</sup> partly because the measures implemented to eliminate discrimination and violence against women have not sufficiently and strategically addressed the issue of gender stereotypes, such as those present in matters related to family law and family relations. Moreover, not enough attention has been paid to specific discriminatory situations in the daily lives of men and women.<sup>120</sup>

I believe the resolutions analyzed here show that the Collegiate Circuit Courts have apparently been unable to apply or incorporate international standards for women's rights nor an adequate gender perspective that includes interpretations that are free of stereotypes. This is perhaps due to a general lack of clarity on how to do so or a lack of awareness of the issue. Thus, it is important to carry out a careful review of the various resolutions

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<sup>118</sup> The First National Survey on Discrimination (2005) is an essential tool that explains how discrimination operates in the Mexican society. According to its results, stereotypes and *machista* attitudes prevail in Mexican society. For example, 40% of people think "women should work in 'fields appropriate for their gender' and one out of three believes it is normal for men to earn more money than women." CONAPRED, First National Survey on Discrimination (2005), available at: [www.amdh.com.mx/ocpi\\_/documentos/docs/6/25.ppt](http://www.amdh.com.mx/ocpi_/documentos/docs/6/25.ppt). See also CONAPRED, *supra* note 85.

<sup>119</sup> Lazarevich, Delgadillo, Mora and Méndez consider the feminist movement one of the elements of social change in terms of gender roles and cultural patterns. Lazarevich *et al.*, *supra* note 7, at 156.

<sup>120</sup> Marta Lamas expresses the need of moving public policies from abstract concepts to concrete issues, addressing specific discriminatory situations of everyday life. Lamas, *supra* note 14, at 7.

analyzed in this article in the light of International Human Rights Law, so as to overcome legal reasoning based on gender stereotypes and arguments that reinforce them. Some could argue that the generalizations on women's participation in society or the explanations (such as housework "usually" being done by women) present in some of the resolutions are harmless, but two points should be highlighted. First, language is the first way of defining relationships between people,<sup>121</sup> and therefore courts should be very careful in building their arguments. Second, the State has the international obligation of fighting gender discrimination, which means, among other things, exposing prejudices and stereotypic expressions, including those that may seem to be "neutral,"<sup>122</sup> and incorporating a gender perspective in order to guarantee not only formal, but also substantive equality.<sup>123</sup>

In the light of this obligation and considering that jurisdictional activities are "the guarantee of all guarantees,"<sup>124</sup> I believe that the Federal Judicial Branch has an enormous responsibility. In my point of view, in order to eliminate gender stereotypes and incorporate a gender perspective in court resolutions, the Federal Judicial Branch should continue training and creating awareness among all its members, especially Clerks, Judges and Magistrates, on International Human Rights Law in general—not only on the contents of treaties, but on the interpretations of the Inter-American Court of Human Rights, other international courts and treaty bodies as well—and on women's rights in particular, focusing on gender stereotypes and their relation to discrimination. In addition, as has been noted by experts, in the degree that legislation is interpreted and applied from the perspective of International Human Rights Law, and not only from the principle of legality, we will be able to move towards a better protection of rights.<sup>125</sup> As Claire L'Heureux-Dubé, judge of the Supreme Court of Canada from 1987 to 2002, stated:

[...] it is imperative that all jurists go beyond myths and stereotypes in order to ensure that justice is done—we need to 'debunk' these myths. De-

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<sup>121</sup> CONAPRED. Press release 085 (2009) "Urgente eliminar lenguaje sexista del ámbito público y privado", <http://www.conapred.org.mx/boletines1.html>.

<sup>122</sup> *Id.* at 8.

<sup>123</sup> Particularly, the Inter-American Commission on Human Rights has highlighted States' international obligation "to ensure substantive equality in family law and family relations". See María Eugenia González de Sierra vs. Guatemala Case 11.625, IACHR, Report No. 4/01, OEA/Ser./L/V/II.111 (2001), para. 41.

<sup>124</sup> Miguel Sarre, Instituto Tecnológico Autónomo de México (ITAM), Keynote Address at auditorium "José Vicente Aguinaco Alemán", alternative seat of the Supreme Court of Justice of the Nation (Bolívar & 16 de Septiembre, Centro Histórico): *Introducción a los derechos humanos y al derecho a la igualdad y a la no discriminación* (April 6, 2010).

<sup>125</sup> *Id.*

bunking is more than simply being able to recognize myths and stereotypes. It is about exposing the ideological and cultural foundations of the myths and stereotypes prevalent in each culture and eradicating these fictions from the reasoning of all those who interpret our general culture, and, in particular, those in positions of power who contribute to their reinforcement.<sup>126</sup>

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<sup>126</sup> L'Heureux-Dubé, *supra* note 14, at 91.