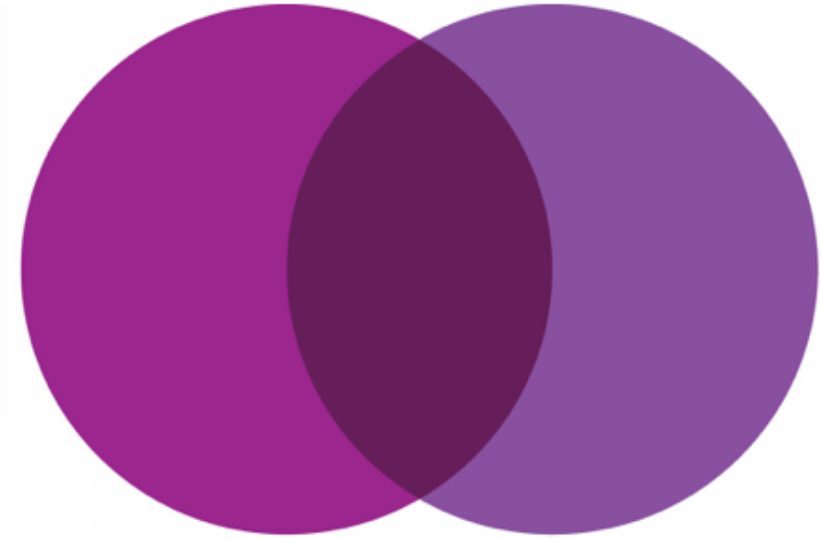

# Shadow Report
# on employment discrimination against women in Mexico

**June 2018**

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**Programa de Derecho a la Salud**
**División de Estudios Jurídicos**
**Centro de Investigación y Docencia Económicas**

The **Sexual and Reproductive Rights Area** of the Right to Health Program at the Law Division of the Center for Economic Research and Teaching (SRRA) is presenting the following Shadow Report for the Committee on the Elimination of Discrimination Against Women (the Committee) in relation to the **Ninth Periodic Report of Mexico**.

The SSRA is dedicated to producing academic research that serves for the analysis, design, and evaluation of public policies aimed at making sexual and reproductive rights, as well as the right to non-discrimination effective in the country, especially for women.

This document is focused on providing information that is relevant to several of the issues and questions that the Committee posed for the Mexican State regarding its **employment discrimination policies**.[1] We hope it is useful.

## Employment discrimination policies in Mexico

Without a doubt, the State has implemented a series of policies to eradicate gender discrimination in the workplace. In our view, however, these policies have several problems.[2]

### First problem: laws still discriminate on the grounds of gender

First off: as the Committee is well aware, domestic workers are excluded from the enjoyment of basic labor rights by the Federal Labor Law and the Law on Social Security. Given that 90% of these workers are women, this exclusion directly violates CEDAW's prohibition of indirect discrimination against women.[3] It is important to note, however, that these laws also directly violate the Federal Constitution, which *explicitly holds that all workers, including domestic workers, shall enjoy all the labor rights* recognized in the Constitution (article 123, section A). This is important because, technically, the ratification of ILO's Convention No. 189 would not *create* the State's *obligation* to recognize domestic worker's full rights, but merely *reinforce* it. For this reason, it is crucial to ask the State not only when it plans to ratify the 189 ILO Convention, but, also, when it plans to change these two Laws.

Secondly: in 2012, the Federal Labor Law was reformed to explicitly include parental leaves for people who adopt children (article 170, section II Bis and article 132, section XXVII Bis). The problem is that the law gives women a six-week leave, while giving men a five-day leave. Given that there is no rational basis for the distinction and that it merely reinforces the stereotype that it is up to women to take care of children, this norm is in direct violation of the right to non-discrimination. It must be reformed to grant equal access to these leaves.

Third: there is also a difference between men and women's parental leaves for cases in which a child is born into a family. Men get 5 days while women get 6 weeks after birth. Although it could be argued that this distinction is valid, given that women give birth and men do not, it fails to take into account the *social* and not just the *biological* implications of childbearing. For this reason, in our view, paternity leaves in these cases are also problematic. Following the Committee's Concluding Observations on the Fifth Periodic Report of Singapore, in which it recommended extending the length of paternity leaves (which were already two weeks long in Singapore to begin with), we believe the same should be applicable to Mexico.[4]

Fourth: the Law on Social Security establishes different conditions for access to day-care centers for men and for women (articles 201 and 205). According to the law, all working mothers have access to these day-care centers, but working fathers only have access to these services when they are divorced, widowed, or have been judicially granted the custody of their children. In other words: men can only access these services *if they do not have a wife*. This law reinforces, once again, the stereotype that women will take care of the children. Although the Supreme Court has ruled this differential treatment unconstitutional,[5] the law is still in force because of the limited nature of the writ of *amparo* through which it was so declared. The law

must be repealed, together with all other similar norms, ensuring equal access to day-care centers for all.

One final problem must be mentioned: currently, trans people –which includes trans women, of course– find it almost impossible to change their identity documents. Only three states in Mexico allow them to change their birth certificate so as to reflect their gender identity.[6] Furthermore, employment laws –the Federal Labor Law, the Social Security Law, and all other equivalent laws– do not specifically contemplate a procedure that allows them to make changes in their employment documents, nor to take a leave –let alone a paid leave– when they need the time to do what is necessary to make these changes.[7] As several studies in Mexico show,[8] trans women are highly discriminated in the workplace and one way to begin to remedy this discrimination is to guarantee the necessary mechanisms so they can change their identity documents. Given that in its General Recommendation No. 35, the Committee recommended States "repeal all legal provisions that discriminate against women",[9] including trans women, we believe it should also recommend the State to adopt all measures that are necessary to eradicate the discrimination they face in the workplace.[10]

**Second problem: there is no mechanism to successfully detect and punish indirect discrimination in the workplace**

Currently, the State does not have any mechanism in place to successfully *detect* –and thus punish– *indirect discrimination* in the workplace. Yes: indirect discrimination *is* prohibited,[11] but without a mechanism to detect this type of discrimination *within each place of employment*, this prohibition is useless.

As the Committee knows, employment discrimination is structural, but also highly contextual. It depends on many factors, including employment practices implemented by individual companies and public institutions. For this reason, it is important not only to detect overall trends of discrimination in the country, but to have data for *each company and public institution*, given that within each company and public institution, discrimination practices could be taking place.

This mechanism does not currently exist, but it could.

To give but one example: in the United States, each year, employers –both private and public– have to submit a Survey to the Equal Employment Opportunity Commission (EEOC) that includes data on their workforce, disaggregated by sex, race, etc.[12] With this information, the EEOC can detect specific patterns of discrimination *within* companies and public institutions (in hiring, promotions, firings, etc.). The EEOC also has the power to sue these employers. The trials are designed in a way that makes employers have to prove that they *did not discriminate*. If they fail to prove this, they can be successfully punished with onerous amounts of money.

Currently, the Mexican State has no equivalent mechanism in place. And such a mechanism is needed if the State is to fully comply with CEDAW's prohibition of indirect discrimination.

**Third problem: the mechanisms to sue for direct employment discrimination are labyrinth-like and insufficient, at best**

Direct employment discrimination in Mexico is prohibited by many different laws and can be challenged through many different means.[13] These means vary according to the person's employment.

The resources available for public servants, for instance, are not the same as those available to people that work in private companies; those that work in the informal sector do not, of course, have the same resources as those that work in formal settings. For this reason, a person can go to a criminal court, a civil court, a labor "court", an anti-discrimination body, a human rights body, or an internal governmental office to file a complaint, depending on the case. Although this might seem, at first glance, something positive, the problem is that each of these pathways has very important shortcomings. They all have different evidentiary standards, procedures, time-frames, and sanctions, which, even when considered in tandem, fail to give victims proper redress.

For instance: if a person decides to sue the company for being fired, using labor law, the most they can achieve is being reinstated and getting back lost wages, but they get nothing for punitive damages. If they go to civil court, they can get punitive damages, but not necessarily get reinstated. If they go to criminal court, the *individual* discriminator can be imprisoned, but that does not necessarily ensure the person will get her job back. It becomes almost necessary for a victim to sue an employer through every means possible –with the costs that such a litigation strategy entails, especially if different specialized lawyers need to be retained– to see if, together, she might be able to get proper redress.

In this scenario, it is important to consider the State's report on the publication of several Protocols to battle harassment in the workplace. Amongst them, we want to highlight two: the one designed to battle sexual harassment (published in 2016), as well as the one designed to battle discrimination (published in 2017) within the Federal Public Administration.[14] The problem with these protocols is that even if the cases are successfully "processed" and a person is considered "guilty" of either discrimination or harassment, the Committee in charge of the "ruling" does not have the authority to punish the person *administratively*, that is: it does not have the authority to admonish, suspend, or "incapacitate" this person from public office. Such authority still lies with the "internal organs of control" of each institution, which are the offices in charge of investigating and sanctioning administrative misconduct. These authorities are not bound by the Committee's ruling and must conduct their own investigations.[15] So, if the objective, for instance, is to fire a public servant for harassment, the Protocols are not the solution. Furthermore, they created an additional procedure to which victims have to submit to: the one before the Committee in addition to the one before the Internal Organs of Control. This is not optimal for victims.

An additional point must be made: given that employment discrimination occurs within companies and public institutions, one important mechanism that could be used to provoke institutional changes within these places of employment is financially punishing *companies and public institutions*. According to current laws, however, this is a very limited option. Either the amounts are too small, as in the case of private employers (according to the Federal Labor Law, they could be fined up to US$20,000 dollars), or it is not necessarily even an option in the case of public institutions.[16]

In our view, a serious reform is needed to ensure access to proper remedies for individual cases of discrimination. Remedies that are easy to access, not time-costly, and that ensure proper redress for the victims, as well as adequate and exemplary sanctions not only for *individual perpetrators*, but for employers –companies and public institutions– too.

**Fourth problem: discrimination is rarely punished**

Although employment discrimination can be legally punished through many different means in Mexico, according to available data, it is rarely actually punished.

The Federal Labor Law, for instance, allows private employers to be punished for discrimination and sexual harassment with fines that can amount to $20,000 dollars (article 994, section VI). This Law also allows employers to be fined for discriminating women on account of their pregnancy (article 995). These fines can be imposed by the *Secretaría de Trabajo y Previsión Social*.

Through petitions for access to public information, we were able to obtain information regarding the number of fines imposed on employers for these reasons.[17] Based on authorities' responses, between 2013 and 2017, **not one single employer in all the country was fined for employment discrimination or harassment** (that is, for violating article 994, section VI of the Federal Labor Law).[18]

In this same time-frame, only 16 companies were fined for violating rules related to "women's or children's rights" (that is, for violating article 995). 12 of these fines were imposed in the state of Morelos; 1 in the state of Baja California; 1 in Chiapas; 1 in Mexico City; and 1 in Tamaulipas. In other words: in 27 states –most of the country–, no employers were punished.

In 14 of these cases, the fines imposed ranged from approximately US$180 to US$2,200; another fine was of US$4,650 and another one was of US$18,480. Most, in other words, were under US$2,200.00. It is not possible to assess whether these cases were related to women's rights or children's rights, given that authorities didn't specify so in their response.

What is clear though is that the *Secretaría* is failing to punish companies for discrimination and harassment in the workplace, including the discrimination women face on account of their pregnancy (contrary to what the State holds).[19] In our view, it's fundamental for the Committee to reiterate its previous recommendation on the importance of strengthening the Labor Inspection Mechanism's capacities to tackle employment discrimination.[20]

Currently, there is no information available regarding the cases that reach the *Juntas de Conciliación y Arbitraje*, the "courts" that solve labor conflicts. These *Juntas* only publish broad statistical data[21] and rarely publish their rulings (called "laudos").[22] For this reason, it is not possible to assess what is happening with this particular system. These *laudos* should be publically available, and the statistics should also be improved.

As the Committee is well aware, in the case of criminal law, the information available has many problems.[23] This is also the case for the crimes of "discrimination" and "sexual harassment". For starters, it is only possible to know the number of criminal investigations for the years of 2013-2016, although these crimes were included in most state criminal codes prior to this time-frame. Additionally: it is currently not possible to assess how many people were actually *convicted* for these crimes; there's only information on the people *sentenced*. Even further: the information is not disaggregated by type or motive of discrimination, so it is not possible to know how many of these cases are related to employment discrimination against women; it is not possible to know either whether harassment happened in the workplace or elsewhere.

With the information that is available though, it can be affirmed that the crimes of discrimination and sexual harassment are rarely punished in the country, given that only 7 people were *sentenced* for discrimination (2014-2016) and only 91 were sentenced for harassment (2013-2016). Assuming they were all convicted, the number is staggeringly low.

**Figure 1. Criminal investigations and people sentenced for discrimination in state jurisdictions, 2014-2016[24]**

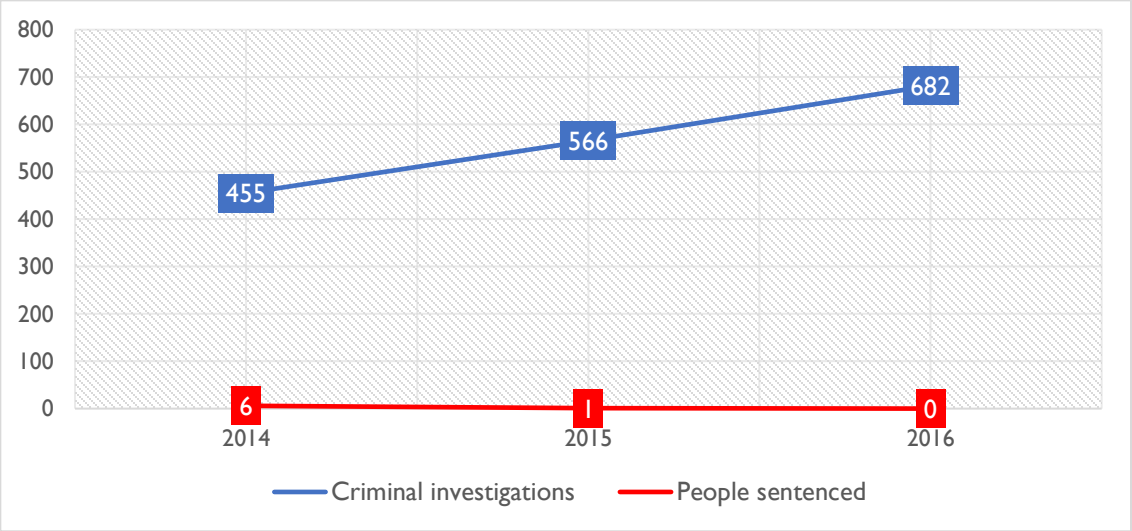
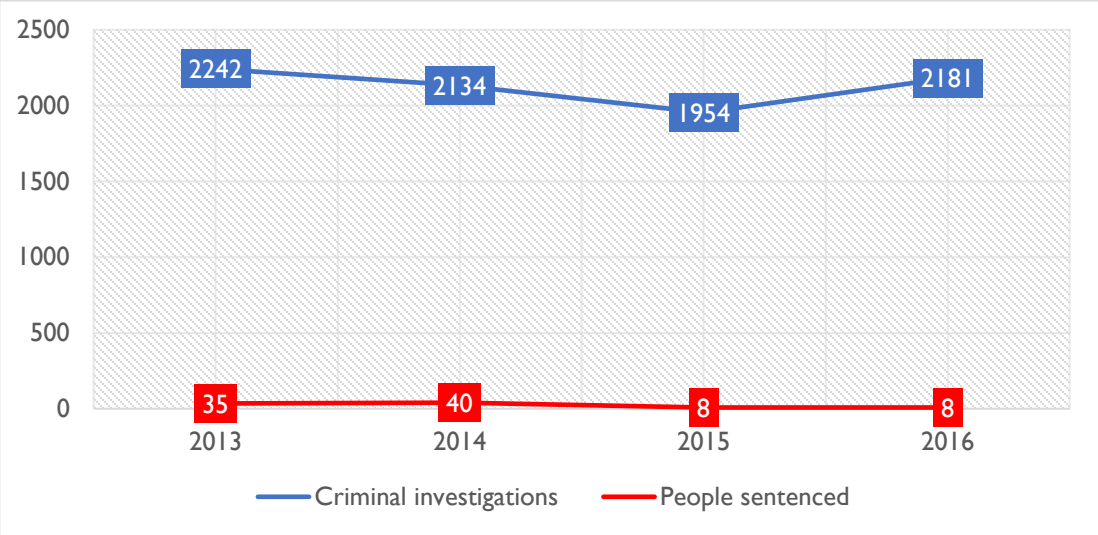


**Figure 2. Criminal investigations and people sentenced for sexual harassment in state jurisdictions, 2013-2016[25]**




In the case of civil law, the information that is published is not disaggregated in a way that allows discrimination cases to be detected. It is even more general than the one published regarding the criminal justice system. It is only possible to know, broadly, how many cases reach civil courts, but not *which* cases reach civil courts, let alone their outcomes. Given that most courts do not publish their rulings, as the Committee is well aware,[26] it is also not possible to assess directly what they are deciding on. This must be remedied.

The National Council to Prevent Discrimination (CONAPRED) reported 2,935 *complaints* related to employment discrimination between the years of 2011 and 2017.[27] This authority is competent to review suits against private parties and *federal* institutions and public servants. The most common motive of alleged discrimination is pregnancy (24% of the cases) and the third most common is "gender" (12.57%). This information, however, is only about *complaints*, not about *outcomes*. For now, it is not possible to know what happened with these cases. Assuming they were all properly managed and gave victims redress, the number is nonetheless small given the overall occurrence of employment discrimination.

**Figure 3. Complaints filed before the CONAPRED related to employment discrimination[28]**

| Complaints | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|---|---|---|---|---|---|---|---|---|
| Against private parties | 229 | 280 | 279 | 359 | 465 | 391 | 219 | 2222 |
| Against public servants | 47 | 98 | 127 | 132 | 133 | 91 | 85 | 713 |
| Total | 276 | 378 | 406 | 491 | 598 | 482 | 304 | 2935 |

In our view, as it happens with the *Secretaría de Trabajo*, CONAPRED's institutional capacities must also be strengthened, considering that it has the power to review complaints against private parties coming from *all the country*.[29]

Finally, regarding other systems put in place to challenge discrimination in the workplace, data is practically non-existent. Although institutions that adopted a Protocol for discrimination and/or harassment have the obligation to publish information on the cases they process, most do not (as the Committee can see from the State's lack of response regarding the number of cases processed).[30] The Registry of Punished Public Servants (Registro de Servidores Públicos Sancionados) is also useless, given that the "reasons" for punishment are not disaggregated in a way that allows one to detect cases of harassment and/or discrimination. This must be remedied.

**Fifth problem: the mechanisms to promote gender inclusion in the workplace are problematic, or insufficient**

The State reports, as part of its compliance with CEDAW, the publication of the NMX-R-025-SCFI-2015 en Igualdad Laboral y No Discriminación.[31] This is a voluntary mechanism through which private companies and public institutions can obtain a "certification" that shows that they are an egalitarian workplace.

In order to obtain these certifications, employers have to prove that they have certain policies and mechanisms in place, which favor equality, including gender equality.[32] Upon closer inspection, however, the way these requisites are drafted and accounted for, it is possible to get a certification merely by making *formal* changes, without needing to prove how these changes *actually increase the number and power of women within a company*. For instance, employers do not even have to give a detailed account of their workforce, nor how it changes with time. It is thus not possible to measure how many women they have in each position, earning what kind of salary, nor how this improves with time.

In other words: this mechanism merely guarantees a *formal minimum*. Given that it is a voluntary mechanism, there is no reason for the State not to demand *actual and full inclusion of women*. Also: the State should make it compulsory for all companies that wish to be State contractors and for all public institutions.[33]

Additionally: Mexico has failed to ratify ILO's No. 156 Convention –as per the Committee's recommendation– and has failed to include in the law comparable accommodations for people with family responsibilities.[34] It is important to reiterate the recommendation for the State to ratify this Convention and include in the law these accommodations.

**Sixth problem: information on employment discrimination is insufficient**

There have been important advances regarding the information that is publically available on employment discrimination in the last 15 years. This information, though, is insufficient, for the following reasons.

First: although there has been an effort to incorporate "sex" as a basic indicator, the State has failed to be truly intersectional in the way it acquires and disaggregates data.[35] For starters: the State, with few exceptions, has not taken into account the reality of LGBTQ women. "Gender identity" and "sexual orientation" are not basic indicators that have to be incorporated into *all* of its surveys and statistical efforts. It only recently began to take into account the realities and needs of people that are afrodescendants, and it only recently begun measuring the impact that skin color has on people's rights. The information available regarding people with disabilities is still scarce.[36] Most importantly, it is very hard to analyze all of this information together. For this reason, it is very hard to assess, for instance, how women's chances of accessing the workforce vary depending on their sexual orientation, skin color, disabilities, gender identity, ethnic origin, etc. And how, for each of these variables, they fare differently to men. This must be remedied. The State must apply the principle of intersectionality into all of its surveys, census, and studies.

Second: although the State has produced many studies that *show* that there is employment discrimination, the number of studies that it has produced explaining *how* this discrimination happens is low.[37] This is important because it is the only thing that would allow the State to design and successfully implement public policies that could actually change structural conditions that allow discrimination to happen in the first place. Just like the Committee made the recommendation for the State to produce a diagnosis with regard to trafficking, it should also recommend a detailed diagnosis on employment discrimination.[38]

[1] **List of Recommendations**

| Issue | Recommendations |
|---|---|
| **Discrimination** | The State needs to reform the Federal Labor Law and the Social Security Law to establish equal access to parental leave and to day-care centers for men and women.<br><br>The State needs to reform the Federal Labor Law and the Social Security law to ensure domestic workers' full rights.<br><br>The State needs to contemplate mechanisms to guarantee and protect trans women's rights in the workplace, including their right to have their identities fully respected. |
| **Indirect discrimination** | The State needs to create a mechanism to detect indirect discrimination practices within each company and public institution. This mechanism should be such that it also allows these employers to be sued when they are implementing this type of practices. |
| **Access to justice** | A serious reform is needed to ensure access to proper remedies for individual cases of discrimination. These remedies should be easy to access, not time-costly, and enough to ensure proper redress for the victims, as well as adequate sanctions not only for *individual perpetrators*, but for employers –companies and public institutions– too. |
| **Information policies** | The State needs to include additional indicators for the information that it acquires, analyzes and publishes, so as to make it truly intersectional. This includes adding not just "sex", but "gender identity", "sexual orientation", "skin color", "disability", and "ethnic origin" –at least– into *all* its surveys, studies, and census.<br><br>The State needs to produce and publish *qualitative* reports that give an account of *how* discrimination happens, not only regarding whether or not it exists.<br><br>The State needs to improve access to public information, including statistics, regarding the Judiciary (civil and criminal courts, at a state and federal level), the Labor System (Secretaría de Trabajo and Juntas de Conciliación y Arbitraje, at a state and federal level), administrative authorities (the Contralorías and Committees charged with implementing discrimination and harassment Protocols), and anti-discrimination bodies (CONAPRED and its state equivalents). This includes specifically disaggregating information on the cases that reach these systems, that are related to employment discrimination and harassment. The information should be such that it is possible to monitor all cases, as well as their outcomes.<br><br>All authorities that solve cases related to employment discrimination must publish their decisions in a complete, updated and accessible manner –including the |

| | |
|---|---|
| | Secretaría de Trabajo, the Juntas de Conciliación y Arbitraje, civil courts, criminal courts, anti-discrimination bodies, and administrative *contralorías*. |
| **Institutional strengthening** | The State needs to ensure that institutions charged with solving employment discrimination cases –such as the CONAPRED and the *Secretaría de Trabajo* specifically– have the financial, technical, and human resources that are needed to undertake this endeavor. |
| **Promotion of gender equality** | The State needs to ratify ILO's 156 Convention and reform laws accordingly.<br><br>The State needs to improve the NMX-R-025-SCFI-2015 en Igualdad Laboral y No Discriminación. In order to get certified, companies should provide detailed information on their workforce –which should be made public– and they should prove that they have full and actual gender equality at all levels of employment. The State should also make certification compulsory for all companies that wish to be State contractors and for all public institutions. |

[2] For the full report on the status of policies to battle employment discrimination in Mexico, in which this Shadow Report is based, *see* Estefanía Vela Barba, *La discriminación en el empleo en México*, Instituto Belisario Domínguez-Consejo Nacional para Prevenir la Discriminación, 2018, available at: http://bibliodigitalibd.senado.gob.mx/handle/123456789/3668

[3] *See* Instituto Nacional de Estadística y Geografía, "Estadísticas a propósito del Día Internacional del Trabajo Doméstico (22 de julio). Datos nacionales", July 20, 2017, available at: http://www.inegi.org.mx/saladeprensa/aproposito/2017/domestico2017_Nal.pdf

[4] "Strengthen measures aimed at facilitating the reconciliation of professional and private life, including extending the length of paternity leave, so as to promote the equal sharing of responsibilities between women and men." Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Singapore, CEDAW/C/SGP/CO/5, para. 29 (d).

[5] So far, the Second Chamber of the Supreme Court has decided three different Amparos on the matter: the Amparo en Revisión 59/2016 (decided on June 29, 2016), the Amparo en Revisión 700/2017 (decided on December 6, 2017); and the Amparo en Revisión 1369/2017 (decided on May 16, 2018).

[6] These states are: Mexico City, Michoacán, and Nayarit.

[7] For a more detailed analysis of this lack of accommodations, *see* Vela Barba, *supra*, note 2, pp. 199-202.

[8] For a more detailed analysis of studies on the discrimination LGBTQ people suffer in the workplace in Mexico, *see* Vela Barba, *supra*, note 2, pp. 86-89.

[9] Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, July 14, 2017, par. 31.

[10] As both the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights affirmed, these types of accommodations are necessary if trans people, including trans women, are to fully enjoy their rights, including their right to access a decent working life. *See* Comisión

Interamericana de Derechos Humanos, Violencia contra personas LGBTI, OAS/Ser.L/V/II.rev.2, Doc. 36, November 12, 2015, p. 294 ("Recomendaciones dirigidas al Poder Legislativo", no. 26); Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-24/2017, November 24, 2017, pp. 43-70.

[11] The Federal Law to Prevent and Eliminate Discrimination prohibits indirect discrimination in Article 1, section III; and the Federal Labor Law, in article 2, establishes that "substantive equality" must be ensured for all workers, especially women. At the same time, given the "direct applicability" of international human rights treaties, including CEDAW, it is possible to argue that indirect discrimination is forbidden nation-wide. For a deeper analysis of the law on this matter, *see* Vela Barba, *supra*, note 2, pp. pp. 19-46, 162-191.

[12] *See* U.S. Equal Employment Opportunity Commission, "About the EEO-1 Survey", available at: https://www.eeoc.gov/employers/eeo1survey/about.cfm; for a detailed analysis of the *lack* of such an important mechanism in Mexico, as well as its necessity, *see* Vela Barba, *supra*, note 2, pp. 154-160, 214.

[13] For a detailed analysis of all the mechanisms put in place to sue for direct discrimination, as well as their problems, *see* Vela Barba, *supra*, note 2, pp. 209-214. For the specific case of harassment in the workplace, also *see* Estefanía Vela Barba, "#MeToo en México", *Nexos*, February 26, 2018, available at: https://www.nexos.com.mx/?p=36297

[14] These are the: *Protocolo para la prevención, atención y sanción del hostigamiento sexual y el acoso sexual* (published on August 31, 2016) and Protocolo de actuación de los Comités de Ética y de Prevención de Conflictos de Interés en la atención de presuntos actos de discriminación (published on July 13, 2017).

[15] *See*, for instance, articles 31-34 of the *Protocolo para la prevención, atención y sanción del hostigamiento sexual y el acoso sexual;* and articles 25 and 26 of the *Protocolo de actuación de los Comités de Ética y de Prevención de Conflictos de Interés en la atención de presuntos actos de discriminación*.

[16] For instance: the Federal Labor Law establishes that companies can be fined with up to $20,000.00 US dollars (which is what 5,000 daily minimum wages amount up to, approximately), if employers discriminate or tolerate, allow or directly perpetuate harassment (article 994). They can also be fined up to $10,000.00 US dollars, if they discriminate a woman on account of her pregnancy (article 995). In our view, this is hardly an incentive to change. Regarding the possibility of directly punishing a public institution –as opposed to an individual public servant–, the options too are limited. The Federal Law to Prevent and Eliminate Discrimination is the only one that *explicitly* contemplates this possibility with regards to *federal* public institutions. However, it is not clear whether or not institutions can be financially punished for discrimination, and if so, for what amounts.

[17] *Source*: Dirección General de Asuntos Jurídicos, Dirección de Evaluación, Rendición de Cuentas y Responsabilidad Pública, Unidad de Transparencia, Oficio No. STPS/UT/44/18, March 5, 2018, Respuesta a Solicitante con el Folio 0001400004418.

[18] Fifteen states explicitly reported that no companies had ever been fined (Aguascalientes, Baja California Sur, Campeche, Chiapas, Chihuahua, Coahuila de Zaragoza, Ciudad de México, Michoacán, Morelos, Nayarit, Oaxaca, Querétaro, San Luis Potosí, Tabasco, Tamaulipas); seventeen states reported that "no document", "data", "file" or "information" "was found" (Baja California, Colima, Durango, Estado de México, Guanajuato, Guerrero, Hidalgo, Jalisco, Nuevo León, Puebla, Quintana Roo, Sinaloa, Sonora, Tlaxcala, Veracruz, Yucatán, Zacatecas).

[19] "The Ministry of Labour and Social Security conducts countrywide inspections to assess overall working conditions, safety and hygiene, training, equal pay and so forth in order to ensure that labour standards are being complied with and that labour rights —particularly those of women— are being upheld; and to detect alleged violations of the regulatory framework." Committee on the Elimination of Discrimination against Women, Seventieth session, 2–20 July 2018, Item 4 of the provisional agenda, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, List of issues and questions in relation to the ninth periodic report of Mexico, Addendum, Responses of Mexico, CEDAW/C/MEX/Q/9/Add.1, para. 140.

[20] Comité para la Eliminación de la Discriminación Contra la Mujer, 52° período de sesiones, 9 a 27 de julio de 2012, Observaciones Finales del Comité para la Eliminación de la Discriminación Contra la Mujer, México, CEDAW/C/MEX/CO/7-8, para. 29.

[21] *See*, for instance, the data base "Relaciones laborales de jurisdicción local", published by the National Institute of Geography and Statistics, which includes data on the cases solved by the *Juntas*.

[22] The Junta Federal de Conciliación y Arbitraje has a public data base to see the "state of the *expedientes*". If the data base is analyzed carefully, however, it is necessary to already know the case number in order to access the data; and, even if the case number is known, the data that is available is general and the *laudo* cannot be accessed. This Junta also has a website in which it publishes some *laudos*, but they are not all the laudos that it has solved. When the webpages of other Juntas are analyzed, something similar can be found. What can be seen in the case of the *Juntas*, in order words, is what the NGO EQUIS Justicia para las Mujeres detected for state courts in its 2015 and 2017 reports on transparency in the judiciary: they fail to fully comply with the principles of transparency. See EQUIS Justicia para las Mujeres, Verificación de la obligación de transparentar sentencias judiciales. Diagnóstico de la situación, 2015; EQUIS Justicia para las Mujeres, Transparencia en la publicación de sentencias. ¿Retrocesos a partir de la Ley General de Transparencia y Acceso a la Información Pública?, 2017; EQUIS Justicia para las Mujeres, Shadow Report on Women's Access to Justice in Mexico, 2017 (presented to the Committee for Mexico's Ninth Periodic Report).

[23] Comité para la Eliminación de la Discriminación Contra la Mujer, 52° período de sesiones, 9 a 27 de julio de 2012, Observaciones Finales del Comité para la Eliminación de la Discriminación Contra la Mujer, México, CEDAW/C/MEX/CO/7-8, para. 12 (d).

[24] *Source*: The numbers for criminal investigations are the ones reported by the Censo Nacional de Procuración de Justicia Estatal, administered by the INEGI (2015-2017); the figures on people sentenced come from the Censo Nacional de Impartición de Justicia Estatal (2015-2017), also managed by the INEGI. This data is for state jurisdictions.

[25] *Source*: The numbers for criminal investigations are the ones reported by the Censo Nacional de Procuración de Justicia Estatal, administered by the INEGI (2014-2017); the figures on people sentenced come from the Censo Nacional de Impartición de Justicia Estatal (2014-2017), also managed by the INEGI. This data is for state jurisdictions. We aggregated the number of cases for "acoso sexual", "hostigamiento" and "aprovechamiento sexual", given that all states call and regulate harassment differently. In all cases, though, these crimes punish harassment that occurs in the workplace.

[26] "Please also indicate whether mechanisms are in place to monitor the implementation of the General Act on Transparency and Access to Public Information, especially in the light of reports suggesting that the number of sentences being made public has fallen considerably and the right of women to gain

access to information on cases has been limited following the introduction of that law." Committee on the Elimination of Discrimination against Women, Seventieth session, 2–20 July 2018, Item 4 of the provisional agenda, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, List of issues and questions in relation to the ninth periodic report of Mexico, CEDAW/C/MEX/Q/9, para. 2.

[27] The data of complaints covers the time frame of January 2011 to June 2017. For further details, *see* Vela Barba, *supra*, note 2, pp. 89-92.

[28] *Source*: The numbers for criminal investigations are the ones reported by the Censo Nacional de Procuración de Justicia Estatal, administered by the INEGI (2015-2017); the figures on people sentenced come from the Censo Nacional de Impartición de Justicia Estatal (2015-2017), also managed by the INEGI. This data is for state jurisdictions.

[29] CONAPRED is a national body charged with "promoting policies and measures aimed at contributing to cultural and social development, advancing social inclusion, and guaranteeing the right to equality." Given that it works on *preventing all forms of discrimination*, including gender discrimination, it is very important for the advancement of women's rights. And, as can be seen by the data included in this Shadow Report, women *are* using it to file complaints. It could actually be argued that they are the ones that use it the most. For 2016, however, the CONAPRED had an approximate budget of US$7.8 million dollars for *all* its activities, including processing complaints. To give some comparisons: in 2016, the National Human Rights Commission had an approximate budget of US$73 million dollars (it is competent to review complaints against federal public servants, like the CONAPRED); the National Institute for Women's budget was of approximately US$44 million dollars (it does not have the power to review complaints, but it is charged of coordinating policies aimed at promoting women's rights, as is the CONAPRED); and the Executive Commission for the Attention of Victims had an approximate budget of US$45 million dollars (it is competent to review individual cases of victims' rights violations). In our view, it is clear that the CONAPRED's institutional capacity should be strengthened, given that it has the power to do something none of these institutions have: reviewing complaints against private parties that discriminate (which includes companies that discriminate women).

[30] Committee on the Elimination of Discrimination against Women, Seventieth session, 2–20 July 2018, Item 4 of the provisional agenda, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, List of issues and questions in relation to the ninth periodic report of Mexico, Addendum, Responses of Mexico, para. 136.

[31] *Ibid.*, para. 127.

[32] For a detailed analysis of the NMX-R-025-SCFI-2015 en Igualdad Laboral y No Discriminación, *see* Vela Barba, *supra*, note 2, pp. 181-191, and 217-219.

[33] Currently, according to Article 14 of the Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, the law that establishes the guidelines for State acquisitions and contracting of services, in cases of public licitations, companies will get "a bonus" if they are certified. There is no reason not to make this certification obligatory for companies that wish to enter into a contractual relationship with the State to provide services. For more details, *see* Vela Barba, *supra*, note 2, p. 181.

[34] Comité para la Eliminación de la Discriminación Contra la Mujer, Observaciones Finales del Comité para la Eliminación de la Discriminación contra la Mujer, México, CEDAW/C/MEX/CO/7-8, para. 29 (d).

[35] For a detailed analysis of the statistical information that is available regarding employment discrimination in Mexico, *see* Vela Barba, *supra*, note 2, pp. 49-89, and 93-95.

[36] For greater details on the case of women with disabilities, *see*, for instance, the Shadow Report sent to the Committee by the organization Transversal: Transversal. Acción sobre los derechos de las personas con discapacidad, *Informe sombra sobre la situación de mujeres con discapacidad en México*, May 2018.

[37] For a detailed analysis of the qualitative studies that are available regarding employment discrimination in Mexico, *see* Vela Barba, *supra*, note 2, pp. 95-149.

[38] Comité para la Eliminación de la Discriminación Contra la Mujer, Observaciones Finales del Comité para la Eliminación de la Discriminación contra la Mujer, México, CEDAW/C/MEX/CO/7-8, para. 21 (b).