

# REGULATION OF LABOR GENDER HARASSMENT IN MEXICO

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*Harassment is a phenomenon whose study with a gender perspective is important, as there are authors, such as Rodriguez, which indicate that, the total number of victims of this phenomenon the “78% are women”<sup>1</sup>. Despite the problems, the Mexican Labour Law introduces the topic until there form carried out in November of 2012, without considering any action with a gender perspective. It is important to emphasize that, the secondary laws and regulations, a follow up to the Article 1 constitutional give follow-up to the international human rights instruments duly ratified, as are: the Convention 11 of the ILO, the Convention on the Elimination of all Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, among others. However, the problem doesn't yet have in Mexico a proper solution to the female victims, the solution put forward so far is of a general nature and is an important legal reform to meet the gender differences in labor and even more than effectively punishes to the stalkers and adequately protect the victims.*

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<sup>1</sup> RODRÍGUEZ CARLOS, *MOBBING & ACOSO LABORAL* (Istmo 2010). Available at <http://istmo.mx/2010/07/mobbing-acoso-laboral/> (last visited January 9, 2015).

## INTRODUCTION

This article deals with the analysis of the problem that is suffered by thousands of people in the world: the workplace harassment, which to be a form of violence is carried out mainly against the workers, they also have features that, if you already placed in a state of social vulnerability: indigenous, child workers, women and disabled, to mention some. In such a way, that the characteristics that make them different and socially vulnerable, also make them easily blank of workplace harassment.

In this research are addressed in specific employment harassment against Mexican women, which according to data from the Ministry of Labor and Social Welfare, in the year 2011, has affected the “8% of the Mexican women older than 15 years”.<sup>2</sup>

It should be noted that, in the year 2012, it was a reform to the Federal Labor Law that seeks to take the harassment, providing definitions of labor harassment and sexual harassment in the workplace; however this doesn't take into account the particular characteristics of workplace harassment with gender perspective.

Due to the foregoing, this article—in use of the methods of deductive and exegetical research mainly—starts with a conceptual framework of workplace harassment and gender. Also mention is made of the work as a human right, as well as the features that has work in the twenty-first century that at the time have led such phenomena such as harassment, to give possibility of analyzing the problem and the specific legal instruments that are in place to regulate. Subsequently, by way of conclusion is given a final reflection from the aspects that should be taken into account in the development of a reform on workplace harassment from a gender perspective in Mexico and finally the article includes a section with the research sources consulted.

## I. CONCEPTUAL FRAMEWORK

Before you begin to address the issue, it is important to point out some concepts that serve as the basis for the item, you first must make clear that, it is the workplace harassment and then to continue talking about the work as a human right in order to see where you must protect a person in this field, continuing with how it has developed the work in the twenty-first century and finally speak of gender equity in the workplace.

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<sup>2</sup> Secretaría del Trabajo y Previsión Social, *Encuentro Internacional de Estadísticas de Género: Empoderamiento, Autonomía Económica y Políticas Públicas*, 3 (México: Gobierno Federal 2011).

### A. *Concepts on Workplace Harassment*

Since you hear the phrase “workplace harassment” can be noted that, it is a complex term, the expression of harassment is also used in the criminal law, however in the case of the labor law, it is spoken of workplace harassment and therefore are some definitions to understand its meaning.

Heinz Leyman mentions that, harassment is a:

Situation in which a person has a extreme psychological violence, in a systematic way and recurrent and over a long period of time with the purpose to destroy the communication networks of the victim or victims, destroy his reputation, disturb the exercise of their work and achieve that finally such person or persons end up leaving the workplace.<sup>3</sup>

The previous concept can be remove various characteristics such as the way in which it is exercised by the harassment, however it did not mention the fact that, today the acts of stalkers can also be run through physical violence; or the periodicity, by what this labor phenomenon is not a single act; coupled with the consequences that searches for the aggressor, so it is a definition from the psychology that has served as the basis for the legal regulation of many countries.

To have a clearer idea of the term, Florence Penalty Saint Martin refers that:

The mobbing is known as workplace psycho-terror, such as harassment at work and this among other things establishes a communication hostile, very dishonest, because it is based on slander, gossip, invisibility of merits, exaggeration of errors, that one or a group of persons organized directs so systematized against who considers that threatens their interests.<sup>4</sup>

What is being said in the paragraph has relevance for describing different expressions with which it is known the harassment, but also mentions the acts that, performed the actor of that fact to his victim and that can be single or multiple people, because it is still the same figure, even if the attack is performed by a group of individuals.

Without the need to analyze more definitions we can say that, the main elements that we find are the followings:

Subject: So that there is this phenomenon, it is necessarily required the presence of several workers, one that intimidates, named as the aggressor or harasser; another that will act as the victim of the first and a group of labor which is excluded to the victim, which can eventually become aggressors in

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<sup>3</sup> Cited by: ROJO, JOSÉ VICENTE, EL MOBBING O ACOSO LABORAL 16 (Tébar 2005).

<sup>4</sup> GOBIERNO DE CHILE DIRECCIÓN DEL TRABAJO, EL ACOSO LABORAL O MOBBING 5 (Dirección del Trabajo Santiago, December 2007).

liabilities or permissive, becoming aware of the harassment and ignore it;

**Bully behavior:** That is to say, the negative behavior repetitive and intentional that it is rude or hurtful to the victim. The conduct that constitutes harassment can be verbal, with silences malicious, actions or omissions which have physical as intended to affect the victim, but is characterized by the element of intent to be able to shape the workplace harassment;

**Objective of workplace harassment:** Degrade the working conditions of the victim, destroy their networks of communication, destroy his reputation, disturb the exercise of their work and get your motivation labor, to the point that withdraws or leave the work environment of the harasser;

**Duration:** This is not isolated events, but for a sequence of actions or omissions by mild that seem, its constant repetition affects the workervictimization; as could be observed there are those who establish at least once a week and in a constant period of at least six consecutive months;

**Implications:** The effects that will undoubtedly attract damages caused to the health physical, moral and social, which will be analyzed at a later point.

In any case, the harassment must be, always profiles as are the objectives of the systematicity, the reiteration and frequency in the harassing behavior, and at the same time, other subjective as are those of the intentionality and the persecution of a purpose.

Therefore, we can conceptualize the workplace harassment as the demonstrable phenomenon occurred in the course of or in connection with the work that is characterized by a series of harassing behaviors, which undermine the dignity and the physical or mental health of a worker, in a systematic way and recurrent, over a long period of time, exerted by an employer, a boss or immediate superior or mediate, a co-worker or a junior and has as objective to the victim is removed from the organization or the working environment of the harasser.<sup>5</sup>

Once analyzed the elements that constitute harassment at work, we consider appropriate to analyze the labor law as a human right.

### *B. The Work as a Human Right*

For the National Commission on Human Rights in Mexico, the human rights are: “the set of prerogatives inherent to the nature of the person, whose effective realization is indispensable for the integral development of

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<sup>5</sup> MENDIZÁBAL BERMÚDEZ & GABRIELA, *EL ACOSO LABORAL Y LA SEGURIDAD SOCIAL* 6-7 (Porrúa, México 2013).

the individual who lives in a legally organized society”<sup>6</sup>, highlighting what he says this organism may be noted that, the work is essential to the development of a person, so that in the human rights of second generation, it is contemplated not only the right to work but that this is fair and satisfactory for the best individual progress, because if a job cannot eke those satisfactions for basic survival, it doesn’t provide the indispensable prerequisite for the realization of other human rights, such as health care, the freedom of movement, expression, belief, conscience, etc.

The foregoing to be consistent with the accumulation of human rights recognized in the Universal Declaration of Human Rights, which refers to in his Article 23 fraction 1th: “Every person has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”<sup>7</sup> Being then an obligation of the Mexican State observe these provisions as is the case of the work and ensure the free performance for all citizens.

Human rights must be guaranteed by the State, should be included in the protection of individuals in their laws, so that in the Constitution of the United Mexican States in its first article third paragraph mentions that:

All the authorities, in the scope of their powers, have an obligation to promote, respect, protect and ensure human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness. As a result, the State must prevent, investigate, punish and redress human rights violations in the terms established in law.<sup>8</sup>

In the Magna Carta, Mexican is hereby established the obligation to ensure the human rights, in this regard, Article 5 manifests itself: “*no person may be prevented from engaging in the profession, industry, trade, or work that suits, are lawful.*”<sup>9</sup>

Therefore, the Mexican woman is free to choose the job that you like and if it meets with the labor profile, should not be discriminated against, nor much less harassed on the grounds of gender.

And the Article 123 of the same legal system speaks of the right to a dignified and socially useful work, as follows: “Every person has the right to decent work and socially useful; to the effect, it will promote job creation

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<sup>6</sup> Comisión Nacional de Derechos Humanos, *¿Qué son los Derechos Humanos?* Available at [http://www.cndh.org.mx/Que\\_Son\\_Derechos\\_Humanos](http://www.cndh.org.mx/Que_Son_Derechos_Humanos) (last visited June 23, 2015).

<sup>7</sup> *Declaración Universal de Derechos Humanos*, ADOPTADA Y PROCLAMADA POR LA ASAMBLEA GENERAL EN SU RESOLUCIÓN 217 (December 10, 1948).

<sup>8</sup> *Constitución Política de los Estados Unidos Mexicanos*, VIGÉSIMA PRIMERA EDICIÓN IMPRESA (Secretaría de Gobernación, September 2014). ISBN: 968-805-77-0.

<sup>9</sup> Ditto.

and social organization of work, in accordance with the law.”<sup>10</sup>

The rule in question clearly mentions the decent work and as such should be protected the rights of women and their dignity in the workplace, such as the essential precondition for the realization of all other human rights.

Analyzed the above, it is necessary to speak of how it develops the worker in the twenty-first century, in order to be aware of the problems that have been given and understand the topic of harassment in our times.

### C. *The Work in the Twenty-First Century*

In order to understand the world where develops the harassment, it is necessary first to understand how it is to work in the world today, and for that purpose, we can say that, in the last two decades, we have witnessed the change in the world of work, the knowledge revolution and the use of new cyber technologies, which led to the access to information and privileging until production processes in all areas. The globalization has caused major changes in the structure of labor and social protection for workers. The reorganization of the work takes global nuances and lets us see in the economic aspect:

- Emergence of emerging economies such as the BRIC’s;
- The predominance of informatics on the production, communications and the global exchange as dynamic axis of the world trade;
- The consolidation of global supply chains;
- Polarization between the financial and industrial powers and developing countries with natural resources noncompetitive.

These changes are forcing us to speak of urgent needs around the work, which have an impact on the development of the work and mainly affecting workers in the world, are conducive to the breeding ground for phenomena such as the mobbing and these needs fall under the following topics:

First: The production of goods is becoming increasingly specialized, so that the workers require more knowledge to be able to perform better. Some authors, on the subject mentioned that: “*the most important contribution that the management needs to be done in the twenty-first century is, similarly, raise the productivity of the work of knowledge and of those who work with him.*”<sup>11</sup> This reflects the fact that, for the work of this century, it will require higher skills and preparation, which by consequence leads over time to a person to enter the world of work. In the same order of ideas, it is

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<sup>10</sup> Ditto.

<sup>11</sup> DRUCKER PETER F., LOS DESAFÍOS DE LA GERENCIA PARA EL SIGLO XXI 165 (Norma 2002).

important to mention that: “a company’s most valuable asset of the twentieth century was the production team. The most valuable asset of an institution (commercial or non-commercial) of the twenty-first century will be those of their employees to work with the knowledge and productivity of these.”<sup>12</sup> The foregoing on the grounds that to operate the machinery of today or the projects to be carried out by professionals are increasingly called degree of specialization.

Second: The stability in the same job is becoming increasingly difficult, “one of the frequent occurrence of facts most notable of the labor markets around the world is that the rates of creation and destruction of employment are high regardless of the degree of protection of labor stability.”<sup>13</sup> we can dislodge that, even when there is job creation are more those who disappear that you deploy, which is why many people remain unemployed each year throughout the world, including Mexico, and this generates anxiety and workers to accept conditions of work below their dignity, even remain in jobs where they are harassed more employable.

Even when all employees are at risk of being without employment, “the stability of the workers of confidence is less than for the other employees”<sup>14</sup>, because as he was leaving, a head of a company or institution many times come out without that they ask for those who worked directly with him, in spite of such people—many times—more prepared than the quality of employees with workers.

Third: The use of ICT has also had impact in the case of the employment of the twenty-first century, because “the increase of the productivity induced by the ICT is a source of job creation. The growth of production has given impetus to the employment in both Europe and the US, so that although they can disappear jobs in some sectors, the global dynamism resulting from the use of ICT leads to the generation of employment in other to compensate for losses in excess.”<sup>15</sup> Since the creation of new jobs, the need for greater knowledge of the use of technology for those who search for the job. Even many jobs already do not require that, the person is present to a source of work, so that the working relationships are changing radically.

There can be no doubt that, the “information and communication technologies (ICT) are transforming the world of work through the creation

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<sup>12</sup> Ditto.

<sup>13</sup> Banco Interamericano de Desarrollo, *Se Buscan Buenos Empleos, Informe de Progreso Económico y Social*, 238-239 (2004).

<sup>14</sup> BENSUSÁN, GRACIELA, *EL MODELO MEXICANO DE LA REGULACIÓN LABORAL* 367 (Plaza y Valdés 2000).

<sup>15</sup> DE PABLO REDONDO, ROSANA, *NEGOCIO ELECTRÓNICO* 46 (UNED 2010).

of new employment opportunities and increased innovation, inclusion, and globalization of labor markets.”<sup>16</sup>, since at the present time, any person can know if they need any worker with certain qualities in another part of the world, or even work at a distance, this without discarding that, many individuals are looking for a job thanks to the internet.

Fourth: the mobility of workers and enterprises has been carried out in a massive way at this time, “put the geographical mobility is not only important for the company, but also for the worker, since, depending on the place in the may be required to run your delivery, you will have a professional expectations and specific promotional and working conditions specific.”<sup>17</sup> Now, a worker who travels to another country can learn new skills and knowledge that you can implement then in a company in another place, so it will be a more qualified person to get a job, however, the reality is not very beneficial since the big companies are those who have achieved the best benefits and not the people.

Fifth: The polarity of technologically advanced countries and the producers that still only provide raw materials marks the development of the workers and their quality of life.

The evolution of world trade during the golden era of capitalism, to increase the relative importance of the manufacturing, benefit most from the industrial countries, thus increasing the differences with respect to the commodity-exporting countries, although there are to consider the same time that a part of this increase is due to the industrialization of some of these countries, now able to offer certain products at competitive prices in the world market.<sup>18</sup>

The foregoing generates not only inequity in wealth in the world, but that in many countries, there are more unemployment and therefore, the people migrate to find a better paid job, which often generates more discrimination and possible harassment.

Analyzed the foregoing is need to speak on gender equity.

#### *D. Gender Equity in the Workplace*

The Supreme Court of Justice of the nation states that, the gender

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<sup>16</sup> El Banco Mundial, *Conectarse Para Trabajar: Cómo las TIC Amplían las Oportunidades de Empleo en todo el Mundo*, (2013). Available at <http://www.bancomundial.org/es/news/feature/2013/09/10/how-icts-are-expanding-job-opportunities> (last visited July 1, 2015).

<sup>17</sup> GONZÁLEZ DOMÍNGUEZ FRANCISCO JOSÉ, *PRINCIPIOS Y FUNDAMENTOS DE GESTIÓN DE EMPRESAS* 438 (Pirámide 2013).

<sup>18</sup> FELIU GASPAS, *INTRODUCCIÓN A LA HISTORIA ECONÓMICA MUNDIAL* 450 (Guada 2007).



perspective is:

Category of analysis which allows visualizing the allocation of differentiated social roles and tasks under the sex; it reveals the differences in opportunities and rights which are still to this assignment; evidence of power relations originating in these differences; he asked why the differentiated impacts of laws and public policies according to these assignments, power relations and differences; and establishes a strategy.<sup>19</sup>

It can be said on the previous notion that includes not only the gender perspective on being a man or a woman, but the activities that have been assigned with the passage of time to each of the sexes, and have been returned to the date a form of discrimination, more even talking about workplace harassment, since a woman for a long time he has been degraded and the harassment is the new way of doing this.

We can also mention that: “the sex designates biological characteristics of the bodies whereas gender is the set of characteristics, attitudes and social roles, culturally and historically allocated to persons by virtue of their sex.”<sup>20</sup> This must be taken into account when you are looking for equality between individuals, as the physical differences and the social issues many people are not treated with equality in various circumstances, for the case of the harassment of women, by their biological characteristics and allocations to the social roles that must meet is more prone to be a victim of hostile conduct and harassing behavior. Fortunately, there are various policy instruments that tend to gender equity in the labor field, in this regard, we note that, the Protocol of San Salvador, notes in this respect in their Article 6:1. “Every person has the right to work, which includes the opportunity to obtain the means to lead a decent and dignified life through the performance of a lawful activity freely chosen or accepted”.<sup>21</sup>

The foregoing concerns that, the salary of a person must achieve for the basic needs of the worker, and in case of being head of the family for the maintenance of the same dignified manner and decorous.

2. States parties undertake to adopt measures that ensure full realization of the right to work, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, particularly those directed to the disabled. States parties also undertake

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<sup>19</sup> Suprema Corte de Justicia de la Nación, *Protocolo Para Juzgar Personas con Perspectiva de Género*, 3 (2014).

<sup>20</sup> *Ibidem*, at 62.

<sup>21</sup> Protocolo Adicional a la Convención Americana sobre Derechos Humanos en Materia de Derechos Económicos, Sociales y Culturales, *Protocolo De San Salvador*, COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS (1988) Available at <https://www.cidh.oas.org/Basicos/basicos4.htm> (last visited June 1, 2015).

to implement and strengthen programs that help to adequate family care, so that women may have a real opportunity to exercise the right to work.<sup>22</sup>

The paragraph described previously spoke to give equality to women, and in the case of Mexico, this equality is not reflected in the figures shows that, the majority of the victims of harassment are women, therefore the importance of what is being said.

On the Mexican legislation, we can cite to the Federal Labor Law that on gender equity includes the following provisions:

Article 2 (...): The substantive equality is achieved by eliminating discrimination against women that impairs or nullifies the recognition, enjoyment or exercise of their human rights and fundamental freedoms in the workplace. It is the access to the same opportunities, considering the biological differences, social and cultural rights of women and men.

The aforementioned despite being content in the Mexican standard is not applied, because the workplace harassment reflects more victims female, so that gender equity doesn't only need reforms but actions.

Not only to the institutions and the State must be concerned with the gender equity, also the employers because you must create "(...) an awareness of the need for companies to have a gender approach should not be seen as the result of a fashion. It should be understood as a clear commitment by the employer because the gender equity reports and generates wealth"<sup>23</sup>. If the employer can landing the ideas of gender equity, you can achieve a better work environment and most committed people and to respect the women from the source of work and not wait for the stay legal.

## II. WORKPLACE HARASSMENT FEMALE

The workplace harassment toward women start from that began this work, which leads us to realize that, the problem has been on the increase in direct relationship with the incorporation of women into the labor market, it is important to mention as pointed out in the Dr. García Carreno Zoraida that: "*Women as the subject of a working relationship has had a higher labor force participation in relation to the men in the last three decades, by their levels of schooling and education; however, there have been obstacles for insertion and permanence in the labor market.*"<sup>24</sup> The women by the role

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<sup>22</sup> Ditto.

<sup>23</sup> ORTEGA GIMÉNEZ, ALFONSO, DERECHOS HUMANOS EN EL SIGLO XXI 94 (Club Universitario 2014).

<sup>24</sup> GARCÍA CARREÑO ZORAIDA, EL ACOSO LABORAL EN MÉXICO, ASOCIACIÓN IBEROAMERICANA DE JURISTAS DEL DERECHO DEL TRABAJO Y LA SEGURIDAD SOCIAL DR. GUILLERMO CABANELLAS, (2009). Available at <http://aijdtssgc.org/2009/11/20/el-acoso-laboral-en-mexico/> (last visited February 5, 2015).

entrusted to it by the society has more duties, and by the treatment that has been given since ancestral times are more likely to have problems such as harassment, which as noted by the above quote makes the female doesn't have the same opportunities.

Women continue to have the stereotype that your work is performed in the house, even to carry out activities that allow you to generate income to your home, the main activities are:

Trade 49.2%; restaurant and accommodation services 17.2%; manufacturing industry 14.3%; miscellaneous services 9.1%; professional services, financial and corporate 3.9%; social services 3.1%; agriculture, livestock, forestry, hunting and fishing 1.7%; extractive industry and electricity, construction, transport, post and storage 0.6%.<sup>25</sup>

The above reflects as the female continues to work in the majority of cases from their home, this isn't too bad but the professional growth of the men and women will not equitable while opportunities are not den in equity by gender. *On the other hand, where the jobs are usually hired females are: domestic workers (90.7%) and street vendors (63.2%)*<sup>26</sup>.

As can be seen, women play activities similar to those performed in your home in a job outside, which doesn't allow them to a professional growth and a change of activities. However, there are activities that have the same number of men and women, being the following: *clerks, vendors and employees in services, where there is virtually a man for every woman.*<sup>27</sup>

Despite what is being said in the previous paragraph, few activities that require to women and many of them are still not be able to join the country's economic life as it is due.

According to Acevedo, Biaggil Borges<sup>28</sup> and gender-based violence at work, in any of its multiple expressions, it is a fact of life that is expressed in the relationship between the sexes in the workplace, but that officially doesn't reach to be recognized as transgressions and tend to trivialize or naturalize as isolated facts and inconsequential. Gender-based violence in the workplace is defined by the above-mentioned authors such as "any manifestation of verbal aggression, gestural, physical, psychological, and sexual, in the framework of the labor relations, which originated in the inequalities between the sexes, that affects the dignity and integrity of the

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<sup>25</sup> INEGI, HOMBRES Y MUJERES EN MÉXICO 77 (Instituto Nacional de las Mujeres 2014).

<sup>26</sup> GARCÍA CARREÑO ZORAIDA, EL ACOSO LABORAL EN MÉXICO, ASOCIACIÓN IBEROAMERICANA DE JURISTAS DEL DERECHO DEL TRABAJO Y LA SEGURIDAD SOCIAL DR. GUILLERMO CABANELLAS, (2009). Available at <http://aijdtssgc.org/2009/11/20/el-acoso-laboral-en-mexico/> (last visited February 5, 2015).

<sup>27</sup> Ditto.

<sup>28</sup> Ibidem, at 169.

people, their health, and their chances of access, retention and job promotion.”<sup>29</sup> It can be considered a manifestation of the asymmetrical power relations between men and women, in which the situation of inequality of the latter, they are more affected by discrimination and social subordination of that are the subject. The problem may originate from some relationship with the socially assigned roles to men and women who directly or indirectly affect the situation of women in the labor market.

In 2006 in Mexico, one of the few jobs in this field was the result of a National Survey on the dynamics of the relationships in the homes, raised by the National Institute of Statistics and Geography, “*in which it was found that, 10% of women who said harassment at work, this is presented through sexual innuendo or proposals, amounting to a total of 205.587 registered cases.*”<sup>30</sup>

The trend in Mexico has been to reduce the workplace harassment sexual to its manifestation, which no doubt can be the most frequent, but it is only one of the various forms that adopts the practice of transgress the workers. The government of the Republic has implemented a series of policies, strategies and actions to combat workplace harassment with gender perspective, to be put into practice in the units of the federal administration.

The workplace harassment, particularly toward women has been shown in studies by INMUJERES, who in collaboration with the Ministry of the Public Function, developed the Program of Institutional Culture (PCI) of the Federal Public Administration. As a follow-up to the program implemented the “Questionnaire on institutional culture with a Gender Perspective in the Federal Public Service 2008”, which has as its background the survey of 2006, whose objective was to measure the scope of the proposed actions by INMUJERES, to promote and encourage the minimum conditions that would institutionalize a gender perspective in the agencies of the Federal Civil Service. “*The instrument, it was applied in 2008 with the participation of 258 institutions of the Federal Public Administration, of which 240 met the validation process with a participation of 277 thousand 89 female officers, staff and operational staff, 116 thousand 318 women (42%) and 160 thousand 771 males (58% .)*”<sup>31</sup>

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<sup>29</sup> *Idem.*

<sup>30</sup> INEGI, *Encuesta Nacional Sobre la Dinámica de las Relaciones en los Hogares (ENDIREH)*, (2006). Available at <http://www.inegi.org.mx/est/contenidos/Proyectos/Encuestas/Hogares/especiales/endireh/endireh2006/default.aspx> (last visited November 15, 2014).

<sup>31</sup> Instituto Nacional de las Mujeres, *Programa de Cultura Institucional*, 42 (INMUJERES, 2008).

### III. NORMATIVE ANALYSIS OF WORKPLACE HARASSMENT IN MEXICO

With the intention of having clear the instruments that can serve as support for the settlement of workplace harassment with a gender perspective and the regulations strictly applicable, this section will be divided into international and national instruments.

#### A. *International Instruments*

In Mexico, as will be noted in this paragraph, shall not have an adequate legislation to prevent and punish the harassment, however with the reform of the Constitution, it is possible to invoke the principle pro person international legal systems of which the country is a party and to ensure greater protection, talking about the topic to the woman who was suffering from harassment.

The block of constitutionality that incorporates the international treaties that acknowledge the human rights of women workers is as follows.

#### 1. ILO Conventions Ratified by Mexico

Mexico has signed most of the ILO treaties, however, it is questionable whether its application in the country and speaking quote, “*the International Labor Organization has no specific standard for protection against workplace harassment. However, the provisions of Convention No. 111 on the discrimination (employment and occupation) and Recommendation No. 111 which accompanies it, are an important tool in combating the workplace harassment at work.*”<sup>32</sup> Therefore this doesn't mean that, we do not deal with this issue, because he has done various issues that speak of the subject without mentioning it with the word mobbing, seeking equal treatment between men and women and asserting their physical differences.

In this regard, the International Labor Conference at its 83rd meeting, held in 1996 resulted in the Report 111, which in its part 4B points out:

Equality of opportunity and treatment occupies a place of first importance in the political and the activities of the ILO. In 1919, the Constitution of the ILO already referred to the need to ensure to all the people their development potential and an equitable economic treatment. In the Declaration of Philadelphia on the purposes and objectives of the International Labor Organization, which was adopted in 1944 and is contained in the annex of the Constitution, it is stated that: all human beings, without distinction of race, creed or sex, have the right to pursue their material well-being and spiritual development in conditions of

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<sup>32</sup> Organización Internacional del Trabajo, *Acoso Laboral Hacia las Mujeres*, 2 (INMUJERES, 2012).

freedom and dignity, of economic security and equal opportunities.<sup>33</sup>

This is important since Mexican laws recognize harassment and there are penalties for this, but not specifically for aggressors of women.

Thus, “Convention No. 111 seeks to promote conditions to contribute to the achievement of equal opportunities in employment and occupation and defines discrimination as any distinction, exclusion or preference based on race, color, sex, religion, political opinion, social origin or descent which has the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation”<sup>34</sup>, although it is not said that, prohibits harassment at work is talking about a woman you must give equal treatment to that of a man from recruitment, in their benefits, social security and up to when it comes to the conservation of the employment and their Subsequent to the end of the employment relationship.

In an effort to determine the rules governing the Commission of Experts on the application of ILO Conventions and Recommendations made a General Survey and determined that, there are 8 fundamental Conventions, namely:

- Convention on freedom of association and protection of the right to organize convention, 1948 (No. 87);
- Convention on the law of association and collective bargaining, 1949 (No. 98);
- Forced labor Convention, 1930 (No. 29);
- The abolition of forced labor Convention, 1957 (No. 105);
- Minimum age Convention, 1973 (No. 138);
- The worst forms of child labor Convention, 1999 (No. 182);
- Equal Remuneration Convention, 1951 (No. 100);
- Convention on the discrimination (employment and occupation), 1958 (No. 111).

The principles and values that are reflected in these Conventions constitute a universal aspiration of the international community as a whole, all of which are very applicable in our country.

*The four categories of fundamental principles and rights at work, collected in the fundamental ILO conventions,*<sup>35</sup> form a set of rights that are mutually reinforcing and that must be considered in an integrated manner.

These categories of fundamental principles and rights at work, 1998 are:

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<sup>33</sup> Ditto.

<sup>34</sup> Ditto.

<sup>35</sup> Organización Internacional del Trabajo, *Informe III (Parte 1B)*, (Oficina Internacional del Trabajo Ginebra). Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---elconf/documents/meetingdocument/wcms\\_174832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---elconf/documents/meetingdocument/wcms_174832.pdf) (last visited March 23, 2015).

- (a) Freedom of association and the effective recognition of the right of collective bargaining;
- (b) The elimination of all forms of forced or compulsory labor;
- (c) The effective abolition of child labor and;
- (d) The elimination of discrimination in employment and occupation.

That is why there is a commitment of the Mexican State for actions aimed at regulating and in his case to eradicate this social phenomenon, so once it mentioned what has made the ILO, it must be mentioned the international instruments that protect the rights of women.

## 2. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

The Organization of the United Nations (UN) has carried out conventions in many subjects, and to be a serious problem he could not miss the mobbing, so that, the December 18 of 1979 was signed the Convention on the Elimination of All Forms of Discrimination against Women. As in the case of the ILO is not spoken as such of the harassment but refers to this problem in the female sex in his: “*Article 11. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the woman, in conditions of equality with men, the same rights, in particular: (a) The right to work as an inalienable right of every human being*”<sup>36</sup>, it is important to say that, many of the cases of harassment are given by searching for the discrimination to women in certain positions.

On data that have to do with the marital status of the people whose details have been handled in advance, it is mentioned that: “*in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure the effectiveness of their right to work, States parties shall take appropriate measures to: (a) prohibit, under penalty of sanctions, the dismissal on the grounds of pregnancy or maternity leave and discrimination in the dismissal on the basis of marital status;*”<sup>37</sup> however, in Mexico have not been given the appropriate mechanisms for the sanctions and therefore continue abuses happening to women workers in the topic of workplace harassment. The author should also mention the convention mentions the following:

- (a) Introduce the paid maternity leave or with comparable social

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<sup>36</sup> ONU, *Convención Sobre la Eliminación de Todas las Formas de Discriminación Contra la Mujer*, 4 (1981).

<sup>37</sup> *Ibidem*, at 5.

benefits without loss of previous employment, seniority or social benefits;<sup>38</sup>

The fact mentioned in the previous paragraph are also in many cases causes of discrimination and harassment at work, so it is an important point the seek protection.

(b) To encourage the provision of the social support services necessary to enable the parents to combine family obligations with work responsibilities and participation in public life, especially through the promotion of the establishment and development of a network of services for the care of children.<sup>39</sup>

The previous point seeks equal circumstances taking into account the physical nature of the genera, and these points are often the causes of workplace harassment or discrimination.

### 3. Convention of Belem Do Para

The Convention of Belem Do Para of the September 6, 1994 in the Article 1 mentions: “violence against women any action or conduct, based on gender, which cause death, physical, sexual or psychological harm or suffering to women, both in the public or the private sphere.”<sup>40</sup> On this point and by comparing it with the workplace harassment, is harassment stresses that can cause physical and psychological damage mainly, so you still not mentioning the word harassment can be referenced to this by invoking the principle pro person for the cases that arise in Mexico.

On the other hand the Article 6 relates the following:

The right of every woman to a life free of violence includes, among others:

To the right of women to be free from all forms of discrimination, and

B: the right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.<sup>41</sup>

You can consider this article also for the cases of harassment, it speaks of the discrimination as well as look for a person makes you feel inferior or subordinate.

Combined with the above mentioned Article 7: “*States Parties condemn all forms of violence against women and agree to adopt, by all appropriate means and without delay, policies to prevent, punish and*

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<sup>38</sup> Ditto.

<sup>39</sup> Ditto.

<sup>40</sup> Organización de los Estados Americanos, *Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer (Convención de Belém do Pará)*, (Mesevci 1994).

<sup>41</sup> Ditto.



*eradicate such violence*".<sup>42</sup>

General Recommendation 19 of the Committee on the Elimination of Discrimination against Women

The document prepared by the Committee for the Elimination of Discrimination against Women on 29 January, 1992, within their specific recommendations said the following: "*services should be provided appropriate protection and support to the victims. It is essential that, staff members are trained judicial, law enforcement officials and other public officials in order to ensure the effective implementation of the Convention.*"<sup>43</sup> This refers to the fact that, not enough to have laws that punish the harassment, but the staff that will attend to the victims must be prepared for this, because the attention of a victim must always be in a special way, this will be reflected not only in a person, but in others that have suffered the same problem.

Also mentions that: "States should encourage the collection of statistics and research about the extent, causes and effects of the violence and the effectiveness of measures to prevent and respond to the violence, mention is made that the statistics are important to see the form of prevention and punishment, in the present investigation pertains to the victims of harassment, however, the Mexican government in spite of knowing these numbers has not done something truly effective against the problem, even if the recommendation makes reference to"<sup>44</sup> provide for effective complaints procedures and remedies, including compensation. However, the compensation for the workplace harassment is not provided for in the Mexican law, spoke of will be awarded to the worker a compensation constitutional by dismissal, most not for the damage caused to the person itself by the fact.<sup>45</sup>

In particular on the mobbing mentions that: "States should include in their reports data on the sexual harassment and on the measures taken to protect the women of the sexual harassment and other forms of violence or coercion in the workplace."<sup>46</sup> However in Mexican legislation are only defined terms more there are no effective measures for the punishment of harassment, even when you have institutions that can carry out effective sanctions.

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<sup>42</sup> Ditto.

<sup>43</sup> Office of the high commissioner for human rights, *La Violencia Contra la Mujer: 29/01/92cedawrecom*, General 19. (general comments) Recomendación General 19. Available at [http://www.ipu.org/splz-e/cuenca10/cedaw\\_19.pdf](http://www.ipu.org/splz-e/cuenca10/cedaw_19.pdf) (last visited June 29, 2015).

<sup>44</sup> Ditto.

<sup>45</sup> Ditto.

<sup>46</sup> *Idem*.

The victims must not only have support for the complaint of facts, but also after this, by what “States to establish or support services for victims of domestic violence, rape, sexual assault and other forms of violence against women, including the establishment of shelters, the employment of specially trained health workers, rehabilitation and counseling.”<sup>47</sup> In this reason, so that many people who have suffered these acts need adequate assistance to continue with a normal life.

The recommendation also spoke of that must be carried out “*effective legal action, including criminal sanctions, civil remedies and compensation provisions to protect women against all kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the workplace*”<sup>48</sup>, however, as has already been mentioned on the subject there is much to be done to that Mexico has a effective protection with respect to workplace harassment, however, can be invoked this law.

#### 4. Platform for Action of the IV International Conference for Women

The platform for action made on September 15, 1995, has specific references by terms of the harassment, first pointed out that, the countries must “*enact and enforce laws to combat sexual harassment and other forms of harassment in all places of work.*”<sup>49</sup> Referring to the above, it is important what is being said because the workplace is a point where the woman is vulnerable and often tied to not be able to give to be the breadwinner of a family.

On the problematic of the harassment, the member states as the Mexican nation should “take effective measures to enact and enforce legislation to ensure the safety of the young women from any form of violence in the workplace, including the programs of training and support programs; and adopt measures to eradicate sexual harassment of young women, in the institutions of education and other”<sup>50</sup>, in this should be added the fact that, one must not only seek to legislate, but since its inception the laws issued seek prevent and punish these acts against women, since, if only we are talking about the creation of these systems are often made of form Incomplete as has happened in Mexico.

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<sup>47</sup> Ditto.

<sup>48</sup> Ditto.

<sup>49</sup> Declaración y Plataforma de Acción de Beijing, *La Cuarta Conferencia Mundial Sobre la Mujer*, (1995). Available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPFA%20S.pdf> (last visited June 29, 2015).

<sup>50</sup> Ditto.

## 5. Objectives of the UN Millennium Development

We have already mentioned various international instruments aimed at regulating the workplace harassment, more not less important it is to mention the objectives for the Development promulgated by the UN in 2013, since one of them concerns the following: “*promote gender equality and the empowerment of women*”<sup>51</sup>, this objective doesn’t focus directly to the harassment, however, if we are talking about search for equality, we can refer to that, many women are victims of this last figure by not be considered with the same capabilities as the male sex, what does that what is being said is important for the development of the research.

Then by its importance is mentioned concerning the topic content in the Inter-American Program on the Promotion of Human Rights of Women and Gender Equity and Equality.

## 6. Inter-American Program on the Promotion of Human Rights of Women and Gender Equity and Equality OAS-CIM

First, the program carried out in the year 2001 mentions that, there must be “*the full and equal access of women to work and productive resources*.”<sup>52</sup> With this despite not touching the subject as such harassment, can be invoked as a protection to the woman who many times despite being in a position similar to that of a man are not treated in the same terms.

It also speaks of “ensure women’s equal access to employment and productive resources, such as the credit and the earth”<sup>53</sup> highlighting the sections cited above the access to employment, coupled with this is intended to be a decent job and the respect for women to suffer is not facts such as harassment.

Already analyzed the international legislation applicable to the subject, thought should be given below on the Mexican national laws.

### B. Analysis of the Mexican Legislation

Hierarchically should be first to talk about the Constitution, in order subsequent federal laws to finish with the regulations and programs that

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<sup>51</sup> ONU, *Objetivos de Desarrollo del Milenio y más allá de*, (2015). Available at <http://www.un.org/es/millenniumgoals/gender.shtml> (last visited June 29, 2015).

<sup>52</sup> OAS, *Programa Interamericano Sobre la Promoción de los Derechos Humanos de la Mujer y la Equidad e Igualdad de Género*. Available at [http://www.oas.org/es/CIM/docs/PIA\[SP\].pdf](http://www.oas.org/es/CIM/docs/PIA[SP].pdf) (last visited July 29, 2015).

<sup>53</sup> Ditto.

regulate the workplace harassment.

### 1. Political Constitution of the United Mexican States

In the current text of the Constitution states, in “*The constitutional article first imposed on all the authorities, in their respective fields of competence, the obligation to promote, respect, protect and ensure the human rights, as well as the duties to prevent, investigate, punish and redress human rights violations.*”<sup>54</sup> Speaking of workplace harassment, it is encompassed in the quoted text, since the right to work is guaranteed in the magna carta.

### 2. Federal Labor Law in

This determines how possible actions in case of mobbing the following:

(1). Discontinue of the working relationship of the harasser, without responsibility for the pattern:

The Art. 47 of the Federal Labor Law gives the employer the opportunity to dismiss with due cause to their workers, without which this represents you the outlay of a workers’ compensation. The reform published on November 30, 2012 included changes in specific to the fraction VIII, which states:

VIII. Commit the worker or immoral acts of harassment and/or sexual harassment against any person in the establishment or place of work;

Notwithstanding the foregoing, and considering that, there are different types of workplace harassment, for those, where there was no downward vertical harassment, would not apply this fraction.

(2). Responsibility of the pattern against the harassment:

This is the crux of the harassment and for this we have some articles that are unrelated to each other. The Art. 56 of the act says:

In no event may the conditions of work be lower than those specified in this Law and shall be in proportion to the importance of the services and equal for equal work, without differences may be established by reason of race, nationality, sex, age, religion or political doctrine, except the modalities expressly set out in this Law.

This makes it clear that, not only discrimination is prohibited, but the own labor legislation, not only the fundamental rights are seeking non-discrimination in the workplace.

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<sup>54</sup> Suprema Corte de Justicia de la Nación, *Manual de Buenas Prácticas Para Investigar y Sancionar el Acoso Laboral y/o el Acoso Sexual en la Suprema Corte de Justicia de la Nación*, 5 (2012).

For its part, the numeral 132 determines that, it is the duty of the patterns give a good treatment of its workers, which in interpretation a contrary, means that, they must refrain from ill-treatments. Article 132—obligations of employers:

...VI. Save to workers due consideration, refraining from bad treatment in word or deed;...

On the harassment, the fraction of the article XII 133 specifically found the prohibition to the patterns of harassing their workers in the following way: *“It is prohibited to the patterns or their representatives: XII. Carry out acts of harassment and/or sexual harassment against any person in the place of work;”* but it is still the most important fraction XIII, because it establishes the liability of the pattern in front of the mobbing in your business or work center, even when he doesn't has caused and is driven by its workers. Article 133—it is prohibited to the patterns or their representatives:

XIII. Allow or tolerate acts of harassment and/or sexual harassment in the workplace;

Missing clearly, the provisions are applicable to determine if the ignorance of the acts stalkers, exempt from this responsibility to the employer. Following is the international trend, the answer is not: the pattern is responsible for the work environment, including the psychological in the working environment and within the included aggressive behaviors by mobbing. Now is the time in Mexico and for the sake of the workers, but also the patterns, it is extremely important to implement preventive measures, since the law itself establishes financial penalties for patterns that generate or tolerate the mobbing.

Article 994, shall be liable to a fine equivalent to:

VI. From 250 to 5000 times, the general minimum wage, the employer who commits any act or discriminatory conduct in the workplace; the one who is going to perform acts of sexual harassment that tolerates permits acts of sexual harassment against its employees;

(3) Termination of the employment relationship unilaterally, without responsibility for the harassed worker:

The Art. 51 of the Federal Labor Law sets forth the grounds for termination of the employment relationship, without any liability to the worker, within which may be applicable when the worker has experienced harassment, in attention to in attention to actions of harassment actions that have been perpetrated against him:

II. Incur the pattern, their family or any of its representatives, within the service, in lack of probity or honesty, acts of violence, threats, insults,

harassment and/or sexual harassment, ill-treatment or other similar, against an employee, spouse, parents, children or brothers;

This fraction has been renovated in the year 2012 to include in clear and convincing evidence that, the worker harassed, as a synonym for victim of workplace harassment may be terminated without any responsibility the working relationship for this cause. However, it should be noted that, the main objective of the harasser is precisely this: that the victim is removed from the work environment, so this will be fulfilled its purpose. Even so it should not be forgotten, that on many occasions is through the health, dignity and the very life of the victim, so it is preferable to give up.

### 3. Federal Regulation of Health and Safety at Work

This regulation highlights:

Specifies the obligations to be met by the pattern, in topics relevant to biological agents capable of altering the worker's health, ergonomic risk factors, preventive services of occupational medicine and protection to women in a state of pregnancy or lactation.<sup>55</sup>

Since in many cases, the woman is a victim of workplace harassment by being pregnant or sick; it is therefore important that your protection.

### 4. Federal Criminal Code

Another federal law is the Federal Criminal Code, Article 259 bis says:

To that end with lewd repeatedly contacting to person of any sex, using her position of authority derived from their labor relations, teachers, home or any other involving subordination, he/she shall be imposed sanction up to forty days fine. If the harasser was public server and used the means or circumstances that the commissioned you provide, you will be dismissed from office.<sup>56</sup>

However, for these cases, only comes at the request of the offended party, a fact that many times is not given, since many women seek to maintain their employment or are more occupied by getting a new source of labor, coupled with this, mention was made of the hierarchical position, which is not required to happen in that way.

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<sup>55</sup> *Reglamento Federal de Seguridad y Salud en el Trabajo*, (Diario Oficial de la Federación 2015). Available at [http://www.amda.mx/images/stories/opinion/2015/aba\\_salud\\_150302.pdf](http://www.amda.mx/images/stories/opinion/2015/aba_salud_150302.pdf) (last visited June 3, 2015).

<sup>56</sup> *Código Penal Federal*. Available at <http://info4.juridicas.unam.mx/ijure/tcfed/8.htm?s> (last visited February 18, 2015).

## 5. Law of the National Institute for Women, 2001

On the other hand, the Law of the National Institute for Women in its Article 4 says: “*the general purpose of the Institute is to promote and foster the conditions that permit the non-discrimination, equality of opportunity and treatment between the genres; the full exercise of all the rights of women and their equal participation in the political, cultural, economic and social life of the country*”.<sup>57</sup>

This reflects that, the Institute seeks to ensure that, there is equality, however, has not been achieved the goal, since it is not even in the topic wages and income to work is to women in a manner equal to men.

In addition to the above rules may be referred to the Article 17 of the general law of equality between women and men that alludes that: “*the National Policy on Equality between women and men must establish the actions leading to achieve substantive equality in the area, economic, political, social and cultural. (...) (VIII. The establishment of measures to ensure the responsibility at work and personal and family life of women and men)*”.<sup>58</sup>

This is important because in the present, not only the men are responsible for a family, many of the times it is a woman, and therefore must be seeking a equality in employment, so that it will be of equal treatment taking into account the differences of each sex.

## 6. General Law on Women’s Access to a Life Free of Violence

This law emphasizes the types of violence, which may be caught in the subject of harassment.

The types of violence against women are:

I. Psychological violence. Is any act or omission that causes damage to the psychological stability, which may consist of: neglect, abandonment, neglect reiterated, jealousy, insults, humiliation, devaluation, marginalization, indifference, infidelity, destructive comparisons, rejection, restriction to self-determination and threats, which lead to the victim to the depression, isolation, the devaluation of their self-esteem and even to suicide;<sup>59</sup>

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<sup>57</sup> Congreso de la Unión, (*Ley del Instituto Nacional de las Mujeres 2001*). Available at <http://www.inmujeres.gob.mx/inmujeres/images/stories/normateca/legislacion2014/ley%20inmujeres.pdf> (last visited July 3, 2015).

<sup>58</sup> Congreso de la Unión, *Ley General para la Igualdad entre Mujeres y Hombres*, Available at <http://www.inmujeres.gob.mx/inmujeres/images/stories/normateca/legislacion2014/lgimh.pdf> (last visited July 3, 2015).

<sup>59</sup> H. Congreso de la Unión, *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, (2007). Available at <http://www.inmujeres.gob.mx/inmujeres/images/stories/normateca/legislacion2014/lgamvly.pdf> (last visited July 3, 2015).

Many times the psychological violence is one of the main tools of the harasser, and that is also something difficult to detect, and the ways in which exercises are given in the workplace harassment.

In addition, "*The physical violence. Is any act that inflicts damage not accidental, using physical force or any kind of weapon or object that might cause injury or not whether internal, external, or both;*"<sup>60</sup> and although not always seen in the harassment, in few cases can occur, and many times is not denounced by women for fear of a new aggression.

You can also mention the "*economic violence. Is any action or omission of the aggressor that affects the economic survival of the victim. Manifests itself through limitations aimed to control the entry of their economic perceptions, as well as the perception of a paid less for equal work, within the same work center;*"<sup>61</sup> As mentioned in advance without doubt is a cause of discrimination and harassment, in that, it seeks the woman sits lower on the grounds of gender, even when their skills and abilities may be similar or even superior to that of men in the same job.

Finally, as far as the topic emphasizes the following: "*Is any act that degrades or injures the body and/or the sexuality of the victim and that therefore goes against their freedom, dignity and physical integrity. It is an expression of abuse of power that involves the male supremacy on women, to denigrate it and think of it as object*".<sup>62</sup> This is important because many of the times is not only the fact that the harassment cause a superior but rather someone who feels to have authority over another person.

## 7. Federal Law to Prevent and Eliminate Discrimination

The Federal Law to Prevent and Eliminate Discrimination is important because the discrimination is one of the main forms of workplace harassment.

You can highlight the text of the law "*leveling measurements are those that seek to make effective the access of all people to the real equality of opportunities by removing physical barriers, communicational, regulatory or other type, which obstruct the exercise of rights and freedoms mainly to women and to the groups in situation of discrimination or vulnerability.*"<sup>63</sup>

Highlights the case of the women by the vulnerability that, many times they have in a field of labor in relation to the male sex, and the aim of the norm is

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<sup>60</sup> Ditto.

<sup>61</sup> *Idem*.

<sup>62</sup> Ditto.

<sup>63</sup> H. Congreso de la Unión, *Ley Federal para Prevenir y Eliminar la Discriminación*, (2014). Available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf> (last visited July 2, 2015).



that women have the same treatment as men even in regard to the work.

## 8. Regulation of the General Law on Women's Access to a Life Free of Violence

This notes the following:

The Secretariat of Labor and Social Welfare, in its capacity as a member of the system, they will have the following powers:

I. Inform the competent authority of the knowledge of any fact through which they are practiced or performed acts of violence against women in the workplace;<sup>64</sup>

The foregoing is of importance, because it is one way in which they can address the cases of workplace harassment and you need to perform a authority because in order to keep a job many women do not complain about these facts.

Should also be pointed out the following systems.

## 9. The National Development Plan 2013-2018

Which specifically incorporates a gender perspective as an essential principle. VI. A. Strategies and transverse lines of action. With regard to the Gender Perspective mentioned: "*incorporate the gender-equality perspective in public policies, programs, projects and compensatory instruments as affirmative action of the Federal Public Administration.*"<sup>65</sup> However, the projects or programs that have promoted it, although if they support the women do so by as soon as to further strengthen its activities in many cases home.

## 10. National Program for Equal Opportunities and Non-discrimination against Women (PROIGUALDAD) 2013-2018

For being the lead program of the gender policy in the country, whose general objective is to achieve substantive equality between women and men, in the framework of a full respect for human rights of women and girls and in a context of participatory democracy, using the planning,

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<sup>64</sup> H. Congreso de la Unión, *Reglamento de la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, 2008, Available at [www.diputados.gob.mx/LeyesBiblio/regley/Reg\\_LGAMVLV.doc](http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGAMVLV.doc) (last visited July 2, 2015).

<sup>65</sup> *Plan Nacional de Desarrollo 2013-2018*, Available at [http://transparencia.info.jalisco.gob.mx/sites/default/files/PLAN%20NACIONAL%20APARTADOS%20APLICABLES\\_0.pdf](http://transparencia.info.jalisco.gob.mx/sites/default/files/PLAN%20NACIONAL%20APARTADOS%20APLICABLES_0.pdf) (last visited June 3, 2015).

programming, and budget with a gender perspective in order to provide public policies focused on reducing the gaps of inequality currently seen between women and men.

Employment: unemployment, low wages and the increase of the informality and the inequality of treatment and opportunity for access to a job because of the color of the skin, physical appearance, language, ethnicity, sexual preference or health condition, are conditions that contribute to the exclusion and lead to the poverty.<sup>66</sup>

“4.3 to promote quality employment”.<sup>67</sup>

## 11. National Program of Equality for Women and Men

Not only the laws have sought the support of women, also the programs created by the government, in relation to the treaty can be salvaged the following:

The equality in pay and working conditions for women and men, and the reduction in occupational segregation and posts on grounds of sex, are the mechanisms for the construction of a competitive economy.<sup>68</sup>

Since many times a woman by the same job performance is given a lower salary, which should not be given since their work and needs are the same as the person of any sex.

By what the program looks for: “*drive the development of productive skills of women employment-oriented, and promote more women have been certified by labor capacities.*”<sup>69</sup> This will allow that, when a woman arrives with the same knowledge is treated in the same way, however, much remains to be done in this area to match the woman with the man.

## IV. FINAL THOUGHTS: PROPOSAL FOR CHANGES IN MEXICAN LEGISLATION AIMED AT REGULATING THE WORKPLACE HARASSMENT FROM A GENDER PERSPECTIVE IN MEXICO

As we have been able to observe the situation of workers, derived from the technological change and economic crises, placing it in a state of vulnerability to the pattern and the other workers, this situation is

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<sup>66</sup> *Programa Nacional para la Igualdad y no Discriminación 2014-2018*, Available at [http://www.conapred.org.mx/userfiles/files/Pronaid\\_Hechz\\_INACCSS.pdf](http://www.conapred.org.mx/userfiles/files/Pronaid_Hechz_INACCSS.pdf) (last visited July 3, 2015).

<sup>67</sup> Ditto.

<sup>68</sup> Instituto Nacional de las Mujeres, *Programa Nacional de Igualdad para Mujeres y Hombres*, Available at [http://cedoc.inmujeres.gob.mx/documentos\\_download/100919.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/100919.pdf) (last visited July 1, 2015).

<sup>69</sup> Ditto.

compounded if you are a woman, because the women, we are a group with greater vulnerability. We have built-in way late to the labor market, in circumstances of disadvantage and combined with this with social charges exceed those of men, owing to the activities that gender stereotypes have been imposed on us, for example: the care of children, sick, disabled, elderly, domestic work.

We also learned that, there is a large amount of rules of an international character which protect the rights of women and establish the obligation of States to regulate and create the conditions for women to develop in each area of your life free of violence. Coupled with this, there is a large amount of rules prohibiting workplace violence and in specific is already in the Federal Labor Law with specific rules and even imposes fines on employers who tolerate harassment.

But the reality of the situation shows that, the women we are still victims to a greater extent of workplace harassment than the men, and despite the legal means to do this, until the victim decides to denounce the bully, already lost his job and the complaint of the harasser almost always ends with the working relationship of the victim and the harasser.

It is in this sense that, it is worth questioning whether what is needed are more rules to regulate the harassment and prevent its presence in the workplace? Does require a more specific legislation to protect women as workers in a state of increased vulnerability men?

The answers (we think the authors) is that, while legislative reforms are needed, they should not follow the same direction raised so far: regulate in a general way the violence in work for all the work centers of the country, because each work center is different and has different characteristics, such as number of women workers in relation to workers; the activities that are being carried out, wages; the days of work; the investment you make in the company in job training; the size of the company; its location, etc.

The results of research in specific centers of work, such as colleges show that, the general legal rules do not always are the way to solve conflicts.<sup>70</sup>

This leads us to propose that, there is a need for a legislative reform, where the obligation to the patterns to develop a protocol for action against workplace harassment.

In this way, we can say that, the action protocol is a working tool that guides the actions, procedures, attitudes, and profiles of the staff responsible for processes to be followed in specific cases, collecting techniques that are

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<sup>70</sup> MENDIZÁBAL BERMÚDEZ, GABRIELA, *El acoso Laboral en las Instituciones de Educación Superior: Una Visión Desde el Género*, (Porrúa, México 2015).

considered adequate for such situations, to give an effective solution and standardized to the same; i.e., it must be flexible enough to respond to each specific case and at the same time, have the indispensable legal weight to resolve a conflict, therefore account with direct and coercive elements.

That is why for the attention of workplace harassment has been found to the protocol as the most efficient mechanism for the settlement of labor disputes, by virtue of the fact that is confronted with the reality direct and specific for each work center, with established patterns of behavior that have already been identified such as harassment, making further use of the pre-existing structure within the work center, which provides tools that a regulation would not have, for example, determining the severity of the case and as a way to set up precautionary measures or include custom as a mechanism for resolving employment training through courses and workshops on workplace harassment.

This makes it possible to give solution to the conflict of more efficiently than a judicial process, which is more long, costly, and that ends with the exclusion of the workplace of any of the parties involved. While the implementation of a protocol of action allows you to give solution to the conflict without the need to terminate the employment relationship to the victim and in many cases give the option to vindicate the bully without losing their jobs.

This would lead to handle cases in attending to the specific characteristics of the victims, including gender characteristics.

## V. CONCLUSION

The problem of workplace harassment, in spite of being addressed from various national and international systems, that rely on the solution of the proposed topic does not yet have in Mexico an adequate solution for the victims, especially when it touches on the theme for the female sex, and is therefore deemed to be urgent and necessary legal reform that, addresses gender differences in labor matters in the case of the problem of harassment in the workplace and even more that, you add an effective sanctions for actors in these unlawful conduct, and also to protect women adequately.