



**Centro de Análisis y Defensa
de Derechos A.C.**

Por una sociedad empoderada

**REDUCING THE
GENDER GAP AND
FIGHTING FOR SOCIAL
PROTECTION IN MEXICAN LAWS**

ssoto@caddmx.org

**Centro de Análisis y Defensa de Derechos
Hermosillo, Sonora, México**

Aurora Sabrina Soto García Representante Legal



OVERVIEW AND PROBLEM STATEMENT

The law, "Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora", which regulates the right to security and social welfare in favor of workers of the government of Sonora, violates human rights of gender equality, non-discrimination, security and social welfare and access to health, wronging working women and collaterally the beneficiary spouses, since it imposes additional and unjustified requirements on working women to enjoy social security rights.

Centro de Análisis y Defensa de Derechos, A.C. (CADD) identified this affectation to working women of the state of Sonora, Mexico, in the year 2017, and it was defined as a main objective to achieve the legal change of discriminatory laws through legal empowerment of the affected women, and thus undertaking strategic litigation in defense of the human right to social security, in order to form a social security model that comprehensively provides social security benefits following international human rights standards and, progressively increase the number of beneficiaries, in order to obtain better conditions of social equality parting from the protection of the population without any discrimination.

DESCRIPTION OF THE PROJECT

The project is aimed at making a legal change in the law "Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora" and its regulations, through strategic litigation. Several lawsuits have been filed in relation to the human rights of social security, non-discrimination and equality. The number of court rulings required in the appeal for review issued by Constitutional Courts has been obtained, in order to request the general declaration of unconstitutionality of the discriminatory norms, and thus to get the Supreme Court of Justice of the Nation to order the Congress of the State of Sonora the total non-application of discriminatory laws for the benefit of all working women at the service of the State. It is worth mentioning that there are about 80,000 women affected by this situation throughout the state of Sonora. Once the above is achieved, CADD, A.C. seeks to replicate the strategic litigation in the other states of the Mexican Republic (more than 16 states) that suffer from the same problem, since they have laws similar to that of our community.

First and foremost, it is necessary to put into context the situation that surrounds this problem. From a legal perspective, Article 123 of the Mexican Constitution was reformed in December 1960 to





guarantee the right to social security for government workers, including medical services and medicines for family members. without distinction of gender. The Congress of the State of Sonora to comply with this Constitutional obligation, in 1962 created the "Law of the Institute of Security and Social Services of Workers of the State of Sonora", however, the law restricts the right to social security in its watershed in medical service to their relatives, for mere gender issues. According to this law, the worker must make his employer-employee contributions, which provide the right to obtain medical assistance and pension, here where discrimination is found, since the worker has to prove that her spouse or cohabiter , is physically and psychologically disabled and depends economically on it; with the worker there is no such discrimination because his wife or concubine is entitled to medical service and pension in case of death of the worker.

From the social perspective, fifty-nine years of social injustice and discrimination against women workers have gone by. At the beginning of the year 2017, a crowd of working women from the State of Sonora protested outside of Congress, to demand that they be allowed to register their husbands or concubines to the medical services provided by the Institute of Security and Social Services of State Workers. of Sonora (ISSSTESON). However, even with the demands of society, both the Congress and the State Government have remained indifferent to the effects on human rights. Therefore, Centro de Investigación y Defensa de Derechos, A.C. (CAAD, A.C.) in partnership with the state unions: Sindicato Único de Trabajadores de la Universidad Estatal de Sonora (SUTUES), Sindicato de Trabajadores Académicos del Universidad de Sonora (STAUS), Sindicato de Trabajadores del Centro de Estudios Científicos y Tecnológicos del Estado de Sonora (SITCECYTES), and a group of working women dissatisfied with the situation carried out a legal strategy to achieve justice and recognition of the basic rights of security and social security.

To achieve this end, CADD, A.C. undertook various activities, including providing a workshop on social security and gender equity for a group of 60 women affiliated with Instituto de Seguridad y Servicios Sociales del Estado de Sonora (ISSSTESON), in order to know what their rights are, and what measures should be put into action to access to social justice.

CADD, A.C. provided legal counsel to the group of affected women, promoting various demands for protection against the law “Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora” and its regulations, given that the norms normalize a conception or stereotype of gender by which it is presumed that a man cannot be economically dependent on his wife or partner unless he is older than 55 or 60 years old, or, that he suffers a disability.





Assuming that men are only economically dependent on women in case of unemployment or disability, reinforces the gender stereotype in the sense that men must be providers of their family, and women's work is annulled to generate well-being family, which translates into gender-based discrimination against women and men.

Through strategic litigation, it has been made possible that the Judicial Branch of the Federation issues various rulings in which it is determined that the selected norms discriminate against women and men for reasons of gender, ordering the authorities in charge of providing security services that allow women to register their husbands for medical services; also, it was made possible to grant widow's pensions to the spouses of deceased workers who had contributed their widow's pension payments during their working life, in the same circumstances as male workers.

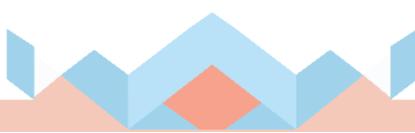
Article 233 of the Law of Protection (Ley de Amparo) establishes that when jurisprudence derived from indirect amparo in review in a same circuit has been issued, the Plenary Sessions may request the Supreme Court of Justice of the Nation to initiate the procedure of general declaration of unconstitutionality, for effects that it orders the Congress to disregard the unconstitutional norms of the general population.

In this case, more than the five uninterrupted sentences in the Fifth Circuit (Sonora) have been achieved through the amparos (Amparo Lawsuit) in review, which have determined that the rules are unconstitutional due to discrimination against working women and their husbands.

It should be noted that fortunately all the trials were won in the second instance (by Collegiate Courts) because the federal judges in the first instance declared the arguments inadmissible. Due to the above, it was necessary to file review appeals that culminated in favorable judgments for women, since the judges did not judge from a gender perspective.

It is necessary to make a parenthesis to specify that the six judges in charge of providing justice in the matter of amparo are men, and for them our arguments were inappropriate to determine that the offices of the authorities that did not allow women to register their husbands to medical services They were not discriminatory.

Therefore, appeals for review before the Collegiate Courts were filed against the decisions of the federal judges in the matter of amparo, which resulted in favorable judgments for the group of





affected women, on determining that the judges had not judged with the perspective of gender, and that women and their spouses had effectively been discriminated against by the application of the impugned laws, by contravening the Constitution and international treaties.

The foregoing was very beneficial for our project, given that the resolution by Collegiate Courts in review amparo, is in conditions to obtain that the Supreme Court of Justice of the Nation issue the general declaration of unconstitutionality of the discriminatory laws; and thus achieve that the Congress of the State of Sonora disapply and / or repeal the rules, for the benefit of all women who are in the same situation.

Therefore, the next step is to request the Plenary of the Fifth Circuit to request the Supreme Court of Justice of the Nation to issue a general declaration of unconstitutionality against the “Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora”, and in turn, order the Congress of the State of Sonora to derogate and / or repeal it, and thus benefit the total number of working women affected, and those who subsequently enter to work for the State.

PROJECT IMPACT

First, awareness-raising and empowerment workshops have ensured that the vulnerable population, women workers of the State, know their rights, lose the fear of carrying out legal defense to achieve full enjoyment of their right to social security without restrictions for gender issues.

In addition, in the course of the litigation, important precedents have been established regarding non-discrimination in our State, by obtaining the admissibility of precautionary measures (suspension of the act complained) so that, as of the filing of the amparo proceeding, the women immediately enjoy their right to social security for the duration of the dispute. In the first place, CADD, when filing the amparo proceedings in favor of the working women, asked the Judges to issue a precautionary measure so that the discriminatory laws would be immediately suspended, so that they will enjoy the right to social security. without having to wait for the conclusion of a long litigation, and allow their spouses access to the medical services provided by the ISSSTESON as long as the trial is resolved.

In first instance, the injunction was denied by all the judges, arguing that issuing a precautionary measure of that nature would be to recognize rights that they do not yet have.





However, CADD promoted legal recourse against said judicial decision, arguing that the precautionary measure was appropriate because allowing to continue applying a discriminatory law was contrary to the constitutional article 1 that enshrines the right to non-discrimination on the basis of gender, also, contrary to the argument of the constitutional judges, the working women did have recognized, both constitutionally and conventionally, their right to non-discrimination and gender equality.

Therefore, the three collegiate courts in our State granted the reason and decided to grant the precautionary measures in favor of the women. Which has been beneficial for the following cases that have been filed, because at the time of filing the amparos, the judges decree the precautionary measure so that they enjoy the services and benefits in the area of social security in less than twenty-four hours.

Likewise, through strategic litigation, the necessary precedents have been obtained to take this case to the Supreme Court of Justice of the Nation, through the request for a general declaration of unconstitutionality that must be requested by the Plenary of the Fifth Circuit (Sonora), so that the laws challenged by discrimination will not continue to be applied, and thus benefit all women (approximately 80 thousand) who go through the same problem in our State.

An important aspect to note is that in Mexico, even though there is a legal protection through the Amparo Proceedings, and works quite well, citizens do not have the knowledge of the effectiveness of this tool. Legal struggles such as this case are examples to strengthen the sense of right and fighting spirit.





RELATION TO THEME OF GENDER EQUALITY AND LABOR AND EMPLOYMENT

The project is directly related to the theme of Gender Equality and Labor and Employment of the World Justice Challenge 2019. First, it is related to gender discrimination for both women workers in the State and affected spouses. It has already been explained in previous sections, that the “Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora y sus reglamentos” make differences in the treatment and access to medical services and pensions between workers. Working women are denied the registration of their partners in the medical services, and in their case, widow's pensions, even when they meet the same requirements and quotas as male workers. On the other hand, this problem is also related to the issue of Labor and Employment because the working conditions are being affected by the application of a discriminatory law. Both themes can be observed in this situation that afflicts a large percentage of the working population of the governments of the states of Mexico.

POTENTIAL FOR SCALING

The respect and promotion of human rights should be paramount for any government, however, in the present case, the government is the one who transgresses the rights of its own workers. The effects at the level and with the perpetuation that has been seen in Mexico is alarming, especially when the Constitution prohibits and sanctions discrimination based on gender. In Sonora it was found that the awareness and empowerment of women provides the opportunity to create strong groups among state workers in defense of rights. The national research carried out by CADD in relation to affectations similar to those found in Sonora, showed that they are more than 16 states (Aguascalientes, Baja California, Baja California Sur, Chihuahua, Chiapas, Coahuila, State of Mexico, Guerrero, Jalisco, Nuevo Leon, Quintana Roo, Sinaloa, Tabasco, Tamaulipas, Veracruz, Yucatan) where the corresponding laws must be declared unconstitutional for transgression of the human rights of gender equality, non-discrimination, security and social security and access to health to the detriment of working women and collaterally to the beneficiary spouses. The work in these 16 states could provide a legal, economic, and social benefit, palpable in the lives of more than 1,000,000 women and their corresponding partners. While legal work can not be carried out directly by CADD, a support network can be created with associations and unions present in each state. In such a way that advisory





workshops are offered for local associations, so that they carry out the legal process that defends the affected human rights.

POTENTIAL FOR REPLICATION

The affectations on the right to social protection have been seen, not only from the perspective of women and their spouses, but also from that of same-sex couples. Same-sex couples, who do not fit into the social paradigm established in Mexico, experience the same denial of social protection and access to health. Even, and following the context of gender equity and non-discrimination, same-sex couples are subject to more discrimination by the authorities, as many are still in the struggle for the right to civil union, with few state laws in Mexico that recognize this union in people of the same sex. The above is only the beginning, because there are other barriers, among which are the recognition of the rights of the spouses, in terms of access to health and the right of workers to leave a pension to their spouse at their death.

In November 2018, the Mexican Senate approved a reform of the federal social security laws that guarantee these rights with a gender approach. After its implementation, women will be able to provide social security and widow's pension services to their spouses. Also, workers who are united in marriage or cohabitation with a same-sex partner can provide all the services of security and social security, on equal terms with heterosexual couples; however, these laws only operate for federal social security systems, which excludes workers at the service of states at the local level.

However, at the local level only nine States have regulated same-sex marriage in their laws, so there are still 23 States that do not provide for these rights in their laws, which means that state laws on social security In these states, they deny same-sex persons to provide social security benefits to their partners.

The same fate befall widows of working women at the local level, because as it was previously advanced, women make social security contributions in the same conditions as men, however they do not have the same rights, since they can not provide a pension of widowhood to their husbands, in case of death.





In this sense, the project we present can be replicated in the 23 states of the Mexican Republic (including Sonora) that restrict the right to social security under the following problems:

A) Discrimination against women affiliated to the Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora, by not allowing a husband or widower to transfer a widow's pension in case of death.

B) Discrimination due to sexual preference, by not recognizing the right to social security for all people regardless of their sexual preference, that is, the refusal to provide the same rights that are granted to heterosexual couples in state laws.

SUSTAINABILITY

In our State (Sonora) there is a diversity of feminist social movements (Mujer Sonora, Mujeres y Punto, entre otras) that have collaborated with CADD to organize the affected women and strengthen the project, also, by joining efforts we seek to advocate together before Congress, to create greater social pressure, and thereby achieve the reform of discriminatory laws.

Regarding the political factor, we believe that we can benefit from a change of legislature recently, since the political party that prevails in the Congress of our State is the same one that pushed the federal reform to the social security laws with perspective of gender, in favor of working women and same-sex couples.

Likewise, we seek to create medium-term alliances with civil associations in the other affected states of the Republic, in order to get the project replicated, since in most of the states local laws on social security are still discriminatory, so there is a need to achieve homogenization of local laws with federal laws, so that all workers in the service of the State enjoy the same rights.





CONCLUSIONS AND FUTURE OF THE PROJECT

The project has achieved the union of the affected people and has achieved notoriety among the government. Strategic litigation has proven to be a tool of utmost importance and of great efficiency in achieving the defense of human rights. The following steps are the most important for a solid basis of respect for gender equity and rights to social protection and access to health.

To date we have achieved the number of judgments by the Collegiate Courts in the Fifth Circuit (Sonora) so that it is possible to request the Supreme Court of Justice of the Nation to issue a general declaration of unconstitutionality against the “Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora”, and in turn, order the Congress of the State of Sonora to derogate and / or repeal it, and thus benefit the total number of working women affected.

At the same time, we consider it important to use the Open Parliament tool to enter into a dialogue with the Congress of the State of Sonora, and present a proposal for reform of the “Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora” subscribed by CADD and various partner organizations.

