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THE RULE OF LAW AND CONSTITUTIONAL JUSTICE

IN THE MODERN WORLD

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QUESTIONNAIRE

Mexico

A. The rule of law and constitutional justice in the modern world.

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The Political Constitution of the United Mexican States (Constitution) recognizes, under article 1ⁱ, that the origin of rights lies in the recognition that the Constitution and international treaties, signed and ratified by Mexico, give to human rights. Likewise, article 133ⁱⁱ also recognizes as sources of law, the laws issued by Mexico's Federal Congress (Congress), which have a superior status than local laws.

Moreover, case law issued by the Judiciary also bear the characteristics of a relevant source of law, because of its binding effect. The *Amparo* Lawⁱⁱⁱ provides that Mexico's Supreme Court and various lower courts can issue binding case law, which shall never have retroactive effects.



2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

At case law level, there is no well-established use of the term *Rule of Law*, in which differences are made between its formal or substantive dimensions. Nevertheless, the term has been used in reference to a segment of fundamental rights. For example, regarding freedom of speech, the Supreme Court in full session has argued that the free expression of ideas, as well as of communication and access to information, are essential in the formation of public opinion, as a necessary component of a representative democracy, and therefore constitutes a fundamental right of the *Rule of Law*.^{iv}

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

The Supreme Court has guaranteed respect for the Rule of Law in different areas, but due to limited herein, only three of them will be mentioned: 1) separation of powers, 2) rights of due process and 3) access to information.

As regards to the first, the Supreme Court in full session determined that due to the fact that the figure of separation of powers does not imply an absolute separation and isolation, it is rather a principle which mandates the coordination and collaboration of the different branches of government, in order to achieve a balance of forces that guarantees political unity of the State. However, this flexibility of the concept of separation of powers should not be confused with an encroachment of jurisdictions, as this represents a risk to the preservation of the Rule of Law, on the grounds that the limits to the abuse of public authority would not be well-identified.^v

The rights of due process set forth in the Constitution are intertwined with the powers granted to government authorities through systematic relations. This is what the Supreme Court in full session decided in the case of the legal concept of *res judicata*, which protects the citizens by ensuring their security and legal certainty in order to avoid being subject to two trials, for the same facts. At the same time, *res judicata* is a tool that the courts have in order to implement their rulings, namely to enforce their final decisions. This is the reason why *res judicata* is considered a cornerstone of legal certainty both for the citizens and judges' actions, and it established itself as a foundation of the Rule of Law.^{vi}

Lastly, within the framework of a constitutional controversy, the Supreme Court in full session explained the double dimension of access to information as an individual and social constitutional right. In the first one, the exercise of the right to access information is a right in itself, which implementation is projected towards the field that develops the personal autonomy of seeking, receiving and disseminating all types of information. In the second one, the social component represents a mechanism of institutional control; in other words, based upon the transparency of government action it is possible to engage citizens in an effective political involvement. It is again in the intersection of rights, both individual and collective, where the Supreme Court regards that the Rule of Law is bound.^{vii}

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

As it has been mentioned in response to the first question, in Mexico there is no doctrine on the Rule of Law on a case law level, which does not necessarily mean that the concept of it is



not frequently used in the Supreme Court's rulings. In the field of Mexican doctrine, some focal points are acknowledged with regards of what this term means to the Mexican legal system. Four essential elements are set out: "1) supremacy of the law; 2) accountability of government officials; 3) judicial control of constitutionality; and 4) respect for and promotion of fundamental rights." (Vázquez, 2002:111). From this specific breakdown, it is possible to find multiple references in the Mexican regulatory system and in the Supreme Court's case law.

On few occasions, the Second Chamber of the Supreme Court has used the term *supremacy of the law*, in order to indicate that the Mexican legal system has reserved for the law (understood exclusively as any law issued by Congress) certain matters that cannot be surpassed by actions of the Executive branch, because these matters must be justified and measured through mandates of law.^{viii}

Regarding the *accountability of government officials*, Title Fourth of the Constitution entitled *About the Accountability of Government Officials, Individuals Associated with Major Administrative Offences or Acts of Corruption and State Liability*, foresees the accountability of government officials starting from article 108 to 114. This section was amended in 2015, in order to include a National System of Anticorruption, identified as "a coordinating body between authorities from all levels of government that have authority in matters regarding the prevention, detection and punishment of administrative liabilities and acts of corruption, as well as in the inspection and control of public resources." (Article 113 of the Constitution). Likewise, the Second Chamber of the Supreme Court has created rulings that refer to the formal requirements that must be followed by those regulations that impose obligations and sanctions to government officials, such as observing the principle of transparency of such legal provisions, through the institutional dissemination channels.^{ix}



Another interesting example is that in which the same Second Chamber determined that regarding the administrative liability of government officials, the power to sanction whomever is responsible, may not be delegated, which means that there is a strict context of law, of the Rule of Law that determines who has the power to impose sanctions.^x

In respect of judicial review of constitutionality, there are at least two main aspects of authorities: 1) the *writ of amparo*, (or *juicio de amparo*, under articles 103 and 107 of the Constitution), and 2) constitutional controversies and unconstitutionality actions (article 105 of the Constitution). The writ of *amparo* is referred to in article 103, that stipulates three scenarios of dispute where judicial review is applicable: “I. By general rules, acts or omissions of the authority that violate recognized human rights as well as the rights granted for their protection by this Constitution and the international treaties in which the Mexican State is a party; II. By general rules or acts of the federal authority that violate or restrict the sovereignty of the States or the autonomy of Mexico City; and III. By general rules or acts of local state authorities which invade the jurisdiction of the federal authority.” Whereas article 107 of the Constitution regulates the authorities and specific cases in which it proceeds.

In 2011, a constitutional reform was approved that expanded the protective scope of the writ of *amparo*, by including, as an admissible rule, the violation of human rights set out in the Constitution, as well as in International Treaties in which Mexico is party. The scope of the writ of *amparo* by legitimate interest is added to the legal interest provided earlier, to the writ of *amparo* brought against individuals, as well as the power to recognize the violation of rights by omission of the authorities.



Since the 1917 Constitution until 1994, 55 constitutional controversies were presented. Whereas, once the reform was approved, 116 controversies were presented from 1995 to 1997 (Begné, 2007:23). Furthermore, a new authority was added: to try cases of actions of unconstitutionality, which contemplate the possibility to challenge a federal or local law in order to determine if such law is or is not in accordance with the federal Constitution. In case of it not being in accordance with the Constitution, the law ceases to have effect. In other words, it is annulled and declared unconstitutional.

Lastly, regarding the respect and the promotion of fundamental rights, as of the June 10th of 2011 reform, the Constitution provides the following obligations for all authorities, in their fields of responsibility: “promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressivity”. As a consequence, the State must prevent, investigate, sanction and indemnify for violations of human rights, under the terms established by law”. (Article 1 of the Constitution).

In a recent opinion, the Supreme Court in full session linked the observance and respect for human rights with the work done in prisons. The work, seen as a guiding principle of social reintegration, must take into account the principle of human dignity, since depending on the outcome of this principle other rights will be developed.^{xi}

Regarding the proper promotion of human rights, the Supreme Court in full session issued a case law where it established the opinion that the existence of local constitutional courts can have the double role of controlling the operation of government authorities, and of monitoring the promotion and protection of human rights at a local level.^{xii}



5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

The answer to this question can be ambivalent as, it has been mentioned before, in Mexican case law there isn't a conceptual doctrine regarding the use of the term Rule of law. Nevertheless, it has been illustrated that its use has a constant overlap of at least two fundamental rights that make it significant to raise it to the status of Rule of law. Moreover, it has also been mentioned that the use of the term constitutional supremacy seems to collect the core element of the concept.

One concept used by the Supreme Court, as of the 2011 Constitutional reform still remains to be explained: *constitutional uniformity*¹, which also shares elements with the previous use of Rule of law or constitutional supremacy. In this respect, the Second Chamber of the Supreme Court has issued case law that collects the use of the term "constitutional uniformity" in the sense of enunciating a broad provision of protection that includes the rights granted by the Constitution, International Treaties signed by Mexico, as well as binding national or international precedents that favor the person who requires the protection of justice.^{xiii}

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

The answer to this question brings along the need to briefly describe the most recent evolution that the impact of international law has had on the interpretations of Rule of law (constitutional uniformity), on the basis of certain emblematic cases.



In 2009, the Inter-American Court of Human Rights (IACHR) condemned Mexico for the enforced disappearance of Rosendo Radilla. The ruling ordered the country to take internal legal measures compatible with international obligations contained in several international treaties.

On the other hand, in a consultation known as *Varios 912/2010* resolved in 2011, for the first time the Supreme Court examined the effects that the decisions of the IACHR had on Mexican authorities. On this first occasion, it was decided that this was a new type of constitutional supremacy, which recognized the binding effect of rulings passed directly against Mexico. The rest of the rulings by the IACHR would only be guidelines for Mexican judges' criteria.

A couple of years after, in 2013, the Supreme Court resolved the contradiction of court opinions number 293/2011, in which it consolidated conclusively that the existence of a constitutional block (Constitution and International Treaties) meant in the case of Mexico, a control parameter of constitutional uniformity, also known as control of constitutionality. Here, we come back to the subject of the binding effect of the IACHR's rulings, and this is where the Supreme Court issued case law stating that all rulings are binding for Mexican judges, regardless of whether Mexico was the condemned country or not, provided that the applicability of the ruling favors people.^{xiv}

Lastly, within the same contradiction of court opinions number 293/2011, the Supreme Court in full session ruled that the outright restrictions set forth in the Constitution must prevail over other rights in the Constitution or several International Treaties.^{xv}

After these cases, the boundaries of the implications of international law on Mexican justice were outlined. Regarding the contradiction of court opinions number 299/2013, which states



that case law issued by the Supreme Court cannot be a matter of control of constitutional uniformity, because it is the highest court in the country and its decisions serve the purpose of giving legal certainty to the judicial activity conducted by lower courts. If there was a case where the Supreme Court's case law ruled against human rights, within the Supreme Court there are mechanisms to provide a solution, such as interruption, change or substitution of case law.^{xvi}

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

In this past year, the country's public finances have caused that practically all government offices take several budgetary adjustment measures. In this context, the Supreme Court along with the Judicial branch took the decision of implementing policies regarding austerity measures, optimization, budgetary discipline and modernization of the budgetary administration. This is done by ensuring, at all times, the "necessary conditions for an efficient operation that ensure the observance of the duties of the Judiciary branch and those constitutional obligations established in order to satisfy citizens' demand of access to justice" (DOF, 28/02/2017).

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

Despite certain events in the international environment, for example, the economic crisis in 2008, the Supreme Court along with the Judiciary branch have had budgetary stability, which has allowed the continuance into the provision of justice in the country.



9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

In addition to the precedents addressed in answer 6, in section 1 above, we should include the one regarding the genesis of file *Varios 912/2010* and the contradiction of court opinions numbers 293/2011 and 299/2013, where the Supreme Court has issued three specific guidelines related to the compliance with rulings by the Inter-American Court of Human Rights. (Morales, 2015)

The first one is the *Amparo under Appeal 168/2011*, where the First Chamber of the Supreme Court decided that the rulings issued by the Inter-American Court of Human Rights to which Mexico is a party, are mandatory for all authorities in the country including, certainly, all bodies administering justice, in addition to resolving that the obligation to comply with such rulings wasn't just delimited to the operative paragraphs, but to all interpretative criteria contained in the rulings.

The second guideline is the Motion for Review 133/2012, in which the Supreme Court in full session held that the mandatory nature of the rulings issued by the Inter-American Court of Human Rights does not require reiteration in order for them to be binding on all authorities in the country. In other words, the local case law rules aren't applicable to Inter American judgments.



The last example refers to the *Amparo under Appeal 375/2013*, in which the First Chamber of the Supreme Court endorsed its commitment with the criterion related to the binding effect on all authorities, derived from “article 68.1 of the American Convention on Human Rights which provides that the States Parties to the Convention undertake to comply with the judgment of the Inter-American Court of Human Rights”.

Regarding the existing legal mechanisms in the country we find the State Liability Law –for cases in which the Mexican State is condemned to pay compensatory allowances-, the General law of Victims and even the *Amparo* Law.

III. The law and the State

10. What is the impact of the case-law of your Court on guaranteeing that State powers act within the constitutional limits of their authority?

One of the most effective instruments the Supreme Court uses to ensure that the actions of government authorities are done within their constitutional limits is, precisely, control of constitutionality of the laws understood in a broad sense. The case law issued by the Highest Court in these cases, does not only solve the controversy regarding the constitutionality of a specific provision, but it also serves as a mandatory precedent for all judges in the country. The Constitution, whilst a legal norm of binding and immediate compliance, structures the different ways in which the checks and balances operate within the government. These balances are oriented to maintain stability between the jurisdiction of different authorities, as well as the respect and the guarantee of fundamental rights, which serve as basic pillars of the Mexican State.^{xvii}



In various occasions, the Supreme Court^{xviii} has spoken on this matter. Specifically, it has emphasized in a case law which constitutes a mandatory precedent, that the constitutional controversy is the means that certain governmental, judicial or constitutional bodies have in order to contest the irregularity of a particular legal provision. The Court has stressed that not all alleged flaws are resolved through an action of unconstitutionality. The only ones that qualify to be subject of review are the ones that are directly correlated with the aforementioned principle of separation of powers or with the federal clause conferring jurisdictions.

Article 49 of the Constitution^{xix} is one of the primary legal foundations of this logic of checks and balances between the Nation's authorities. And this is precisely, the one that serves as a source for interpretations, pursuits and decisions of the Supreme Court regarding its scope and safeguard.

11. Do the decisions of your Court have binding force on other courts? Do other ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

The Supreme Court's rulings are binding, in several ways, to other courts and judges. First of all, and in accordance with the specific norm that regulates this binding effect, the Federal Judicial Authority Organization Act (FJAOA), is competent to directly give indicative orders to the judiciary branch's bodies so that they carry on a certain proceeding (depending on the specific order). Other rulings that are also binding are the ones that, under certain circumstances, are a mandatory precedent. In this case, they operate as sub-rules derived from



rulings that must be implemented by authorities that have jurisdiction, just as they do it with laws applicable to a specific case.

Thus, specifically, articles 10 and 11 of the FJAOA^{xx} enshrine the attributions of the Supreme Court, much like, in particular, the ones belonging to the Plenaries of the Court. These articles establish the cases that the Plenaries of the Court will solve, as well as their duties to ensure the autonomy of the judicial bodies and the people who work in them.

Ordinary courts have the obligation to respect case law that serves as precedent. In other words, not all decisions that the Supreme Court makes, in all sorts of affairs, are a binding rule for lower courts. The Constitution and the specific regulations on this matter, determine the cases in which the rules set by the Highest Court are mandatory case law. The Constitution (articles 94 and 105)^{xxi}, the FJAOA and the *Amparo* Law establish: 1) that the exercise of the Judiciary branch is vested in the Supreme Court, the Tribunals and Courts of different specialties (among them electoral, district courts, etc.); 2) the procedural and substantive powers they have; and 3) the terms in which the Supreme Court's case law is mandatory. These regulations also set forth the conditions of interruption and modification of this mandatory case law.

On the other hand, the *Amparo* Law specifies the scenarios in which the decisions of the Supreme Court generate mandatory case law. In general terms (and putting aside many of the specific conditions of creation, modification and suspension) article 15 provides that case law is determined through the reiteration of criteria, substitution and contradictory court opinions. Articles 216 to 235 of the same act provide the rules governing the precedent in Mexico.^{xxii}



In sum, as mentioned above, the direct orders from the Supreme Court to different judges and courts in the Republic are binding and of immediate implementation. On the other hand, regarding mandatory case law, not only the Constitution in general, but specifically the *Amparo* Law provide in which cases the Supreme Court's rulings are orders that must be followed in equally relevant situations.

Regarding possible conflicts arising between the Supreme Court and other highest courts, while exercising their functions, it is worth pointing out that, whilst that Court leads the jurisdiction as well as its single and highest instance, the problems of conflicts with other courts of the same rank do not occur. This is clearly defined in the Constitution and in the provisions that develop this subject, as well as in the daily operation of the Mexican justice system.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).

The Supreme Court, as the Highest Court of constitutionality in the country, is in charge of creating legal rulings that, in many cases, refer to the State organization based upon the principle of division of powers. There are times when the guarantee or indemnity of a human rights' violation goes through the design or implementation of a certain public policy, in which case the Supreme Court has determined the standards that the legislative and executive branch agencies must follow, whenever it is necessary to legislate on the subject.

There are a number of rulings by the Supreme Court that have incorporated international standards of human rights, after which the laws have developed criteria, principles and thresholds that must be followed by public policies involving fundamental rights. For instance,



the Court has pronounced itself in many occasions, with respect to the indigenous peoples' right to consultation in cases in which it is intended to implement projects in their territories, or in other cases that directly affect them. It has stated that this community consultation process provides a necessary mechanism, though insufficient, in order to ensure self-determination and other cultural rights associated with it.^{xxiii}

The authorities have, within their field of competence, the obligation to use all the means at their disposal in order to ensure the consultation process, according to the standards established by the Supreme Court. Some of the criteria used to assess such consultation process are: 1) its cultural adequacy; 2) the information that is available and at hand; 3) the previous status; and 4) the consideration of the affected community's interests or those prone to be impaired.^{xxiv}

Another typical form of ruling through which the Supreme Court introduces public policy standards as evaluation criteria, is the one concerning exhortatory rulings. These are decisions where at least part of the ruling doesn't consist of an order that must be accomplished immediately, but of a way to inform legislators, in a broad sense, about correcting certain unconstitutional flaw incurred by them. Consistently, the rulings entailing the modification of a public policy incorporate clauses such as these. On those occasions, the Supreme Court encourages the appropriate authority to amend the unconstitutional flaw.^{xxv}

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

After the 2013 reform, the *Amparo* Law increased the number of subjects that can be qualified as accountable whenever one of these trials of constitutional nature, oriented towards the



protection of fundamental rights, initiates. It extended the description of “authority held responsible for an unconstitutional action” to private subjects who perform public functions in a derived manner. The individuals who carry out acts of authority will be prosecuted in an *Amparo* trial, taking into consideration the substantive characteristics of the contested act, not the issuer.^{xxvi}

Among the requirements^{xxvii} for the proceeding of the *Amparo* trial against private entities, the individual must carry out responsibilities that are similar to the ones belonging to government authorities, which should be contemplated in any of the country’s regulations. It is also required that those actions affect a person, specifically, the enjoyment and respect of their fundamental rights.

Regarding the specific terms of legal recognition and case law development, article 1 of the *Amparo* Law provides that the object of these trials is to solve every dispute that may arise. Among them, we find possible infringements derived from general laws or by acts or omissions carried out by government authorities or private individuals who carry out similar acts to those of the authority. Likewise, article 5 provides that individuals may be accused in an *amparo* trial whenever they carry out duties that are materially public. The case law has specified the extent and the constitutionally suitable interpretation of the accountability of private actors. It has held that the acts of private individuals that are prosecutable through the *Amparo* procedure, must have the same characteristics as the ones carried out by government authorities. This means that these types of actions or omissions must unilaterally create, modify or extinguish legal situations, and there must be a relationship of subordination with the affected party.^{xxviii}

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight



against corruption? Do you have case-law related to the accountability of public officials for their actions?

Title four of the Constitution (articles 108-114) is dedicated to the accountability of government officials and individuals who carry out duties that are similar to those of public officials. These responsibilities are set, among other reasons, for being associated to acts of corruption, administrative offences and patrimonial detriment of the State. In the government officials' category, the representatives of popular election, members of the Judiciary branch, persons who hold a position in Congress, and officials in constitutional autonomous agencies are included. Likewise, public officials will be obligated to present a declaration of assets and a declaration of interests before competent authorities, in terms of the law.

Moreover, article 113 of the Constitution, recently modified, creates a national anti-corruption system, which is oriented to articulate authorities of all levels (federal, state, local, autonomous, etc.) in order to detect and sanction acts of corruption, to attribute administrative liabilities, and to monitor and control public resources. The Federal Law of Transparency and Access to Information specifically regulates the national anti-corruption system created in such article. Therefore, it contemplates the situations and procedures that must be followed regarding government officials' accountability.^{xxix}

In many occasions, case law has referred to public officials' accountability.^{xxx} In particular, it has developed different criteria regarding the right to equality and its interpretation in accordance to the Constitution at matters related to supervision and accountability of the federation.^{xxxi}

IV. The law and the individual



15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

People can directly and indirectly challenge acts of authorities and individuals as mentioned in responses to questions 11 and 13. In article 103, the Constitution provides that the federal courts will solve all requests for *amparo* originated by: 1) general rules, acts or omissions of authorities that violate or threaten human rights and constitutional rights, as well as international treaties ratified by Mexico; and 2) rules or acts of authorities that limit the sovereignty of the states or their field of competence. Furthermore, article 107 of the Constitution provides that the *amparo* trial will take place at the initiative of the affected party, which is the person who alleges the infringement of a human right or a legitimate collective or individual interest.

The *Amparo* Law which is further elaborated under articles 103 and 107 of the Constitution, reiterates in article 1 the object of the *amparo* trials established in article 107 of the Constitution and adds that these procedures protect people against general rules, acts or omissions of government authorities or individuals, whenever the latter serve duties similar to the government agencies (article 103 of the Constitution).

Case law has elaborated a consistent interpretation regarding the purpose of ordinary legal actions in general and, in particular, of the *amparo* trial, whilst they are judicial mechanisms available to individuals in order to contest, directly or indirectly, acts of authorities. It has mentioned that, in agreement with article 8.2, subparagraph *h*), of the American Convention on Human Rights, the Mexican State has instituted the *amparo* trial as a guarantee of the right all citizens have in order to appeal court rulings before the same public official or his/her direct superior. This *amparo* trial is not, in strict sense, an appeal, in which its specific objective is the



threat or violation of fundamental rights, but an action that results in the study of charges of human rights violations as well as procedural and legality shortcomings associated with them.

This way, the Mexican State fulfills the conventional obligation of establishing an expeditious jurisdictional mechanism, through which individuals can claim the violation of their rights and constitutional rights, as well as their disagreement with court judgments, interlocutory or final.^{xxxii}

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

The Supreme Court has stated case law regarding the right to access the administration of justice, in the form of access to ordinary courts. From the legal standpoint, article 17 of the Constitution provides a prohibition against all people to “take justice” into their own hands or carry out violence in order to demand the fulfillment of an alleged right. In that sense, all individuals bear the right to access the administration of justice through courts, concerning their matters in dispute. In order for this administration of justice to be adequate, it must at least fulfill the following characteristics: it must be 1) expeditious; 2) prompt; 3) respectful of the principle of legality; 4) watchful of the terms and time limits; 5) complete; and 6) impartial, among others.

Regarding the costs, the same constitutional precept establishes the gratuity of access to the administration of justice. In this respect, it provides for a constitutional prohibition of collecting judicial expenses from the parties.



Regarding collective actions, that same article stipulates that Congress will enact laws that regulate the exercise of these mechanisms of protection of group rights, as well as the ways of establishing the amounts and mechanisms for calculating the indemnity for damages caused to the victim. It also establishes the exclusive authority of federal judges and courts to solve these procedural instances.^{xxxiii}

In many occasions, the Supreme Court's case law has referred to this global right and the constitutional rights that are a part of it. In that sense, regarding the reasonable term, as a legal obligation to solve cases within a constitutionally admissible time frame, it has stipulated, among other things, that all people have the right to be heard in court. This opportunity granted to the parties to be heard during the trial, must comply with the requirements to access a judge or court that is competent, independent, impartial and previous, no matter what type of trial is being held (civil, criminal, labor, etcetera).

This interpretation of articles 14 and 17 of the Constitution doesn't imply, according to criteria established by the Supreme Court, that the right to be heard together with all constitutional rights, stall the procedures making them long and burdensome, to the point of undermining the rights to a reasonable term and a prompt administration of justice. Rather, the court has mentioned that these prerogatives must be interpreted jointly and aimed to ensure that the constitutional purposes are met in trials.^{xxxiv}

Particularly, regarding access to administration of justice by individuals who are vulnerable due to their age, gender, sexual preference, ethnic affiliation, sociocultural practices, etc., the constitutional interpretation and human rights imperatives must prevail in the understanding of the purposes of the trial. Among those purposes that legal proceedings must abide, especially when a vulnerable subject (individual or collective) is involved, are the rational



prosecution oriented to comply with the purposes of administration of material justice, consistent with a constitutional State governed by law.^{xxxv}

17. Has your Court developed case-law on other individual rights related to the rule of law?

Under schematic reasoning, the Supreme Court's case law has, among its objectives, the interpretation and development of individual rights related to and resulting from the Rule of Law provision. The hermeneutics of those rights and constitutional rights is not restricted to the exegetical transcription of the legislative provisions enshrined in the Constitution, but it also serves the rights that are all immanently composed by different constitutional provisions.

Among those rules and principles resulting in individual rights, to mention a couple of them, we find the interpretation of the Rule of Law provision^{xxxvi}; the right to access information^{xxxvii}; the provision of human rights^{xxxviii}; the principle of democratic society based on the rule of law^{xxxix}; the right to personal freedom and its guarantees^{xl}; the right to due process^{xli}; the rights of indigenous peoples^{xlii}; the differentiated right to equality and development^{xliii}, in terms of rights and constitutional rights, provided by the social rule of law.^{xliv}

In sum, the Supreme Court's rulings have invariably interpreted the Constitution in a way that through their readings, derive rights and constitutional rights that are explicitly embedded in the Constitution, as well as others that derive from the integration of its multiple legal provisions.

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?



As it was mentioned in the answer to question 17, the Rule of Law provision is a guiding principle of constitutional interpretation by the Supreme Court. In this sense, we assume that the Constitution must be understood in a systematic way, together with international treaties regarding human rights and supranational judicial authorities that bind the Mexican State.

Therefore, when it comes to rights that originate from case law or from the systematic interpretation of the Constitution inferred from the principle of the Rule of Law, we don't understand them as "absent" fundamental rights. Rather, the definition given by the Court in these cases is that they are immanent rights to the constitutional text, in a broad sense, which specific integration, in terms of fundamental rights (subject, object, content and source) are specified in the constitutional rulings.

For example, we find the fundamental right to the free development of personality^{xlv} originated from case law. Even though this precept isn't enshrined in a specific constitutional provision, its configuration is originated from the joint interpretation of superior precepts regarding freedom, equality and dignity, among others. This fundamental right created by the Supreme Court has undergone regular and vigorous development by that institution, as by the frequent request for *amparo* from the citizens.



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¹ Free translation.

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ⁱ Article 1. “Every person in the United Mexican States shall enjoy the human rights granted by this Constitution and international treaties of which the Mexican State is a party, as well as the guarantees for their protection, which exercise cannot be restricted or suspended, except in such cases and under such conditions as are herein provided.” *Constitución Política de los Estados Unidos Mexicanos* (CPEUM), consulted in http://www.diputados.gob.mx/LeyesBiblio/pdf/1_240217.pdf

ⁱⁱ Article 133. “This Constitution, the laws of the Congress of the Union that emanate therefrom, and all treaties that have been made and shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the supreme law of the whole Union. The judges of each State shall conform to the said Constitution, the laws, and treaties, in spite of any contradictory provisions that may appear in the constitutions or laws of the States” *Constitución Política de los Estados Unidos Mexicanos* (CPEUM), consulted in http://www.diputados.gob.mx/LeyesBiblio/pdf/1_240217.pdf

ⁱⁱⁱ Article 217. “The case law established by the Supreme Court, in full session and in chambers, is binding for these regarding the one declared by the full court, and also for the Full Circuit courts, collegiate circuits and single-judge circuit courts, district courts, military and judicial courts under common law of the states and the Federal District, and administrative courts and labor tribunals, both local or federal.

The case law established by Full Circuit courts is binding for collegiate courts and single-judge circuit courts, district courts, military and judicial courts under common law of the states, and administrative courts and labor tribunals, both local and federal that are located within the corresponding circuit.



The case law established by collegiate circuit courts is binding for the bodies mentioned in the previous paragraph, except for the Full Circuit courts and the rest of the collegiate circuit courts.

The case law shall not have, in any case, retroactive effect in detriment of any person.”

Ley de Amparo, consulted in: http://www.diputados.gob.mx/LeyesBiblio/pdf/LAmp_170616.pdf

^{iv} Tesis [J] 80, under the heading: FREEDOM OF EXPRESSION. ARTICLES 6 AND 7 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES ESTABLISH FUNDAMENTAL RIGHTS OF THE RULE OF LAW. Full Court, *Apéndice de 2011*, Novena Época, Tomo I. Constitucional 3. Pág. 952, Reg. IUS: 1001589. Consulted in en: sjf.scjn.gob.mx/

^v P./J. 78/2009, under the heading: DIVISION OF POWERS. THE FACT THAT THIS PRINCIPLE IS FLEXIBLE ONLY MEANS THAT BETWEEN THEM EXISTS A COLLABORATION AND COORDINATION IN THE TERMS ESTABLISHED, BUT DOES NOT ALLOW THEM TO ARROGATE AUTHORITIES THAT CORRESPOND TO ANOTHER BRANCH, BUT ONLY THOSE THAT THE CONSTITUTION ASSIGNS THEM. Full Court, *Semanario Judicial de la Federación y su Gaceta*, Tomo XXX, Julio de 2009, Novena Época. Pág. 1540. Reg. IUS 166964. Consulted in: sjf.scjn.gob.mx/

^{vi} Tesis: P./J. 85/2008, under the heading: RES JUDICATA. THE CONSTITUTIONAL FOUNDATION OF THAT PROCEDURAL LEGAL INSTITUTION IS FOUND IN ARTICLES 14, SECOND PARAGRAPH AND 17, THIRD PARAGRAPH OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES. Full Court, *Semanario Judicial de la Federación y su Gaceta*, Tomo XXVIII, Septiembre de 2008, Novena Época, Pág. 589. Reg. IUS 168959. Consulted in: sjf.scjn.gob.mx/

^{vii} Tesis: P./J. 54/2008, under the heading: ACCESS TO INFORMATION. ITS NATURE AS AN INDIVIDUAL AND CONSTITUTIONAL RIGHT. Full Court, Pleno, *Semanario Judicial de la Federación y su Gaceta*, Tomo XXVII, Junio de 2008, Novena Época, Pág. 743. Reg. IUS 169574. Consulted In: sjf.scjn.gob.mx/

^{viii} Tesis: 2a./J. 202/2010, under the heading: FISCAL MISCELLANEOUS RESOLUTION FOR 2000. THE RULE 5.2.2 EXCEEDS THE CONDITIONS SET BY THE FEDERAL TAX CODE AND THE LAW ON VALUE-ADDED TAX, AND THUS CONTRAVENES THE PRINCIPLE OF SUPREMACY OF THE LAW. Second Chamber, *Semanario Judicial de la Federación y su Gaceta*, Tomo XXXIII, Enero de 2011, Novena Época. Pág. 1111, Reg. IUS: 163019, Consulted in: sjf.scjn.gob.mx/

^{ix} Tesis: 2a./J. 249/2007, under the heading: PUBLIC OFFICIALS. THE MANUALS OF ORGANIZATION, OF PROCEDURES OR SERVICES TO THE PUBLIC, ON WHICH OBLIGATIONS ARE IMPOSED, AND DUE TO NON-COMPLIANCE RESPONSIBILITIES AND SANCTIONS MAY BE ESTABLISHED, MUST BE PUBLISHED IN THE CORRESPONDING OFFICIAL DISSEMINATION MEDIUM. Second Chamber, *Semanario Judicial de la Federación y su Gaceta*, Tomo XXVII, Enero de 2008. Novena Época, Pág. 515. Reg. IUS 170438. Consulted in: sjf.scjn.gob.mx/

^x Tesis: 2a./J. 87/2008, under the heading: ADMINISTRATIVE LIABILITY OF GOVERNMENT OFFICIALS FROM THE CIRCUIT COURTS AND DISTRICT COURTS. THE AUTHORITY GRANTED TO THE COUNCIL OF THE FEDERAL JUDICIARY TO DETERMINE ITS EXISTENCE AND IMPOSE SANCTIONS, CAN ONLY BE EXECUTED BY ITS FULL COURT OR THE COMMISSION IT DETERMINES, AND NOT DELEGATED TO JURISDICTIONAL BODIES. Second Chamber, *Semanario Judicial de la Federación y su Gaceta*, Tomo XXVII, Mayo de 2008. Novena Época. Pág. 154. Reg. IUS 169618. Consulted in: sjf.scjn.gob.mx/

^{xi} Tesis: P./J. 34/2013 (10a.), under the heading: PRISON LABOR. ITS DEVELOPMENT MUST BE BUILT ON THE OBSERVANCE AND RESPECT OF HUMAN DIGNITY. Full Court, *Gaceta del Semanario Judicial de la Federación*, Libro 1, Diciembre de 2013. Décima Época, Pág. 128, Reg. IUS 2005110. Consulted in: sjf.scjn.gob.mx/

^{xii} Tesis: P./J. 23/2012 (10a.), under the heading: LOCAL CONSTITUTIONAL CONTROL. IT IS VALID TO ESTABLISH A CONSTITUTIONAL COURT AND A SYSTEM OF MEANS TO DEMAND THE FORMS OF ORGANIZATION OF POWERS, AND THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE LOCAL LEVEL. Full Court, *Semanario Judicial de la Federación y su Gaceta*, Libro XIII, Octubre de 2012, Tomo 1. Décima Época, Pág. 288. Reg. IUS 2001870. Consulted in: sjf.scjn.gob.mx/



^{xiii} Tesis: 2a./J. 70/2015 (10a.), under the heading: APPEAL OF THE WRIT OF AMPARO. THE ACCOUNTABLE AUTHORITY TO WHOM THE SANCTION IS PERSONALLY IMPOSED, IN ACCORDANCE TO ARTICLE 260, FRACTION IV OF THE AMPARO LAW, HAS LEGAL GROUNDS TO REQUEST AN APPEAL AND CHALLENGE THE CONSTITUTIONAL REGULARITY OF THIS LEGAL PRECEPT. Second Chamber, *Gaceta del Semanario Judicial de la Federación*, Libro 18, Mayo de 2015, Tomo II. Décima Época, Pág. 1309. Reg. IUS 2009205. Consulted in: sjf.scjn.gob.mx/

^{xiv} Tesis: P./J. 21/2014 (10a.), under the heading: CASE LAW ISSUED BY THE INTERAMERICAN COURT OF HUMAN RIGHTS. IT IS BINDING TO MEXICAN JUDGES, AS LONG AS IT IS MORE BENEFICIAL TO THE CITIZEN. Full Court, *Gaceta del Semanario Judicial de la Federación*, Libro 5, Abril de 2014, Tomo I. Décima Época. Pág. 204. Reg. IUS 2006225. Consulted in: sjf.scjn.gob.mx/

^{xv} Tesis: P./J. 20/2014 (10a.), under the heading: HUMAN RIGHTS SET OUT IN THE CONSTITUTION AND INTERNATIONAL TREATIES. THEY ESTABLISH CONTROL PARAMETERS OF CONSTITUTIONAL UNIFORMITY, BUT WHEN THERE IS A SPECIFIC RESTRICTION IN THE CONSTITUTION REGARDING THEIR EXERCISE, THE PROVISIONS ESTABLISHED IN THE CONSTITUTIONAL TEXT MUST BE FOLLOWED. Full Court, *Gaceta del Semanario Judicial de la Federación*, Libro 5, Abril de 2014, Tomo I. Décima Época, Pág. 202, Reg. IUS 2006224. Consulted in: sjf.scjn.gob.mx/

^{xvi} Tesis: P./J. 64/2014 (10a.), under the heading: CASE LAW OF THE SUPREME COURT OF JUSTICE OF THE NATION. IT IS NOT SUSCEPTIBLE TO UNDERGO CONSTITUTIONAL CONTROL AND/OR *EX OFFICIO* CONVENTIONALITY BY JURISDICTIONAL BODIES OF LOWER RANK. Full Court, *Gaceta del Semanario Judicial de la Federación*, Libro 13, Diciembre de 2014, Tomo I. Décima Época, Pág. 8. Reg. IUS 2008148. Consulted in: sjf.scjn.gob.mx/

^{xvii} The development of the bond between distribution of powers and fundamental rights within the Mexican context can be found in Carla Huerta's text, *El control constitucional y sus límites*, available in: <https://archivos.juridicas.unam.mx/www/bjv/libros/6/2955/13.pdf>

^{xviii} Specifically, the Constitutional Controversy 117/2014 may be consulted. See: Tesis: P./J. 42/2015 (10a.), under the heading: CONSTITUTIONAL CONTROVERSY. THE VIOLATIONS THAT ARE SUSCEPTIBLE TO BE FUNDAMENTALLY ANALYZED ARE THE ONES RELATED TO THE PRINCIPLE OF DIVISION OF POWERS OR WITH THE FEDERAL CLAUSE, ON THE BASIS OF A CONCEPT OF BROAD AFFECTATION. Full Court, *Gaceta del Semanario Judicial de la Federación*, Libro 25, Diciembre de 2015, Tomo I. Décima Época. Pág. 33. Reg. IUS. 2010668. Consulted in: sjf.scjn.gob.mx/

^{xix} Article 49 provides the following: Article 49. The supreme power of the Federation is divided, for its exercise, into legislative, executive, and judicial branches.

Two or more of these powers shall never be united in one single person or corporation, nor shall the legislative power be vested in one individual except in the case of extraordinary powers granted to the Executive, in accordance with the provisions of Article 29. Under any other circumstance, except the one provided in the second paragraph of article 131, will any extraordinary powers be granted to legislate." The Constitution may be consulted in: http://www.diputados.gob.mx/LeyesBiblio/pdf/1_240217.pdf

^{xx} Articles 10 and 11 of the Federal Court System Organizational Act (http://www.diputados.gob.mx/LeyesBiblio/pdf/172_031116.pdf) provide the following:

Article 10. "The Supreme Court in full session will have authority over:

I. Constitutional controversies and unconstitutionality actions referred under fractions I and II of article 105 of the Political Constitution of the United Mexican States;

II. Motions of review against rulings pronounced in the constitutional hearing by the district judges or single judge circuit courts (...)"

Artículo 11: "The Supreme Court in full session will at all times ensure the autonomy of the Judicial branches' bodies and the independence of its members (...)"

^{xxi} Constitution Article 94: "The judicial power of the Federation is vested in a Supreme Court of Justice, in an Electoral Court, in collegiate and single judge circuit courts, and district courts. (...) The law will establish the terms where case law established by Federal Courts and circuit courts are binding, regarding interpretation of the



Constitution and general laws, as well as the requirements for their interruption and substitution”. Article 105: “The Supreme Court of Justice, under conditions specified by law, will have authority over the following issues: (...)”

^{xxii} The Amparo Law can be consulted in: http://www.diputados.gob.mx/LeyesBiblio/pdf/LAmp_170616.pdf

^{xxiii} The criterion can be found under the case docket Amparo en Revisión AR 270/2015. See: Tesis: V.2o.P.A.12 A (10a.), under the heading: MUNICIPAL OPERATING BODY CALLED WATER OF HERMOSILLO, SONORA. IT IS CONSIDERED AN AUTHORITY REGARDING AMPARO TRIALS WHEN THE WATER BILL OR THE SANCTION IMPOSED BY THE MENTIONED BODY FOR USING THIS LIQUID FOR DIFFERENT PURPOSES THAN THE ONES ORIGINALLY HIRED, ARE CHALLENGED. Collegiate Circuit Court. *Gaceta del Semanario Judicial de la Federación*, Libro 35, Octubre de 2016, Tomo IV. Décima Época. Pág. 2996. Reg. IUS: 2012860. Consulted in: sjf.scjn.gob.mx/

^{xxiv} This criterion is under the case docket *amparo* en revisión 781 of 2011, which can be consulted in: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=133848>. In a similar vein, the case docket AR 781/2012 and the Constitutional Controversy 32/2012 may be consulted in: <https://www.scjn.gob.mx/sistema-de-consulta/#/>

^{xxv} Some rulings that have exhortations are the unconstitutionality actions AI 37/2011 y AI 59/2006. In order to analyze exhortatory rulings in Mexico, consult: Landa César, *Las sentencias atípicas en la jurisdicción constitucional latinoamericana*, available in, <https://archivos.juridicas.unam.mx/www/bjv/libros/6/2894/24.pdf>

^{xxvi} In this respect, the text of Benjamín Rubio Sánchez, *Amparo contra actos particulares*, is available in: <http://revistajurista.com/amparo-contra-actos-de-particulares/>

^{xxvii} In this respect, the text “La ley de amparo en lenguaje llano”, published by the Supreme Court is available in: <http://www.ceed.org.mx/LiteratureRetrieve.aspx?ID=137554>

^{xxviii} This criterion may be found under the case docket recurso de queja 54/2014, available in: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/Publico/14000540.007-1861.doc>.

^{xxix} The Federal Law of Transparency and Access to Information can be consulted in: http://www.dof.gob.mx/avisos/2493/SG_090516/SG_090516.html

^{xxx} Specifically, the case docket amparo en revisión AR 1076/2013 may be consulted. See Tesis: 1a. LIX/2014 (10a.), under the heading: ACTION FOR JUDICIAL REVIEW OF AN ADMINISTRATIVE-LAW DECISION, SUMMARY JUDGMENT. First Chamber, *Gaceta del Semanario Judicial de la Federación*. Libro 3, Febrero de 2014, Tomo I. Décima época. Pág. 667. Reg. IUS 2005632. Consulted in: sjf.scjn.gob.mx/. The criterion regarding accountability by public officials can be consulted in Tesis: 1a. LIX/2014 (10a.), under the heading: ACTION FOR JUDICIAL REVIEW OF AN ADMINISTRATIVE-LAW DECISION, SUMMARY JUDGMENT. First Chamber, *Gaceta del Semanario Judicial de la Federación*, Libro 3, Febrero de 2014, Tomo I. Décima Época. Pág. 667. Reg. IUS 2005632.

^{xxxi} Federal Government Oversight and Accountability, consulted in <http://www.diputados.gob.mx/LeyesBiblio/pdf/LFRCF.pdf>. For further information, see Leticia Bonifaz, *La división de poderes en México*, FCE, México, 2017, pp. 93 a 95.

^{xxxii} See ADR 6357/2015 en Tesis: 1a. CCLXXVIII/2016 (10a.). FUNDAMENTAL RIGHT FOR AN EFFECTIVE JUDICIAL REMEDY, *Gaceta del Semanario Judicial de la Federación*, Libro 37, Diciembre de 2016, Tomo I. Décima Época. Pág. 368. Reg. IUS 2013206. In addition, the contradiction of rulings CT 152/2005 y CT 265/2103 may be consulted.

^{xxxiii} For a review of doctrine regarding the right to access ordinary courts of lower rank, preconditions of trial, terms, among others, see Saavedra Yuria, *El artículo 17 de la Constitución Política de los Estados Unidos Mexicanos*, available in en <https://archivos.juridicas.unam.mx/www/bjv/libros/8/3568/14.pdf>

^{xxxiv} This criterion is found in case docket amparo directo en revisión AR 282/2017, en la Tesis: 2a. CV/2007. Under the heading: HUMAN RIGHTS. THE JUDICIAL GUARANTEE PROVIDED UNDER ARTICLE 8, NUMBER 1, OF THE AMERICAN CONVENTION, IS IN ACCORDANCE WITH THE ONES REGARDING HEARINGS AND ACCESS TO JUSTICE PROVIDED IN ARTICLES 14 AND 17 OF THE CONSTITUTION. Second Chamber, *Semanario Judicial de la Federación*



y su *Gaceta*, Tomo XXVI, Agosto de 2007. Novena Época, Pág. 635. Reg. IUS 171789. Also rulings ADR 1670/2003 y AR 282/2007.

^{xxxv} This criterion is found in case docket amparo directo AD 243/2015, in Tesis: II.2o.P.38 P (10a.), under the heading: VICTIMS RELATED TO THEIR OFFENDER BY FILIAL OR COUPLE'S RELATIONSHIPS THAT MAY LEAD TO THE COMMISSION OF A CRIME. THE EVALUATION OF EVIDENCE MUST INVOLVE, ACCORDING TO EACH CASE, THE GENDER PERSPECTIVE OR THE EFFECTIVE PROTECTION OF VULNERABLE SECTORS. Collegiate Courts, *Gaceta del Semanario Judicial de la Federación*, Libro 31, Junio de 2016, Tomo IV. Décima Época. Pág. 3036. Reg. IUS 2011934. Consulted in: sjf.scjn.gob.mx/

^{xxxvi} This provision may be consulted the rulings Amparo en revisión AR 152/ 2013, AR 122/2014, AR 263/2014, AR 591/2014, AR 135/2014 y AR 136/2014, among others.

^{xxxvii} The development of this right may be consulted, among others, in the Constitutional Controversy CC 61/2005. Available in:

<http://sjf.scjn.pjf.gob.mx/sjfsist/Paginas/DetalleGeneralScroll.aspx?id=20918&Clase=DetalleTesisEjecutorias>

^{xxxviii} This provision may be consulted in the ruling de amparo en revisión AR 275/2013.

^{xxxix} The interpretation of this right can be consulted in the case docket amparo en revisión AR 750 de 2015, among others.

^{xl} See ADR 6065/2014 y ADR 583/2015, among others.

^{xli} See ADR 83/2015.

^{xlii} These rights are developed, among others, in the case dockets amparos directos AD 47/2011, AD 54/2011, AD 59/2011, AD 50/2012, AR 450/2012, AR 622/2015.

^{xliii} See ADR 83/2015, ADR 35/2014, ADR 1464/ 2013.

^{xliv} See AR 2617 de 1996 y AR 750/2015

^{xlv} Regarding the fundamental right of free development of personality, considered as deriving from the interpretation of the the rule of law provision, the case docket amparo directo en revisión ADR1638/2015 may be consulted.