

Analysis of the standard of the best interest of children and adolescents and its application in sentences for femicide crimes in Michoacán

Abstract

In the present investigation, an analysis was carried out to assess the application of the standard of best interest of girls, boys and adolescents in the state of Michoacán, Mexico in order to identify the aspects that should be taken into account when attending to a case in which a boy, girl or adolescent is left without the protection of their mother, that is, orphaned by femicide, so under a methodology of legal analysis the figure of the best interest of the child and 20 twenty sentences of femicide cases were studied, as a sample that helped in the study with the purpose of obtaining elements that help the judges so that more attention is paid to the cases of girls, boys and adolescents in conditions of orphanhood due to femicide, which will benefit having a more responsible sentence, fair and protective of their human rights.

Keywords: femicide, legal analysis, gender crimes, violence, legal conflicts

Volume 12 Issue 1 - 2024

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Received: January 21, 2024 | **Published:** February 06, 2024

Introduction

Best interest of girls, boys and adolescents

The standard relating to the best interest of girls, boys and adolescents is established in various specific and complementary regulations, such as in the case of the regulations on gender crimes, which recognizes the obligation to protect them, an example of this is Article 2.b of the Model Law on Femicide, which is considered of special interest to the State, specifically to legal operators who must protect or take greater care to protect minors and adolescents.

In Mexico, the CPEUM identifies in its article 34 the age limit in which minors and adults are considered minors, establishing that men and women who have reached the age of 18 are citizens, therefore, the “best interest” standard. It will be applied to people under that age, since the legal category of citizen confers the capacity to exercise rights and fulfill obligations¹ of adulthood.¹ And minors only exercise their rights since they do not have the capacity to fulfill the obligations of the State, on the contrary, they must be protected by it. Its treatment must also address adequate protection, in the case of inter-American regulations, the Model Law on Femicide that addresses the issue of childhood in the cited article 2.b states: “in the event that there is a conflict of interest, the “best interest of girls, boys and adolescents, which consists of the recognition and respect of the rights inherent to their condition as human beings.”² It should be noted that as the Model Law on Femicide, it is an inter-American soft law instrument that provides guidance for the execution of other international instruments that are mandatory, such as the United Nations Convention on the Rights of the Child, which in its article 1, it indicates: “a child is understood to be any human being under eighteen years of age, unless, by virtue of the applicable law, he or she has reached the age of majority earlier.”³

Historically, girls, boys and adolescents had not been considered subjects of rights, however, in recent years (since 1924 with the

¹On December 22, 1969, during the government of President Gustavo Díaz Ordaz, the decree was published by which citizenship was granted to young Mexicans upon turning 18. Previously, citizenship was obtained until the age of 21.

Geneva Declaration on the Rights of the Child and in the Declaration of the Rights of the Child of the year 1959, and the United Nations Convention on the Rights of the Child of 1989, to name a few) it is considered that: “the child, due to his or her lack of physical and mental maturity, needs special protection and care, including due legal protection, both “before and after birth.”³ This is why our Mexican legal system has recognized that they must be protected from the effects that they may receive:

As possible indirect victims of femicide, which refer to the ability to receive information about violence and its consequences, as well as about their rights and the ability to make informed decisions and participate autonomously, evolve according to age and degree of development.²

This characteristic of being recipients of violence and suffering that can have long-term consequences in their adult lives is why primary attention must be given to benefit their physical and mental health, in addition to “protecting the confidentiality of their identity, especially in the case of girls, boys and adolescents, as well as guaranteeing their safety and facilitating their participation throughout the investigation and criminal process.”²

The best interests of children are contemplated in the Convention on the Rights of the Child, in which Article 3 identifies the State as protector:

States undertake to ensure to the child the protection and care necessary for his well-being, taking into account the rights and duties of his parents, guardians or other persons responsible for him under the law and, to that end, they will take all measures appropriate legislative and administrative measures...States Parties shall ensure that institutions, services and establishments responsible for the care or protection of children comply with the standards established by the competent authorities, especially with regard to safety, health, number and competence of its personnel, as well as in relation to the existence of adequate supervision.³ Therefore, judicial officials must provide immediate attention in the judicial process to guarantee their safety, even if they have their parents, the judges have the responsibility of ensuring the needs of minors by identifying whether they are a

child or adolescent. The General Law on the Rights of Girls, Boys and Adolescents, hereinafter LGDNNA, in its article 5 considers that “girls and boys are those under 12 and twelve years of age and adolescents are people between twelve and eighteen years of age.”⁴ For its part, the World Health Organization (WHO) identifies the stage of adolescence between 10 and 19 years, which is a stage in which physiological changes occur (stimulation and functioning of organs by hormones, female and masculine) structural (anatomical), psychological (integration of personality and identity) and adaptation to cultural and/or social changes.⁵

Among the rights that girls, boys and adolescents have recognized in the LGDNNA, in its article 13 are the rights to: life, peace, survival and development; priority; of identity; live as a family; substantive equality; not to be discriminated against; to live in conditions of well-being and healthy integral development; to a life free of violence and personal integrity; health and social security protection; to the inclusion of girls, boys and adolescents with disabilities; to education; to rest and recreation, to freedom of ethical convictions, thought and conscience, religion and culture; to freedom of expression and access to information; to participation; of association and meeting; of intimacy; legal security and due process, migrant rights; access to Information and Communication Technologies.⁴

These indicated rights must be protected even when there are legal conflicts between adults, which is why the standard of best interest of the minor has been called that way, to reduce adultcentrism which is a: “system of dominance that organizes in an asymmetrical way and unequal relations between generations.”⁶ Leaving without value what a girl, boy or adolescent may feel, suggest, allow themselves at this stage. This can lead to multiple discrimination, which are different conditions of vulnerability of their rights, which the State has the duty to protect.

Now, there are two categories when dealing with children: 1. Those who can be taken outside the judicial system and 2. Those who are within a judicial procedure.⁷ And When a girl, boy or adolescent is part of a judicial process, three classifications can be identified that we consider facilitate their handling in the process: the first group are children and adolescents who are direct victims of physical, sexual, and psychological violence; The second group includes children and adolescents who are indirect victims of violence, such as witnesses of mistreatment and crimes, which in this case we are addressing indirect victims of femicide. And in the third group there are children and adolescents who generate violence, which is called bullying;⁷² to other children,⁸ adolescents or adults.

From this division, it is possible to identify the individualized treatment that each case must carry out with social workers, psychologists as specialized accompaniment, experts to ensure the place where they will live protected from the danger to which they were exposed, which, in accordance with the LGDNNA, in its Article three must “guarantee their maximum possible well-being, prioritizing their best interests through structural, legal, administrative and budgetary measures”⁷⁴ in addition to considering the gender perspective in situations of violence in its article 47.⁴

The protective treatment that must be given by the federal, state and municipal authorities within the scope of their powers in accordance with the crime to which they have been a part, (article 47 of the LGDNNA) will be provided to them in the event that are affected by:

²According to the Royal Spanish Academy, bullying means bullying at school, in educational centers, bullying that one or more students exert on another in order to denigrate and humiliate them in front of others.

- I. Neglect, negligence, abandonment or physical, psychological or sexual abuse;
- II. Corruption of persons under eighteen years of age;
- III. Trafficking in persons under 18 years of age, child sexual abuse, child sexual exploitation with or without commercial purposes, or any other type of exploitation and other punishable conduct established in the applicable provisions;
- IV. Trafficking of minors;
- V. Work before the minimum age of fifteen years, provided for in article 123 of the Political Constitution of the United Mexican States and other applicable provisions;
- VI. SAW. Work in adolescents over 15 years of age that may harm their health, education or impede their physical or mental development, labor exploitation, the worst forms of child labor, as well as forced labor and slavery, in accordance with the provisions of the Political Constitution of the United Mexican States and other applicable provisions;⁴
- VII. The incitement or coercion to participate in the commission of crimes or in criminal associations, in armed conflicts or in any other activity that prevents their integral development, and
- VIII. Corporal and humiliating punishment (...).⁴

These effects will be addressed by what article 4 section XX of the LGDNNA calls “comprehensive protection” which is the “set of mechanisms that are executed in the three levels of government in order to guarantee in a universal and specialized manner in each one of matters related to the human rights of girls, boys and adolescents, in accordance with the guiding principles of this law, the CPEUM and international treaties.

According to the Manual for Judging with a Gender Perspective in Criminal Matters, Mexico has a “hyper-specialized” criminal prosecution system, this means that it does have the foundation and institutions to address the problem of violence suffered by girls, children and adolescents, you can go to judicial authorities such as in Michoacán: the specialized prosecutor’s office for Attention to Crimes of Family and Gender Violence. On the other hand, it is important to note that the Belem do Pará Convention, in its article 7c, indicates that criminal, civil and administrative or other norms can be used to prevent, punish and eradicate violence, and Recommendation number 33 of the CEDAW considers that “civil reparation measures and criminal sanctions should not be mutually exclusive.”⁹

The above allows us to identify the priority given to the principle of the best interests of the minor, regardless of the legal matter for which the crime is reported. If it involves a child, the State must necessarily intervene. For example, the LGDNNA in its article 122 indicates that the Attorney General’s Offices for the Protection of Girls, Boys and Adolescents have the power to request special protection measures from the Public Ministry or themselves when the case requires it, in addition to those established in the National Code of Criminal Procedures.⁹ Another relevant element for judges is the one established as precedent of jurisprudence 1^a/J.22/2016 (10^a) “Access to justice under conditions of equality. Elements to judge with a gender perspective.” Dictated by the SCJN, since among the steps it is considered to carry out a review of the violence or vulnerability in which the parties find themselves, without their request and in point iv) and v) it is said: iv) if the situation of disadvantage due to gender issues is detected, question the neutrality of the applicable law, as well as evaluate the differentiated impact of the proposed solution to seek

a fair and equal resolution according to the context of inequality due to gender conditions; and, v) to do so, it must apply the human rights standards of all the people involved, especially children.¹⁰

Once the inequalities or poorly practiced actions are identified, the jurisdictional body may order that that or another action be carried out again that clarifies or gives another focus to the controversy, always ensuring that they are processes adapted to children and do not have no girl or adolescent in prison for more than 6 months.⁷ This means that they can participate in the trial by providing their testimony in accordance with appropriate measures, without affecting the emotional health of the child, adolescent, for example listening to their testimony in a private room without having friction with their aggressor or other people that the child or adolescent considers threatening, be in specialized company, do not summon them to court unnecessarily, do not make them wait so as not to generate some type of anxiety or anguish due to the legal process, even the CNPP in its article 64 considers that the procedure be private or behind closed doors when the best interests of the girl, boy or adolescent are affected. Now, the human rights standards of girls, boys and adolescents to which jurisprudence refers are from national and international sources, the Manual for judging with a gender perspective in criminal matters points to: (norms, jurisprudence, advisory opinions, observations, recommendations, general and thematic reports from human rights protection organizations).¹¹ Some jurisprudential precedents of the Inter-American Court that are of observance by the Mexican authorities in matters of girls, boys and adolescents are the cases: VPR vs. VPC vs. Nicaragua; Jessica Lenahan González vs. United States; González et al., case ("Campo Algodonero") vs. Mexico; Valentina Rosendo Cantú vs Mexico; Atala Riff and girls vs Chile, Guzmán Albarracín vs Ecuador.

In the case of Atala Riff, the scope of children's participation in judicial procedures was considered in six aspects:

- I. Do not start from the premise that a child is incapable of expressing their own opinions;
- II. It is not necessary for children and adolescents to have exhaustive knowledge of all aspects of the matter that affects them, but rather sufficient understanding to form their own opinion on the matter;
- III. Children can express their opinions without pressure and can choose whether or not they want to exercise their right to be heard.
- IV. The right to express their opinions requires a correlative obligation of the people responsible for listening to them, as well as of parents or guardians to inform them of the issues and possible decisions that may be adopted and their consequences.
- V. The capacity of children and adolescents must be evaluated to take their opinions into account and/or to communicate to them the influence that these opinions have had on the outcome of the matter.
- VI. Children's levels of understanding are not uniformly related to their biological age, so maturity must be measured from the ability to express their opinions on the issues consulted in a reasonable and independent manner.¹¹

This means that it is not obligatory for children to participate in the trial, as the third aspect says, however, it is the State's obligation to respect their right if they want to express any opinion on the matter, in addition to evaluating ex officio whether it is convenient or not admit the testimony of children and adolescents, because it could

affect their privacy too much and harm them psychologically when testifying in court for the crime suffered. This is supported by the contradiction of thesis 256/2014 called: "THE RIGHT OF MINORS TO PARTICIPATE IN JURISDICTIONAL PROCEDURES THAT AFFECT THEM SHOULD BE ASSESSED BY THE JUDGE AND NOT BE CONDITIONED ON THEIR BIOLOGICAL AGE."⁵

It was also indicated that the evaluation made ex officio by the court is so that their opinions are heard and that "these can influence the judicial decision-making that resolves their life and their rights."⁵ In the same way, it was emphasized that attention to children and adolescents is not a gesture of compassion or a legal "decoration," but rather it is an active participation that will influence the decision that the judging persons make to have a better benefit in the case judgment.

The right and/or rights that are correlated with the principle of the best interests of children and adolescents are the right of effective access to justice, access to information, progressive autonomy, right to protection of their privacy, identity and private life, right to life, survival and development, right to equality and non-discrimination, right to education, health, healthy environment that are established in the CPEUM, the Convention on the Rights of the Child,³ the LGDNNA⁴ and the Law for the Protection of the Rights of Girls, Boys and Adolescents,¹² this last regulation in its article 41 considers that the right to express your opinion implies two aspects:

- I. The matters that affect them and the content of the resolutions that concern them.
- II. That their opinions and proposals regarding the affairs of their family or community be heard and taken into account.

This action of recognizing children and adolescents in the trial reflects the contradiction of thesis 256/2014 already cited, which allows two objectives to be achieved: the effective exercise of the rights of children and adolescents and for the judge to consider all the elements so that he can make a decision in the trial, and in this way the protection of the best interests of the child is achieved. Therefore, the First Chamber of the SCJN considers that the testimony of the child is relevant and must be collected ex officio, but it must be in a careful evaluation of the case due to the consequences that this may bring due to participation in the process, since that the Inter-American Court points out that: "the degree of physical and intellectual development of children under 18 years of age is variable, as is the experience and information they possess, since the decision-making capacity of a 3-year-old child is not equal to one 16".⁵

And another point to highlight about the contradiction of the thesis is that it suggests that the judging persons must explain to the child "how, when, and where they will be heard and who the participants will be" in the hearing in which they will be present and depending on the case that No matter how traumatizing this may have been, if the children and adolescents wish to participate, they must be given access to listening following the SCJN guidelines for their preparation and relief from the test, in order to mitigate the negative effects and "guarantee their differentiated and specialized."⁵ In this regard, one of the principles that must be observed at all procedural moments and especially in the sentence is that of "progressive autonomy" which consists of "optional evolution is progressive depending on their age, social, economic and cultural environment." and their particular aptitudes."¹¹

The relevance of taking care of the participation of children and adolescents in the trial through their testimony is because we must avoid committing the revictimization of children and adolescents,

mainly for crimes that have put them in traumatic circumstances that can affect them and that would be difficult to overcome in their adult life due to their particular conditions, which is why the Protocol for Judging with the Perspective of Childhood and Adolescence considers that an evaluation exercise must be carried out to take into account:

- I. Analyze case by case, making an effort to individualize the study.
- II. Consider the age of the child along with their particular emotional, cognitive, social and cultural characteristics.
- III. Assess the ability of children and adolescents to form their own opinion.
- IV. Consider the scope that these opinions will have in the final decision of the process taking into account their age and maturity.¹¹

The key to achieving the objective of knowing the position of the child in the trial without being affected depends on the first point considered by the Protocol already indicated because it must be analyzed one by one, because we are working with the most vulnerable people in training. Society and given this, the judicial system can be an unnecessary impact for them, however, to do so, it is also suggested to consider two aspects: letting them know that they have the possibility of not exercising the right to participate in a trial and the second is that they decide participate through a representative, who in the event that his parents were in conflict, could choose another person who is not part of the trial so that he feels more confident that he will not be disturbed.¹¹

For this reason, it is suggested in the Protocol for judging with the Perspective of Childhood and Adolescence, the SCJN and the LGDNNA that local courts must have recreational and rest spaces that allow children and adolescents to feel safe and with enough confidence to express their feelings opinions since it promotes their right to be heard, in addition to seeking the principle of respect for development that is understood "as a comprehensive, holistic concept that encompasses the physical, mental, spiritual, moral, psychological and social."¹¹

Likewise, in the international arena the issue of childhood and adolescence has been developed, from which Mexican law has taken influence. In this regard, let us review that within international standards there are observations that the UN has worked on such as general observation number 14 (2013) on the right of the child to have his or her best interests a primary consideration. This document specifies that best interest is a triple concept: it is a right, a principle and a rule of procedure. It explains that the concept of "best interest" is not new and was previously established in the Declaration of the Rights of the Child of 1959 and in CEDAW, as well as in regional instruments.¹³

Therefore, best interest is a triple concept because: it is a substantive law because it can be put into practice before the courts; It is a principle because it is intended to be interpreted correctly and it is a procedural rule because there must be procedural guarantees that the best interests of the minor will be applied. It is not a simple task, since there is a predisposition of the law to consider the minor as innocent and in many cases in reality the case has to be analyzed, but it is achieved when its scope and conceptual superiority is understood. An example of the protection of minors is that speaking in terms of justice, it applies concepts such as repression or punishment and in the case of delinquent children and adolescents, it is replaced by terms such as rehabilitation and restorative justice.¹³

To better identify what Observation no. 14 with the term primary consideration, the emphasis is placed on the fact that it is not "one"

among several, but rather "the primary consideration" and that it means addressing the protection of: "dependency, maturity, legal status and often lack of voice." that must be represented for the protection of minors.¹³

In relation to the evaluation of the best interest standard, two main aspects must be taken into account, which are: 1. The context, which means valuing: the child's opinion, their identity (sex, orientation, national origin, religion, beliefs, cultural identity, personality) the preservation of the family environment, their security, their situation of vulnerability, their health and their education and 2. That the procedure ensures legal guarantees, this means that before the authority their right to express their own opinion, to determine the facts, to priority in time (which would affect their evolution) must be taken care of have qualified professionals, legal representation that provides legal arguments that can review the decisions and the right to evaluate the impact that this legal decision has on the rights of the child and adolescent.¹³

Another relevant instrument is General Comment number 24 (2019) of the Committee on the Rights of the Child on the rights of the child in the juvenile justice system, which covers issues of recruited children, armed groups and children in the customary justice system, indigenous or otherwise. In addition to making suggestions to the States parties, one of them is the application of extrajudicial measures: "the preferred way of dealing with children should be the application of extrajudicial measures...including serious crimes" this suggestion is ideal to avoid stigmatizing children and adolescents and do not leave a criminal record.

Two other relevant aspects of Observation No. 24 in the event that a child is found guilty of a crime are: the payment of monetary bail, which the UN considers to be a condition that discriminates against poor families, because they cannot make payments. due to the precarious nature in which they live, which is why they recommend not ordering bail in resolutions as a method of repairing damage and, the second aspect is to encourage the use of technological means such as "court appearance" on video, with the purpose of testing which tools are useful in the development of the process with children and adolescents and also with the purpose of not exposing them so much to situations that affect them, such as intimidating clothing⁷ of the authorities.

And at the national level there are also precedents, some of them are: direct protection under review 5999/2016¹⁴ about theft of a child by his mother; direct protection case under review 5465/2014¹⁵ about rape of a Mazatec girl; protection under review 644/2016¹⁶ about a three-year-old girl separated from her mother in prison; direct protection under review 2655/2013¹⁷ on divorce, guardianship, custody and loss of parental authority, these are an example of the application of human rights standards on minors that can be found on the SCJN website.

Due to these international precedents, the development that the SCJN has had is recognized, in the inclusion of the best interests of minors in judicial procedures by implementing actions that benefit them, above all that they are treated with dignity and valued in the sentence. For this purpose, the evidentiary assessment proposed in the Protocol for Judging with the Perspective of Childhood and Adolescence is useful because it considers, among other points, that all the facts and all the evidentiary material must be taken into account, and that credibility must be given to each test and then together, that there must be an interpretive effort of the participation of children and adolescents and not be discarded due to simple contradictions and always consider the characteristics of childhood: age, physical

and intellectual development, life experience, environment and information what they have about the matter.

These aspects are not so that the will of the children and adolescents can be taken literally, but rather to evaluate their perception of the crime, as well as the damages they suffered and so that the judging persons can make decisions about their lives to protect them, often even from their biological parents or caregivers and order the appropriate measures that the SCJN childhood protocol proposes to be mandatory. In addition to the previous elements, judging persons will encounter some obstacles that will need to be identified to overcome, two of them are manipulation or alienation and the re-victimization of children and adolescents. In the first case about the manipulation of parents or relatives, family codes have contemplated the concept of "parental alienation."³ Which is executed by one of the parents as a type of use of the children and adolescents so that they avoid, hate or reject the other parent to achieve personal and legal benefits and what is intended is to identify that the opinion is a judgment typical of the child, which is identified with an expert test in psychology.

This expert test in psychology will allow the identification of any manipulation that has occurred or future risk that the child may suffer if he or she lives with the parent with whom he or she is in legal conflict. Given this, the Protocol for Judging with the Perspective of Childhood and Adolescence considers that the following aspects to identify the manipulation or alienation of children and adolescents:

- I. The fact that it is perceived that the opinion of a child may be influenced by external interference does not imply that, de facto, it should be discarded or not taken into account, but rather that greater evidence must be included, such as an expert in psychology, to check for possible alienation.
- II. In order to establish whether or not a condition of alienation or manipulation exists, the opinions must be evaluated in accordance with the age, maturity and circumstances surrounding the case, always taking into account that children and adolescents are beings with progressive autonomy capable of forming their own judgment .
- III. When analyzing the above, all the evidentiary material and the other circumstances that arise in the case take on special relevance, so that not only the progressive autonomy of the child, but also all their other rights and integral development can be respected.
- IV. In the event that the right to participation of children and adolescents has not been respected, in response to the obligation to avoid their revictimization, it must be assessed whether the evidence provided, individually and as a whole, generates sufficient conviction to make a decision .
- V. If after evaluating the evidence individually and jointly, the expression of the child's opinion is still considered necessary, it must be ordered to obtain it to make the respective decision respecting the right to participation of the child.¹⁸

In the Family Code of Michoacán it is identified as "Parental Alienation Disorder" and in the Penal Code it can be identified as "manipulation", which is still a damage that the judges must identify to discover if the child has lied during the judicial proceedings and the

³Article 318 of the Family Code of the State of Michoacán considers that Parental Alienation Syndrome transforms the consciousness of a minor, with the aim of preventing, hindering or destroying their ties with one of their parents or grandparents and can also be lost. parental authority due to the parental alienation generated.

reasons why they have done so, since, for example, in cases of sexual crimes, children and adolescents may be forced to lie to avoid the emotional pain of being exposed, scolded, punished, or hurt by This suggests that the authority be careful because it can easily fall into a wrong assessment.

That is, if the children and adolescents have already issued their statement before other authorities, they could fall into the second error, which is re-victimization, which is why emphasis is placed on taking care when a child or adolescent issues their statement, since it may be flawed or affected by the level of stress or anxiety you had when speaking to authority. In this regard, the Protocol for Judging with the Perspective of Childhood and Adolescence also provides three aspects that must be taken care of so that children and adolescents are not revictimized:

- I. The criteria for assessing the credibility of a child's statement should not be the same as those used to assess the credibility of an adult.
- II. When there are sufficient reasons to doubt the testimony of a child due to the re-victimization they have suffered, an expert test in psychology of the testimony may be ordered to evaluate the credibility of their statements.
- III. Based on the information provided by said evidence, the judging persons must decide whether or not to grant credibility to the statement of children and adolescents, keeping in mind that the conclusions of the opinion do not bind them in themselves, but rather are another tool within the flow. evidence to dictate your resolution.¹⁸

Once the testimony of the child has been collected and their position regarding the trial has been considered, some criteria of the SCJN regarding the ISN must be taken into account, for example, that the basic, spiritual, emotional and social needs must be met. Educational, that their feelings and opinions are attended to and that their status quo is maintained, that is, that there are no alterations that harm their personality after the sentencing is issued.

For this reason, care must also be taken to ensure that the family relationships of the child are maintained and that their family structure is kept intact to the extent possible so that their development is not affected and in relation to the comprehensive reparation of the damage, there are four obligations of the judging persons in cases where there are children and adolescents:

- I. The parameters that guide the quantification of damage should not be read as requirements that must be met exhaustively if this implies an impact on children and adolescents.
- II. The judging persons must dictate all the necessary procedures to determine the quantification of the damage, as well as its repair.
- III. The impact caused to the integrity of the rights of children and adolescents must be considered in light of their foreseeable future development.
- IV. Particular aspects must be addressed to achieve comprehensive reparation that require reinforced protection of the interests of children and adolescents to avoid their revictimization.¹⁸

Which means that unlike the evaluation carried out with adults, in this case, protection will be sought, an obligation to evaluate the evidence or order it if there are no elements for reparation, prevent the future of children and adolescents and avoid their revictimization, which requires that judges have a special sensitivity to consider not

only the material damage that must be repaired but also the set of children's rights that must be automatically protected. And to achieve the objective of providing comprehensive protection coverage, an additional instrument has been issued: on August 4, 2021, the National Protocol for Comprehensive Care of Children and Adolescents in Conditions was published in the Official Gazette of the Federation. Orphanhood due to Femicide, since the number of victims of gender violence at the national level has left children and adolescents highly vulnerable, the president of Inmujeres Nadine Gasman Zylbermann spoke about this and reported that within the period from January to December In 2019, 796 cases of children orphans due to femicide were recorded.¹⁹

This figure barely allows us to see what happened in a year, now the amount of each year would have to be added to consider that the number of victims is relevant and that this protocol was necessary to coordinate the work of the authorities, which provides as a general objective:

Provide elements that guide and facilitate the actions of the substantive personnel in charge of protecting the rights of girls, boys and adolescents who are orphaned by femicide, as well as their effective restitution, through the generation of actions for the provision of services, corresponding services in accordance with the applicable regulatory framework.²⁰ This tool will allow the 3 administrative and jurisdictional levels of government at the federal and local level to protect the human rights of children and adolescents in a coordinated manner, establishing a specific route and to do so, the obligated authorities are identified:

- I. Offices for the protection of children and adolescents of the Federation, of the federal entities and municipalities.
- II. Federal and state Attorney General's Offices and Attorney General's Offices.
- III. Public Ministries.
- IV. Secretariat of Security and Citizen Protection and Security Secretariats in the Federal entities.
- V. Instances for the advancement and development of women in federal entities and municipalities.
- VI. Systems for the Comprehensive Development of the Family in the states and municipalities.
- VII. Executive Commission and Victims Commissions.
- VIII. National Human Rights Commission.
- IX. Welfare Secretariat of the Federation and the federal entities.
- X. Secretary of Education of the Federation and the federal entities.²⁰

The authorities already mentioned are those that represent the State in the matter, which has the obligation to seek the protection of the human rights of children and adolescents; they cannot abandon the most vulnerable people in society who have lost their mothers and who may also be abandoned by their parents when they are found guilty of the crime of femicide and have to be kept in prison away from their children. Given this, the human rights of children and adolescents must be guaranteed under a care route developed to maintain coordination between authorities.

This care route includes two treatments: the first is the general aspects and the second is the rights restitution procedure carried out by the Federal Prosecutor's Office for the Protection of Children and Adolescents. In general aspects, the first contact of the victim(s) with

the auxiliary police is contemplated through the call to 911, who will identify how many NNA victims there are and who will provide them with: initial medical and psychological attention to the impact of the crime suffered. In this regard, the Attorney General's Office will carry out actions and a diagnosis to locate family members or protection and support depending on the case, as well as temporary accommodation and coordination between the Attorney General's Office and the Public Prosecutor's Office to issue temporary measures, including support for funeral expenses. Shelter, food, doctor, psychologist, social work.

After this, in the second treatment, the procedure for restitution of rights contemplates that a person be appointed legal representative to analyze whether the children and adolescents have been the object of a crime and can report it to the public ministry, carry out the procedures and follow up on the report so that protection measures are issued according to the severity of the problem. At the same time, in the attorney general's office an evaluation is carried out by a multidisciplinary group that will prepare a "Rights Restitution Plan" in which the authorities that can assist in the matter will be identified and that together it will be monitored until the children's rights are restored, which would end the procedure.

The above is broadly the method proposed as a care route by the National Protocol for Comprehensive Care of Children and Adolescents in the condition of Orphans due to Femicide and which seeks to "build a common floor for the institutions that implement the care and protection of children and adolescents."²⁰ It is worth noting the progress that has been made in Mexico in the regulatory field to ensure that the human rights of children and adolescents are protected and restored and that in this regard it was identified that the SCJN has issued two protocols that have been briefly analyzed in the body of the present work: the Protocol for Judging from the Perspective of Childhood and Adolescence and the National Protocol for Comprehensive Care of Children and Adolescents who are Orphaned by Femicide, which allows the judges to have a more complete training, however, there is still reluctance, there is resistance to issuing this type of sentences with special assessments for children and adolescents and this is an obstacle to overcome for the administration of justice.

This means that, although there are already guides for the assessment of cases where there are children and adolescents, this practice has not yet spread and we mean that before, during and after a judicial procedure a child and adolescent must have legal support, they must be heard so that his circumstance is argued in the sentence and an easy-to-read sentence is provided so that he receives access to justice in language appropriate to his age and understanding. These easy-to-read sentences have their national precedent in 2013 in the protection under review 159/2013, issued by the First Chamber of the SCJN in which the problem of a person with disabilities was addressed and in which the importance was pointed out to make information and documentation accessible to people with disabilities: This format is carried out using a simple and direct language, in which technicalities as well as abstract concepts are avoided, this is done through the use of examples, therefore, everyday language must be used, personifying the text as much as possible. ...the format is based on the guidelines of the European Association Formely International League of Societies for persons with Mental Handicap (ILSMH).²¹

This meant the recognition of the need to generalize this practice so that the judges, when they encounter a circumstance in which the case involves a person with a disability,²¹⁻²⁴ was served in this way by providing the right of access to justice through an "easy" reading format, which also made it look at other groups such as people who

speak an indigenous language,²⁵ be they boys, girls or adolescents,²⁶ or people with mental health problems.²⁷

To prepare a sentence, the Protocol for Judging with the Perspective of Childhood and Adolescence of the SCJN recommends the Practical Guide for clear communication developed by the Madrid City Council to facilitate communication in sentences that include the rights of children and adolescents, these are : 1) plan; 2) structure; 3) write clearly and simplify; 4) edit and supplement; 5) add images; 6) design; 7) integrate audio and video; 8) think about interactivity; and 9) review and test.²⁸ The difficulty is that this guide is not focused on cases of children and adolescents, which ends up being a generality that does not emphasize the care that Mexican courts must take towards the human rights of children and adolescents.

In the same way, the aforementioned Protocol considers that the Brasilia Rules on access to justice for people in vulnerable conditions (the Rules) provide recommendations so that vulnerable people understand the judicial act that the court communicates to them, in this regard it is stated notes that:

Simple and understandable terms and grammatical structures will be used that respond to the particular needs of vulnerable people included in these Rules. Likewise, intimidating expressions or elements will be avoided, without prejudice to the occasions in which the use of threatening expressions is necessary.²⁹

The Rules give us the guideline for writing a sentence: the use of simple and understandable grammatical terms, which results in a complicated task because we must consider making it easy how difficult it is to translate legal terminology into understandable words, perhaps a child do not know what a judging person is and it must be explained to them that it is the person who received the request from their parents and decided their request, for this you can learn from the "Guide to prepare sentences in easy-to-read format aimed at people with intellectual disabilities,"³⁰ issued by the SCJN that is not specifically addressed to children and adolescents, but it does facilitate the understanding of what is an easy read, the obligations in this type of adaptations and its process.

The already mentioned Guide addresses the process of preparing the sentence for cases of children and adolescents, which can be used because there is still no guide for children and adolescents, so it can be consulted, since it addresses what words to use, how to address, instructions for use, list of legal terms. In this regard, the

Guide to prepare sentences in easy-to-read format aimed at people with disabilities, considers that:

Although there is a consensus that the main target audience for easy reading is people with intellectual disabilities, it is important to note that documents in this format can benefit a very broad group of target people who, for different reasons, have difficulties in understanding written information, for example, people with a low level of literacy or whose mother tongue is different from the predominant language of the place where they live, boys and girls, among others.³⁰

And as the quote points out, the effort to synthesize and simplify the information is to approach different population groups, not only people with disabilities, but also people with a low educational level, indigenous children and adolescents since it is a "tool that seeks to guarantee accessibility in communication."³⁰ By making an easy-to-read sentence, this treatment between adults is broken and importance is given to people in training who are users of the justice system, in addition to considering international human rights standards, as well as the jurisprudence of the SCJN.

An example of the application of the best interest standard is the ruling of the Tamaulipas Control Judge, Carmen Marquina, who made public the ruling on January 11, 2022 on the case of Elsa, who along with two sisters were victims of abuse. Sexual activity by teenage relatives, clearly and simply stating the sentence: "I believe that what you and your sisters said at the hearing is true, which is why I declared your brother and your cousin guilty for the things they did...they will be supervised by another authority that will monitor that they are behaving well for two years and that is called assisted freedom."³¹

This example must become everyday and customary because the barriers are still enormous for children and adolescents: "it is important to question whether they have really been taken into account by the Mexican courts and what the good and bad practices have been."³² And although there are precedents by the SCJN on the issue of easy-to-read sentences, this practice has not spread among judges or at least not in childhood and adolescence, which is an issue that requires practical implementation.

For this purpose, sentences of femicides from Morelia, Michoacán, were reviewed to identify the treatment given to the children who have been orphaned. This exercise was carried out during the period of 2022 and so far in 2023. What was found was the following Table 1.

Table 1

Crime	Proceedings	Indirect minor victims
1. Sentence of femicide. ³³	Appeal ruling XI-91-2022. 5 th . Criminal Court.	Four 4 children of the victim whose ages or names are not identified for the protection of personal data.
2. Sentence of femicide, Morelia ³⁴	Appeal ruling file number XI-89-2022. 2 nd . Criminal Court	A son of the victim, how old he is is not mentioned, but it is stated that he is a minor, and gave his testimony in the case for being a visual witness of the crime.
3. First instance ruling for the crime of femicide Zitácuaro, Michoacán of October 4, 2022 ³⁵	File number 108-2021	Girl between 2 and 3 years old who was left abandoned on the street by her mother when the accused took her to commit the crime.
4. Appeal sentence for the crime of femicide Zitácuaro, Michoacán ³⁶	File XI-48-2022 1 st Criminal Chamber of the Supreme Court of Justice	Indirect victim and direct witness, a 3-year-old girl, "Since the principle of immediacy and, therefore, due process has been violated; Likewise, in response to the principle of the best interest of the child and the duties of any judge regarding the necessary measures to guarantee and protect the possible psychological or emotional impact of the indirect victims, the total reinstatement of the procedure is ordered..."
5. Sentence of femicide, Morelia, Michoacán ³⁷	Final ruling 214-2019	3 children are mentioned, but they do not indicate their ages and they were part of the trial

Table I Continued...

Crime	Proceedings	Indirect minor victims
6. Sentence of femicide Morelia, Michoacán³⁸	File number 515-2019	The 12-year-old daughter, who is recognized as an indirect victim only, gives her testimony.
7. Appeal sentence for crime of femicide Morelia, Michoacán³⁹	File XI-3-2022. 7 th Criminal Chamber.	I minor daughter, it is not stated how old she is, but it is said to be the daughter of the accused and the victim, "they were deprived of growing up and living with their mother, which affects the overall development of the girl."
8. Appeal sentence for the crime of femicide.⁴⁰	File XI-20-2022. 8 th . Criminal Court.	Minor indirect victims are mentioned, but it does not say how many they are or what ages.
9. Appeal sentence for the crime of femicide⁴¹	File XI-55-2022. 7 th . Criminal Court.	The victim had 3 children of which one was a minor. That's all that is mentioned.
10. Appeal sentence for the crime of femicide⁴²	File XI-50-2022. 5 th . Criminal Court	In an interview, it is mentioned that the victim has a daughter who is "in care of a relative" at the time of the events. That's all that is mentioned.
11. Sentence of femicide⁴³	File 814-2018 Oral Criminal Justice Center, Charo Michoacán.	The accused and the victim had 5 children, 2 older and 3 younger, all 3 of them were witnesses to the events, that is all that is mentioned.
12. Appeal sentence for the crime of femicide⁴⁴	File XI-95/2023 8 th . Morelia Criminal Court.	Two indirect victim children, that's all that's mentioned
13. Appeal sentence for the crime of femicide and homicide⁴⁵	File XI-27-2023 8 th . Morelia Criminal Court	An advisor is appointed to the State Commission for Victims and another to the Office of the Attorney General for the Protection of Children. There are two children, ages 2 and 8, who died from stabbing along with their victim mother. The father is the accused.
14. Sentence of the crime of femicide⁴⁶	File 217-2021, Criminal, Accusatory and Oral Justice System Zitácuaro, Michoacán.	Two are indicated, a 6-year-old girl and a 3-year-old boy, in addition to the fact that the victim was pregnant and in the comprehensive reparation it is ordered to pay them a sum of money as indirect victims.
15. Appeal sentence for the crime of femicide, La Piedad Michoacán⁴⁷	File XI-63-2023 1 st Criminal Chamber of the Supreme Court of Justice of Morelia, Michoacán.	There are 4 children indicated, 3 of them minors and one is the victim's daughter. The payment of compensation for damage in the amount of money in favor of the 4 children was ordered and this appeal is confirmed.
16. Femicide sentence, Zitácuaro, Michoacán⁴⁸	File 124/2022 Criminal, Accusatory and Oral Justice System Zitácuaro, Michoacán	The children are mentioned and how many, due to the protection of personal data, their ages are not mentioned, testified in court and are recognized as victims.
17. Appeal sentence for the crime of femicide, Morelia, Michoacán⁴⁹	File XI-16-2022, Morelia, Michoacán.	The boy was a witness at trial and another daughter of the parties, no age indicated.
18. Final sentence of femicide Uruapan, Michoacán.⁵⁰	File 282/2021, Uruapan, Michoacán.	The testimony of a minor and a girl is mentioned, without indicating their age or relationship to the victim.
19. Femicide sentence, Charo, Michoacán⁵¹	File 1150-2020 Morelia Criminal, Accusatory and Oral Justice System.	4 minor children of the victim who were deprived of growing up together with their mother and with it the probability of affecting the free development of their personality, which caused an impact with a magnitude greater than that of which they are accused. criminally.
20. Sentence of femicide⁴ November 28, 2022, Morelia, Michoacán.⁵²	File 24-2021, Criminal, Accusatory and Oral Justice System Morelia, Michoacán.	I a 10 year old son was interviewed by the court.

Table prepared by myself with information from the Judicial Branch of the State of Michoacán.

⁴Femicide ruling dated October 28, 2022, file 24-2022. *Criminal, Accusatory and Oral Justice System Morelia*. 2022. p. 6.

Results

20 sentences issued by the Court of the Judiciary of the State of Michoacán were analyzed, of which the first instance sentences and appeal sentences in the period 2022-2023 of the crime of femicide

stand out, in which it was identified if there were children and adolescents and how there were their participation in the trial, if they had given testimony or if they had been assigned a representative from an institution such as Victim Assistance, and what was identified was the following Table 2.

Table 2

Matters in which the Court DID attend to children and adolescents in crimes of femicide	Matters in which the court did NOT attend to children and adolescents in crimes of femicide
1. XI-48-2022 it was ordered to reinstate the procedure and avoid revictimization	1. XI-91-2022
2. XI-27-2023 Advisor to the State Commission for Victims and Attorney for the Protection of Children and Adolescents (deceased) is appointed.	2. XI-89-2022
3. 217-2021 It is ordered to pay them as indirect victims	3. 108-2021
4. XI-63-2023 Ordered to pay them as indirect victims	4. 214-2019
	5. 515-2019 recognition of indirect victim only
	6. XI-3-2022
	7. XI-20-2022
	8. XI-55-2022
	9. XI-50-2022
	10. 814-2018
	11. XI-95-2023
	12. 124-2022
	13. XI-16-2022
	14. 1150-2020 only the impact on the free development of personality is recognized.
	15. 24-2021
	16. 282-2021

Of the cases in which living children were treated, there were 7 seven, 2 who died during the events and 1 who died with her mother due to being pregnant, about which the Court did not rule despite being a neonate with rights. Before the Law. Regarding the children of women victims of femicide who were not attended to during the judicial process, 31 children and adolescents were counted plus the 2 cases in which it is not known how many children there are, which was on XI-20-2022 and 124-2022, so The number of indirect victims rises to more than thirty-one.⁵³

Conclusion

The best interest of children and adolescents must be protected by the courts. In this case, a measurement was made by the Court of Judicial Power of the State of Michoacán and the results were difficult to measure because not all crimes of femicide record whether there are children and adolescents. Among the matters that do identify them, they register it as part of the procedure because they were witnesses of the events or because it is data collected that is not attended to as a parallel responsibility and equally relevant to the main crime since the best interest of the child It does not have to be requested by the parties, it must be ex officio that care management must be carried out as indicated by the protocols already seen during the development of the investigation such as the National Protocol for Comprehensive Care for Children and Adolescents in Orphanhood. For Femicide and the Protocol for Judging with the Perspective of Childhood and Adolescence, in addition to its specialized regulations.

Another relevant aspect is the participation of children and adolescents in trial, who have been interviewed and have gone to court to testify without receiving specialized treatment or it was not recorded that an order was made in the matters reviewed, which is

worrying because no specialized attention was ordered. : In charge of who will be left, tutoring, psychology, food, among others. And a solution to the trial was not ordered in an easy-to-read sentence format that provides certainty that they are not abandoned, that there was a court that heard their case and that their rights will be protected, above all that justice will be done for the damage they received. . It is important to note that the matters reviewed are of first instance and of second instance or appeal and that in the latter there must be greater care to protect children and adolescents.

We hope that the work in favor of children and adolescents continues to advance and that this work is rectified to benefit more children orphans due to femicide.

Acknowledgments

None.

Conflicts of interest

The author declares there is no conflict of interest.

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