

# The CEDAW's Reception in Spain. The Gap between Law and Practice

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## Abstract

This paper deals on the reception of CEDAW in Spain. First I'll try to explain the history and context in which the Convention was first ratified (1984) and then apply to the Spanish legal system. The paper review all the information gives to the CEDAW's Committee trough the periodical reports; and also the consequences of that on the Spanish legal order. At the end, the paper proposes some conclusions related to the political and legal impact of CEDAW in Spain.

*Key words:* CEDAW. Spain, Legal and political consequences of ratification of CEDAW in Spain, Equality between women and men.

## Resumen

Este artículo se refiere a la recepción del CEDAW en España. En primer lugar, atenderé a la historia y contexto en el que el Convenio se ratifica en 1984, para después analizar las aplicaciones que tiene en el ordenamiento jurídico español. El trabajo trata de analizar la información facilitada a través de los informes periódicos, para detectar las consecuencias en el sistema jurídico en España. Al final, el artículo propone algunas conclusiones relativas al impacto legal y político del CEDAW en España.

*Palabras clave:* CEDAW, Consecuencias políticas y legales de la ratificación del CEDAW en España, Igualdad entre mujeres y hombres.

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## Introduction

The Convention on the Elimination of all Forms of Discrimination against Women was ratified by Spain in 1984. The Convention was already in effect as of September 1981, nearly three years after the United Nations General Assembly had approved it in its Resolution 34/180, of December 18, 1979. Spain's ratification instrument is dated December 16, 1983 and was published in the State's Official Bulletin—the official means of entering into effect under Spanish legal system—on March 21, 1984.

Up to now, Spain has presented six reports before the CEDAW Committee. The sixth was defended by the Spanish Government in the session of the Committee of CEDAW in the summer of 2009.

### 1. History and Context

In the early 80's, Spain was initiating the internal ratification process of CEDAW's recently approved Convention in the United Nations. At that time, Spain had just approved its Constitution in November 1978. Therefore, the nation was immersed in a process of adjusting to all the norms of legal system pertaining to the new constitutional text.

In November 1975, General Franco had died after ruling Spain for almost forty years through a dictatorial system in which there were no possibilities for the legal recognition of any political parties. Franco's arrival to power after the civil war had meant the abolition of the republican constitution in which universal suffrage had been included for the first time in Spain's history. In a tough parliamentary battle in the republican period, Deputy Clara Campoamor defended the recognition of women's right to vote<sup>1</sup>. "The Feminine Vote" became the title of the book she wrote in exile after not receiving the full sup-

port of her political party (the socialist group) on this issue. To make matters worse, she was then not accepted into the communist platform with which she had intended to join forces. Sadly, she died in exile, far from her political environment, but not without first succeeding in explaining her experiences and frustrations with the political manipulation of the parties on the issue of recognizing (or not) the right of women to vote<sup>2</sup>. This historic fact, which confirms the use of equality for women, has remained etched in Spanish history. For a long time, equality between men and women was interpreted in terms of political orientation, but never in terms of a social objective. On many occasions, this approach weakened attempts to gain equal access to all opportunities for men and women alike.

After Franco's death, the process of political change in Spain began to inch forward. In July 1976, President Arias Navarro resigned, and the naming of his successor, Adolfo Suárez<sup>3</sup>, opened the way for reforms which began in earnest in September 1976, with the passing of the law on political reform. With the legalization of the political parties, a commission was constituted in which the distinct political versions were represented for the preparation of a constitutional text that responded to the nation's new political climate and, consequently, the political and legal needs generated by this text.

Once the text was prepared and duly debated, it was submitted to a referendum on November 6, 1978. The Spanish people's response marked the full acceptance of the new Constitution, which meant the installation of democratic institutions and the establishment of a territorial organization that attempted to respect the country's cultural and geographic traditions<sup>4</sup>.

The Constitution was passed after the 1978 referendum, and with the monarchic proposal that Franco himself issued just before his death, the current system under which we are now living was set in motion. It consists of a Parliamentary Monar-

<sup>1</sup> This parliamentary debate can be seen in the monograph prepared by Paloma Durán, titled *El voto femenino en España (The female Vote in Spain)*, Asamblea de Madrid, Madrid 2007.

<sup>2</sup> The detailed story of the debate process and illumination about the recognition of voting by women was gathered in Clara Campoamor's book, titled *El voto femenino y yo: mi pecado mortal (The Feminine Vote and Me: My Mortal Sin)*, Horas y horas, Madrid 2006.

<sup>3</sup> Especially interesting is the version of the transition offered by Adolfo Suárez's Chief of Staff, Carmen Díez de Rivera. Just before her death,

she committed this topic to writing in a book titled, *Historia de Carmen (Memoirs of Carmen Díez de Rivera)*, Planeta, Madrid, 2002.

<sup>4</sup> Regarding the constitutional debates, the texts that were debated and the amendments of the different political groups: All of this can be found in the text by Fernando Garrido Falla titled, *Comentarios a la Constitución (Commentaries on the Constitution)*, Editorial Civitas, Madrid, 1985 (2nd edition).

chy and a democratic and social State governed by the laws set forth in the very same constitutional text in Article 1, Paragraphs 3 and 1 respectively<sup>5</sup>.

From the point of view of the policies and functional responsibilities within the area of equality between men and women, it is worth noting that Spain created the state mechanism for this area's competencies in 1983. All previous attempts made at lower functionary levels and depending on various ministries were taken into consideration. The Council of Ministers gave the mandate for elaborating plans for equality to the Women's Institute in 1987, just four years after this organization's creation. At this juncture, the process was set in motion for elaborating the four equal opportunity plans later approved in Spain.

Plan I spanned the period 1988-1990. Plan II corresponded to the period 1993-1995. Plan III corresponded to the period 1997-2000, and Plan IV corresponded to the period 2003-2006.

During the vigilance period of the last plan in March 2004, there was a change in the Spanish government that favored elaborating and passing an Equal Rights Law. This restricted State activities within the legal framework where the State continued to maintain competencies. In order for this law to be applied, a so-called Strategic Plan was approved. According to its preamble, the law's text (LOIEMH) established what was considered the legal foundation to move toward effective equality in all areas of social, economic, cultural and political life. Article 17 of the LOIEMH also anticipated the elaboration of the above-mentioned Strategic Plan for the task of creating action objectives, areas and measures in which public powers should focus their energy<sup>6</sup>.

In agreement with the territorial distribution approved in the Constitution, the Spanish State had to transfer competencies in

social matters to the Autonomous Communities according to the stipulations of their respective Statutes. Thus, in the decade after the Constitution's approval, these competencies were passed on to the Autonomous Communities, leaving the State with a very limited framework for acting on these matters.

Organic Law 3/2007, of March 22, 2007, established the guidelines for equality in public policy and proposed promoting a series of measures that include communication media, the work environment (proposing measures to companies) and public employment (referring to the State Administration, and the Armed Forces). Without intending to take merit away from the law's objective, it fell short on a practical level and failed to match the effect of the above-mentioned plans that mostly included political methods for the proper application of equality between men and women.

From a strictly legal standpoint, it is necessary to remember that, in Spanish law, civil resolutions had until then perpetuated the Roman and Germanic tradition in the sense that women were basically considered disabled people who, in their private legal spheres, were constantly subject to another person's authority<sup>7</sup>.

The first Civil Code, approved in Spain in 1889, established that the title of a legal person – in other words, “person with a legal capacity” – was obtained at birth with no specific regard as to that person's gender. However, since the primacy of the male was still not specifically established, the code highlighted a few limitations in women's capacity to work. The most graphic of these made reference to the regulation of a woman's legal age and the relative laws for marriage that placed many legal restrictions on married women<sup>8</sup>.

<sup>5</sup> Article 1 of the Spanish Constitution of 1978 affirms textually that: 1. *Spain is constituted as a social and democratic State based on Laws that promote liberty, justice, equality and political pluralism as the highest values of its legal ordinance.* 2. *National sovereignty resides in the Spanish people from which emanate all of the State's powers.* 3. *The political structure of the Spanish State is that of a parliamentary monarchy.*

<sup>6</sup> A commentary about the content and incidents of the new law can be found in Paloma Duran's article, *La Ley Orgánica de Igualdad efectiva entre mujeres y hombres (The Organic Law of Equality Between Men and Women)*. The article was published by a Spanish Journal called “State's Ecclesiastic Law and Canon Law”, IUSTEL; May 2009, dedicated solely to the topic of Women and the Religious Factor.

<sup>7</sup> J. ALVENTOSA DEL RÍO (1988), *Situación jurídica de la mujer en el ámbito del Derecho civil español (Legal Situation of Women in the Area of Spanish Civil Law)*, P. DURAN (coordinator), *Mujeres y Derecho (Women and Law)*, Valencia City Hall, Valencia, pp. 29-61.

<sup>8</sup> For example, Article 105.1 of the Civil Code established that divorce was appropriate when arising from “adultery on the part of a woman in any circumstance or on the part of a man if and when a public scandal or insulting situation harmed the woman's reputation”. Along similar lines, Article 57 stated that, “the husband must protect the wife, and the wife must obey the husband”.

The 1931 Constitution had introduced equality in its Article 25, affirming that gender could not be the motive for legal privilege. Later, Franco's political regime led the retrocession in certain areas such as nationality. A child's nationality was determined by the nationality of the father in most cases, or in some cases by the marital regime. The law of April 24, 1958, translated in the Civil Code and signed by the State and the Holy See in 1953, affirmed the following in its exposition of motives: "With regard to a woman's legal capacity, in general, the current Law is based on the principle that, both in terms of natural and social order, gender in and of itself cannot determine a difference of treatment in the area of Civil Law that could in any way translate as any limitation of women's participation in legal proceedings."

Nevertheless, it was not until May 2, 1975, that Law 14/1975 was passed. This law governed the legal situation of married women and set forth reforms for certain resolutions governing nationality and marital regimes so that married women could not be discriminated against in any way. Thus, it was actually the Constitution of 1978 that presented the new model for equality and non-discrimination, and this both justifies and explains the evolution experienced in Spain.

Article 10, paragraph 1 of the Spanish Magna Charter states that *the human dignity, the inviolable and inherent rights, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace*<sup>9</sup>. This resolution is complemented by article 14 of the same text, stating that *Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance*<sup>10</sup>.

Legal reforms have been later derived from the constitutional text so as to guarantee equality and non-discrimination with respect to women. In addition, the corresponding equality policies

have been approved both at the state and autonomous levels. In this sense, an especially important role has been played by the leading equality mechanism in Spain, namely the Women's Institute.

As mentioned earlier, the Institute was created under Law 16/1983 of October 24, 1983. It was initially subject to the Ministry of Culture, taking the place of the General Sub-Delegation of Women, which pertained to the Ministry of Culture's General Management of Youth and Socio-Cultural Promotion<sup>11</sup>.

When Spain presented its initial report before the CEDAW Committee in February 1985, the Women's Institute had still not received an explicit mandate to elaborate public policies on the issue of equality. The process for consolidating the Autonomy Statutes and transferring competencies to the Autonomous Communities had already begun and the legal mandate received after this reorganization of Spanish territory was gradually becoming a reality.

When it came to the Optional Protocol, the sociological context and environment in Spain was radically different after the Convention was ratified. It is a well-known fact that the Protocol's consensus text was basically finished unofficially in March 1999. It was later approved by the United Nations General Assembly in December of the same year. Spain was one of the first States to ratify the Protocol and, thus, underline Spanish society's commitment as well as its institutional obligation to consent with the Agreement's resolutions and guarantee civil society's voice in complying with it.

The Spanish government actually gave greater publicity to the Protocol's ratification than to that of the Convention. It must be remembered that those were very different times and that this decision was not made in vain. Spain was the first State to announce a meeting with civil society, in 2000, to disseminate the Protocol's contents. It also published the ratified text in

<sup>9</sup> Original text of Article 10, 1.º, in Spanish said: *La dignidad de la persona, los derechos inviolables que le son inherentes, el libre desarrollo de la personalidad, el respeto a la ley y a los derechos de los demás son fundamento del orden político y de la paz social.*

<sup>10</sup> Original text of Article 14 in Spanish said: *Los españoles son iguales ante la ley, sin que pueda prevalecer discriminación alguna por razón de nacimiento, raza, sexo, religión, opinión o cualquier otra condición o circunstancia personal o social.*

<sup>11</sup> Celia VALIENTE (1994), *Feminismo de Estado en España. El Instituto de la Mujer: 1983-1994 (Feminism in Spanish State, The Women's Institute: 1983-1994)*, Juan March Foundation Work Papers, November, pp. 1-48.

English and Spanish to promote it, in compliance with the Protocol's article 13<sup>12</sup>.

## 2. The National Reports

The chronology of national reports presented by Spain before the CEDAW Committee goes back to the commitment established in Article 18 of the Convention. As has been said, Spain initiated the ratification process in 1980 and, after the parliamentary procedures, dated its ratification document on December 16, 1983. Two months later, on February 4, 1984, Spain became a Member State of the Convention with the publication of the Official State Bulletin on March 21, 1984. In August of 1985, Spain presented its initial report, which was then defended in Vienna in April 1987.

Report II was presented on February 4, 1989. Report III should have been presented in February 1993, but it was held up until 1998. Report IV was presented in 1998 according to the established target dates. These last two reports were defended together in June 1999 as a result of work accumulated within the Committee after the IV World Conference on Women held in Beijing, China, in September 1995. The Committee received numerous initial reports from States that ratified the Convention, and these States currently represent almost all of the United Nations Member States.

Continuing with this chronological process, Report V was to be presented in February 2001. It happened, although additional information was added at the end of 2002 with the idea that the report's presentation in the Committee was imminent. In fact, this turned out not to be the case and the Committee did not hold the presentation of the Report V until July 2004.

Report VI was to have been presented in February 2005, but it was delayed until March 2008. Spain was called to defend this report in the Committee's sessions the summer of 2009.

As far as the report system is concerned, it should be noted that the same thing happened in other countries as well as in

Spain. Initially, each State presented its reports in agreement with State criteria, but there were no suggestions – as there are currently – proposed by the Committee regarding the reports' elaboration, especially when it came to specifying what information the reports should contain.

This explains why Reports I and II presented by Spain did not follow the Convention text's system. In Report I, the main legal reforms approved in Spain were documented as a result of the 1978 constitutional text's entering into effect. Furthermore, the report pointed out the fact that 10 of the 17 Autonomous Communities had specific mechanisms for creating and applying equality policies.

The statistical data from Report I reflected a society with a high rate of inequality between men and women. To provide an example, the data confirmed that barely 6% of all women participated in politics at all. The civil status of women had repercussions in the work environment, and salary differences between men and women were significant.

From a political standpoint, the Equal Opportunity Plan had yet to be approved, and the chosen strategy (according to the Report) was not to prepare an equality law but merely to broaden the "egalitarian legislation" in effect at the time.

That initial report did not include any reference to legal decisions in which the CEDAW text had been considered, and when the Committee asked about it, the response came in the form of Constitutional Tribunal sentences in which the contents of Article 14 of the Constitution were cited and detailed. Among other things, this article covered the formula for preventing discrimination for reasons of sex.

When Spain defended Report II in 1991, it was in fact the same report it had presented two years earlier. The first Equal Opportunity Plan had been passed, and its objectives were twofold. On one hand, it attempted to guarantee the main legal reforms necessary to achieve coherence between the legal ordinance and the constitutional text. On the other hand, it attempted to prompt a change in attitudes, lifestyles and social structures, all of which remained documented in the report's text.

<sup>12</sup> In the original English version, Article 13 of the Optional Protocol reads as follows: *Each State Party undertakes to make widely known and to give publicity to the Convention and this Protocol and to facilitate access to information about the views and recommendations of the Com-*

*mittee, in particular, on matters involving that State Party.* The Women's Institute, which was then dependent upon the Ministry of Labor and Social Affairs, published an English and Spanish version on the Convention and the Protocol in number 25 of its document collection in Madrid, 1999.

This was undoubtedly the motive behind the system in Report II, which covered the application of policies in the various areas of the Equal Opportunity Plan. Report II included two parts. The first part provided an overview of the situation of women's political life, legal power and the administration of justice. This part also covered education, employment, health and civil status for women, bearing in mind all cases, statistical data and principle legal reforms. The second part of the Report referred to the evolution that had been experienced since the presentation of the Report I.

It should be noted that during this period, the Spanish Criminal Code was revised in such a way that abuse went from being a misdemeanor to a crime. In addition, the sterilization of mentally disable individuals was no longer penalized, sexual offences in the work place were more strongly regulated, and important reforms in the civil regime were registered, especially in all aspects concerning marriage. This included inheritance issues with respect to marriage as well as the order of children's family names, which had traditionally appeared in Spain with the father's name first and the mother's name last.

Obviously, legal reforms cannot guarantee an automatic change within the population, but in many cases they can facilitate it. In other cases, they can provide responses to society's demands. It was clear from Report II that Spanish society was still far from providing effective equality between men and women.

Reports III and IV were presented separately, but their defense was conducted simultaneously. They coincided with the timing of the IV World Conference on Women and its preparation process, and this had two important consequences. The first was that preparations for the Conference created a paralysis on certain questions. This was especially true in Spain's case since it was due to assume the European Union's rotating presidency in the second semester of 1995. Spain would then be negotiating on behalf of the European Union with its previous work process as part of the troika. In addition, the Action Platform approved in China during September of 1995 explicitly backed the ratification of CEDAW. That political momentum was not squandered, and there was an important increase in ratifications with the presentation of the initial reports. A positive note was the integration of State ordinances into CEDAW's resolutions. However, from an operations viewpoint, the Committee was nearly blocked and oversaturated

with work. I cannot omit here the fact that Article 20 of the Convention establishes that the Committee's meetings must comprise a period that does not exceed two weeks. This obviously limits attempts to move forward in evaluating Reports. Given all this, the decision was made to defend both Reports at the same time. The Reports covered the time period between 1993 and 1999, the year in which they were finally defended.

Perhaps one of the most important consequences of this process was that, after the defense of Reports III and IV before the CEDAW Committee, these reports were published in the original Spanish as well as in a translated English format so as to achieve a double objective. On one hand, the Spanish text aided the dissemination of the Convention and its contents as well as its consequences in Spanish politics and lawmaking. On the other hand, the English version helped in publicizing the activities carried out in Spain throughout the entire international community.

Report III is probably the shortest of all those presented thus far by Spain. It also contained the least amount of statistical information. The most relevant fact is that it was the first to be presented in accordance with the Convention's articles, each of which contained legal measures and political programs that had been realized. It also documented an essential reform that was executed in Spain as a result of European Union policies, namely defining sexual harassment as a crime against sexual freedom.

As far as Report IV is concerned, it followed the established system and mostly offered a broad picture of the situation in Spain. In addition, it offered data regarding changes and improvements as well as obstacles encountered in the quest for guaranteeing equality. During the period covered by this report, the Spanish government was executing Plan III of the Equal Opportunity Program.

This plan introduced two innovative elements. The first was the incorporation of new areas of action which, until then, had not been contemplated as specific work areas. These included the case of rural women as well as the case of violence against women. The latter case became the object for two action plans and the so-called integral law.

The second important element was that of "transversal integration" or the so called *mainstreaming a gender perspective*.

The previous reports presented by Spain kept traditional policies separate from the elaboration of programs specifically targeting women. In most cases, these programs were managed and supervised by women.

Report IV made reference to a substantial change experienced in Spain, namely a positive evolution in the treatment of equality/inequality between men and women. During the report's period, the issue went from being a woman's problem (meaning that the responsibility for solving problems rested primarily with the woman) to being a general social problem. This change was no a trivial matter because it meant that if inequality was a problem of society as a whole, the responsibilities had to be shared.

Therefore, institutions needed to become involved in order to promote the political will to end the problem. Participation by social agents, research centers, academic institutions and the private sector was also critical. As stated before, this change of perspective represented a substantially different treatment toward equality than had been applied traditionally in Spain.

Finally, Report IV represented a novelty compared to previous reports in the way it incorporated relationships between Constitutional Court sentences in which the Convention text had been expressly invoked in order to interpret certain articles of the Spanish Constitution.

After the change of dates to which I referred in the previous Reports, Report V was presented in 2001. Information annexes were presented later though, since it was not defended until July 2004. This implied the integration of two years' worth of statistical data as well as another interesting twist. Spain's data presentation was made while the Popular Party was in power, yet the defense of the report was actually concluded under the PSOE (Socialist Party) mandate, as the socialists won the elections in March 2004.

Report V was produced under the general guidelines for elaborating reports approved by the CEDAW Committee in 1998. As such, it employed the system already used in Report IV, which considered information according to the Convention's articles. It doubtlessly contained the largest amount of additional documentation of any of the previous Reports. With the

legislation and jurisprudence, its annexes included all of the information submitted by Autonomous Communities that had competencies on the issue of equality. In addition, the annexes included information from each of the non-governmental organizations and trade unions that participated on the Governing Board of the Women's Institute.

Data concerning education, health, political participation and employment from this period demonstrated an important advance in the situation of women in Spanish public life, even if the political process did not totally confirm the equality between men and women. In light of this, one element that the Committee evaluated positively was that, in the report, mention was made not only of the progress but also the obstacles in achieving equality. Special mention was also made regarding the deep concern for violence against women. Spain was the first country in the European Union to approve the *Plan against Domestic Violence* (1998), and it was the host country for the *European Conference on the Follow-up for the Beijing Action Platform* (1999) which approved –among other issues- to support the United Nations proposal to make November 25th the International Day against Domestic Violence. During its presidency of the European Union in 2002, Spain proposed the elaboration of common indicators in the area of domestic violence. However, despite the measures approved, this extremely serious problem remains in our society.

This was also confirmed by the fact that during the non-governmental session held the day before the Reports' defense in the summer of 2004, Amnesty International presented an alternative report in which it highlighted the insufficiency of the approved measures, adding that there were large gaps in guarantees for protection and support for women victims of domestic violence.

Report VI, in accordance with the CEDAW's chronological criteria, should have been presented in 2005. However, it was presented in March 2008 and was defended in the Committee sessions at the end of July 2009.

Unfortunately, the annexes containing information on the Autonomous Communities have not been made public. Unlike the previous report, Report VI was elaborated almost entirely by the Women's Institute. According to its introduction, a group of forms was created to gather information on the Autonomous

Communities, thereby limiting to a degree the kind of information available about these communities' activities<sup>13</sup>.

In addition, the Report affirmed that information from the Governing Board's organizations had been obtained, and this prompted the Committee to request more information in order to clarify the Report's elaboration, as well as its dissemination process.

Once the report was presented, the Committee approved a list of questions for the Spanish State in its pre-session. These questions reiterated the request for additional information about the Report's elaboration process as well as the ways the Convention text and protocol were publicized. Unfortunately, the answer was that there was no State publicity activity, although there had been some dissemination at the autonomous and local levels.

To this disappointment, we should add our dismay at the lack of participation at the non-governmental level. The Spanish State responded that the existing law on equality passed in 2007 anticipated the creation of a Women's Participatory Council as an advisory entity that united the many women's associations. However, that council was not structured to make it effective, and this makes it impossible to assert with certainty that the non-governmental sector has participated in the report's elaboration. The possible exception to this might be the organizations (mentioned above) that belong to the Governing Board of the Women's Institute. In short, we are only talking about four women's organizations and the two most representative trade unions.

<sup>13</sup> The Spanish Constitution established in Article 137 the territorial organization of the State. It has city halls, provinces and autonomous communities. All of them have the autonomy to manage their interest. Since 1978, Spain has 17 Autonomous Communities (AC) and two autonomous cities (Ceuta and Melilla). Each AC has its own statute with legislative, judicial and executive power. It means that after the approval of the Constitution, the State gradually transferred part of its mandate to the AC, which now have mandate in some issues like social affairs, which include public policies to promote equality between men and women.

The consequence is that each AC has its own political and legal outline to work in this field. The most significant example is the fact that some AC have a law on equality, others have a political plan and in some cases, both. It means that the State has a very restrictive mandate with which to work. That is the reason some AC were disappointed about the process issued by the State in order to prepare the VI Report to CEDAW's Commit-

tee. One interesting advance presented in the written response to the Committee's questions involves Spain's policy regarding heirs to the Crown. The 1978 Constitutional Text established the inheritance of the Crown only in terms of males. Therefore, the Committee has posed this question on numerous occasions. In recent years, there has been a new perspective on this question.

The Spanish State now maintains that there is no single definitive position on this issue. However, any change would require a prior reform to the Constitution. Therefore, the State appeals to the State Council's Report in which constitutional reform on this topic and others is mentioned. The other topics are no less important, as they affect institutions as basic to the nation as the Senate. Therefore, the reform process is not blocked, and constitutional reform will ultimately condition the moment in which Spain can change its position on the heir to the Crown, especially given the fact that the current heir, Prince Philip, has two daughters and no sons.

All in all, an evaluation of the Reports points to the fact that both their systems and contents have steadily improved. The most important weakness involves the internal process for elaborating and preparing Reports. Here, the institutions have always been counted on, but there has been a consistent lack of information about public opinion. This is undoubtedly one of the reasons the non-governmental sector has been so inactive, not only in terms of generating greater participation but also in presenting alternative reports, as the Convention's text allows.

The State prepared the forms and, in some way, it was interpreted as a restrictive way to explain the activities by the AC.

There also is a second theme: the differences among AC. There are (according with Article 143 of the Constitution) two types of AC: "historic" AC and others. It means that the legal processes to approved the AC in both cases are different; the approval of the statute of the AC in both cases are different; the economic and political influences in both cases are different; and a very long list of others issues are different too. From a political point of view, this situation has a lot of consequences and confirms the idea that themes related to the AC and relationship with the State are always very sensitive. Now one of the pending questions is the role of the AC in the international relations, which the Constitution gave as an exclusive mandate to the State; but, in fact, the activities in some areas are approved and applied by the AC.

### 3. The Repercussions on Spanish Legal Order

The first question to respond concerns the degree of knowledge about the Convention and the Protocol. Spain is a country with a relatively recent democratic tradition and one heavily influenced by European Union regulations. Spain's incorporation into the European Union has, on many occasions, diluted the impact of other International Organizations that are no less important.

In the case of the United Nations<sup>14</sup>, the transcendence of its humanitarian activities is etched into public opinion, but the same cannot be said in other sectors. In spite of efforts in the area of equality between men and women that have been confirmed by the Women's Institute in constant publications about documentation approved in the seat of the United Nations, it still cannot be said that the international legislation is widely disseminated and familiar.

In fact, we can venture to say that the contents of both the Convention and the Protocol are largely unknown. This is not incompatible with the increase in legal decisions that include its legal foundations as well as references to the CEDAW Convention.

In addition, there is the important fact that Spain's ratification of the Convention coincided with reforms that were being made to the national legal order with the aim of reinforcing the resolutions to the 1978 Constitution. These resolutions include two particularly meaningful articles.

First, Article 1.1 deems equality as one of the values that is above legal ordinance. This article is completed in the text of Article 9.2, which spells out the obligation of public powers to promote conditions of equality, as well as Article 14, which establishes the traditional formula for fighting, among other things, discrimination for reasons of sex.

Second, Article 10.2 of the Constitution affirms that the norms related to rights and freedoms recognized as such in the Constitution will be interpreted according to the *Universal Dec-*

*laration of Human Rights* as well as the treaties and international agreements ratified by Spain on these issues. This includes both the CEDAW as well as its Optional Protocol.

In other words, from a regulatory point of view, the Constitution establishes the guideline for interpreting and applying policy for equality and non-discrimination between men and women.

As mentioned above, this constitutional mandate was sanctioned at the end of 1978. It was not until 1983 that the Women's Institute was created as an organism with competencies for elaborating and executing policies of equality. In addition, only in 1987 did it receive its governmental mandate to elaborate equal opportunity plans for men and women, bearing in mind Spain's territorial distribution and the consequences in terms of competencies. Thus, over the course of nearly a decade (1978-1987) between the passing of the Constitution and the Women's Institute receiving its governmental mandate, Spain ratified the CEDAW Agreement (1983) and defended its initial report in 1987.

All of this made it difficult to establish the limits between the legal reforms taking place at the time as a result of the Constitution's approval and the reforms taking place as a consequence of Spain's ratification of the CEDAW. In any case, these reforms were approved and adopted across all legal areas, especially in the civil and mercantile sectors as well as others that I will refer to below.

As mentioned earlier, from a chronological standpoint, the 1978 Spanish Constitution marked a watershed in the recognition of fundamental rights, especially in terms of equality. That process ran parallel to the ratification of the Convention with the State's logical obligation to integrate those resolutions into Spanish legal ordinance. It is impossible to go into detail regarding the reforms, and therefore I will only mention the most significant ones in relation to CEDAW.

In terms of civil law, the de-penalization of adultery and cohabitation out of wedlock took place before the ratification of CEDAW. However, this doubtlessly served as a point of departure both in terms of civil law and criminal law. The subsequent

tional website). Another text by the same author titled, *Economic, social and cultural rights: an approach from a gender perspective*, is available in the collection titled, *Perspectives on Human Rights – with special reference to women*, published by the University of Lapland, *Jurídica Lapponica*, no. 23, 2000, pp.160-172.

<sup>14</sup> Many works have been written concerning the United Nations' work in the area of equality between men and women. Among them is Paloma Durán's monograph, *The United Nations and equal opportunities for men and women*, published by INSTRAW in 2006 (the text can be consulted in the English version or the Spanish version in INSTRAW's insti-

modifications to the Civil Code's Law 11/1981 governing parenthood, custody and the economic regime of marriage, and Law 30/1981 governing causes for annulment, separation and divorce were understood as a bridge extended to women who were subject to a regime of nearly total submission to men in the marriage system existing before the Constitution.

The reforms passed in terms of children's adoption (Law of November 11, 1987) and women's nationality (1982, 1988 and 1990 respectively) also attempted to guarantee the exercising of nationality without discrimination for women. Spain's initial report had already included a reference to the reform passed in the Law of July 13, 1982 that regulated the equality of men and women in the acquisition and loss of nationality. However, the most important thing to be pointed out as a consequence of CEDAW's ratification (as corroborated by Spain during the presentation of its second report) is the promulgation of Law 11/1990, of October 15, on reforming the Civil Code in terms of its application of the principle of non-discrimination for reasons of sex.

As a result, it is established that the personal and inherited effects of a married couple, in the absence of a common national law, will not be subject to the husband's personal law but rather to the law of habitual common residence. In the absence of that law, it will be subject to the place of marriage.

The marriage would also not alter its civil neighborhood laws, meaning that the married woman would not have to follow the laws of her husband's neighborhood and would have the option of regaining her own neighborhood jurisdiction by declaring it to the Civil Registry (City Hall).

As a consequence of this reform, according to the information supplied by Spain, the preference of the male in receiving hereditary rights has been eliminated. The need to attend to the person's gender to achieve the classification of intimidation was eliminated as well. The preference of the mother as guardian of children under 7 years of age has also been eliminated. In fact, the decision is now up to the judge when it comes to children's custody, and the strongest determining factor is always the children's best interest.

To these civil law reforms, we would have to add the reforms that were applied as a consequence of the passing of Law 35/1988, of November 22, governing artificial reproduction techniques. This law was later updated in 2003 and 2006,

and followed by the law on biomedical research, approved in 2007.

In the area of criminal law, the categorization of abuse as a crime occurred in 1989. Abuse had been previously categorized as a misdemeanor. The categorization of rape as a crime was also expanded, as were the regulations governing the crime of dishonest abuse.

Later on, the 1995 reforms established new regulations on crimes against sexual freedom, which figured for the first time as a crime of sexual harassment. Subsequently, these regulations were broadened with the definition of environmental harassment, which occurs between people who do not have a hierarchical relationship and are working in the same place.

Similarly, the crime of non-payment on child support was reformed in 1995. The crime had originally been defined in 1989, but it failed to consider children born out of wedlock. The law of prostitution imposed on minors and adults was also reformed. In the latter case, abuse is defined as taking advantage of a situation of the victim's need or the perpetrator's superiority.

Finally, in 1995 the Criminal Code established the recognition of crimes governing workers' rights in cases of serious discrimination for reasons of gender, among many other factors.

After that, certain reforms were introduced in reference to violence against women. Initially, both the Criminal Code and the law on criminal sentencing were reformed to establish the so-called policy of "distancing the aggressor from the victim" during the sentencing period. Distancing the aggressor was also established as a possible precautionary measure. Psychological aggression was also included into the definition of abuse, and the possibility of prosecution for abuse was written in.

In this same area, certain reforms were included as a result of passing the integral law on gender violence. Perhaps the measure that has sparked the greatest social debate has been the stiffening of punishments in cases where the aggressor is a male. This proposal meant filing recourse before the Constitutional Court, whose sentence was considered a formula for expressing reverse discrimination in favor of women.

There have been many new reforms made in Spanish Labor Law as well. Initially, these legal reforms were directed at guaranteeing equality in accessing the labor market, including cer-

tain specific professions where women had traditionally been prohibited, such as the Armed Forces and mining. These reforms, many of which came about as a result of Spain's membership in the European Union, were meant not only to secure basic opportunities but to regulate salaries, promotions and the ability to create companies as well. These reforms also included maternity protection which, according to the Spanish constitutional text, must not be discriminatory.

In the field of Commercial Law, most of the reforms stem from the Constitution's approval and primarily affect the legal regime related to the ability of married women to participate in trade operations. It also affects the marital authorization for the same, as well as the effects of married women participating in trade operations. The latter reforms, which are direct results of Spain's application of CEDAW and the EU resolutions, have been mostly directed at the labor market's regime.

As stated earlier, this is not the forum to discuss Law 3/2007 on the effective equality between men and women, but it can be reiterated here that due to Spain's territorial distribution, the State only regulates the areas in which it is still able to do so. These include State public administration, State owned media, the armed forces, political parties, and the State proposal on elaborating equality plans for companies (one of the Law 3/2007's most hotly debated issues).

All in all, the legal reform process conducted in Spain since CEDAW's ratification has gained steady momentum. As noted earlier, the process has gone hand in hand with reforms resulting from the passing of the Constitution. Therefore, it is difficult to discern the boundaries of one legal text with respect to the other. In practical terms, the one certainty is that the legislation guarantees equality between men and women, although obviously legal equality does not automatically translate to real equality.

#### 4. The Political Discourse

In this epigraph, I will attempt to analyze the political contributions proposed in the different Equal Opportunity Plans, both at the State and Autonomous Community level.

At the State level, as noted earlier, the Women's Institute was created under Law 16/1983, of October 24. The law's Article 2

established that the Institute's primary mandate was to promote conditions that favor true equality between men and women.

Along these lines, the government later charged the Institute with the mandate to elaborate a plan to promote equality. In 1986, the Institute prepared a report on the social situation of women in Spain. The report confirmed that the Constitution's approval had facilitated legal changes but there was still a long way to go before true equality became a reality. In September 1987, the Council of Ministers took note of the first Equal Opportunity Plan executed in Spain during the period 1988-1990.

Regarding the political use of equality, an historic subject in Spain, one thing that is certain is that Plan I was organized into six areas of action: equality in judicial ordinance, education and culture, labor relations and employment, health, international cooperation, and the promotion of associations and women's NGOs.

Three years later, in January 1993, Plan II was approved with a period of effectiveness between 1993 and 1995. This plan's text included what were considered to have been advances with respect to the prior plan. These advances included the adaptation of Spanish legislature to the constitutionally recognized principle of non-discrimination. Advances were also noted in specific programs in the areas of education, health, employment and training as well as in support to non-governmental organizations working for women's causes. In addition, institutional tools were created to facilitate integration and equality across all parts of public administration.

With these advances, Plan II was interpreted as highly ambitious, broadening the number of action areas to 10. In addition to including egalitarian legislation development, it proposed means for avoiding stereotypes regarding men's and women's roles as well as actions to promote equitable sharing of domestic responsibilities between men and women. Beyond that, it publicized a social image of women that was adjusted to their realities and doubtlessly guaranteed increased participation by women across all action sectors.

Plan III was approved by an entirely different governing political party (between 1997 and 2000). It was presented with a multilateral and international perspective that brought with it the promise to integrate the commitments assumed in the IV World Conference on Women (Beijing, 1995) into Spanish legislation and politics. In addition, it vowed to integrate the resolu-

tions of EU community action programs approved in the seat of the European Union.

Add to this the important fact that Plan III integrated a chapter about the qualitative and quantitative follow-up and evaluation system that implied a change with respect to prior plans. On another front, as mentioned earlier, areas were added that previously had not been considered as specific, such as the case of violence against women or the case of rural women.

Plan III was structured around three axes that reviewed the international commitments assumed by Spain and covered the so-called "combined policy". First of all, the policy aimed to maintain specific programs for women in those sectors or areas where it was deemed necessary. Secondly, it aimed to integrate equality transversally and mainstream a gender perspective in all public policies. Finally, it aimed to incorporate the so-called social initiative that involved considering the work of social actors and civil society as a whole.

This plan was executed parallel to the elaboration and approval of Plan I against domestic violence. This was the reason why Equality Plan IV, approved for the period 2003-2006, did not include a section on violence, which was being approached with other resources and with another methodology. Plan IV, following the criteria of Plan III, included an evaluation system that was structured into three levels: follow up on the plan's execution; qualitative analysis on the plan's execution; and finally, the evolution of the situation for women. The follow up process was organized with both objective and subjective aspects in addition to a system of specific indicators.

In terms of content, Plan IV assumed the principle of transversal integration proposed in the previous plan. It also assumed the cooperation principle that included a dialogue among all the actors that intervened in the execution and guarantee processes for equal rights between men and women. One might say that the action areas were conventional, but they responded to necessities required by Spanish society. Proof of this lies in the incorporation of an area dedicated to the conciliation of personal and professional responsibilities, for the first time.

Nevertheless, in 2004, after the changeover in government, Plan IV was practically diluted by a change in political strategy and the approval of a law on effective equality between men and women, namely Law 3/2007, of March 22. Many things can be said about Law 3/2007<sup>15</sup>, but the one thing for certain is that the area of competencies is restricted to the State level. In a way, this means a reduction in State interventions into other areas while respecting the competencies of the Autonomous Communities. Given that the effectiveness of these plans has been proven over many years in Spain, the government has approved the so-called strategic plan for the period 2008-2011 with the idea of guaranteeing the execution of resolutions included in this law.

As a matter of fact, the Autonomous Communities have approved and revised their statutes on autonomy after the approval of the Constitution. With the recognized corresponding regulatory and political capacity, they have steadily approved laws on equality between men and women as well as action plans at the Autonomous Community level. The naming, terminology, methodology and follow up of these plans are as rich and diverse as the geography and culture in modern Spain. In a way, the State framework has become a reference without regulatory power in the competency areas that do not pertain to it. In addition, the work of the Autonomous Communities and smaller local governments has meant not only a greater sensitivity and an important socio-structural change, but also an investment in human, economic and institutional resources that respond to the political will and the demands of Spanish society.

An analysis of autonomous plans and laws confirms the importance of the CEDAW in terms of the policies passed. The total practice of these instruments has turned the Convention into a legal framework that justifies actions for promoting equality between men and women. It has also served as an argument for the validity of affirmative actions approved for women, especially in the areas of employment, education and participation in decision-making processes by women.

Strangely enough, the same does not occur with the State plans. Only Plan I explicitly mentions the CEDAW that Spain had

<sup>15</sup> See Paloma Durán's article, *La Ley Orgánica de Igualdad efectiva entre mujeres y hombres (The Organic Law of Equality Between Men and Women)*. The article was published by a Spanish Journal called "State's

Ecclesiastic Law and Canon Law", IUSTEL; May 2009, dedicated solely to the topic of *Women and the Religious Factor*.

just ratified. In Plan II, the international sphere is not mentioned, although the EU community is mentioned through reference to the third community action program as one of the references used in the Plan's elaboration.

In the cases of Plans III and IV, the commitments adopted in Beijing during the IV World Conference on Women as well as those adopted through EU Community programs are seen as pivotal to the approved policies.

CEDAW's lack of visibility continues to be evident in Spain, despite the fact that many of the approved measures are a result of the Convention's proposals, as it has been amply proven above.

## 5. Conclusions

Once the analysis of the political and legal process has been accomplished, it is necessary to bear in mind the effects that this has had on the real life of Spanish women. If we look at the picture offered in the initial report in addition to the one offered in Report VI, the changes in education, employment, health and participation in decision-making processes are obvious.

It could be said that Spain is one of the European Union States in which the situation of women has experienced the most pronounced changes. As has been mentioned on more than one occasion, this does not mean that this equality is real and effective yet, but certainly many advances have been made.

The first to which I referred is certainly the consideration for achieving equality as a social objective. Therefore, achieving this goal is a responsibility shared among all the actors that participate in society. This is one of the most significant achievements that can be attributed to both the change in Constitution as well as the ratification of CEDAW.

Moreover, creating sensitivity in society in areas such as language and advertising, which I have not been able to explore here for reasons of space, is also one of the real indicators of tangible advance on this matter.

Women's participation in public life has increased notably as well. In the initial report, Spain documented vetoes towards

women taking part in the Armed Forces. Today, the Armed Forces are made up of almost 13% women. The activity rate for women was 22% in 1976. Now it is at 51.51% in the first quarter of 2009. Women have gone from representing 4.5% of Parliament after the 1982 elections to the current level of 37%. Women represent 46% of the total field in the legal sector, while they represent over 50% of the total in both attorneys and judicial secretaries.

These are perhaps the sectors in which the progress of women can be most clearly demonstrated. However, as it has been shown earlier in this paper, these advances are not yet synonymous with real equality. CEDAW's impact is proving very positive in the case of Spain, yet there is still plenty of work to be done in order for women to be equally present in all areas of public life as their male counterparts.

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