Committee on the Elimination of Discrimination against Women

Concluding observations on the combined seventh and eighth periodic reports of Spain*

1. The Committee considered the combined seventh and eighth periodic reports of Spain (CEDAW/C/ESP/7-8) at its 1309th and 1310th meetings, on 8 July 2015 (see CEDAW/C/SR.1309 and 1310). The Committee’s list of issues and questions are contained in CEDAW/C/ESP/Q/7-8 and the responses of the Government of Spain are contained in CEDAW/C/ESP/Q/7-8/Add.1.

A. Introduction

2. The Committee expresses its appreciation to the State party for the timely submission of its combined seventh and eighth periodic reports. It also appreciates the State party’s written replies to the list of issues and questions established by its pre-session working group. It welcomes the oral presentation of the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee notes the State party’s delegation which was headed by H.E. Ms. Ana María Menéndez, Ambassador and Permanent Representative of Spain to the Office of the United Nations and International Organizations at Geneva. The delegation comprised representatives from the Office of the Public Prosecutor; the Ministry of Foreign Affairs and Cooperation; the Ministry of Justice; The Ministry of the Interior; the Ministry of Employment and Social Security; the Ministry of Health, Social Services and Equality; the Ministry of Education, Culture and Sport; and the Permanent Mission of Spain to the United Nations at Geneva.

B. Positive Aspects

4. The Committee welcomes the progress achieved since the consideration in 2009 of the State party’s sixth periodic report in undertaking legislative reforms, in particular:

   (a) The Law 4/2015 on the Legal Status of the Victims of Crime; and

   (b) The Organic Law 1/2015 amending the Penal Code with regard to violence against women; and

* Adopted by the Committee at its sixty-first session, meeting from 6 to 24 July 2015.

5. The Committee welcomes the State party’s efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of:

(a) The National Strategy for the Elimination of Violence against Women (2013-2016);
(b) The Strategic Plan for Equal Opportunities (2014-2016); and

6. The Committee welcomes the fact that in the period since the consideration State party’s sixth periodic report, the State party has acceded to the following international instruments:

(a) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2014;
(b) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in 2013;
(c) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2010;
(d) The Council of Europe Convention on Action against Trafficking in Human Beings, in 2010; and

C. Principle areas of concern and recommendations

Parliaments

7. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with the parliamentarians, adopted at the forty-fifth session, in 2010). It invites the national and autonomous Parliaments to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.

General context

8. The Committee notes with concern that the financial and economic crisis and austerity measures taken by the State party to address the negative effects they had on women in all spheres of life. The Committee also notes with concern that no studies and evaluations have been conducted to monitor the gender specific effects of the financial crisis. The Committee takes into account the exceptional circumstances that the State party faced during the past years and is still facing, however, it reminds the State party that even in time of fiscal constraints and economic crisis, special efforts must be made to respect women’s rights, sustain and expand social investment and social protection and to employ a gender sensitive approach, giving priority to women in vulnerable situations and avoiding retrogressive measures.
9. The Committee encourages the State party to:

(a) Undertake necessary studies and evaluations to monitor the gender specific effects of the financial crisis;

(b) Ensure an internal redistribution of its domestic resources to overcome the consequences of the economic and financial crisis, giving priority to measures supporting gender equality in all fields and devise an effective strategy to ensure the full implementation of the Convention; and

(c) Collect statistics disaggregated by sex in all relevant areas, especially for all aspects of employment in public and private sectors.

Visibility of the Convention, Optional Protocol and the Committee’s General Recommendations

10. The Committee notes with concern the lack of understanding by the State party of the due diligence obligation and the lack of follow-up to the Committee’s Views on Communication No.47/2012, Ángela González Carreño v. Spain. It notes the insufficient action taken to train judges and lawyers on the Convention and its Optional Protocol and to integrate it into the State party’s legal framework. It is further concerned that women themselves, especially those in rural areas and migrant women, are unaware of their rights under the Convention and thus lack the information necessary to claim their rights.

11. The Committee recommends that the State party:

(a) Ensure that the Convention, its Optional Protocol, and the Committee’s General Recommendations are sufficiently known and applied by all branches of government and the judiciary, as a framework for laws, court decisions and policies on gender equality and the advancement of women;

(b) Take appropriate measures to implement the recommendations in the Committee’s Views on Communication No.47/2012, Ángela González Carreño v. Spain;

(c) Enhance women’s awareness of their rights and the remedies available to them to claim violations of their rights under the Convention, and ensure that information on the Convention, its Optional Protocol and the Committee’s general recommendations is provided to all women, including in rural areas, and migrant women; and

(d) Provide legal education and regular training for government officials, judges, lawyers, magistrates, prosecutors, the police, and other law enforcement officers on the Convention, the Optional Protocol and their application so that they can serve as an effective framework for all laws, court decisions and policies on gender equality and the advancement of women.

Reservations and declarations

12. The Committee notes that the State party maintains its declaration to the Convention regarding the constitutional provisions on succession to the Spanish Crown.

13. The Committee reiterates its previous recommendation and encourages the State party to consider the timely withdrawal of its declaration to the Convention concerning the succession to the Spanish Crown.

National machinery for the advancement of women

14. Notwithstanding the explanations given, the Committee notes with concern:

(a) The restructuring of the State party’s national machinery for the advancement of women, the elimination of the Ministry of Gender Equality and the substitution of the
Women’s Institute (Instituto de la Mujer) by an Institute for Women and Equality of Opportunities;

(b) That such restructuring measures have affected the ability of the State party to ensure the development and effective implementation of gender policies and may dilute the focus on gender as a cross cutting element;

(c) The absence of a consistent gender equality strategy at the national level and insufficient institutionalized and systematic coordination between the Autonomous Communities and the Central Administration, as well as the reduction of the competencies on gender equality and gender-based violence of local authorities through the amendment of article 27 of the Regulatory Law on Local Administration by Law 27/2013; and

(d) The limited cooperation between the Council of Women’s Participation, an advisory body on equality between men and women, and civil society organizations working on women’s issues in the State party.

15. In accordance with its General Recommendation No. 6 (1988) on effective national machinery and publicity and the guidance provided in the Beijing Platform for Action on the necessary conditions for the effective functioning of national mechanisms, the Committee recommends that the State party:

(a) Increase the resources attributed to the Institute for Women and Equal Opportunities (Instituto de la Mujer y para la Igualdad de Oportunidades) to ensure that a sharp focus on women’s rights is maintained and gender can be mainstreamed in all its activities, and consider re-establishing the Ministry of Gender Equality, with the human and financial resources needed to address its mandate in order to have a high-level mechanism capable of initiating, coordinating and implementing gender equality policies;

(b) Strengthen coordination between the Autonomous Communities and the Central Administration by clearly defining their mandates and responsibilities in relation to women’s rights, and regularly conduct monitoring and evaluation of this coordination; and

(c) Allocate adequate human, financial and technical resources appropriate with their mandate and strengthen cooperation and coordination between the various mechanisms and women’s civil society organisations.

Temporary special measures

16. The Committee reiterates its previous concern at the limited understanding by the State party of the concept of temporary special measures, as outlined in article 4, paragraph 1, of the Convention and its General Recommendation No.25 (2004) and is concerned at the absence of a comprehensive strategy for implementing temporary special measures to achieve substantive equality of women and men in the State party in all areas of the Convention where women are under-represented or disadvantaged.

17. Recalling article 4, paragraph 1 of the Convention and the General Recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party:

(a) Familiarize all relevant State officials and policy-makers with the definition of temporary special measures, adopt and implement temporary special measures, including time-bound goals and quotas, directed towards the achievement of de facto or substantive equality between women and men in all areas where women are underrepresented or disadvantaged; and
(b) Address the root causes of the weak implementation of the existing temporary special measures and introduce in its legislation provisions to encourage the use of temporary special measures in both the public and private sectors.

Stereotypes

18. The Committee welcomes the establishment of the Observatory of Women’s Image with a mandate to, inter alia, receive complaints, as well as the prohibition of various publicity campaigns that were considered sexist. However, it remains concerned at the persistence of entrenched traditional attitudes and stereotypes concerning the roles and responsibilities of women and men in the family and in society. The Committee recalls that such stereotypes are also root causes of violence against women. The Committee also reiterates its concern about the insufficient positive media portrayals and images of ethnic minority women, Roma women, migrant women and women with disabilities. The Committee also remains concerned that no measures have been taken to eliminate stereotypes in the education system, and that school curricula and textbook have not been revised.

19. The Committee urges the State party to:

(a) Put in place a comprehensive strategy with proactive and sustained measures to eliminate gender stereotypes, by reviewing the Law on Education and adopting targeted programmes in the education system, revising school textbooks and curricula, conducting awareness raising campaigns directed at women and men generally, and at media and advertisement agencies specifically;

(b) Use innovative measures targeting the media to strengthen understanding of substantive equality of women and men and use the education system to enhance positive and non-stereotypical portrayals of women; and

(c) Monitor and review the measures taken so as to assess their impact and to take appropriate action.

Violence against women

20. While noting the existence of a specific law prohibiting violence against women (Organic Law 1/2004) and the development by the Ministry of Interior of the Monitoring System in cases of gender violence (VioGén System), the Committee is alarmed by the prevalence of violence against women, including sexual violence, in the State party and the high percentage of women who have died as a result of a gender-based violence in close relationships. It is particularly concerned:

(a) That Organic Law 1/2004 does not cover the full range of gender-based violence, other than intimate partner violence;

(b) About the number of cases of children killed by violent fathers during the exercise of their visiting rights (20 children killed between 2008 and 2014); and

(c) About the deterioration of protective services for women victims of domestic violence in different Autonomous Communities, including the limited availability of shelters for women and children.

21. Recalling the provisions of the Convention and the General Recommendation No. 19 (1992) on violence against women, the Committee urges the State party to:

(a) Revise its current national legislation on violence against women to include other forms of gender-based violence, for instance, violence by care takers, police violence and violence in public spaces, workplaces and schools;

(b) Provide mandatory training for judges, prosecutors, the police and other law enforcement officials on the Convention, its Optional Protocol and the strict
application of criminal law provisions on violence against women and on gender-sensitive procedures for interviewing and dealing with women victims of violence;

(c) Put in place comprehensive measures to prevent and address violence against women and girls, and ensure that women and girls who are victims of violence have access to immediate means of redress and protection, and that perpetrators are prosecuted and adequately punished;

(d) Encourage women to report incidents of domestic and sexual violence to the law enforcement bodies by de-stigmatizing victims and sensitizing the police and judiciary and by raising awareness about the criminal nature of such acts;

(e) Provide adequate assistance and protection to women victims of violence by providing sufficient shelters, including in rural areas, and enhancing State cooperation with non-governmental organizations providing shelter and rehabilitation to victims; and

(f) Collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and the perpetrator.

Trafficking and exploitation of prostitution

22. While noting the adoption of the Framework Protocol on Victims of Trafficking by the State party in 2011 and the efforts of the State party to develop strategies and improve the legal framework for the protection of and assistance to victims of trafficking, in line with paragraph 22 of the Committee’s previous concluding observations (2009), the Committee remains concerned at the prevalence of trafficking in women and girls to the State party and at the absence of comprehensive anti-trafficking legislation, as well as the failure of the State party to criminalize all forms of trafficking. It is also concerned at the limited definition of pimping which might impede the adequate prosecution of the exploitation of prostitution, as well as the limited data available to date to determinate the scale of this phenomenon.

23. The Committee recommends that the State party:

(a) Adopt a comprehensive anti-trafficking legislation with a gender perspective and an explicit definition of trafficking in persons in accordance with international standards;

(b) Continue intensifying efforts aimed at bilateral, regional and international cooperation to prevent trafficking and prosecute traffickers;

(c) Adopt a comprehensive approach to address the phenomenon of exploitation of prostitution, collect data and undertake analysis, provide sufficient shelters and crisis centres, exit and reintegration programmes, as well as alternative income generating opportunities for women who wish to leave prostitution, and take measures to reduce the demand for prostitution; and

(d) Adopt a comprehensive definition of pimping to make possible an adequate prosecution of the perpetrators of exploitation of prostitution.

Participation in political and public life

24. The Committee welcomes the increase in the representation of women in Parliament (35.5 per cent) and in the legislatures of the Autonomous Communities (44.6 per cent). However, it is concerned at the generally low participation of women in political and public life, in particular in decision-making positions at the Autonomous Communities level (four out of 17 presidents of Autonomous Communities are women), in the diplomatic service (12 out of 199 Ambassadors are women), and in the judiciary.
25. The Committee recommends that the State party:
   (a) Increase the participation of women in political and public life at all levels, including by adopting temporary special measures, such as statutory quotas, in accordance with article 4 (1) of the Convention and the Committee’s General Recommendation No. 25 (2004) on temporary special measures;
   (b) Build capacity of and enhance access to campaign financing for women candidates to enable them to compete effectively with their male counterparts; and
   (c) Conduct awareness raising activities for politicians, community leaders, journalists and the general public on the importance of women’s participation in decision-making in order to promote understanding that full, equal, free and democratic participation of women on an equal basis with men in political and public life, including in international representation, is a requirement for the full implementation of the Convention.

Education

26. The Committee is concerned that women and girls continue to choose traditionally female dominated fields of education (only 26.4% of students enrolled in engineering and architecture and 9.8% of those in sports studies are women) and that they remain underrepresented in technical and vocational education. The Committee is also concerned about the low level of school attendance and the high dropout rate among Roma girls and that in 2013, despite some positive achievements attained at the basic level of education, the Committee is also concerned that the “Education for citizenship and human rights” course was replaced with subjects on “Civil and social values” or “Ethical values” which are optional, and that currently in schools there is no mandatory comprehensive age appropriate education on sexual and reproductive health and rights.

27. The Committee recommends that the State party:
   (a) Intensify its efforts aimed at providing specific training and diversifying academic and vocational choices for women and men and take further measures to encourage women and men to choose non-traditional fields of education and careers;
   (b) Ensure that all gender stereotypes are eliminated from textbooks; that school curricula, academic programmes and professional training for teachers cover women’s rights and promote gender equality;
   (c) Provide mandatory comprehensive age appropriate education on sexual and reproductive health and rights to girls and boys, as part of the regular school curricula, including about responsible sexual behaviour, prevention of early pregnancies and sexually transmitted diseases, taught by appropriately trained personnel; and
   (d) Take effective measures to retain Roma girls at school and increase their enrolment through temporary special measures such as scholarships and free provision of textbooks.

Employment

28. The Committee is concerned that the austerity measures introduced in response to the economic and financial crisis have had a severe and disproportionate impact on women, in particular women with disabilities, older women and women domestic workers. Women have faced unemployment, cuts and reductions in social security and dependent care, wage freezes, transformation of full-time into part-time jobs with overtime hours. It is particularly concerned:
(a) At the persistent gender wage gap (17.8%) which is higher than the average in the European Union, as well as at vertical and horizontal segregation in the labour market, and at the concentration of women in part-time work which adversely affects their career developments and pension benefits; and

(b) At the low representation of women in managerial and decision-making positions and on boards of directors (18.2%) and that the Law on equality of 2007 and Law 31/2014 amending the Corporation Act do not provide sanctions for non-enforcement of the required gender balance in the boards of directors of large companies; and

(c) That the State party has not ratified the International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

29. **The Committee recommends that the State party:**

(a) Review its legislation and policies in order to promote equal opportunities and equal treatment of women in employment including career opportunities and to limit exposure of women to segregated and precarious work;

(b) Restore the financing of the implementation of the Law 39/2006 on the Promotion of Personal Autonomy and Care for Dependent People;

(c) Continue taking concrete and proactive measures to eliminate the gender pay gap and create more opportunities for women to access full-time employment;

(d) Take measures to achieve women’s equal and full participation in decision-making in the economic sphere, in particular in the boards of directors of large companies by introducing mandatory quotas;

(e) Adopt temporary special measures to accelerate the equal participation of women from disadvantaged groups, including migrant women, Roma women, single mothers, older women and women with disabilities in the labour market, and undertake comprehensive studies on the employment and working conditions of those groups of women, with recommendations for enhancing their effective participation in the labour market; and

(f) Improve the positions of domestic workers with a view to ratify ILO No. 189 (2011) concerning Decent Work for Domestic Workers.

**Health**

30. The Committee is concerned:

(a) That the legislative amendment of Royal Decree-Law 16/2012 excluded migrants in an irregular situation from universal health-care coverage and had a disproportionate impact on migrant women, as it deprived them of free access to sexual and reproductive health services, thus losing an opportunity to identify victims of gender-based violence and trafficking and support for victims of sexual violence;

(b) That the new draft law (February 2015), which envisages making abortion for girls between 16 and 18 years dependent on the consent of parents, caretakers or legal guardians, was approved by the Lower Chamber of the Parliament (El Congreso de los Diputados); and

(c) At the significant reduction of the budget for women with HIV/AIDS.

31. **The Committee recalls articles 12 and General Recommendation No. 24 (1999) on women and health, and recommends that the State party:**
(a) Restore universal access to health care, including by repealing the amendment of Royal Decree-Law 16/2012, with a view to ensuring health-care to all women in the State party regardless their migration status;

(b) Ensure that the draft law on the right to abortion for girls between 16 and 18 is not adopted; and

(c) Ensure the provision of adequate treatment to all women living with HIV/AIDS.

Rural women

32. The Committee notes with appreciation the increase of grants for the advancement of rural women, innovation excellence awards and training for rural professionals. However, it expresses concern that despite the provisions of Law 35/2011 on shared ownership of agricultural enterprises, more than 70% of owners are men.

33. The Committee recommends that the State party eliminate all barriers in the implementation of Law 35/2011 on shared ownership of agricultural enterprises.

Disadvantaged groups of women

34. While noting that State party has taken various legislative and other measures to improve the situation of disadvantaged groups of women, it is concerned that the budget cuts and recent legislative reforms may undermine such progress. The Committee is particularly concerned at the situation of migrant women, Roma women, older women and women with disabilities.

35. The Committee recommends that the State party:

(a) Adopt measures, including temporary special measures within the meaning of article 4, paragraph 1, of the Convention and the Committee's General Recommendation No. 25 (2004) on temporary special measures, to ensure equal rights and opportunities for women who face intersecting forms of discrimination, in particular, migrant women, Roma women, older women and women with disabilities;

(b) Adopt necessary legislative measures, as well as targeted policies to address multiple forms of discrimination and promote the integration into society of disadvantaged and marginalized groups of women facing intersecting forms of discrimination.

Refugee and asylum-seeking women

36. While noting the information provided by the delegation of the State party that in 48 cases refugee status was granted on the ground of gender-based persecution, according to Law 12/2009 on Asylum and Subsidiary Protection, the Committee is, however, seriously concerned, at the practice of expulsion of persons, including women and girls, crossing the border at Ceuta and Melilla, with no individual gender specific evaluation of each case.

37. In line with the provisions of the Convention and the General Recommendation No. 32 (2014) on gender related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee calls upon the State party to:

(a) Improve protection for, women and girls asylum seekers, in the Autonomous Cities of Ceuta and Melilla by ensuring that no violence is used during border controls; by ensuring access to asylum procedures for all claimants, regardless of their country of origin or mode of entry; by establishing a fair and efficient asylum procedure; and by improving reception conditions and ensuring that they are gender-sensitive;
(b) Establish contingency plans and preparedness for arrivals at land and sea borders to deal with increasing mixed migration flows, while ensuring protection-sensitive entry systems that also take into account a gender and age perspective; and

(c) Provide adequate treatment for women and girls asylum-seekers with specific needs and adopt a gender perspective when developing programmes for assistance.

Marriage and family relations

38. While noting that the General Council of the Judiciary in its Guidelines on proceedings related to gender-based violence (2013) rejected the validity of the so-called “parental alienation syndrome” (PAS), the Committee is concerned that it continues to be used in a number of judicial decisions in the State party to withdraw child custody from the mother and to grant it to a father accused of domestic violence. The Committee is concerned that existing and upcoming legislative mechanisms do not adequately address the consideration that needs to be accorded to the existence of domestic violence within case of child custody determination. The Committee is also concerned at attempts to pass legislation that sets joint physical custody as the default rule in determining cases of child custody.

39. The Committee recommends that the State party:

(a) Ensure that visitation rights without supervision are not granted to fathers where the rights, well-being and safety of children may be jeopardised; and

(b) Ensure that the legislation that sets joint physical custody as the default rule in determining cases of child custody is not adopted, and take measures to adequately address the consideration of the specific needs of women and children to determine child custody in cases of domestic violence.

Beijing Declaration and Platform for Action

40. The Committee calls upon the State party to utilize the Beijing Declaration and Platform for Action, in its efforts to implement the provisions of the Convention.

Millennium Development Goals and the post-2015 development framework

41. The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the achievement of the Millennium Development Goals and into the post-2015 development framework.

Dissemination

42. The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations and recommendations between now and the submission of the next periodic report. The Committee therefore requests the timely dissemination of the concluding observations, in the official language(s) of the State party, to the relevant state institutions at all levels (national, regional, local), in particular to the Government, the ministries, the national and autonomous Parliaments and to the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers’ associations, trade unions, human rights and women’s organisations, universities and research institutions, media, etc. It further recommends that its concluding observations be disseminated in an appropriate form at the local community level, to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the
Convention, its Optional Protocol and jurisprudence, and the Committee’s General Recommendations to all stakeholders.

Ratification of other treaties

43. The Committee notes that the adherence of the State party to the nine major international human rights instruments1 would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.

Follow-up to concluding observations

44. The Committee requests the State party to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 21 (a), (b), (f) and 37 (c) above.

Preparation of the next report

45. The Committee invites the State party to submit its ninth periodic report in July 2019.

46. The Committee requests the State party to follow the “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents” (HRI/MC/2006/3 and Corr.1).

1 The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.