

DV/VAW as a Human Rights Violation: A Political Ideology & Platform

www.warondomesticterrorism.com

Women's Rights Are Human Rights: Rhetoric to Reality

*Give women equal rights & entire nations are more stable & secure. Deny women equal rights & the instability of nations is almost certain... Women's equality is not just a moral issue, it's not just a humanitarian issue, it is not just a fairness issue, It is a security issue, it is a prosperity issue, & it is a peace issue... **[But the] pace of change has been far too slow, including women's economic participation, leadership, & security.***

Hillary Clinton, US Presidential Candidate

*There is no shortage of good & innovative practices & programmes being initiated by women in cities & communities around the world to respond to this crisis. The shortcomings are not in the vision, voices & the voluminous efforts undertaken by determined women around the world. No, the shortcomings lie elsewhere—**in the lack of political prioritization, & the lack of public spending, to end violence against women & girls.***

Michelet Bachelet, UN Women

Women's Rights Are Human Rights: Rhetoric to Reality

*Too often, [women] carry the burden of work that is unpaid, unseen, unreported—and underappreciated. Globally, [they] spend twice as much time on household chores as men, & four times as much time on childcare... They are the first to be submerged by economic crisis. We must do better than this... Remember, women control the purse strings. They account for over 70 % of global consumer spending. **So if we want more spending & more economic growth, then we need to empower more women as agents of aggregate demand.***

Restrictions on women's rights to inheritance & property, as well as legal impediments to undertaking economic activities such [as] freely pursuing a profession, are strongly associated with larger gender gaps in labor force participation... The results from this study suggest that it would be beneficial to level the playing field by removing obstacles that prevent women from becoming economically active if they choose to do so.

Christine Lagarde, IMF

DV as a Human Rights Violation: What Does That Mean?

Domestic Violence as a Human Rights Issue by Dorothy Thomas & Michele Beasley

States are bound by international law to respect the individual rights of each [] person & are thus accountable for abuses of those rights. The aim of the human rights movement is to **enforce states' obligations [] by denouncing violations** of their duties under international law (Eisler, 1987).

Reasons domestic violence has NOT been considered a human rights issue in the past:

1. Traditional concepts of state responsibility under international law **only recognized state ordered violations**
2. Misconceptions about the **nature & extent of DV** and the effectiveness of a **State' s responses**
3. Neglect of **equality before & equal protection of the law** without regard to sex as a human rights principle
4. **Failure of states to recognize their affirmative obligation (positive action)** to provide remedies for domestic violence crimes (and any cover-up for those crimes)

Gender Violence as a Social Institution & State Responsibility

Domestic Violence as a Human Rights Issue, by Dorothy Thomas & Michele Beasley

In traditional human rights practice states are held accountable only for what they do directly or through an agent... More recently, however, the concept of state responsibility has expanded to include [] states' systematic failure to prosecute acts committed either by low-level or **parastate agents or by private actors** ...Although the state does not actually commit the primary abuse, its **failure to prosecute amounts to complicity**.

Although international law is gender neutral in theory, in practice it **interacts with gender-biased domestic laws & social structures** that relegate women & men to separate spheres of existence: **private & public**. Men exist as public, legal entities and, participate in public life & enjoy the full extent of whatever **civil & political** rights exist. Women, however, are **socially & economically** disadvantaged in practice & in many places by law.

This **gender bias, if unchallenged, becomes so embedded in the social structure** that it often assumes the form of a social or cultural norm seemingly beyond the purview of the state's responsibility, rather than a violation of women's human rights for which the state is accountable. In some cases, even civil & political rights violations committed directly by state actors have been shrugged off as acceptable.

Domestic Violence as Tyranny & Oppression

Domestic Tyranny: Making of American Social Policy Against Violence by Elizabeth Pleck

Governments legal obligation to combat domestic violence

- 1) widespread **prevalence** in every society around the world
- 2) socio-economic & health consequences**
- 3) violates conditions necessary for **human beings & their development**

Socio-political norms sustaining domestic violence

- 1) For sake of their children, or redemption of their husbands – wives have traditionally been urged to renounce [private rights]. Therefore, desire for **women's personal autonomy threatens family stability**
- 2) Public policy against DV offers state intervention in the family as a major remedy for abuse, challenges the view that **marriage & family should be preserved at all costs**
- 3) The clients of DV institutions were mainly poor or working class; the founders more privileged. Critics claim that DV programs have attempted – & succeeded – in imposing their own standards on their clients, while **strengthening the political power & cultural dominance of reforming elite (& thereby *status quo* patriarchal structure which oppress women)**

Re-socializing Society: Private & Public Rights

Protecting the Majority of Humanity by Riane Eisler, JD

Until recently, human rights theory & action has focused primarily on the so-called **public sphere** from which the majority of humanity – women & children – were traditionally barred. If, however, we are serious about building a more just, peaceful & sustainable future, we have to recognize that our first & most lasting, **lessons about human relations are learned not in the public but in the private sphere**. **This is where people learn to respect the rights of others – or where they learn to view human rights violations as normal.**

The last half century has seen an expansion of the purview of international criminal law to crimes against humanity, whether committed in war or peace & is a development of major importance...

To change policies & behaviors that fail to respect these & other human rights, we need an **integrated approach that takes into account what is considered normal & acceptable in all spheres of life, both public & private, & in all relations, from intimate to international.**

Human Rights: Jump Starting the Stalled Revolution

Reframing VAW as a Human Rights Violation: Evan Stark's Coercive Control

by Kahtryn Libal and Serena Parekh

A human rights framework could jump start the “stalled revolution.” However, this will not materialize without **widespread mobilization of interest & understanding of human rights among DV advocates & the society in general...**

Ways to justify **state accountability**:

1. State is responsible for **failing to enforce** human rights norms in a nondiscriminatory way... an attractive strategy when states fail to investigate and punish criminalized VAW
2. State accountable for **traditions, customs, and informal beliefs** that entail **a negative view of women** or serve to keep women in certain devalued roles (*definition of “devalued” & by who?*)

Building Accountability & Governance

State-Building: Governance & World Order in the 21st Century by Francis Fukuyama

The same coercive power that allows [governments] to protect property rights & provide public safety also allow them to confiscate private property & abuse the rights of their citizens... **The task of modern politics has been to tame the power of the state, to direct its activities toward ends regarded as legitimate by the people it serves, & to regularize the exercise of power under a rule of law...**

Neopatrimonial regimes [are characterized] as “predatory” behavior, where a large percentage of society’s resources are stolen by a single individual (or group). It merely amounts to rent-seeking – that is, use of public sector to **reallocate property rights to the benefit of a particular interest [group]...**

The **trend in world politics has been to weaken stateness... to cut back the size of state sectors & to turn over to the market or to civil society functions that have been improperly appropriated.** At the same time, the growth of the global economy has eroded the autonomy of sovereign nation-states by increasing the mobility of information, capital, and, to a lesser extent, labor.

UN Report: In-Depth Study on VAW

Key Issues for Governments to Examine, United Nations

- ▶ **Psychological abuse** & violence and its different forms
- ▶ **Incarceration of women** in mental hospitals or prisons for not conforming to social norms
- ▶ **Locking up & isolating** women from others
- ▶ Dynamics of **VAW in institutional settings**, including schools, hospitals, prisons, etc
- ▶ **Economic abuse & exploitation** - withholding income, usurping wages & denying basic necessities
- ▶ Abuse of **older women**
- ▶ Underlying **dynamic of gender inequality that fuels the murders of women**
- ▶ More inquiry is also needed about the **use of technology, such as computers & cell phones**
- ▶ **Evolving & emerging forms of violence** need to be recognized & better addressed

UN Report: Good Practices in Combating VAW

States Obligations in Developing Good Practices, United Nations

- ▶ **Enable judicial actors** to assist victims, thru **capacity building**, etc.
- ▶ State has a **duty to ensure gender sensitivity of the judiciary** & all actors in the legal domain. Civil society, including NGOs, has considerable experience & expertise & should be included in training State agencies
- ▶ Establish the **principle of women's sexual autonomy (private rights)** & ensure that legal systems uphold it
- ▶ National & International institutions must **set standards of policy & practice** & adhere to these standards
- ▶ Draft & **implement laws** with respect to marriage, divorce, child custody & visitation, public benefits, employment, housing & immigration should all be designed to address VAW
- ▶ **A functioning legal system** is crucial for positive legal reform & procedural change. Corruption deprives women of legal redress & protection. Rights of victims must be guaranteed under the law
- ▶ Criminal & civil remedies should be made available for the effective prevention & redress, including orders of protection, **actions for damages against perpetrator**, the police or **third parties who fail to prevent violence**
- ▶ The fact that VAW occurs in cross-border context invites the development of **cross-border cooperation**

UN Report: Good Practices in Combating VAW

Issues & Problems in State's Response to VAW, United Nations

- 1) **Poor & inconsistent implementation** of international commitments, national laws & minimum standards
- 2) Conditions of **virtual impunity**, due to the **failure of States to effectively prosecute** perpetrators
- 3) Abuse still resulting in **stigma & shame for victims** of violence
- 4) VAW is linked to **structures & practices which permit men to believe their rights supercede** those of women
- 5) Relative **neglect in legal reform**, policy & practice of sexual violence
- 6) **Poor resourcing** of work to combat violence against women compared to other issues/sectors
- 7) **Little investment in primary prevention** as a long term initiative
- 8) **Need for increased investment & capacity-building** for research, data collection & monitoring, especially in evaluating the effectiveness of new practices
- 9) **Absence of effective oversight** mechanisms for action against VAW at national levels
- 10) **Limited documentation & reflection on the routes women's movements have developed to speak with a collective voice & build strategic allies at national & local levels; (and international levels)**
- 11) **Need for renewal of feminist ideas** while retaining the vision of ending violence & male domination

Human Rights Violations of Women in Family Courts

2 Major Violations of Women's Rights & Their Consequences

1. Economic Rights violations

- ▶ Defrauding women of ~40+% of their rightful assets & property
- ▶ Throwing women & children into abject poverty & homelessness, with aging women particularly hard-hit
- ▶ Disempowering women

2. Custodial Rights violations

- ▶ Encouraging & supporting widespread rape, torture & murder of women & children w/in home & family
- ▶ Perpetuating unsustainable health-care costs (caused directly & indirectly by abuse w/in the home)
- ▶ Are complicit & responsible for indoctrinating future generations with violence, hatred, xenophobia, discrimination, extremism, & thereby perpetuating violence w/in the society
- ▶ Socially, disempowering & persecuting women for “reasons of maternity/motherhood”

VAW as Human Rights Violations

Landmark Jurisprudence

Inter-American Commission on Human Rights

Gonzales (Lenahan) vs. USA, 2011

*The Commission published its decision on August 17, 2011. This is the first time an international human rights body has ruled on the United States' legal obligations towards an identified domestic violence survivor. The Commission's decision finds in Jessica's favor & declares that the United States violated her human rights by **failing to adopt reasonable measures to protect her & her daughters from her abusive husband's acts of violence**, when the police should have known that they were at risk of being harmed. The Commission recommends that the United States provide redress to Jessica, & in addition **implement reforms to federal & state laws & policies that proactively address & prevent gender-based violence**, including domestic violence*

(<https://www.law.miami.edu/human-rights-clinic/pdf/2011/gonzales-summary-timeline.pdf>)

VAW as Human Rights Violations

Landmark Jurisprudence

United Nations – Convention on Elimination of Discrimination Against Women (CEDAW)

Gonzalez Carreño vs. Spain, 2014

On July 2014, the Committee issued its decision in the case, in which it determined the Spanish authorities were responsible for the death of Andrea as a result of their negligence. The decision emphasizes the **need for Courts to take into account the history of domestic violence in the determination of custody & visitation of children**, to ensure they do not endanger the safety of victims of violence, including their children. It also states that **stereotypes affect women's right to a fair trial & that the Spanish judicial authorities applied stereotypical notions regarding the nature & severity of violence, as well as visitation rights of abusive parents with their children.**

http://www.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&dc=62&lang=en.

An Ideological Shift & Social Restructuring

The Feminine Mystique (Two Generations Later), Betty Friedan, 1997

There is a new awareness that **something has to change now in the structure of society**... conditions of jobs & professional training are still based on the lives of the men of the past who had wives to take care of the details of life. Women don't have such wives, but neither do most men now. So the **“family friendly” workplace becomes a conscious political & collective bargaining issue**.

There is much talk lately of a 3rd sector, of civic virtue [] that the real bonds that keep a society flourishing are not necessarily wealth, oil, trade, technology, but **bonds of civic engagement**...

The **decline of [the 3rd sector] is blamed on women working**. All those years when women did the PTAs, & Scouts, & church & sodalities... for free, **no one valued them** much at all. *(Now that they are gone, they do)*

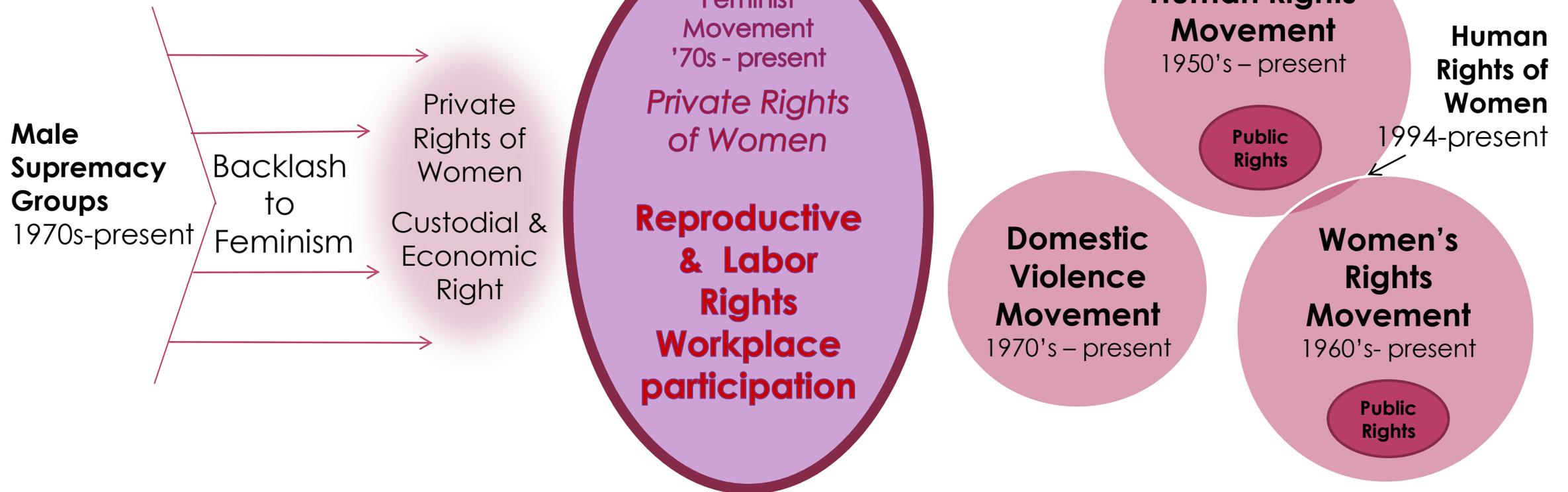
Some social scientist & political gurus propose that the **3rd sector can take over welfare responsibilities of govt.**

But, women, of the 3rd sector, know that **they cannot alone assume the larger responsibilities of government.**

Our democracy requires a new sense of combined public, private, civic & corporate responsibility.

Movements Compared

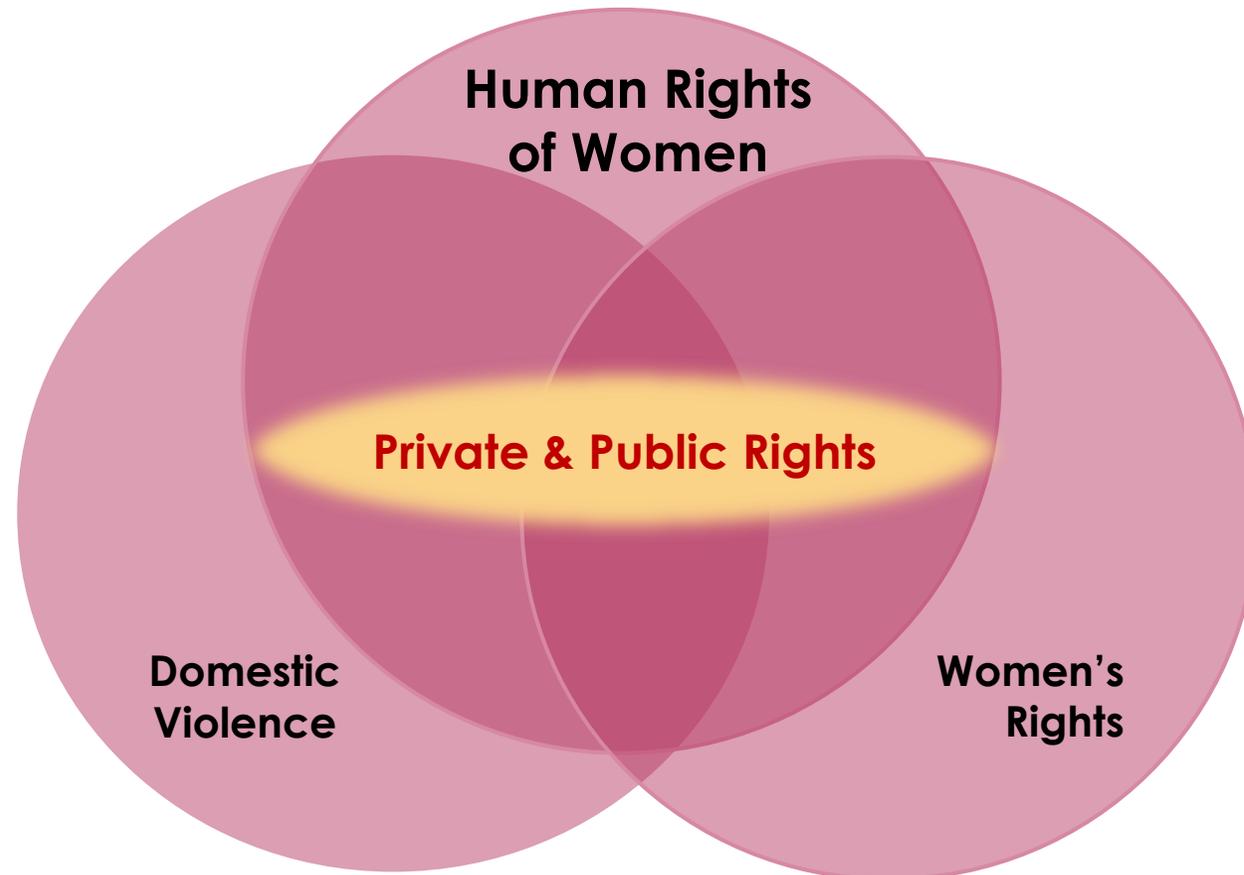
1950 – present



Moving Forward

The 21st Century

18



SPAIN: CASE STUDY

Amnesty International

RECOMMENDATIONS

To the Spanish Parliament

- ▶ Guarantee **real specialization of judicial organs** charged with judging cases domestic violence.
- ▶ Guarantee **quality of legal assistance** to victims of gender violence, including sexual violence
- ▶ Assure **proper training of ALL professionals** who intervene in courts of gender violence
- ▶ Assure **proper training of district attorneys** (JVM's) and their specialization in gender violence.

To the Justice Department

- ▶ Improve **training for judges** regarding human rights & VAW, from a gender perspective
- ▶ Develop systems which encourage **good practices, detect lack of diligence & assure accountability**
- ▶ Perform a **in-depth study regarding the guarantee of the rights of victims** w/in courts on VAW

SPAIN: CASE STUDY

Amnesty International

To the District Attorneys

- ▶ Improve training in matters of human rights & VAW from a **gender perspective**
- ▶ Verify the **compliance of regional district attorneys** (DA) by the State DA in protection of victims

To the Bar Associations

- ▶ Revise training & **accountability of lawyers**, correcting malpractice & verify their effectiveness

To the Judges & District Attorney's Association

- ▶ Conferences with **nat. & intl. experts, developing good practices & correct lack of diligence**
- ▶ Identify **lack of human resources, materials & legislative deficiencies & push for solutions**

SPAIN: CASE STUDY

Save the Children

RECOMMENDATIONS

To the Spanish Government

- ▶ Assure norms that **respect the rights of children** in judicial process
- ▶ Assure **specialization of professionals & methodologies** in obtaining children's testimonies
- ▶ Improve **coordination between medical & educative services with the Administration of justice**
- ▶ Guarantee specialized information about the **rights & how to implement them** during judicial procedures
- ▶ Implement assistance of court-appointed **specialized legal counsel** in attending children victims
- ▶ Assuring the **specialization & transparency** of the experts in the Administration of justice

SPAIN: CASE STUDY

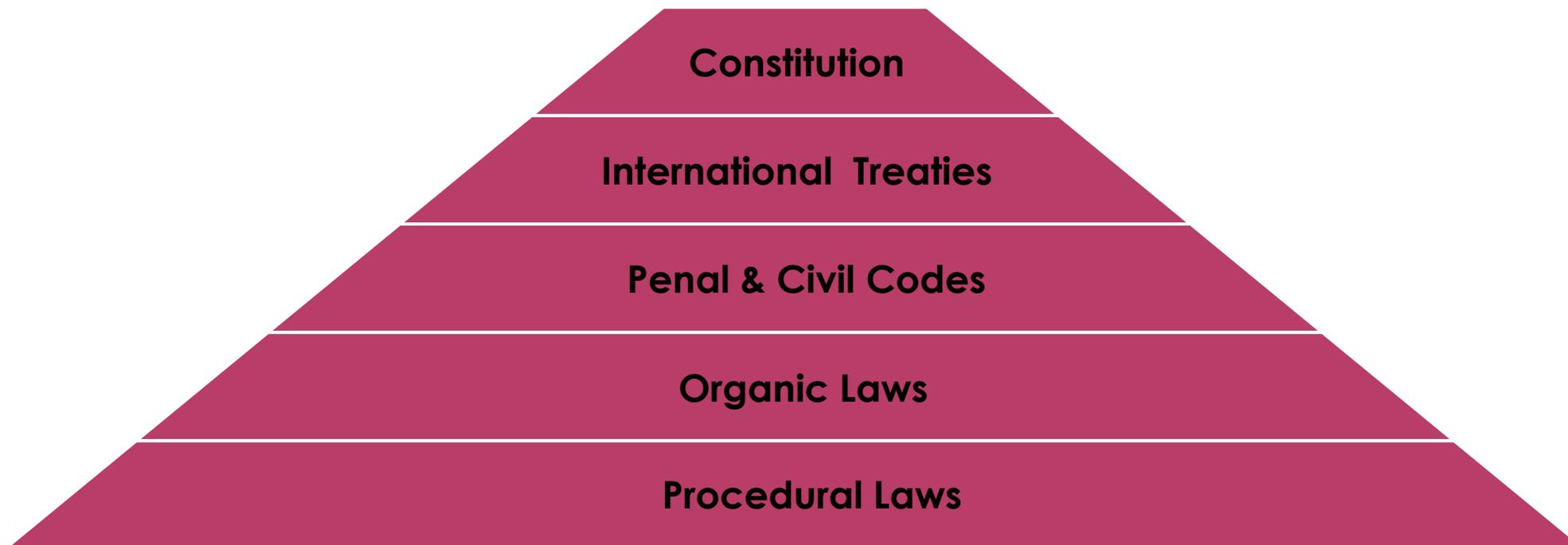
Save the Children

To the Spanish Government (continued)

- ▶ Promote the formation & actualization of **rights of children & the obligation of the State** when faced with cases of violence, improving coordination between judges & district attorneys
- ▶ Guarantee the **right of the children to be heard &** to participate in the issues that affect them
- ▶ **Protocolize the “best interest of the child”** by judicial authorities, under international norms
- ▶ Establish guidelines **guaranteeing that aggression will not be repeated**, w/ judicial protection orders
- ▶ Guarantee priority in the **judicial investigation of these crimes**, recognizing that precipitated dismissal of allegations can cause irreparable damage to the affected children in future procedures
- ▶ Review the **actions of district attorneys**, assuring allegations of crimes are properly investigated & prosecuted, and that judicial decisions comply with Spanish law & best interest of the child

Utopian Legal Structure: A Case Study, Spain

Hierarchy of Legal Norms



Spain: A Multi-layered Examination of Human Rights Violations by Judicial Actors

	Acts & Omission of Acts	Consti-tution	(CEDH), (CEVCM), (CEDAW), (ICCPR), (ICESCR)*	Penal Code	Civil Code	Equality Act; Gender Violence; Judicial Power	Lawyer's Statutes Dec.658/01	Deonto-logical Code
Judicial Actors & Public Authority	Failure to prevent a crime, affecting life, integrity, health, or liberty & covering-up of evidence.	9, 10, 13, 14, 1.5, 24 & 45.1	CEDH-1, 2, 3, 5, 8, 13 & 14 CEVCM-3 & 4 CEDAW-2, 3, 4, 5, 11, 13, 15 & 16 ICCPR-2, 6, 7, 9, 17, 23 & 26 ICESCR-1, 6, 7, 10 & 11	10, 11, 22, 27, 28, 29, 195, 450, 451, 465, 467.2, 511, 512 & 607bis	6, 7, 8, 27, 348, 349, 1088, 1089, 1091, 1092, 1093, 1094, 1097, 1098, 1101, 1102, 1104, 1106, 1107, 1254, 1255, 1262, 1271, 1279, 1347, 1362, 1365, 1369, 1375, 1383, 1386, 1390 & 1391	AI-1, 2, 3, 4, 6, 9, 10, 11, 12 & 13 CVG-1, 2, 17, 18, 19, 37, 38 & 39 ODJ-1, 5, 6, 9, 11 & 17	1, 4, 5, 6, 7, 11, 12, 17, 21, 22, 23, 87, 87bis & 87ter	1, 2, 3, 4, 5, 6, 9, 10, 11, 12 & 13
	Failure of women to access common property records, & assets.	33.3, 34, 35, 38, 14 & 24	CEDH-1, 4.1 & 14 CEVCM-3 CEDAW-2, 3, 4, 5, 11, 13, 15 & 16 ICCPR-1, 2, 3, 17, 23 & 26 ICESCR-1, 6, 7, 10, 11 DJVCAP-8 annex	10, 11, 22, 29, 110, 111, 112, 113, 116, 117, 120, 173, 195, 199, 208, 250, 450, 451.2, 465, 467.2, 510, 512 & 607bis	103, 137, 138, 6, 7, 8, 27, 348, 349, 1088, 1089, 1091, 1092, 1093, 1094, 1097, 1098, 1101, 1102, 1104, 1106, 1107, 1254, 1255, 1262, 1271, 1279, 1347, 1362, 1365, 1369, 1375, 1383, 1386, 1390 & 1391	AI-1, 2, 3, 4, 6, 9, 10, 11, 12 & 13 CVG-1, 2, 17, 18, 19, 37, 38 & 39 ODJ-1, 5, 6, 9, 11 & 17	1, 4, 5, 6, 7, 11, 12, 17, 21, 22, 23, 87, 87bis & 87ter	1, 2, 3, 4, 5, 6, 9, 10, 11, 12 & 13
	Violation of the right to an effective defense, to privacy.	24 & 18	CEDH-1, 2, 3, 5, 6, 8, 13 & 14 CEVCM-3 & 4 ICCPR-9, 17, 23 & 24 ICESCR-1, 6 & 10	11, 12, 22, 29, 109, 110, 116, 195, 450, 451.3, 510, 511 & 607bis	6, 7, 8, 27, 348, 349, 1088, 1089, 1091, 1092, 1093, 1094, 1097, 1098, 1101, 1102, 1104, 1106, 1107, 1254, 1255, 1262, 1271, 1279, 1347, 1362, 1365, 1369, 1375, 1383, 1386, 1390 & 1391	AI-1, 2, 3, 4, 6, 9, 10, 11, 12 & 13 CVG-1, 2, 17, 18, 19, 37, 38 & 39 ODJ-1, 5, 6, 9, 11 & 17	1, 4, 5, 6, 7, 11, 12, 17, 21, 22, 23, 87, 87bis & 87ter	1, 2, 3, 4, 5, 6, 9, 10, 11, 12 & 13
	Introduction of false information, falsified documents or false testimony to courts	1, 9, 10, 24 & 45.1		22, 28b 390.3, 390.4, 393, 396, 429, 450, 451, 461, 464, 465, 467.2, 51, 511, 512 & 607bis	6, 7, 8, 27, 348, 349, 1088, 1089, 1091, 1092, 1093, 1094, 1097, 1098, 1101, 1102, 1104, 1106, 1107, 1254, 1255, 1262, 1271, 1279, 1347, 1362, 1365, 1369, 1375, 1383, 1386, 1390 & 1391	AI-1, 2, 3, 4, 6, 9, 10, 11, 12 & 13 CVG-1, 2, 17, 18, 19, 37, 38 & 39 ODJ-1, 5, 6, 9, 11 & 17	1, 4, 5, 6, 7, 11, 12, 17, 21, 22, 23, 87, 87bis & 87ter	1, 2, 3, 4, 5, 6, 9, 10, 11, 12 & 13

Spanish Constitution

25

- 1 – **Social & democratic state**, with power emanating from the people
- 9 – Citizens & public authorities are bound by the Constitution & law
- 10 – **Constitutional rights are in conformity w/ international treaties**
- 13 – **Foreigners** shall enjoy same freedoms as Spaniards
- 14 – **Non-discrimination** for reasons of gender
- 15 – Right to **life & physical & moral integrity, free from torture**
- 18 – Right to honor, personal & family privacy & to own image
- 19 – **Freedom of movement** & choice of place of residence
- 24 – Right to **effective protection from judges & the courts**
- 32 – **Rights & duties of spouses** in marriage & its dissolution (civil code)
- 33 – No one may be deprived of their **property & [economic] rights**
- 35 – Right to **free choice of profession & sufficient remuneration**
- 38 – Free enterprise, with **public authorities protecting the economy**
- 39 – Public authorities assure **social, economic & legal protection of family**
- 40 – **Equitable distribution of regional & personal income**
- 41 – Public authorities maintain **Social Security system for all citizens**
- 42 – Safeguard the **economic & social rights of Spanish workers abroad**
- 43 – Right to **health protection**
- 45 – Right to an **environment suitable for the development of person**
- 51 – Public authorities shall guarantee **protection of consumers**

Convention on Elimination of Discrimination Against Women (CEDAW)

26

- 2 – State Parties shall refrain from engaging in discrimination against women, **abolish all laws, regulations, customs & practices, & ensure competent tribunals & public institutions**
- 3 – Ensure full **development & advancement** of women
- 4 – Special measure at accelerating *de facto* equality between men & women, w/ special measures aimed at **protecting maternity**
- 5 – modify social & cultural patterns, proper understanding of **maternity as a social function**, with the **interest of the child** the primordial consideration
- 11 – Prevent **discrimination on grounds of marriage or maternity** & ensure effective **right to work & participation in public life**
- 13 – Eliminate **discrimination in economic & social life** w/ rights to **family benefits & financials**
- 15 – **Equality before the law**, in all civil & legal matters
- 16 – Eliminate **discrimination in relating to marriage & family relations**

- 10 – Felonies/misdemeanours** - intentional or negligent **actions or omissions** under the Law
- 11** – Felonies or misdemeanours that **infringing a special legal duty** of the principal (lawyers & judges), is equivalent to an omission
- 22 – Aggravating circumstances** are: Perpetrating the act with premeditation, abuse of superiority or confidence, or to deliberately & inhumanely increase victim's suffering
- 24 – Civil servant are those who exercise public duties**
- 27** – Those criminally responsible are the principals & their accessories
- 28** – Principals are those who perpetrate the act themselves, alone, jointly, or by means to aid & abet
- 29** – Accessories are those who [] co-operate in carrying out the offence with prior / simultaneous acts
- 116** – All persons held criminally accountable shall also be held liable [for] damages or losses
- 120** – Natural or legal persons dedicated to any commerce, shall be held civilly liable [] for felonies or misdemeanours committed by **their employees**
- 121 – The State & public authorities shall be subject to subsidiary liability for damage caused by those criminally accountable for malicious/negligent felonies, when these authorities acting out their duties**
- 173** – Whoever inflicts degrading treatment on another person, seriously **damaging his moral integrity**
- 195** – Non-assists to a person in danger (without risk to oneself)
- 208 – Defamation** is the action that harms the dignity of another person, detracting from his reputation

- 393** – Whoever uses a **forged document** in a trial, or to harm another, knowing it is forged
- 450** – Whoever **does not prevent a felony** being committed that affects the life, integrity or health of other
- 451** – Whoever has **knowledge of a felony** committed and, subsequently intervenes in its execution...
- 510** – Those who **provoke discrimination or distribute defamatory information** on groups due to gender
- 512** – Those who in exercise of their professional **deny a person a service due to family situation, or gender**
- 515** – Unlawful **association of those who promote discrimination, hate, or violence** against another persons or group due to their ideology, gender or family situation... or incite to do so
- 542** – The public authority who **prevents a person from exercising their constitutional & civil rights**
- 544** – **Sedition** - those who **force outside the legal channels, application of the laws**
- 545** – Those who have **induced, sustained, or directed the sedition** shall be imprisoned for 15 years if they are public authorities.
- 559** – Those who seriously disturb the **public order to prevent any person from exercising his civil rights**
- 577** – In order to subvert constitutional order, **alter public peace, or terrorize members of a social group**
- 607** – **Crimes against humanity** – **widespread/systematic attack on civil population**, due to victim pertaining to persecuted group for political, cultural or other reasons under international law

Spanish Civil Code

Arts. 61 – 111 Marriage & Divorce

66 – Equality in rights & duties

67 – Spouses must respect & assist each other & act in **family interest**

68 – Spouses are obliged to aid & assist each other

97 – Spouse, for whom divorce gives rise to economic imbalance, shall be entitled to compensation

Arts. 1315 – 1445 On Marriage Property Regime

1316 – In absence of marriage articles, the regime shall be community of joint assets

1347 – Common property - Obtained from work/industry of either spouse & income/interest of all property

1371 – Excessive gambling losses shall reduce their respective pof the common property

1383 – The spouses must inform each other as to their economic activity

1390 – If a spouse, by willful misconduct, causes damage to community, he shall owe the amount thereof

Arts. 142 – 300 On Obligations Towards Family Members

143 – Spouses [] are obligated to support each other

154 – Parental authority exercised respecting children's physical & psychological integrity

243 – Persons sentenced for crimes, making justifiable not to perform guardianship, shall be denied it

247 – Persons who, should incur legal grounds for ineligibility to guardianship, shall be denied it

Arts. 1661-1742 On Partnerships

- 1665 - Partnership is a contract** – 2+ persons put in money, property or industry, in order to split gains
- 1675 - Universal partnership of gains** - everything partners acquire result of industry/work of partnership

Arts. 1088 – 1314 On Obligations & Contracts (husbands & lawyers)

- 1089 - Obligations** arise from law, contracts & from unlawful acts or omissions w/ fault or negligence
- 1092 - Civil obligations arising from crimes** under the Criminal Code
- 1094** - Person obliged to give something is also obliged to preserve it with **due diligence**
- 1098** - If person obliged to do something **fails to do it**, it shall be ordered to be **done at his expense**
- 1101** - Persons who, in performance incurs **willful misconduct, negligence...** shall **pay compensation for damages caused**
- 1102 - Liability for willful misconduct** is enforceable for all obligations
- 1254** - Contract exists when **persons consent** to bind themselves to another or to provide services
- 1258** - Contracts are perfected by consent, to the **performance as well as consequences**
- 1282** - To judge intention of contracting parties, acts at time of, & after, contract shall be considered

Spanish Equality Act, 2007

31

- 1 – Purpose - **Ensure equal treatment & opportunities** for women & men, in particular via elimination of discrimination of women... in all areas of life... pursuant to Art 9.2 & 14 of Constitution
- 2 – Establishes the **principles governing the action** of public authorities, regulates natural & corporate persons' public & private rights & duties & lays down measures designed to eliminate and correct all forms of discrimination on the grounds of sex in the **public and private sectors**.
- 3 – **Equal treatment for women & men** - absence of all direct/indirect gender discrimination, regarding maternity, assumption of family obligations or marital status.
- 4 – **Equality in interpretation & enforcement of laws**
- 5 – Equal opportunities in access to **employment, including self-employment & working conditions**
- 6 – **Direct & indirect discrimination** (an apparently neutral practice would disadvantage women)
- 7 – **Harassment on the grounds of sex** (behavior prompted by a person's gender which violates his or her dignity, creates an intimidating, degrading or offensive environment)
- 8 – Discrimination on grounds of maternity (**less favourable treatment of women relating to maternity constitutes direct discrimination** on the grounds of sex)
- 9 - **Indemnity to reprisal** (Adverse treatment/negative effect of lodging of complaint for discrimination)
- 10 – Legal consequences of discrimination (**discriminatory legal transactions will be null & void**)
- 11 – **Positive action** (public authorities will favour women to correct *de facto* discrimination)
- 12 – Effective **judicial protection**
- 13 – **Burden of proof** (defendant must prove absence of discrimination)
- 14 – Criteria governing **public authority actions**

Terminology & Definitions

Sovereignty & International Law

Sovereignty – in [political](#) theory, the ultimate overseer, or authority, in the decision-making process of the [state](#) & in the maintenance of order.

Sovereignty & international law –The doctrine of sovereignty's [] greatest influence has been in the relations between states. The difficulties here can be traced to Bodin's statement in 1576 that the sovereign who makes the laws cannot be bound by the laws he makes. This statement has often been interpreted as meaning that a sovereign is not responsible to anybody & is not bound by any laws....

[However, Bodin] emphasized that even with respect to his own citizens a sovereign is bound to observe certain basic rules derived from the divine law, the law of nature or reason, & the law that is common to all nations (*jus gentium*), as well as the fundamental laws of the state... & what limits the sovereign power... In fact, Bodin discussed as binding upon states many of those rules that were later woven into the fabric of international law. Nevertheless, his theories have been used as justifying [absolutism](#) in the internal political order & anarchy in the international sphere.

Absolutism – the political doctrine & practice of unlimited, centralized authority & absolute [sovereignty](#), as vested especially in a [monarch](#) or [dictator](#). The essence of an absolutist system is that the ruling power is not subject to regularized challenge or check by any other agency, be it judicial, legislative, religious, economic, or electoral... Absolutism has existed in various forms in all parts of the world, including in Nazi Germany under [Adolf Hitler](#) & in the Soviet Union under [Joseph Stalin](#).

Human rights – [rights](#) that belong to an individual or group of individuals simply for being human, or as a consequence of inherent human vulnerability, or because they are requisite to the possibility of a just [society](#). Whatever their theoretical justification, human rights refer to a wide continuum of values or capabilities thought to enhance human agency or protect human interests & declared to be [universal](#) in character, in some sense equally claimed for all human beings, present & future... It [] is a common observation that this requirement—whether conceived or expressed as a moral or a legal demand—is often painfully frustrated by social as well as natural forces, resulting in exploitation, oppression, persecution, & other forms of deprivation....

Encyclopedia Britannica

Private vs. Public Rights

Private (Personal) Rights – rights (as of personal security, personal liberty, & private property) appertaining to the person (custodial rights, economic rights, reproductive rights, labor rights)

Public Rights – the rights under law of the state over the subject, & of the subject against the state (right to govern, obligation to Protect)

Encyclopedia Britannica

Terminology & Definitions

Judicial Independence

The ability of courts & judges to perform their duties free of influence or control by other actors, whether governmental or private. The term is also used in a normative sense to refer to the kind of independence that courts & judges ought to possess.

Independence for Whom?

Judicial independence can be defined as a characteristic of individual judges or as a characteristic of the judiciary as a whole. Neither conception is indisputably preferable to the other as a practical matter. On the one hand, if judicial independence is guaranteed at the institutional level but not at the individual level, individual judges can be forced to obey the wishes of the leadership of the judiciary, which may result in a less-than-wholehearted enforcement of the rule of law. [] On the other hand, if judicial independence is ensured at the individual level, **individual judges will find themselves at liberty to pursue their individual preferences. Unchecked discretion of that kind not only invites abuse but also raises the likelihood that judges will decide cases in inconsistent ways, with the potential effect of undermining the predictability & stability of the law.**

Independence from whom?

The existence & adequacy of judicial independence become matters of practical concern only when a court decides a dispute involving the interests of some actor or institution with potential or actual power over the court. Generally speaking, the more powerful the actor whose interests are at stake, the greater the need to protect the independence of the court from that actor. If both sides to the dispute are powerful, however, that symmetry of power may provide for all of the necessary protection. The three scenarios that a court may encounter are disputes between:

1. private actors,
2. government actors, and
3. private actors & government actors.

Ultimately, the prospects for attaining even moderate levels of judicial independence are likely to depend on political & historical conditions that are exogenous to the judiciary & may well lie beyond reach, such as the existence of a stable, competitive, multiparty democracy.

Independence for what purpose?

Judicial independence is generally considered a means to an end rather than an end in itself. Most would probably agree that the ultimate goal can be described as the fair & impartial adjudication of disputes in accordance with law.