



Eulalia W. Petit de Gabriel, Universidad de Sevilla (Spain) – eulalia@us.es
Professor of International Law and International Relations

Advisory Committee of the Human Rights Council

Questionnaire on current levels of representation of women in human rights organs and mechanisms

Before I answer the specific questions proposed by the Advisory Committee, a general *caveat* needs to be advanced. A difference must be drawn between nominations for the European Court of Human Rights (ECtHR) and the rest of the treaty bodies. Concerning the ECtHR, the situation is conditioned by the in-house rules of the Council of Europe (CoE) concerning the nomination to address the need for a gender-balanced proposal. For the rest of treaty bodies, no in-house rules are established.

A brief introduction on the ECtHR model follows. As said, all that glitters is not gold: it is a limited-impact model yet. All the same, some lessons can be learnt from it.

Although the European Convention on Human Rights (ECHR) itself doesn't contain any provision of this sort (see. Art 21 ECHR on criteria for office), since 2004, the Parliamentary Assembly has asked the national three candidate proposals to be gender-balanced ([AS/Res \(2004\)1366](#), as modified by its resolutions 1426 (2005), 1627 (2008) and 1841 (2011)). The legal model to introduce both publicity and gender balance is a soft law model, not hard rules, from the domestic law perspective.

Since 2010, national lists are submitted to the *Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights* ([Resolution CM/Res \(2010\)26](#)), of the Council of Ministers, prior to the election by the Parliamentary Assembly. After a 2008 ECtHR advisory opinion requested by the Council of Ministers ([first opinion delivered ever by the ECtHR](#)), as Malta presented a male-only list alleging it had taken all steps towards gender-balanced without success, the Committee of Ministers approved a set of *Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights*, in 2012, including both the gender-balanced requirement and the public and disseminated prior call at national level (Adopted by the Committee of Ministers on 28 March 2012, [CM\(2012\)40-final](#), available at: <https://rm.coe.int/16805cb1ac>, as amended on 26 November 2014 by [CM/Del/Dec\(2014\)1213/1.5-app5](#)). This set of rules provides for a flexibility clause in exceptional circumstances, where a Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes, the committee may decide to consider a single-sex list even when the candidates do not belong to the underrepresented sex.

After the candidate's national proposal has been cleared by this Advisory Panel, the Parliamentary Assembly submits it to a *Committee on the election of judges* before the votes are casted (see *Memorandum prepared by the Secretary General of the Assembly*



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on the Procedure for the election of judges to the European Court of Human Rights as of 15 April 2019, [SG-AS \(2020\) 03 rev 2](#)). This Committee counts on 22 seats, of parliamentary extraction, including the chairpersons of the Committee on Legal Affairs and Human Rights (a man, at present) and the Committee on Equality and Non-Discrimination (a women at present), who are ex officio members. Sessions are not public (held in camera). The composition of the Committee counts on 8 female members (36.4%). The committee may reject a single-sex list unless the candidates belong to the sex which is underrepresented in the Court, i.e. the sex to which under 40% of the total number of judges belong, at the time of the Secretary General's letter inviting presentation of a list, unless the fore-mentioned exceptional circumstances clause applies.

All in all, the General Assemble itself is paradoxically not obliged to take into account the Court's current gender balance situation, when selecting the candidates from the three candidate's national list. Although numbers have improved, in September 2019 the count was still 17 female judges out of 49 (34.7%). No data neither action on non-binary gender is offered.

1. Do current processes in the State allow for, or encourage, a consideration of gender balance when nominating, electing and appointing experts for human rights organs such as the Advisory Committee and treaty bodies? Do these processes ensure publicity, transparency, and participation by civil society organizations and/or other actors?

To the best of my knowledge, Spain follows gender-balance considerations **concerning the ECtHR**, according to CoE soft law guidelines for ECtHR national judge proposal. As these rules are to be enforced by the Committee of Ministers Panel and the Parliamentary Assembly, a formal procedure has been put in place since 2017 (Res. 25.1.2014, publishing a Council of Ministers Agreement of 20.1.2017, [BOE, n. 26, 31.1.2017](#)). According to these rules, the Government has included the gender criterium among those for definition of the slate of three candidates, although the number of female candidates is by far small. For 2018 appointment, two out of 17 self-proposed candidates were women. The final Spanish slate was composed of two men and one woman. She was elected Judge by the Parliamentary Assembly.

Nevertheless, domestic High Courts have considered the CoE's Committee of Ministers guidelines merely soft law, and therefore, the Supreme Court has not provided for legality review on that sole base. Moreover, the same court has considered that the nomination for ECtHR judge's positions is an act of Government, i.e. a political act, not subject to judicial review. See STS 2139/2017, de 31.5.2017, [ECLI: ES:TS:2017:2139](#).



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Spain has opened a public call, too, for *ad hoc* judges of the ECtHR, although this process was channelled through the Ministry of Justice website and not through the Official Journal (BOE). It must be acknowledged that the current composition of the *ad hoc* judges' roller for Spain includes 3 women and 2 men, so apparently gender balance criteria is applied.

After the ECtHR experience, a similar proceeding has been opened for the General Court nomination process last 2019 in the European Union framework¹. However, the similarity ends with the publication of the call in the [Official Journal](#). No gender-balance oriented criteria have been implemented.

For other treaty organs, specifically universal treaty organs, no standardized national procedure exists in Spain, and to the best of my knowledge, no established channel exists to take into account gender consideration when nominating for the posts. But current practice shows that at present there is a well-balanced male-female Spanish presence in treaty organs (see answer to question 5 for details).

Briefly to catch up, while gender considerations appear to be present for the treaty organs nominations made by the Spanish Government, the process generally lacks publicity, transparency, and participation by civil society organizations and/or other actors. The exception to the rule is the case of the ECtHR, where a more public and formal call is open to individual application and, because of CoE in-house rules, transparency is forced (number, gender, names, CV of applicants must be disclosed).

2. Does the State take into account the gender composition of the treaty bodies or the Advisory Committee at the time of nomination or election?

I neither know nor can I answer. No public information is disclosed.

3. Does the State have any good national practices related to the nomination, election and appointing processes for human rights organs such as the Advisory Committee and treaty bodies? Do these processes take into account gender when nominating, electing, or appointing?

I neither know nor can I answer. No public information is disclosed.

4. How does the State take into consideration its obligations concerning non-discrimination and women's right to equal access to participation, as well as

¹ Reference is included, considering the Court of Justice of the European Union a Tribunal which is called to apply the Charter of Fundamental Rights of the European Union and often applying the ECtHR case law standards.



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its obligations under Article 8 of CEDAW to ensure women's equal participation in the work of human rights organs when nominating or appointing candidates for those organs and mechanisms?

I neither know nor can I answer. No public information is disclosed.

Unfortunately, the Judiciary lack of knowledge or interest on applying international rules is a handicap. The Highest Tribunal -Tribunal Supremo- has not address Article 8 CEDAW on cases concerning gender balance criteria in the nomination for international judicial posts (ECtHR, in fact), such as the case cited above (STS 2139/2017, de 31.5.2017, [ECLI: ES:TS:2017:2139](#)). The Supreme Court considered the gender balance to be merely a guideline out of soft law (a resolution of the Committee of Ministers of the Council of Europe), not enforceable. And it considered the nomination decision an act of Government, not to be reviewed. Neither party invoked nor the Court discussed Article 8 CEDAW. But according to the principle *iura novit curia*, at least a debate could have been initiated, taking into account that international treaties in force for Spain and published in the Official Journal are part of domestic law according to Article 96 of the 1978 Constitution. CEDAW was ratified on 16 December 1983, and published in [BOE n. 69, 21.3.1984](#).

Needless to say, huge efforts have been made internally to have a more gender balanced composition of the Judiciary, with measures taken since 2013. The recently passed II Plan on Equality for the Judiciary ([Plan de igualdad aprobado por el Pleno del CGPJ en su sesión de 30 de enero de 2020](#)) includes an analysis of the current situation. It shows that access to the judiciary is now leant towards a female biased entry in the career. The gender unbalanced numbers remain the problem at the highest tribunals. Notwithstanding this, we must underline relating to the conceptual framework of the report that (see Introduction to the report):

- 1) although taking stock of international policies concerning gender, such as UN 1995 Beijing Conference, it does not include any reference to CEDAW obligations;
- 2) it includes no reference to the topic of international tribunals composition, less yet to HR non judicial bodies.

5. How many women has the State nominated to human rights organs and mechanisms in the last five years (such as the Advisory Committee or treaty bodies)?

At present, there are three Committees plus the Sub-committee of Prevention of Torture, and the HRC Advisory Committee where a Spanish national sit. Female is well represented over-passing gender parity. Nevertheless, it is to be taken into account the



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peculiar composition of the CEDAW Committee where all female members is the general rule (what calls also for a deep reflection).

- ADVISORY COMMITTEE: [Ms. COSTAS TRASCASAS Milena](#) (mandate ends 30- 09- 2022)
- COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: [Mr. Mikel MANCISIDOR](#) (mandate ends 31.12.2020)
- COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN: [MS. ANA PELAEZ NARVAEZ](#) (mandate ends 31.12.2022)
- SUBCOMMITTEE ON PREVENTION OF TORTURE: [Ms. Carmen COMAS-MATA MIRA](#) (mandate ends 31.12.2022)
- COMMITTEE ON ENFORCED DISAPPEARANCES (CED): [Mr. Juan José LOPEZ ORTEGA](#) (mandate ends 30.6.2023)

6. Does the State take any action to publicize and encourage women to apply for the special procedures mandate-holders vacancies?

For non-treaty organs, national government endorsement is not needed. In fact, most candidates are not Government sponsored, although they could be. So, national criteria or national procedures for appointing potential female candidates is less of a problem

At the best of my knowledge, it has not been a common practice of the Foreign Affairs Ministry to make public calls or publicize the vacancies. But recently a case of cooperation has occurred. It would be an interesting trend if the pattern is followed.

An example of how channelling information out of the Foreign Ministry can help increase the number of nationals applying, and specifically female nationals, is the following. The opening for 4 positions to be decided by HRC 44 session was sent by the Spanish Ministry of Foreign Affairs to the Spanish Association of Professors of International Law and International Relations (AEPDIRI) on March 2020 (closing date for application was 15 April 2020). The Association forwarded the call to all 700 associates, of whom 50% female members [that very day](#). HRC's nominations are to be disclosed on July 17th 2020. The [HRC Presidency](#)'s recommendation has already been disclosed, confirming the first nominee for every post by the Consultative Group (see its [final report](#)).

This is a resumé of the Spanish and/or AEPDIRI members candidacies performance. Five AEPDIRI female members applied to two different posts (Special Rapporteur -SR- on the promotion and protection of the right to freedom of opinion and expression, one candidacy; and SR on trafficking in persons, especially women and children, four candidacies). One of them has been shortlisted 2nd to the post (SR on



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trafficking)². One AEPDIRI male member has applied to and gone till the final interview process, although he has not been retained for the shortlist (SR on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes). No AEPDIRI member -male or female- applied to the position of SR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Outside the AEPDIRI, 4 Spanish male candidates and 4 female candidates have applied (to all SR positions but the environmental one), although none of them made it to the interview stage.

Therefore, AEPDIRI proves to be an excellent cradle for potential candidates to HR bodies, given the specialization of the research and professional activities its members perform. So, channelling information through this kind of associations, which are present in most countries and regions of the world, is a recommendation.

7. What are the main challenges within your country in tackling the issue of gender balance when nominating and electing candidates for human rights organs and mechanisms such as the Advisory Committee, treaty bodies and the special procedures?

Some of the challenges ahead are:

- Widening publicity for the openings.
 - Channelling publicity through the Official Journal would be the most fair and wide-reaching mechanism, as all legal professionals are used to consult it periodically.
 - A subscription to a Ministry of Foreign Affairs feed system on vacancies.
 - Closer connection with professional associations, like AEPDIRI.
- Widening publicity for the different procedure steps followed for selection or nomination. Disclosing list of candidates and CV or application form with professional data on which the selection is to be undertaken.
- Gender balanced composition of the panels or Committees that make the “trialogue” of candidates when is up for the Government to decide, and prior public communication of the composition of those Committees.
- Acknowledgement both at Governmental and Judiciary level of Article 8 of CEDAW binding force and its compulsory application for ensuring women’s equal participation in the work of human rights organs when nominating or appointing candidates for those organs and mechanisms, irrespective of the IO in-house rules for the nomination, this is, irrespective of the (in)existence of gender-

² The shortlisted AEPDIRI-member candidate, although living in Spain, and being a Professor in a Spanish University, holds a non-European third country nationality.



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balance nomination rules in the IO and irrespective the soft/hard law character of the rules. CEDAW is of a binding force upon most States parties domestically (among others, Spain). Spanish Constitution grants full legal force to international treaties as a source of rights and obligations, second to the Constitution only. The same goal may be achieved if national rules and plans on gender balance are extended to international positions. Up to date, they only apply to national positions and structures. Nominations to international positions are considered acts of Government, based on the discretionary powers of the Executive branch.

8. Are there good practices by the State or other stakeholders that ensure gender parity? If yes, could you please share these practices?

The general national policies on gender equality since 2010 have started to spread influence over the general population, specifically high-level professionals. Consequently, an increase in female-postulations to open calls for international posts is already perceived.

Positive actions have already been described throughout the previous questions and concerned primarily the ECtHR nominations. The system set up in place to accommodate the Council of Europe requirements is interesting, although some of its shortcomings have already been pointed out. It could be strengthened and apply to other vacancies on HR bodies and mechanisms and international tribunals.

9. Are there recommendations directed to States, international bodies, or other entities, that you wish to make in order to strengthen and inform this report?

Gender balance analysis must be enlarged **to properly include non-binary representation.**

Generally, gender balance policies tend to be understood “on the spot”, this is, either considering the vacancy in question, the shortlist equilibrium, or the ensemble of posts to be decided in a session, without an overall examination of:

- The proportion of male/female/non-binary candidates applying for the post;
- The history of the composition of the body, so a more female than male composition (however unbalanced it might be) can build a different approach to the rights in a historical perspective;
- The likeliness of choosing women to fill posts related to family, women and children topics preferentially, to the detriment of male candidates. And vice versa for posts not connected to such topics (more male than female appointments and representation).



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Concerning dissemination of vacancies for open posts (not conditioned to governmental proposals), HRC could enlarge the channeling through National Foreign Ministries, to include the NGOs sector. Specifically, for posts concerning HR bodies and mechanism, professional associations, such as AEPDIRI in Spain, are but a breeding ground for potential candidates, given the specialization of the research and activities the members develop. So, channelling information through this kind of associations, which are present in most countries and regions of the world is a recommendation. See for all, the Global Network of Societies for International Law ([GNSIL](#)), whose 3rd World Meeting is to be convened in Lima, Peru, in November 2021. A list of societies is to be find [here](#). Other large society of interest as a cradle for potential candidates is [ICON](#).

For, specifically, targeting women an interesting work could be done through or with [Atlas Women organization](#). **Inside the UN structure**, a specific commitment should be made by [UNWomen](#). We consider that UNWomen must not only address the gender gap at domestic level but also inside the UN system and specifically concerning HR bodies and mechanisms.

Gender balance is not only a question of non-discrimination, or fair representation. It also triggers a cultural & differential approach to HR in most cases.

Gender diversity, including non-binary, is a must.