

## Contribution of WoW Platform on employment discrimination on the grounds of maternity for the Universal Periodic Review (UPR) of Spain, January 2020

*Women of the World Platform (WoW Platform) is a growing platform founded on March 8<sup>th</sup>, 2015 through an international declaration presented at the 59<sup>th</sup> session of the Commission on the Status of Women (CSW59 – Beijing +20). It is formed by 25 non-governmental organizations from 15 different countries, and its mission is to promote women's identity, in complementarity and reciprocity with men, as well as human, social and labour value of maternity, and priority dedication to the family.*



1. Regarding the report presented by Spain in its last UPR dated on January 2015<sup>1</sup>, in relation to non-discrimination on the basis of genre, the approval of the Strategic Plan on Equal Opportunities 2014-2016 was highlighted, which would be developed (among other plans) through the Special Plan for Equality of Women and Men in the Workplace and against Wage Discrimination 2014-2016<sup>2</sup>. In the section of the report devoted to set out all the policies that Spain had developed in favor of equal opportunities and specially, in the field of employment, **there is no mention anywhere of a single reference or measure to fight against employment discrimination of women specifically on the grounds of their maternity, by a long chalk the special harassment they suffer in the workplace on such grounds.**
2. Therefore, the contribution of our platform through a **current socio-legal study on “mobbing maternal” or work harassment due to maternity in the Spanish case, published**

<sup>1</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. 21<sup>st</sup> session. Spain (A/HRC/WG.6/21/ESP/1). Recovered from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/203/88/PDF/G1420388.pdf?OpenElement> (Retrieved: 12/06/2019)

<sup>2</sup> Ibid., Par. 11.

on July 2019, is considered extremely important. **So-called “mobbing maternal” has an impact on the physical and psychological health of remunerated working women, and affects most women of child-bearing age, from those who externalize their desire for motherhood, those who are pregnant, those who are breastfeeding, to those who are mothers of pre-school children.**

3. This study analyzed the framework of International Law in this area, where there are diverse instruments regulating workplace discrimination on the grounds of maternity. There are two International Labour Organization (ILO) conventions, in particular the Convention no. 158 and 183.
4. The C-158 of 1982 concerning termination of employment, ratified by Spain in 1985, expressly forbids in its Article 5 dismissals based on, among other reasons, pregnancy and absence from work during maternity leave.
5. On the other hand, the C-183 on the protection of maternity of the year 2000, goes further in the fight against the discrimination of women in reproductive age. Of particular relevance are Articles 8 and 9 concerning employment protection and non-discrimination, prohibiting the dismissal of pregnant women, with the burden of proof reversing to the employer if it happens, and prohibiting the requirement for a woman to take a pregnancy test when applying for a job. **We lament that Spain has not ratified this important convention.**
6. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Spain in 1984, guarantees the protection of pregnant women, recognizing:
7. *The great contribution of women to the well-being of the family, and to the development of society, which has not fully been recognized till now, the social importance of motherhood (...), and the awareness that the role of women in procreation should not be a cause of discrimination (...)*<sup>3</sup>.
8. Along the same lines, Article 11 of CEDAW gets appropriate measures to eliminate discrimination against women in the field of employment, going so far as to recognize the right to *health protection and safety in working conditions, including the safeguarding of reproductive function*. It thus forbids dismissal due to pregnancy or maternity leave and proposes the introduction of remunerated maternity leave.
9. Regarding to Spanish national legislation, Article 14 of the Constitution sets out the principle of equality and non-discrimination on the basis of sex. As stipulates Article 8 of **Organic Law 3/2007 on the Equality between Women and Men, discrimination on the grounds pregnancy or maternity is understood as a specific case within discrimination on the basis of sex. Nevertheless, nowadays in Spain the magnitude and impact of “mobbing maternal” gathers the vast majority of discrimination cases and harassment against women in the workplace, even though they remain silent.**

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<sup>3</sup> CEDAW, Preface, paragraph M.

10. The Equality Law mentioned in the previous paragraph also includes the protection of maternity within the general criteria for action by Public Authorities, and expressly prohibits the contracting party from inquiring into the pregnancy status of a candidate for a position, except for the protection of her health as set out in Article 70.
11. Moreover, Articles 45, 48, and 53 section 4 of the Statute of Workers (SW) safeguard the protection of pregnant workers, with contract suspended by birth or for reasons related to the pregnancy, until the year after it occurred, having the right to reserve employment position. **In these cases, the supposition of dismissal without justified reason will be considered invalid**, even for those workers in a probationary period (Art 14.2 and 3 SW); not even training or learning contracts will the count of the duration of the contract be interrupted (*DA 2ª, ap. 1 ET*). Either can those related to maternity and pregnancy be counted as absences from attendance for the purpose of finishing the contract (Art. 52.d). In addition, there are other permissions and unpaid leaves related to maternity and pregnancy (Arts. 37.4, 5 and 6 and 46.3 SW).
12. Therefore, Spanish legislation is quite guaranteeing as regards to labour protection of pregnant and breastfeeding women, in accordance to the international instruments of the ILO and CEDAW.
13. However, harassment at work is categorized in Art. 173 of the Penal Code, as a crime of torture and against moral integrity. Nevertheless, this criminal type only refers to those grave cases in which the harassment has been carried by a superior. This does not include mobbing by co-workers, so in such cases the person should turn to labour courts, or administrative review, as appropriate because of her status as a worker, civil servant or public employee.
14. In Spain, women who are victims of “mobbing maternal” have the option of going to the Social Jurisdiction to be protected by the Labour Law or the administrative remedy. And only in certain cases it is possible to activate criminal proceedings.
15. Anyways, we are talking about a problem that in most cases goes subtly unnoticed. On other occasions, for fear of reprisals it is also avoided, and finally the reported cases are difficult to prove. In short, these practices are not reported as often as they occur.
16. In addition, in these cases the figure of work harassment and harassment for reasons of sex converge, even though these figures are penalized in Spain, **“mobbing maternal” is not specifically recognized as a form of harassment or discrimination, and in this sense we think that there is still much legislative and judicial work to be done.**
17. In this direction, a couple of years ago, the plenary of the Madrid Assembly approved the resolution no. 39/2017 with the aim of requesting national legislative recognition to “maternal harassment” figure, understood as all employment discrimination of women for the fact of being a mother, promoting its eradication as a practice and protecting motherhood from an employment point of view.

18. However, the social reality of Spain is worrying. In our “mobbing maternal” study, it is collected data from 768 women surveyed from April 2018 to April 2019, who are residents in Spain, are in the childbearing age range, work, or have worked for remuneration, or are mother of at least one child under the age of 6.
19. **The most distinguished question in the survey was whether they considered that they had at least once during their working lives suffered from employment discrimination on the grounds of maternity, which 63% said they had. Moreover, if this answer is segmented by the subgroup of women who are Administration’s civil servants, the perception of having suffered mobbing maternal soars, reaching 89% of affirmative responses among the ones polled working in the public sector.**
20. In turn, this aggravated type of discrimination is manifested from the first employment phase, **during the job interview, since 57% of Spanish women have been questioned about the family, and may be denied the right to a job because of the number of children or their future plans for maternity and/or marriage.**
21. A society’s culture makes it feel more or less comfortable and free to make decision or perform certain actions. **The Spanish work culture is discriminatory in terms of maternity, since in our study more than 60% of women said that they felt uncomfortable or even worried when communicating their pregnancy in the work environment.** Overall, after having requested a leave, leave of absence or reduction of working day due to their maternity or child care, 50% of mothers perceived negative changes in their relationship with their superior and/or co-workers.
22. This generates a situation that is not only unfair but also socially unsustainable, given the circumstances of the demographic winter that Spain is going through according to the most updated from the Spanish National Statistics Institute (INE), **such as the short-term fertility indicator that on a national level stands at 1.25 children per women; or the average age of Spanish women who have their first child, which is around 32,19 years old**<sup>4</sup>.
23. Likewise, **the latest INE fertility survey shows alarming data, such as the fact that three out of four women would like to have at least two children but expose that they are unable to do so mainly for economic labour reasons**<sup>5</sup>.
24. Consequently, the labour pressure to which women in Spain are subjected leads them to renounce maternity, hide it, conceal their maternal vocation or have to prove that children do not stop them from being “the same as a men”, seeing themselves constantly subjected to pressure and harassment because of their maternity.

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<sup>4</sup> Spanish National Statistics Institute (INE). Recovered from:  
[http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736177003&menu=ultiDatos&idp=1254735573002](http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177003&menu=ultiDatos&idp=1254735573002) (Retrieved: 15/06/2019).

<sup>5</sup> Ibid. Recovered from:  
[http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736177006&menu=resultados&idp=1254735573002](http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177006&menu=resultados&idp=1254735573002) (Retrieved: 15/06/2019).

25. **Maternity must regain its rightful place as a social and human good, worthy of all consideration, respect and a source of personal fulfillment and development. It cannot be denigrated, discriminated or objectified. That is why tackling “mobbing maternal” must be a political and social priority in Spain.**
26. Legislative recognition of “mobbing maternal” as a specific form of employment discrimination against women on the grounds of their maternity is necessary. **To this end, we recommend the implementation of the following urgent measures:**
- a. **The inclusion of mobbing maternal option in the list of information on work irregularities in the mailbox of the Labour and Social Security Inspectorate.**
  - b. **Establishment of other specific non-judicial mechanisms for the denunciation and active prosecution of any proven discriminatory gesture towards working women in relation to their maternity.**
  - c. **Guardianship of working women who decide to file a legal complaint for mobbing maternal from legal advice to guarantees that no reprisals of any kind will be taken against them.**
27. Nevertheless, in order to tackle this perennial situation of discrimination and defenselessness in our country, we must go to the root of the problem by implementing legislative and socio-cultural initiatives that build an inclusive world of work for motherhood and fatherhood. In this sense, it is considered that **the following recommendations on family/work conciliation constitute that previous and necessary step to avoid or prevent mobbing maternal:**
- d. Flexibility in working hours, real and adjusted to the needs of working parents without any kind of discrimination, as well as the extension of the right to reduced working hours, regardless of the age of the children. These measures would require the necessary tax benefits for companies so that it is not a burden on them. **Therefore, Act 3/2012 on urgent measures for the reform of the labour market, which maintains qualifies aid for facilitating women recruitment<sup>6</sup>, has not been effective in this respect.**
  - e. Promotion of work from home (teleworking) at least in some fraction (daily or weekly) of the working day. To promote professional responsibilities by objectives, as well as work and business entrepreneurship from home. Therefore, *the measures for the social and labour insertion of women with employability difficulties; to promote self-employment and entrepreneurship of women; the promotion of equality plans in small and medium enterprises<sup>7</sup>*, have not had the expected impact.
  - f. To have 24 hours a year available for family issues without justification, but notice, for all the parents of minor children, so that a need common to all parents is covered, and that it does not represent an obstacle for the company.

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<sup>6</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. 21st session. Spain (A/HRC/WG.6/21/ESP/1). Par. 16.

<sup>7</sup> Ibid. Par. 18.

- g. Support for part-time contracts for people with family responsibilities, with tax benefits, so that these contracts do not harm companies. **Therefore, Act 27/2011, which amends the General Social Security Law with regard to social and economic benefits for women<sup>8</sup>, is insufficient.**
- h. Reduced working hours and part-time contracts are sometimes a disadvantage for companies that are forced to hire two people for the same job. For this reason, these reduced working hours or part-time contracts should be accompanied, in the case of people with family responsibilities, by a substantial reduction in the company's Social Security contribution, as well as by deductions so that, in absolute economic terms, they do represent a burden for the company. **Consequently, Royal Decree-Law 11/2013 on protection of part-time workers and other urgent economic and social<sup>9</sup> measures, has not achieved its purpose.**
- i. Extension of maternity benefit to week 24 to facilitate the WHO recommendations regarding the importance of breastfeeding during the first 6 months of the baby's life. This leave should not be neither excluding of paternity leave and, in no case, should the transferability or simultaneity of both leaves be impeded by allowing each family to share the time and manner in total freedom and in accordance with their family needs and priorities and the needs of the baby.

28. In conclusion, of the recommendations made by the other Member States to Spain in its last UPR, we consider that the two most relevant in line with our contributions as civil society are the following:

- Implement the *Strategic Plan on Equal Opportunities 2014-2016 with a view to eliminating any remaining forms of gender discrimination (Montenegro)*<sup>10</sup>, **including the eradication of “mobbing maternal”.**
- *Continue its effort to implement the strategies adopted in order to eliminate any remaining form of gender discrimination (Sudán)*<sup>11</sup>, which is, **to follow an adequate strategy to solve the main factor of inequality of women in Spain, which is not discrimination by the mere fact of being a woman, but for their potential maternity.**

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<sup>8</sup> (A/HRC/WG.6/21/ESP/1), Par. 16.

<sup>9</sup> Ibid., Par. 16.

<sup>10</sup> Reports of the Working Group on the Universal Periodic Review. 29th session. Spain (A/HRC/29/8). Recovered from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/64/PDF/G1507664.pdf?OpenElement> (Retrieved 21/06/2019), Par. 131/R.25.

<sup>11</sup> Ibid., Par. 131/R.28.