

WOMEN'S HUMAN RIGHTS IN THE FRAMEWORK OF ARGENTINE DOMESTIC LAW: TREATMENT SINCE THE RETURN TO DEMOCRACY¹

MARÍA TERESA FLORES

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I. INTRODUCTION

Argentina's return to constitutional rule on December 10, 1983 also represented its definitive incorporation into the international systems for the protection of human rights.

On issues specifically relating to women, of special significance is the crucial decision that resulted in the ratification, in 1985 by Law No. 23,179, of the Convention on the Elimination of All Forms of Discrimination Against Women. This treaty, pursuant to the 1994 constitutional reform, acquired constitutional rank, along with other human rights instruments, as provided in Article 75(22) of the Constitution. The treaty thus became part of what Bidart Campos calls "the bloc of federal constitutional law."²

Several legislative measures were adopted for the implementation of this convention, due in large part to the active participation of women's groups, which represented significant progress. These include laws regarding joint custody, equal rights for children born out of wedlock and civil marriage. The so-called "quota law," Law No. 24,012, is especially notable. This law guarantees the participation of at least thirty percent women on the lists of candidates for national

1. This issue is developed in María Teresa Flores, *La Igualdad Real de Oportunidades*, INVESTIGARÉ, May 1997.

2. GERMÁN BIDART CAMPOS, *Tomo VI, La Reforma Constitucional de 1994*, in *TRATADO ELEMENTAL DE DERECHOS HUMANOS* 555, (1995).

elective offices.

As noted above, the constitutional reform of 1994 has been quite important. The reform included important language in Article 37, incorporated into Chapter 2 of the Argentine Constitution, which is entitled "New Rights and Guarantees." Paragraph two of Article 27 states: "real equality of opportunities between men and women in access to elective office and party positions will be guaranteed by affirmative actions in the regulation of the political parties and in the electoral regime." It ties this concept to the power of Congress, established in Article 75(23) of the reformed Constitution, to "legislate and promote affirmative actions and measures that guarantee effective equal opportunity and treatment, and the full enjoyment and exercise of the rights recognized by th[e] Constitution and the international human rights treaties in force, in particular with respect to . . . women. . . ."

Evidently, affirmative actions, such as those incorporated through Article 37, require that society in general become aware of the political rights of women, their responsibilities, and the need for their active participation in democratic processes.

In Argentina, Law No. 24,012 replaced Article 60 of the National Electoral Code and provides: "The lists submitted shall contain at least thirty percent women candidates for the elected offices and in proportions such that there is a possibility of being elected. A list that does not meet these requirements will not be made official."

Adhering to this system, several Argentine provinces have already issued similar statutory provisions, among them, Chaco, Law No. 3,747, and Mendoza, Law No. 5,888. These provisions also prescribe that the lists of candidates "must contain at least 30% women candidates for the elected offices and in proportions such that there is a possibility of being elected." The province of Santa Fé provides, by Law 10,802/92, that in any list of candidates submitted by the political parties, "at least one-third shall be women, in an interspersed or successive manner." In addition to recognizing quotas, the province of Buenos Aires, through Law No. 11,733, also guarantees at least thirty percent participation of women in government.

Although in most cases the duration of the law that prescribes the "affirmative action" is undetermined, the law of Mendoza states: "The relevant provision on the percentage of women on the lists shall apply to the six elections following the promulgation of the present law." The international legal instrument, i.e., the Convention on the Elimination of All Forms of Discrimination Against Women, states that special measures of this type will cease "when the objectives of

equality of opportunity and treatment have been achieved."³

Measures such as those mentioned above are important achievements for women; however, there have been so many centuries of such harsh discrimination, in addition to the struggle of the large marginalized sectors, that the path ahead will require all the more strength, intelligence, and solidarity. In this context, we also should recall that many women suffer dual discrimination based on gender and poverty.

Evaluating the overall situation of women in our time is complex given that contradictory elements co-exist. For example, all of the work carried out and lessons learned from women's participation in the social and political movements in the Americas during the 1980s, and their importance in the processes of return to democracy, have not been translated into a greater access to decision-making positions or a real increase in political space within the government.

At the present time in Argentina, although a statutory framework exists that recognizes the equality of human beings and includes anti-discriminatory principles,⁴ sociocultural standards have yet to be permanently modified. Women still encounter enormous difficulties gaining access to leadership positions and continue to earn lower real wages than men. Single women supporting households have difficulty obtaining loans to purchase homes and displaced persons or refugees must deal with even greater inconveniences as they place themselves or their children in a new environment.

II. THE CONSTITUTION OF THE CITY OF BUENOS AIRES

In conformity with the provisions of Article 129 of the Constitution of Argentina reformed in 1994, the city of Buenos Aires adopted its own Constitution, or Organizational Statute. This Constitution was endorsed by the city's Constituent Convention on October 1, 1996.

Since the Buenos Aires Constitution is the most recent Argentine constitutional text, it is valuable to analyze whether its provisions display a gender perspective, and whether it encourages the full enjoyment of women's rights or whether, to the contrary, it fails to take a position on the issue.

The preamble sets forth as the priority objective of the Constitution for the City of Buenos Aires: "... to promote human development in a democracy founded on freedom, equality,

3. A/RES/34/180, December 18, 1979, Convention on the Elimination of All Forms of Discrimination Against Women, Article 4.

4. Haydeé Birgin, *Ciudadanía y Justicia. Nuevos Recursos e Instrumentos para la Acción Ciudadana*, in *MUJERES EN LOS '90* 67-90.

solidarity, justice, and human rights, recognizing identity in plurality, in order to guarantee the dignity and further the prosperity of its inhabitants and of the women and men who wish to enjoy its hospitality⁵

Book One of the Constitution for the City of Buenos Aires, entitled "Rights, Guarantees, and Special Policies," is developed under two titles: "Rights and Guarantees" and "Special Policies." Article 11 of the first Title provides for equality and "identical dignity" for all people, which includes "the right to be different, without tolerance for discrimination that tends to produce segregation based on or upon the pretext of race, ethnic group, gender, sexual orientation, age, religion, ideology, opinion, nationality, physical characteristics, psychological or physical condition, social, economic, or any circumstance that implies difference, exclusion, restriction or impairment." Putting aside the argument that the above does not include all possible discriminatory circumstances, the provision represents a clear advance by directly linking the concept of discrimination with *any* "distinction, exclusion, restriction, or reduction" of rights as required by the Convention on the Elimination of All Forms of Discrimination Against Women.

The concept is reinforced by the second paragraph of Article 14, in which it is anticipated that when one is faced with "some form of discrimination," an *amparo* action can be filed by "any inhabitant and/or the legal counsel of the collective rights or interests."

This is a remedy that the Buenos Aires Constitution makes available to anyone affected by discrimination, accepting not only submissions by affected women, but also by women's associations or organizations. This possibility, given the customary reluctance of many women to act individually in initiating court proceedings, either out of ignorance or fear, will allow defense associations to initiate legal actions. These organizations will undoubtedly be able to perform a leading role in this respect.⁶

Chapter two of the second Title in Book One, entitled "Health," includes a guideline that the local legislature must follow in approving "Basic Health Law." Thus, Article 21(4)-(5) requires that this law "promote responsible maternity and paternity," by placing "at the disposition of the people: education, methods, and services that guarantee their reproductive rights." The law must also guarantee "comprehensive attention to pregnancy, childbirth, puerperium, and

5. Constitution for the City of Buenos Aires, Imprenta del Gobierno de la Ciudad de Buenos Aires, November 1996.

6. Birgin, *supra* note 3, at 84.

childhood until the first year of life”

A constitutional plan that prescribes that future health regulations must guarantee “reproductive rights” is clearly a remarkable advance for Argentine legislation.⁷

The third chapter of Title II, on education, establishes in Article 24 that the city of Buenos Aires assumes non-transferable responsibility for “ensuring and financing education that is public, provided by the state, non-religious, and free of charge.” This education must consider “gender perspectives” and incorporate “programs on human rights and sex education issues.”

This inclusion of a gender perspective, auspicious from the outset, should be framed in a general context that promotes development with equality so as to adequately guarantee the basic right to education of females and males.

The second Title of Book One includes Chapter 9, expressly dedicated to “Equality between males and females.” It is structured as follows:

Article 36 guarantees “in the public sphere and promotes in the private sphere the real equality of opportunities and treatment between men and women in access to and the enjoyment of all civil, political, economic, social, and cultural rights, through positive actions” It also mandates that the political parties are to guarantee “effective access to leadership positions and financial management” It further provides that the lists of candidates to elective positions may not “include more than the seventy percent of persons of the same sex with probabilities of being elected,” nor will they be able “to include three people of the same sex in a consecutive order.” This article also provides that the legislature may not agree to the formation of committees or other units made up of three or more members that do not respect the foregoing quota.

Article 37 recognizes “reproductive and sexual rights, free of coercion and violence, as basic human rights, especially in making responsible decisions on procreation, the number of children, and the interval between their births.” It also guarantees “the equality of rights and responsibilities of women and men as progenitors,” promoting “the integral protection of the family.”

Article 38 requires “the incorporation of the gender perspective in the design and implementation of public policies and the elaboration, with broad participation, of a plan for equality between men and women.” This article formulates a complete framework of

7. Elisa Carca, *Salud Reproductiva: Lo Privado También es Político*, in *MUJERES EN LOS '90* 155-169.

objectives and actions that range from the "modification of stereotyped sociocultural patterns," to "the total integration of women into productive activities." The article also guarantees "to women supporting households, access to housing, employment, and credit," shelter of pregnant children and adolescents and "the prevention of physical violence." In addition, it requires the promotion of and "the participation of non-governmental organizations dedicated to women's issues in the design of public policies."

Finally, Article 80(7), Title Three (relating to the legislative branch) of Book Two, which is titled "Government of the City," establishes among the powers of the city legislature the prerogative to legislate and to promote "affirmative action measures guaranteeing the real equality of opportunities and treatment between men and women. . ." Article 104(28), which is dedicated to the local executive branch, in Title Four of Book Two indicates as powers of the head of government the authority to adopt "measures that guarantee effective equality between men and women in all the areas, hierarchical levels, and organizations." Subsection 30 of that same article establishes the authority to organize "advisory councils to advise him on matters such as childhood, youth, human rights, and retirement age."

III. CONCLUSION

In the arduous and slow path towards broad recognition and effective observance of women's human rights in our Latin American countries, the Constitution for the City of Buenos Aires is an important step forward that will be consolidated at the end of 1997, when the local legislature is finally constituted, providing a full government to this federal district.

It is a great step, for as Elisa Carrió says, the state and the law must become instruments of change.⁸ The active participation of diverse social actors is also essential, since "the real force of constitutional texts is not in the letter of law," but in the routine daily life of the people, in the accessibility to mechanisms for filing complaints in case of violations of their rights, and in their capacity to surmount situations that constitute transgressions of the constitutional norms.⁹

We will continue the task, persuaded that by extending our rights and becoming aware of our potential, we will contribute significantly

8. Elisa Carrió, *Legislación y Administración de Justicia*, in *MUJERES DE LOS '90* 115.

9. Gladys Acosta, *Los Derechos de las Mujeres en las Constituciones Políticas*, in *SOBRE PATRIARCAS, JERARCAS, PATRONES Y OTROS VARONES* 203 (1993).

to design and implement local, national, and international legal norms on this issue.

