



shadow report
CEDAW interim follow-up *

July 2017

*Report on the interim follow-up to the CEDAW Committee's concluding observations on the Spanish State report from July 2015 (CEDAW/C/ESP/7-8)

<http://cedawsombraesp.wordpress.com/>

The CEDAW Shadow Platform—Spain, together with the CEDAW Shadow Platforms created in the various Autonomous Communities (hereafter, A.C.), has conducted a follow-up report on the progress of issues surrounding Gender Violence, or Violence Against Women (hereafter GV) and women and girl refugees, which are the object of the interim report, as was indicated by the CEDAW Committee in its July 15th report to the Spanish State (61st session).

These issues correspond to a selection made by the CEDAW Committee (articles 21.a, 21.b, 21.f, and 37.c) from the CEDAW Committee Concluding Observations report, in which the Committee requested the Spanish State to report on how it has progressed towards applying the recommendations in this intermediary period between reports.

The present report, to which have signed a total of 164 organizations¹, represents a summary of the most relevant elements which, as an overall assessment, can be said to give off a general character of insufficient compliance with the recommendations set out for the State by the CEDAW Committee.

We would like to thank Tatiana Khemet, Scholar at the Pozen Center for Human Rights – University of Chicago, for her enthusiastic work in the English version of this report.

¹ See Annex 1

Contents

Analysis of compliance with recommendations regarding perpetuation of gender violence

- 1. LEGISLATIVE REFORM (#21 A CONCLUDING OBSERVATIONS)**
- 2. MANDATORY TRAINING (#21 B CONCLUDING OBSERVATIONS)**
- 3. COLLECTION OF STATISTICAL DATA (#21 F CONCLUDING OBSERVATIONS)**

Analysis of compliance with recommendations regarding the conditions of refugees

- 4. SUITABILITY OF GENDER-PERSPECTIVE TREATMENT FOR WOMEN AND GIRL REFUGEES (#37 C CONCLUDING OBSERVATIONS)**

ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS REGARDING PERPETUATION OF GENDER VIOLENCE**1. LEGISLATIVE REFORM (#21 A CONCLUDING OBSERVATIONS)****1.1 State legislative reforms are still pending**

Organic Act 1/2004, 24 December on Comprehensive Protection Measures against Gender Violence, hereafter referred to as the Violence Act, has not been adapted in order to guarantee and protect the rights of women that suffer forms of violence other than violence perpetuated by current or former intimate partners.

In this way, continue not to receive attention the victims of other forms of GV such as sexual violence in its diverse manifestations (harassment, abuse, assault, stalking) and other forms of GV, like female genital mutilation, forced marriage, obstetric violence, violence committed by caretakers against elderly or differently-abled women or violence against migrant female workers in the domestic service industry, among others.

Despite the fact that 14 of the 17 A.C. already have legislation about GV in order to incorporate other forms and spheres of violence,² this does not translate into attention to all of them, in part due to the difficulty that some rules have full effectiveness only if appropriate amendments to the state laws occur.

Besides regulatory development, since the Spanish State ratified the CEDAW Convention in 1984, no specific Action Plan has been developed to deal with gender violence apart from that committed in current or former intimate partner violence. This absence of Action Plans has entailed the invisibility of other forms of GV, just as the lack of specialized resources intended to care for the victims has as well. In the case of sexual violence, only 9 of the 17 A.C. have made care centers available for victims of sexual violence.

1.2 State Treaty in development

In February 2017, following the reiterated demands for the Spanish Government to consider violence against women as an State Matter and mobilizations by the feminist movement, NGO human rights organizations and civil society, the Congress of Deputies formed the “Sub commission for the State Treaty against Sexist Violence.” Regulatory reform is covered both in the work of this Sub commission and in the work carried out on strategic measures that has been addressed by the Senate Commission on Equality, in parallel to the work of the former. However, despite the fact that the work of the Sub commission intended to create a State Treaty was supposed to have been completed in June 2017, the Government has not made any proposals to feminist organizations, women and human rights organizations, or to the diverse political group that are members of this Commission.

2. MANDATORY TRAINING (#21 B CONCLUDING OBSERVATIONS)**2.1 Training on identification of gender violence is only obligatory initially and for professionals in specialized fields**

People who work in fields specialized in GV, as is the case with Judges and Prosecutors of Violence or State Security Forces, are the only ones who must receive specialized and obligatory training, but only before starting at their position.³ In this way there is no outlined process of continuing education, this continuation having an entirely voluntary character.

² As is the case in Andalusia, Aragon, the Balearic Islands, the Canary Islands, Cantabria, Castile and León, Catalonia, the Community of Madrid, Basque Country, Galicia, Murcia, Navarra, Valencia and Rioja.

³ The Organic Law on the Judiciary recounts, in article 310, that “All examinations for induction into and promotion within a career as a Judge or State Prosecutor will entail the study of the principle of equality between men and women including measures against gender-based violence, and their transversal application within the sphere of the jurisdictional function,” however, it only requires specialization in GV as such for accession to juvenile and GV courts (articles 329 3 and 329 3bis).

With regard to the rest of judicial and law enforcement professionals there is no mandatory training required, despite the fact that, in many cases, they have to intervene in violent situations, for example in police intervention or duty court actions that have the ability to resolve matters such as protection orders. Furthermore, the professionals that carry out jurisdictional functions without belonging to the judicial profession, as is the case with substitute judges, also remain exempt from mandatory training. In the case of regional and local police, in some communities they study units on general violence. In a similar fashion, legal aid attorneys have access to training according to the criteria of the lawyer's association to which they belong.

Neither is there any form of mandatory training for the forensic assessment units, whose function is crucial for the implementation of medical, psychological and social expertise destined for courts and prosecutors in cases of violence against women and girls, including sexual violence, nor for the psychological professionals that lend advice in psychosocial groups that work in family courts, in matters relevant to the children of women who are victims of violence.

With regard to the training of professionals in the health field, this is carried out in a very unequal manner in the various A.C., with no overall data regarding it.

In relation with the contents of the training, it can be considered a relatively limited training, given that in the majority of cases, GV is considered to be only what is demarcated in the Violence Act. Along these lines, the topics referenced in the CEDAW Convention and its Optional Protocol, or in the Istanbul Convention are not identified as such

2.2 Effects of the lack of continuous training, scarcity in resources and inadequacies in proceedings

It is necessary to emphasize that due to the lack of professional training in gender-perspective and the prevention of GV there is prevalence of a sexist and discriminatory view in expert reports as well as in judicial processes and sentences.

Besides the effects of the lack of mandatory training, there are important structural deficiencies, and a scarcity in resources in various aspects, the most significant ones being those in the judicial process. Just as set out by the "*Guide of criteria for judicial action against GV*,"⁴ there exists a series of provisions guaranteed to victims to guarantee an adequate level of protection to victims in terms of security, privacy and image, among other issues. These criteria are not carried out with the necessary rigor in courts that deal with violence against women in the various A.C.

It can well happen that, in the event a situation takes place outside the hours of operation of the GV court, the woman is required to make the same declaration before the police, the on-duty judge or preliminary proceedings and finally the GV court, which entails a revictimization and gives rise to a lack of protection for her safety, privacy and image.

It is notable that Forensic Assessment Units do not exist as permanent and complete teams, failing to comply with the law. To replace them, in many cases, advice panels without training in gender-perspective, gender violence or children are consulted, so that there is often poor assessment of the situation of the victims.

3 COLLECTION OF STATISTICAL DATA (#21 F CONCLUDING OBSERVATIONS)

3.1 Deficiencies in the collection and analysis of data

The diverse sources of official data at the state level that collect information about the situation of violence against women in Spain⁵ in general consider GV to be that exerted by the partner or ex-

⁴ Guiding document drawn up by the General Counsel of the Judiciary that was last updated in 2013.

⁵ View list of sources in Note 1.

partner of the victim and focus the analysis on cases with fatal outcomes and the analysis of allegations.⁶

In one way or another, almost all of the sources reflected the variables indicated by the CEDAW committee (*sex, age, nationality and relationship between the victim and the author*).⁷ However, the logic behind the collection and use of the data means that not all of the statistics and studies are measured in the same way, leaving out important aspects of the reality.

With respect to the relation between victim and assailant, the statistics only collect this data in cases where there exists or has existed a partnership, but they do not consider murders carried out by an assailant against other women who were involved with the woman with whom the assailant had a relationship as femicide. Likewise, until the entry into force of Act 26/2015, on the 28 of July, on the Protection of Infancy and Adolescence, the children of female gender violence victims were not recognize as victims of violence.

In the A.C. whose regulations cover the issue of gender violence independently from that which occurs in the context the partner or ex-partner relationship, these femicides are recorded in some cases which produces a disparity in the same region depending on if the state or regional statistics are looked at.⁸ These problems mean that civil society organizations turn to their own count of victims, including in them those victims that are hidden in the official statistics.

On the other hand, in reference to the quality of the data and its analysis, it is necessary to rely on a structure for collection and treatment of data, with a shared methodology that, besides permitting comparisons and overall views, also allows access to the victim's histories, and doesn't exclusively produce aggregate information in which the victims and their judicial route are counted for determined time periods. In this regard, there are women in extremely vulnerable situations, as is the case with women with disabilities (or differently-abled women) or undocumented migrants, who remain outside of the scope of the analysis by not having a mechanism for data and analysis that looks at their situation.

3.2 Treatment of "other" forms of violence: sexual violence, female genital mutilation (FGM), human trafficking for the purpose of sexual exploitation (HT)

Despite the fact that sexual violence is a widespread phenomenon that has the potential to affect more than 1.4 million women and girls, it is a particularly hidden reality in the official data, lacking sufficient levels of disaggregation. The registry of Ministry of Interior is the main source of information together with the macrosurvey mentioned above.

This entity only offers information about known facts and accusations. The very low percentage of cases heard, 0.7% of the total offenses reported against sexual liberty in 2014, is quite remarkable.

Within this area of "victimizations," there exist four categories ("sexual assault with penetration," "corruption of minors or the 'unable' (*sic*)," "child pornography," and "others against sexual liberty and indemnity") that are only disaggregated by sex, in which women are, obviously, in the majority. The category "others against sexual liberty and indemnity" groups together the majority of the cases. In this statistic there are no other categories (in line with what the CEDAW Committee recommended), which makes a detailed analysis impossible. Likewise, the Spanish system does not count in its statistics on GV the murder of women with a sexual motive by unknown men, acquaintances or those in organized networks, which excludes the possibility of accounting for the associated femicides.

⁶ There are two exceptions, which are the Macrosurvey of Violence against Women and the reports completed by the Interterritorial Health Council.

⁷ See analysis of the main content of these statistics in Note 2.

⁸ This is the case, for example, with data for the Canary Islands in 2016, in which were counted 8 femicides in 2016, while according to the State statistics there were only 5 femicides.

HT and FGM are two forms of GV that face particular difficulties both in their demarcation and treatment. With respect to HT, the 2016 Report of the EU Anti-Trafficking Coordinator counts more than 11,900 women as “identified victims” in the 2013-14 reporting period.⁹ In the case of Spain, the difficulties encountered in the implementation of Comprehensive Plan II to Combat the Trafficking in Women and Girls for Purposes of Sexual Exploitation and application of the different protocols, due as much to the economic crisis as to the political instability,¹⁰ means that only the NGOs that work on the ground have an image that better approximates the situation, as there does not exist data about the overall situation.

With respect to the victims of FGM, it is a phenomenon with complicated demarcations which requires mapping to locate and characterize (by sex and age) the populations from countries where it is practiced. In Spain, in spite of the estimated figures (57.000 women as potential population¹¹) there does not exist at the state level a registry of cases of mutilated women and girls that live in Spanish territory. Neither does there exist of registry of girl residents in Spain that have suffered the practice in trips to their countries of origin or that have arrived already mutilated through a process of family reunification or adoption, even though there exist case registries in some A.C, due to the recognition of this form of violence in their legislation.

ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS REGARDING THE CONDITION OF REFUGEES

4 SUITABILITY OF GENDER-PERSPECTIVE TREATMENT FOR WOMEN AND GIRL REFUGEES

4.1 No recognition of the specific needs of women and girl asylum applicants – lack of collaboration among participant agents

The OAR, the Police and the rest of the responsible organizations not only do not have the focus on interrelation, complementarity and cumulative protection in terms encompassed by international legislation, but they also do not always follow the gender guidelines of the United Nations High Commission for Refugees (UNHCR) about integrated strategies—in health, law, social and security—against GV. In the same way, they do not allocate the necessary budgetary resources.¹²

Specifically, in reference to the OAR’s procedures, human and material resources, it can be said that these do not completely guarantee compliance with the UNHCR guidelines in regards to gender equality, which refers to the right to: present an independent asylum application and be interviewed separately by trained personnel, without relatives being present; to receive information, assessment and translation administered by a woman; to rely on the assurance that motivations for asylum rejections allow appeal; and to have conditions of personal, social and economic security and dignity assured. In this regard, in accordance with the results collected in the study carried out by the Ombudsperson, these deficiencies are fundamentally due to the fact that an effective transposition of community directives in terms of asylum, especially procedures of granting asylum and reception regulations, has not yet been completed.¹³

⁹ The first report on the progress in the fight against human trafficking from the European Commission (July 2016) concluded that trafficking for the purposes of sexual exploitation continues to be the most prevalent form of trafficking, accounting for more than two-thirds of registered victims; 95% of which are women, which equals approximately 9000 female victims registered in the European Union in 2013-14.

¹⁰ See the status of the situation in Note 3.

¹¹ La Mutilación Genital en España”, Fundación Wassu- UAB (Universidad Autónoma de Barcelona). Delegación del Gobierno para la VG. MSSSI. 2013

¹² See Note 4 and 5 for a description of the resources and budgets available with regard to asylum and refuge, as well as for the milestones in the breach of EU and Spain reception commitments

¹³ Guideline 2013/32/UE, on common proceedings for the granting or withdrawal of international protection; Guideline 2013/33/UE, on regulations for the reception/welcoming of international protection petitioners.

4.2 Lack of guarantees of adequate procedures and resources on the part of the OAR in cases with gender violence victims

Partly derived from the European guidelines not being transposed into national directives, this lack is producing an extremely grave situation, described in the Ombudsperson's report, with regard to female victims of GV. This discrimination is taking place due to a restrictive interpretation that the OAR imposes on the conditions for female asylum seekers, totally disregarding reports from the UNHCR.

The OAR, whilst being the organization responsible for the examination of applications, and after the most recent changes enacted by the Asylum Act, continues not considering binding reports from the UNHCR, an entity widely recognized in all legislation as an expert in the field and guarantor of proceedings. The largest discrepancies exist in the assessment of applications related to female victims of gender violence (trafficking victims, forced marriages and female genital mutilation), as well as applications related to sexual orientation and gender identity, focusing on the evaluation of credibility of the allegations and on the analysis of information from the countries of origin in these cases. The Supreme Court itself has ruled in several instances on this issue,¹⁴ with the Ombudsperson calling attention to this issue in the aforementioned report.

Even though a portion of applications for international protection from possible trafficking victims are admitted for processing, *none are officially identified as such*. During 2016, the OAR maintained good practices of communicating to the National Police Central Unit on Illegal Immigration Networks and False Documents (CUINFD) all the cases in which it detected indicators that a person could be a victim of trafficking, in compliance with section V.D.3 of the Framework Protocol for the Protection of Trafficking Victims of 2011. However, the police only completed 37% of interviews, and in no case did it grant the Period of Restoration and Reflection. In some cases it conducted a "pre-identification" interview, a device not specified in the Aliens Act, the Regulation, or in the Framework Protocol for Protection of Trafficking Victims, and it did not reference a motivating resolution that could be appealed.

The lack of formal identification as victims of trafficking leads to these women not being able to access reception resources and specialized psychosocial care. In fact, 3 in every 4 women whose applications were admitted for processing abandoned accommodation resources without prior notice, and CEAR lost contact with them.

Similarly, with respect to European institutions, the recommendations put forth in March 2016 in a European Parliament Resolution on the situation of female refugees and asylum seekers in the EU are still pending adoption by the Commission, the Council and Member States.¹⁵ This document puts forth an analysis of the serious situation, recognizing as a baseline the urgent need to "improve the security and safety of women and girl refugees" opening "safe and legal routes to the EU... for those fleeing conflict and persecution," taking gender into consideration and emphasizing "in particular that more Member States should participate in the EU Resettlement Programs" stressing that "legislation and policies relating to irregular migration should not prevent access to EU asylum procedures" (just as is enshrined in article 18 of the EU Charter of Fundamental Rights). This special vulnerability of women and girl refugees means that this resolution, among other issues,¹⁶ calls upon the Member States to incorporate both measures and interventions for the detection and protection against gender violence, as well as the ratification of the Istanbul Convention.

¹⁴ See one of the resolutions of this courts in note 6 in Annex 2.

¹⁵ Situation of women refugees and asylum seekers in the EU. European Parliament Resolution of March 8, 2016. (2015/2325(INI))

¹⁶ In Note 7 is provided a brief description of the contents of the resolution.