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Comments Paper – Spain



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Support services for GBV survivors in Spain

Sandra Isabel Novo Canto Independent expert

1. Country context

The **principle of equality** is a fundamental right in the Spanish legal system, and the prohibition of any kind of discrimination based on the grounds of sex, ethnic origin, religion or any other personal or social circumstance is captured in the Spanish Constitution as a key pillar of the legal system. Public authorities are obliged to ensure the principle of equality and remove any obstacles thereto¹. However, in Spain and worldwide, gender-based violence (GBV) is still one of the most serious manifestations of that pervasive discrimination against women.

Since 2003 when Spain started collecting data on femicide 922 women were murdered by their partners or ex-partners in Spain². According to the latest data available, around 14% of Spanish women aged 16 and older have ever suffered physical and/or sexual violence and/or fear from their current or former partners. This percentage almost doubles for women born abroad $(27.7\%)^3$.

Spain started to take action against GBV in 1999, with its first action plan on domestic violence and the first dedicated survey on GBV. But it was not until 2004, with a **ground-breaking law against GBV** (LO 1/2004 on Comprehensive protection Measures against Gender-based violence⁴), that violence against women stepped in at the forefront of the political agenda.

Although the scope of the Law LO 1/2004 against GBV was limited to intimatepartner violence, it meant a significant leap forward in the fight against all forms of violence against women: first, it recognised that GBV was grounded in the historic inequality within power relationships between men and women, giving legal and criminal relevance to that inequality. Second, it created a number of **dedicated structures** to fight GBV and support survivors: dedicated courts, specific bodies within the Government (namely the State Observatory on Violence against Women,

¹ See in particular articles 1, 9.2 and 14 in the Spanish Constitution.

² Figure of murders until January 28th, 2018. Statistics available at:

http://estadisticasviolenciagenero.msssi.gob.es/

³ 5th Macro-survey on Violence Against Women, 2015. Main results available in English: http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/macroencuesta2015/pdf/SPAIN_SURV EY_ON_VAW_2015.pdf. Full report in Spanish available at: http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/macroencuesta2015/Macroencuesta20 15/home.htm

⁴ Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género. Available in Spanish at: <u>https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760</u>

and the Government Office for Gender-based Violence⁵), specialised units within police and law enforcement, and specialised support structures, among others. Not to mention the wide catalogue of specific rights for GBV survivors that has been further developed ever since⁶.

The Law LO 1/2004 against GBV recognised the special situation and vulnerability to GBV of migrant women, and article 17 guarantees the rights of every women survivor of GBV, no matter their origin, nationality, religion or any other social or personal circumstance.

While some instructions and recommendations were developed in the meantime, it was in 2009 that the **Law on migration was reformed** –by LO 2/2009⁷– thus granting **independent legal residence and working permits** to lawful migrant women survivors of GBV, as well as temporary residence and working permits to survivors of GBV with irregular administrative status⁸.

Gender was included as a cause of persecution to grant asylum and international protection for the first time in 2009 within the Law 12/2009 regulating asylum and subsidiary protection⁹. However, according to the law, a persecution has to have occurred, or –depending on the circumstances in the country– there must be reasonable fear to suffer persecution based on gender grounds. Survivors of violence and victims of human trafficking are considered highly vulnerable groups by the law, and the **status of asylum or subsidiary protection grants access to every right recognised to GBV survivors** in the same conditions as nationals. However, in absence of a regulation implementing the asylum law, there is still no special procedure established for asylum applicants from highly vulnerable groups – except minors.

At the institutional level it is worth mentioning that the Government Office for Gender-based Violence is part of the **Inter-Ministerial Commission of Asylum** (CIAR), a collegiate body that studies every asylum petition admitted to process and formulates a proposed resolution to the Minister of Home Affairs. Thus, the presence of the DG for GBV within the CIAR ensures that **gender perspective is considered in the decision-making stage of the asylum procedure**.

⁵ The **Government Office for Gender-based Violence (GO for GBV)** is responsible for proposing national policies on gender-based violence ,and for coordinating competent authorities at the national level. Furthermore, given the decentralised regional structure in Spain, every region has also a GBV unit to coordinate GBV actions in the region.

⁶ Guide of specific rights of women victims of gender-based violence, available in English at: <u>http://www.violenciagenero.msssi.gob.es/informacionUtil/derechos/docs/Ingles.pdf</u>

⁷ Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. Available in Spanish at: <u>https://www.boe.es/buscar/doc.php?id=BOE-A-2009-19949</u>

⁸ Independent residence and working permits are granted once a protection order is adopted in court. Also, in order to prevent that the administrative status would be a barrier to denounce GBV, no action will be taken against migrant women with irregular status that denounce GBV to authorities –even if no protection order is adopted in court.

⁹ Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria. Available in Spanish at: <u>https://www.boe.es/buscar/act.php?id=BOE-A-2009-17242</u>

As mentioned above, the legislator in 2004 established a limited scope of the Law against GBV to the violence inflicted by the current or former partner. Although other acts of violence against women were penalised in the criminal code, the gender perspective –as aggravating circumstance–was lacking. After the ratification of the Istanbul Convention by Spain in 2014, and with a view to **extend the concept of gender-based violence in the criminal regulations**, in accordance with the concept of violence against women stated in the Convention, and internationally, the legislator reformed the Criminal Code –with the Law LO 1/2015¹⁰– and introduced **gender as cause of discrimination aggravating criminal liability**.

2. Related good practice initiatives

2.1 A comprehensive catalogue of rights for GBV victims

The Law LO 1/2004 on Comprehensive Protection Measures against Gender-based Violence established a wide list of dedicated rights of GBV survivors which has expanded further in the last decade. As mentioned earlier, every woman that has suffered GBV from her partner or ex-partner is entitled to those specific rights, no matter their origin, nationality or administrative status. The rights are, therefore, equally applicable to migrant women – even with irregular migration status – as well as women beneficiaries of international protection, in the same conditions as nationals. For some rights to be activated, it is required a legal recognition as GBV victim, such as a protection order adopted in court, while for others, a declaration of social services or specialised support structures is enough. There are no requirements to access information and specialised counselling, being available to every woman.

The complete catalogue of rights is available in 9 languages other than Spanish¹¹ (English, French, German, Arabic, Bulgarian, Chinese, Portuguese, Romanian, and Russian); and includes labour rights, right to comprehensive social assistance and specialised counselling, free legal assistance, several rights related to social security, rights in the area of employment and integration in the labour market, as well as a range of economic rights (e.g. priority of access to subsidised housing, or access to economic aids). Furthermore, as mentioned above, foreign women victims or GBV have specific rights related to their residence status, as well as the right to international protection.

¹⁰ Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Available in Spanish at: <u>https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3439</u>

¹¹ The catalogue of rights in the different languages is available at: https://www.msssi.gob.es/en/ssi/violenciaGenero/Recursos/GuiaDerechos/home.htm

2.2 Plans and strategies for GBV prevention

The Plan for assistance and prevention of GBV in migrant population (2009-2012)¹² was the first national plan dedicated to migrant population and GBV, and **laid the foundations** for specific actions addressed to migrant women, that have continued to be developed and refined ever since.

This comprehensive plan is structured along **5 pillars:** information, training, awareness, adaptation of services, and structural changes. It contains a set of measures dedicated to every one of these pillars:

- Measures to ensure migrant population have adequate access to information include: translation of materials into several languages, translation services offered in support structures, and a dedicated helpline operating 24/7 in 52 languages¹³, among others;
- With regards to **training of professionals**, several training modules were developed for professionals assisting women: public officials, health professionals, intercultural mediators, NGO staff, personnel at Embassies, etc.;
- To **raise awareness**, dedicated campaigns were developed, and relevant channels used, engaging with media, NGOs and Embassies;
- It is critical that services are adapted to the particular circumstances of migrant women. To this end, the health protocols were modified and funding and orientation was provided to encourage the adoption of specific measures at the local level to facilitate integration.
- The plan also envisioned **structural changes** including legislative reforms; and articulated new channels and a dedicated forum to facilitate dialogue between women NGOs and migrant NGOs.

The measures set on this plan have laid the ground and shaped subsequent actions dedicated to migrant population. In the **National Strategy for the Eradication of Violence against Women** (2013-2016)¹⁴ particular attention is given to the situation of migrant women along the plan, and it also includes a pillar dedicated to assist and prevent GBV among migrant population. Furthermore, it is worth mentioning here the **Comprehensive Action Plan to Combat Human Trafficking for Sexual Exploitation** (2015-2018) with specific measures dedicated to foreign human trafficking victims in irregular situation.

http://www.violenciagenero.msssi.gob.es/planActuacion/otrasMedidas/pdf/Plan_atencion_prevenci on_violencia_genero_poblacion_extranjera_inmigrante(2009_2012).pdf

¹² Plan de atención y prevención de la violencia de género en la población extranjera inmigrante (2009-2012). Available in Spanish at:

¹³ Information available at: <u>http://www.violenciagenero.msssi.gob.es/informacionUtil/recursos/telefono016/home.htm</u> Information card in English: <u>http://www.violenciagenero.msssi.gob.es/informacionUtil/recursos/telefono016/docs/Tarjeta016_IN</u> <u>GLES.pdf</u>

¹⁴ National Strategy for the Eradication of Violence Against Women (2013-2016), in English at: <u>http://www.violenciagenero.msssi.gob.es/planActuacion/estrategiaNacional/docs/Estrategia Nacional Ingles.pdf</u>

Plan Integral Trata 2015-2018 ENG DEF.pdf

3. Policy debate

3.1 The State Compact Against Gender-based Violence

The Compact was adopted by the Plenary of the Spanish Parliament on September 28th, 2017, catalysing the political will to fight violence against women. The Compact contains 214 measures, including initiatives to strengthen the protection of GBV survivors and their children, to refine assistance and support mechanisms, to improve statistics, advance research on GBV, strengthen training of professionals, advance prevention of violence among migrant population, youth, etc. It also includes measures related to female genital mutilation (FGM), forced marriages, and trafficking for sexual exploitation.

The Compact also seeks to extend the concept of gender-based violence, which in the Spanish system is associated with intimate-partner violence, to all types of violence against women, in accordance with the Istanbul Convention.

3.2 Human trafficking and asylum

Spain has dedicated special attention to human trafficking. Several legislative reforms were undertaken to define the crime along the lines of international and European provisions¹⁵, as well as to further expand the rights and protection of foreign victims of human trafficking¹⁶. A framework protocol for protection of victims of human trafficking¹⁷ was also adopted to coordinate the work of competent authorities and organisations to assist and protect victims. Moreover, two action plans have been developed since 2009, containing a comprehensive set of measures to combat human trafficking for sexual exploitation¹⁸ ¹⁹; and a wide

¹⁵ The reform of the Criminal Code in 2010 –by LO 5/2010– introduced the art. 177bis with an updated definition of human trafficking in accordance with international and European provisions. Moreover, the reform in 2015 –with LO 1/2015–, further extended the definition of human trafficking and strengthened the protection of victims.

¹⁶ In particular, the 2009 reform of the migration law –by LO 2/2009– introduced article 59 bis, which established, among other rights, the right of human trafficking victims to be granted a residence and working permit based on their collaboration with the criminal investigation or their personal circumstances.

¹⁷ The framework protocol for protection of victims of human trafficking was adopted in 2011. It is available in English at: <u>http://www.violenciagenero.msssi.gob.es/ca/otrasFormas/trata/normativaProtocolo/marco/docs/Protocolo/marco/do</u>

 ¹⁸ First Action Plan (2009-2012) available in English at: <u>http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/informes/DOC/Plan</u> <u>IntegralTrataEN.pdf</u>
¹⁹ Second Comprehensive Action Plan to Combet Human Tratficking for Second Comprehensive (2015)

¹⁹ Second Comprehensive Action Plan to Combat Human Trafficking for Sexual Exploitation (2015-2018). Available in English at: <u>http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/planIntegral/DOC/</u>

network of dedicated support and assistance resources including shelter and counselling²⁰ have been put in place to better support victims.

The Second Comprehensive Action Plan to Combat Human Trafficking for Sexual Exploitation (2015-2018) contains 143 measures within 5 key priority areas focused on strengthening prevention and detection of trafficking; improving identification, protection and assistance to victims; deepening research and understanding of the phenomenon; prosecuting traffickers more actively; and strengthen coordination and cooperation between institutions, NGOs and civil society. In particular, there are specific measures envisioned to improve the detection and protection of foreign human trafficking victims in irregular situation, as well as to improve the identification of human trafficking victims within the asylum procedure.

With regards to the latter, we can see progress in identification of asylum applicant victims of human trafficking, as more victims have been granted international protection in the past year²¹. Also the protection paths envisioned in asylum and migration regulation ²² start being considered as complementary instead of alternative in line with UNHCR and Spanish Ombudsperson recommendations.

4. Learning

The importance of coordination to avoid secondary victimisations:

Coordination of competent authorities is of the utmost importance to provide an adequate response to GBV, and avoid secondary victimisations of GBV survivors. Knowing this, since 2004 Spain has adopted several protocols for inter-agency coordination in GBV, both at the national and the regional level. However, Spain is still lacking coordinating protocols to better respond to asylum applicants fleeing gender-based persecutions. Here, the Greek experience proves to be of great learning value for Spain; more so considering the especially difficult circumstances and immense load that the Greek asylum system is facing since 2015.

Adapting support services to particular circumstances of GBV survivors:

A human-centered (or survivor-cantered) design of the services is critical, particularly when considering especially vulnerable groups such as migrant women, human trafficking victims or asylum seekers. Spain is devoting great efforts to adapt existing services –and create dedicated ones– to particularly vulnerable groups. The Greek experience, with a network of support services dedicated to asylum applicant victims of GBV is of great interest and learning value.

²⁰ Guide of dedicated resources and support structures (as of June 2017). Available in Spanish at: <u>http://www.violenciagenero.msssi.gob.es/ca/otrasFormas/trata/normativaProtocolo/marco/docs/GuiaRecursosJunio2017.pdf</u>

²¹ See the report by Accem in English at: http://www.asylumineurope.org/reports/country/spain/identification

²² See article 59 bis of the organic law on migration [Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social] regulating the residence permit on excepcional circumstances for human trafficking victims attending their personal circumstances or their cooperation with the criminal investigation.

Training of professionals:

Having professionals trained with a gender perspective is equally important. Asylum applicants who are GBV survivors often present severe trauma and require trained interviewers, translators, and instructors. The challenge of having sufficient personnel trained in GBV, highlighted in the Greek experience, is also shared in Spain. Although there are several training programmes on GBV, there is still insufficient training on GBV for personnel involved in the earlier stages of the asylum procedure –including asylum instructors– as recently pointed by out the Spanish Ombudsperson²³. Therefore, training efforts aimed at personnel within the asylum procedure should be strengthened.

5. Conclusions and recommendations

Comprehensive approach and the GBV survivors at the centre

GBV is a multifaceted phenomenon, and as such, combating and preventing GBV requires a holistic approach. Integrated action should involve different dimensions: socio-cultural; political; legal; punitive; educational and training. But most importantly, it should be human-cantered and adapted to the survivor's circumstances, in order to avoid further victimisations and provide the support needed. Establishing clear mechanisms to coordinate the different authorities and organisations involved is a key, as it is ensuring that the professionals engaging and supporting survivors are adequately trained on GBV.

Data and visibility: what it is not measured does not exist

In Spain, the collection of data has become crucial for realising the magnitude and how widespread the phenomenon of intimate-partner GBV was, as well as for motivating the political will to tackle it. In 2015 macro survey, data collection included also other forms of violence against women, but also how women respond to it and what services they need the most. It is invaluable the power of data for effective policy-making. With regards to data collection in the asylum procedure, there is still much room to improve in the EU. Disaggregation by sex is not enough. We need to go a step further and start collecting data on causes of persecution as well –at least.

The importance of the country context in gender-related persecutions

How do we determine that the fear of being persecuted based on your gender is funded? How do we establish the lack of due diligence to protect women from violence? Apart from the survivor's testimony, instructors often rely on data and reliable sources to ascertain those questions and decide whether or not granting international protection. The problem we've seen is that, often, those reliable sources provide too little or too much information about GBV. A paragraph is not enough to decide on the country context related to gender, and a comprehensive 200 pages report is too much when a pile of 1000 other cases is awaiting. Specialised research structures in the EU might be well equipped to provide brief papers focusing on the country context related to gender and GBV to support a more gender-sensitive asylum instruction.

²³ Report of the Spanish Ombudsperson in 2016, regarding the asylum procedure and the reception resources in Spain. Available in Spanish at: <u>https://www.defensordelpueblo.es/wpcontent/uploads/2016/07/Asilo en Espa%C3%B1a 2016.pdf</u>

References

Laws and Regulations:

- Organic Law 1/2004 on Comprehensive Protection Measures against Genderbased Violence [Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género]. Available in Spanish at: https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760
- Organic Law 4/2000 of rights and liberties of aliens in Spain and their social integration [Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social]. Available in Spanish at: <u>https://www.boe.es/buscar/act.php?id=BOE-A-2000-544</u>
- Royal Decree 557/2011 approving the implementing regulation of Organic Law 4/2000 of rights and liberties of aliens in Spain and their Social integration [*Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009*]. Available in Spanish at: <u>https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703</u>
- Law 12/2009, regulating the right of asylum and subsidiary protection [Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria]. Available in Spanish at: https://www.boe.es/buscar/act.php?id=BOE-A-2009-17242
- Organic Law 5/2010 reforming the Criminal Code [Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal]. Available in Spanish at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2010-9953
- Organic Law 1/2015 reforming the Criminal Code [Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal]. Available in Spanish at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3439

Relevant Plans and Strategies:

 Plan for assistance and prevention of GBV in migrant population (2009-2012) [Plan de atención y prevención de la violencia de género en la población extranjera inmigrante (2009-2012)]. Available in Spanish at: <u>http://www.violenciagenero.msssi.gob.es/planActuacion/otrasMedidas/pdf/Plan_atencion_prevencion_violencia_genero_poblacion_extranjera_inmigrante(2009_2012).pdf</u>

- National Strategy for the Eradication of Violence Against Women (2013-2016). Available in English at: <u>http://www.violenciagenero.msssi.gob.es/planActuacion/estrategiaNacional/docs</u>/<u>Estrategia Nacional Ingles.pdf</u>
- First Comprehensive Action Plan to Combat Sexual Exploitation (2009-2012) available in English at: <u>http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/informes/DOC/PlanIntegralTrataEN.pdf</u>
- Framework protocol for protection of victims of human trafficking (2011). Available in English at: <u>http://www.violenciagenero.msssi.gob.es/ca/otrasFormas/trata/normativaProtocolo/lo/marco/docs/ProtocoloTrataEN.pdf</u>
- Second Comprehensive Action Plan to Combat Human Trafficking for Sexual Exploitation (2015-2018). Available in English at: <u>http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/</u> planIntegral/DOC/Plan_Integral_Trata_2015-2018_ENG_DEF.pdf

Other resources of interest:

- Website of the Government Office for Gender-based Violence: <u>http://www.violenciagenero.msssi.gob.es/en/home.htm</u>
- 5th Macro-survey on Violence Against Women, 2015. Main results available in English: <u>http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/macroencuesta2015/pdf/SPAIN_SURVEY_ON_VAW_2015.pdf</u>. Full report in Spanish available at: <u>http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/macroencuesta2015/Macroencuesta2015/home.htm</u>
- Statistic portal on violence against women: <u>http://estadisticasviolenciagenero.msssi.gob.es/</u>
- Catalogue of specific rights for victims of Gender-Based Violence in English at: <u>http://www.violenciagenero.msssi.gob.es/informacionUtil/derechos/docs/Ingles.p</u> <u>df</u> Catalogue also available in 9 languages at: <u>https://www.msssi.gob.es/en/ssi/violenciaGenero/Recursos/GuiaDerechos/home</u> <u>.htm</u>
- Catalogue of dedicated resources and support structures for victims of human trafficking (as of June 2017). Available in Spanish at: http://www.violenciagenero.msssi.gob.es/ca/otrasFormas/trata/normativaProtocolo/marco/docs/GuiaRecursosJunio2017.pdf

- Helpline dedicated to GBV victims. Information available at: <u>http://www.violenciagenero.msssi.gob.es/informacionUtil/recursos/telefono016/h</u> <u>ome.htm</u> Information card in English: <u>http://www.violenciagenero.msssi.gob.es/informacionUtil/recursos/telefono016/d</u> <u>ocs/Tarjeta016_INGLES.pdf</u>
- Smartphone app "LIBRES": mainly for women who suffer or have suffered from gender violence, but also for any person who detects in their environment a possible situation of mistreatment or abuse. Contains information about GBV – what it is, what to do, where to start in order to denounce...–, information on the assistance and support resources available, self-protection measures for the victim and her children, testimonials of women survivors, etc. The app is confidential and designed to be hidden in the smartphone. Info available at: http://www.violenciagenero.msssi.gob.es/informacionUtil/recursos/appLibres/ho me.htm (in Spanish)