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Preventing sexual harassment


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Sexual Violence, Sexual & Sexist Harassment Framed in Gender (In)Equality

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Abstract

During the last 4 decades, Spain has had a rapid development and consolidation of women's and equality machineries—state and well-established policies devoted to promoting gender equality – including fighting against any type of violence and harassment towards women. These is the case at all governmental levels -national, regional and local- in a complex multilevel State. Therefore, any public action towards gender-based violence and sexual harassment and violence is considered part of a general frame of gender equality policies. Spain has an important Equality and Gender Violence legislation corpus, including Protocols against Sexual Harassment. Over these decades some specific structures, like the National Government Delegation against Gender Violence, have been created. Although the attention has been mainly focused on partner or ex-partner violence, there is an increasing attention to other types of violence, including Sexual and Gender-Based harassment and sexual violence, as the recently passed Organic Law on the Integral Guarantee of Sexual Freedom.

1. Relevant country context and policy debate on preventing sexual harassment

1.1 A relative long history of policies against gender violence framed as gender equality policies

Spain's evolution from an authoritarian regime to a well-established multi-governed democracy in a short period of time, has been accompanied by incredibly rapid social change and a varied (depending on the governmental period), but overall steady, consideration of gender equality as a political priority. This also led to the rapid development and consolidation of women's and equality machineries—state and well-established policies devoted to promoting gender equality – including fighting against any type of violence and harassment towards women - over the last four decades, both at national and regional governmental levels (Bustelo, 2016).

Being Spain a latecomer among contemporary occidental democracies in starting gender equality policies (one decade later) was possibly effective for framing those late policies in an already comprehensive way, taking advantage of the European

developments in that realm. From the onset of Spanish democracy during the 80s¹, Spanish feminists were strategic in using the claim for joining the European Union (then called the European Economic Community) in 1986 for setting an agenda for gender equality, including violence issues. From the beginning, the first Women's Institute (created in 1984) and the first National Plan for Equality (1988-90) included actions and measures to fight violence against women, although these were not specifically targeted until March 1998 when, after the tragic case of Ana Orantes² assassination in December 1997, it was approved the first Plan Against Domestic Violence. Although these first specific Plans on Violence and the later so called "Integral Act on Gender Violence" in 2004 targeted mainly and almost exclusively gender violence produced in intimate relationships, Sexual and Sexist harassments were also considered as a form of gender-Based Violence and was explicitly identified and targeted in the 2007 "Equality Act"³. This same model of specific plans and laws on gender violence, as part of gender equality policies have been also followed by the Autonomous Communities, which have their own legislative and executive power (see Bustelo 2016).

Logically, the problem of both gender inequality and gender violence, and as part of these, Sexual Harassment (SH), has evolved during these last decades in Spain, as elsewhere. How a problem is defined and explained is always linked to how it is tackled, and this is specifically important for preventing purposes. In this manner, how the causes of a problem are explained are key to understanding prevention. Correspondingly, prevention measures say a lot about how a public problem is defined and represented in a concrete society. In the case of Spain, both violence against women (overtime named as gender violence) and Sexual Harassment have been always directly framed and linked to gender (in)equality. To showcase this evolution, I mention here the frame analysis of Spanish gender-based violence policies (1996–2004), performed under the Comparative European research projects MAGEEQ (2003-2005) and QUING (2006-2011), where a dominant frame in the official documents, 'Domestic Violence', revealed that even if the issue was related to gender inequality, no attention was still paid to the structural and systemic component of inequality. However, it also appeared an alternative frame 'Structural Gender Equality', held by civil society and other progressive voices, in which inequality was defined as the cause and effect of violence. This alternative frame appeared as dominant in later official documents from 2004 onwards.

¹ The dictator Franco died in November 1975; the Spanish Constitution was signed in December 1978. For many analysts, *la Transición* (the transition towards democracy) lasted until 1982 when the Spanish Socialist Party (PSOE) won the second general elections in October.

² Ana Orantes was a victim of gender violence, who exposed in a television interview the violence she had been subjected to by her ex-husband. Thirteen days after her testimony on television, she was murdered by her ex-husband. This generated great repercussions in Spanish society and raised the profile of gender-based violence, and as a consequence, the reform of the Penal Code.

³ Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres

In the case of SH, there was another important case, this time in the political realm, the one from Nevenka Fernández⁴, which popped up in the media in 2001, when she, former Councillor of Finances accused the City Major of Ponferrada, Ismael Álvarez, of SH. After a long judicial process, he was found guilty of Sexual abuse although the consequences for her were extremely hard⁵. The case represented a turning point in the configuration of SH, both legally and socially.

As mentioned before, the 2007 Equality Act defines in its article 7 both “Sexual Harassment” and “Harassment on the grounds of sex” (also known as Gender or Sexist Harassment). It is also stated that “Sexual harassment and harassment on grounds of sex shall be considered in any case to be discriminatory”. Article 48 states that in Gender Equality Plans in companies, specific measures to prevent SH and harassment on the grounds of sex should be considered. Thus, SH was specifically developed in the labour realm in the 2007 Equality Act.

However, following the Gender Equality Act (3/2007), another Act for the reform of the Universities (4/2007), passed just one month later in April 2007, includes the obligation at Spanish public universities to have Equality Units, as well as gender equality plans and protocols against SH. Despite the very poor resources that Spanish Universities are devoting to GE policies⁶, these legally compulsory measures have made the Higher Education (HE) sector one of the most developed regarding institutional measures towards SH in Spain. In a [survey performed by the RUIGEU](#) (Network of University Equality Units) at their universities in November 2021, only 5 out of the 53 universities in the network do not have Protocols of action against sexual and gender-based harassment, and they indicate that they are in the process of being approved.

The specific framing in the 2007 Equality Act of SH within the labour realm ended eventually in a clear differentiation between **harassment in the workplace** on one side and **discriminatory harassment** (sexual and gender-based harassment) on the other and allowed for different developments.

As an example of this differentiation of SH at the workplace (“Labour SH”) and “Discriminatory SH”, we can mention the regulations following the 2007 Equality Act, the Public Administration at the national level approved one “Protocol for action against harassment at work in the General State Administration” and another “Protocol for action against sexual harassment and harassment on grounds of sex” both in 2011. The first one, SH at the workplace is regulated in the Basic Statute of the Public Employee and in the Workers' Statute (both acts with reforms in 2015). The prevention of harassment and violence at work, insofar as they are psychosocial risks,

⁴ https://es.wikipedia.org/wiki/Nevenka_Fern%C3%A1ndez

⁵ There is a book and a TV series about the case.

⁶ As an example, the UCM Equality Unit is composed of one administrative staff and two part time Faculty Staff (UCM, community of aprox. 85.000 people). This situation is similar in other universities as it has been claimed several times by RUIGEU (<https://www.uv.es/ruigeu/en/network-gender-equality-units-university-excellence-ruigeu.html>)

finds an additional basis in the 1995 Occupational Safety and Health Act (*Ley de Prevención de Riesgos Laborales*).

Further developments include the Judiciary the General Council of the Judicial Power approved the Protocol of action against sexual harassment, harassment based on sex, discriminatory harassment and all forms of harassment and violence in the judicial career in 2015⁷. Finally, in the Legislative realm, in March 2020, the Boards of the Congress of Deputies and the Senate, approved the First Equality Plan of the *Cortes Generales*. As part of one of the provisions of this First Equality Plan, a "[Protocol for action against sexual harassment, gender-based harassment and all forms of harassment and violence in the Cortes Generales](#)" was approved in July 2021.

Similar Spanish experiences/ institutional arrangements to the ones presented by the co-host countries are, the State Pact against Gender Violence (*Pacto de Estado contra la Violencia de Género*) in the case of Denmark, and the Government Office - Government Delegation- against Gender Violence (*Delegación del Gobierno contra la Violencia de Género*) in the case of The Netherlands. The "*Pacto de Estado*" (here the link to a [brochure in English](#)). A State Pact is an agreement between different political parties on issues of great significance without interference from whichever party is in government at any particular time, being achieved thorough the consensus of the majority of parties in the parliamentary spectrum. The Pact requires all institutional, social and political sectors to put the issue at the centre of the public agenda. This includes especially women's organisations. The State Pact against Gender Violence was reached in 2017 and the responsible structure is the [Government Delegation for GBV](#) (Ministry of Equality) in coordination with other Ministries, the Autonomous Communities and Local Entities represented by the Spanish Federation of Municipal and Provincial authorities. A total increase in funding of one billion euros were assigned to the Pact as part of a global financial commitment over 5 years. Besides the financial resources, this is the mechanism for coordination between institutions in the multi-level administrative structure of the Spanish territorial model. This Pact resembles in part the promising and incipient Danish "Alliance against SH". The Government Delegation against GBV, a governmental structure which was created in 2010 with the creation of the Ministry of Equality, resembles in part the Dutch Government Commissioner. Although the Ministry of Equality was suppressed in 2011, due to the financial crisis and the change to a conservative government, and it did not get recovered until 2018 with Sánchez Government, the Delegation as such was maintained as an important structure within other ministries.

In general, there has typically been consensus among political groups on the topic of gender violence, as the State Pact demonstrates. Even, considering that since 2018,

⁷ Other bodies have also approved protocols: the Court of Auditors "Protocol for action against situations of sexual harassment, gender-based harassment and workplace harassment (2013); and the Constitutional Court "Protocol for prevention and action against sexual harassment and gender-based harassment (2014)

Spain joined many other European countries in having for the first time parliamentary representation of an ultra-right political party (VOX), which has been quite successful in putting “anti-gender” movements into the Spanish landscape. Despite this evident polarisation, still we can find consensus and the prevention of Sexual Harassment is strongly associated with gender equality public policies.

1.2 #Me too movement, the “La Manada” case and the new Act on Sexual Freedom against Sexual Violences.

The case of La Manada is a sadly very well-known rape case that took place in Pamplona in July 2016, during the San Fermín festivities. A group of five men raped an eighteen-year-old girl in a doorway in the centre of the capital of Navarre. The victim denounced the aggressors for rape. The case, which was considered in two courts in Navarre - Provincial Court and High Court of Navarre - as a sexual abuse, received significant media and social media coverage, and was coincident in time with the international #Me too movement and the raise of feminist movements, especially among young people⁸. It also mobilised a large part of the Spanish population who expressed their disagreement with these sentences. The case was finally reviewed and sentenced by the Supreme Court, which considered it to be rape.

This case which brought several massive demonstrations in the streets was the breeding grounds for claiming for a change in the legislation and a specific public action towards sexual violence. When in 2019 a new progressive coalition government was formed with PSOE and Unidas Podemos, a new Act was proposed by the Ministry of Equality on “Sexual Freedom”, known as the Consent Act or the Act of “No is No” or “Yes is only Yes”, just passed last August 25th after more than one year of negotiations⁹. These are some key issues of this Act: 1) Consent as the axis. This change in the perspective of sexual violence is what, for years, has been demanded by the social movement that was generated after the case of La Manada: that it is the existence of consent that constitutes the crime and not the victim's resistance to the aggressor's force; 2) Aggravating circumstance for chemical submission; 3) Inclusion of sexual femicide or murder of women linked to sexual violence, as the most serious violation of human rights linked to sexual violence; 4) Street harassment will be a crime, prosecutable after a complaint has been lodged by the injured party; 5) Inclusion of on-line Sexual violence, including sexual extortion or non-consensual pornography; 6) Victims of sexual violence will have the same access mechanism as victims of gender violence to active minimum wage income; 7) Compulsory sex education for aggressors; 8) Prohibition of pornographic advertising; 8) Right to reparation, financial assistance and 24-hour crisis centres for victims; and

⁸ The March 8th demonstrations of 2018 and 2019 were incredibly massive in Spain and exceeded all the expectations.

⁹ Organic Law on the Integral Guarantee of Sexual Freedom Ley Orgánica de Garantía Integral de la Libertad Sexual

9) Compulsory sex, gender equality and affective-sexual education at all educational stages, including university degrees related to teaching, health or the judiciary.

2. Good practice examples

Apart from the Spanish comprehensive legislation on gender equality and GBV, including the recently passed Organic Act on the Integral Guarantee of Sexual Freedom, the strong equality machinery, also known as State Feminism (governmental structures with the specific mission for gender equality and preventing GBV), including the Government Delegation against Gender Violence, and the State Pact against Gender Violence, I will mention other general good practices worth mentioning:

- The generalisation of **Protocols against Sexual and Sexist Harassment** as a main tool to fight against Sexual Harassment. Not only they have been generalised in HE institutions, but there is an ample myriad of those across all the State powers: the Executive, the Legislative, and the Judiciary. They have the problem of tending to be too much embedded in very rigid judicial processes, but they have definitely put the issue of Sexual and Gender related Harassment in the public landscape.
- The existence of **studies to investigate the problem of GBV and SH**, and the creation **data information systems**. Regarding the different studies, apart from all the research produced around GBV, there has lately been some studies focused on Sexual and Gender related Harassment, mainly in the Higher Education sector. As example, I include as an annex a presentation on the [survey conducted in 2018 at the Complutense University of Madrid \(UCM\) on Sexual, Sexist, Sexual Orientation & Sexual Identity/Expression Harassment](#). It covered prevalence, consequences and reactions to institutional responses. As for the efforts for building systematic data systems, it should be mentioned the ["Macro survey" periodically performed by the Government Delegation against GBV](#), in where some items on SH and Stalking ("*acoso repetido*") are included.
- **Institutional campaigns** periodically performed on GBV issues. As an example, the very recent one Ministry of Equality's campaign **to prevent sexual violence** "[Queremos Vivas. Querernos Libres](#)" (we want ourselves alive and free)
- Increasing experiences educating men in equality and new masculinities. These experiences which have been very rare in the past are also promoted by new groups of men for equality. There are very recent developments, as an example, a new joint university degree between the University of the Basque Country and the UCM, [Specialisation Gender, Masculinities and Social Action](#).

3. Transferability aspects and lessons learnt

3.1 The Danish and Dutch good practices

Both the Danish Alliance against SH and the Dutch Government Commissioner take advantage of the local contexts and the momentum the #Me too related movements and the attention to very mediatic cases. In comparison with the Spanish case, and probably as elsewhere, public action is demanded and provided because of these cases. Frequently any new public action or new issue in the political agenda transits the same road before becoming a public policy, but more efforts to go beyond this incident-driven approach into a strategic vision are needed for prevention purposes, as it is very well explained in the two papers.

There are some important differences between the Danish Alliance against SH and the Spanish Pact against GBV, among them, the “formality” in the case of Spain, something that is very much needed in a complex multi-governance context. Although the Alliance will need some formalisation, a more “spontaneous” approach in the beginning might promote ownership and stakeholder’s involvement, something extremely important for the effective implementation of the network activity. On the other hand, from a Spanish perspective, it is possible that the Alliance will eventually need to split for tackling the three realms of SH at the workplace, in education and in politics, as they are different in nature and will probably need different approaches.

As for the Dutch Government Commissioner, the first difference to highlight with the Spanish Government Delegation is the scope of action, being the Commissioner focused only on Sexual Violence and the Delegation in GBV in general, with a special focus on violence executed by partners or ex-partners (although there is a clear opening to other forms of violence, and especially sexual violence with the new act approved last month). I would have liked the Dutch paper to give some data on prevalence regarding the sex of the aggressors, as this is a key point for analysing the gendered component of sexual violence. I think the “Emancipator” is an organisation with inspiring practices. Finally, from a Spanish perspective, the fact that in Spain there is an important and consolidated equality architecture might be an advantage for having concrete expert responsible people, and not being in danger of diluting responsibilities among different Ministries.

3.2 Some suggestions to the host and co-host countries based on the Spanish experience

- The idea of tackling jointly Sexual and Sexist or based on Gender harassment and violence it is an interesting one for understanding the structural causes of both, clearly different but interrelated. For exploring how to prevent these types of harassment, a more gender related analysis should be done for going into the causes and roots of the problem, and not only its manifestations. What do unequal gender relations and power dynamics have to with these? Sexist H is based on the superiority of one gender over the other and Sexual H in this superiority and also on a non-evidence-based idea of men & women different sexuality, which

clearly has been socially and politically constructed. Both harassments and violences are discriminatory: sexual violence is probably always sexist, but sexist violence is not necessarily of a sexual nature. An inclusion of a gender perspective should be more clearly integrated in these prevention efforts.

- Very frequently this distinction of Sexual & Sexist harassment is not so clear. In Spain, in the fight against SH at Universities, these two types of harassment are better differentiated and there is somehow more development in that area, although this is not the case in the political realm. As an example, in a 2017 article titled “Spanish Politicians against Sexual Harassment”, some famous female politicians referred to the #Metoo movement and gave examples of cases they knew or issues that have happened to them at parliaments or political parties. Some gave examples of SH, but many of them referred to sexist violence, such as insults or verbal aggression or behaviour for being women¹⁰.
- Beyond regulations and formal adoptions, difficulties of implementation highlight the importance of an inclusive approach which engage all possible stakeholders, not only CSO, but also institutional actors at all levels. This means that SH and violence occur at the institutional level, therefore for understanding and preventing SH we need to incorporate in the public action the complexity of institutions and the difficulties of implementation¹¹.

4. Some conclusions and recommendations

4.1 Some ideas to conclude

What could or should be done at national and European level to prevent sexual harassment? What could/should be done to implement lasting cultural change in society? Here some ideas in bullet points:

- It is necessary to visibilise and name the problem and study the phenomenon.
- Create a zero-tolerance environment, that is shame and blame the problem, not only name it. A bystander approach, as well as educating perpetrators seem important components for that culture enhancement.
- It is also very much needed to understand and tackle the phenomenon as something that is structural & embedded in institutions. The institutions and all the people who take part in them are all responsible of allowing and maintaining the problem.

¹⁰ <https://www.cosmopolitan.com/es/revista-cosmopolitan/a14454048/politicas-espanolas-acoso-sexual-cosmopolitan/>

¹¹ See [Lombardo & Bustelo \(2021\)](#) and [UniSAFE](#) project.

- All social and political actors should be engaged. We need stakeholders' engagement and partnership with actors, not only civil society but also political and institutional at all levels.
- These efforts need resources and good will is not enough. The Spanish State Pact against GBV is a good example working in the right direction.

4.2 Last concluding remarks

Taking out the strong gender component of SH and violence dilutes the political component of a public problem who cannot be “solved” and prevented without a serious look at the structural causes behind the phenomenon and without a strong willingness of society for change and transformation. Gender studies have provided, and keep on producing, knowledge and a strong evidence base about this phenomenon. Although we still have a long way to run, we already have the base to keep on constructing and transfer knowledge for deeply understanding the problem and it causes. This is the only way to produce effective and proactive action beyond a reactive incident-driven approach which frequently ends in a window dressing which calms tempers until the next dramatic incident. We need to deeply explore what it is below the iceberg tip, and which represent the breeding grounds in which the next incident will occur, and many other kinds of violence will manifest.