

## **ANNEX 2**

### **Spain Country Report**

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# 1. Introduction

## 1.1 National social fabric

The Spanish population on 1 January 2007 was estimated to be as follows:

INE <sup>1</sup>	Men	Women	Total
Spanish Legal Population	22,339,962	22,860,775	45,200,737
Spanish Non-legalised Population (approx.)	unreported	unreported	800,000
Total			46,000,737

The make-up of the Spanish population has changed, without doubt, over the course of the last few decades shaping a new social fabric. The sharp increase of the foreign presence in Spain has led to the distinguishing of two main groups:

- A.) The ‘original’ Spanish population, constituted by both groups of different ethnic/cultural backgrounds and groups resulting from internal migrations
- B.) The immigrant population, and subsequent generations.

This mixture of cultures, ideologies, origins and backgrounds has led to the emergence of different collectives, some more visible than others. Our aim is to include as many of these collectives as well as minority groups as possible in the report.

Within the Spanish population we can identify layers of ‘collectives’ which are not really coordinated groups but rather individuals who share the same experiences of discrimination as individuals, due to their ethnic background (Roma, African, Asian, Latin American), their gender, sexual orientation or economic status. We will pay special attention to gender, for this project, also taking into account discrimination related to sexual orientation which represents one of the subcategories of gender.

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<sup>1</sup> Instituto Nacional de Estadística (National Institute of Statistics)

Within the original Spanish population there are no clear demarcations differentiating between ethnic groups apart from the Gitano<sup>2</sup> community. Estimates of the Roma population in Spain range from 500,000 to 600,000.<sup>3</sup>

### **A.) The ‘original’ Spanish population**

Because of the mobility of the population towards urban centres, the coast and islands, internal migration, and the varied ethnic origins stemming from Celtic, Iber, Gothic and Southern peoples (now mixed and representing approximately  $\frac{3}{4}$  of the population), it is more appropriate to speak of cultural groups and identities rather than ethnic groups in Spain. The above factors have contributed to the dispersion of the originally ethnic groups<sup>4</sup> across the territory.

Accordingly we can differentiate between the following main six cultural groups: the Castilians of central Spain; the Asturians and the Basques of Vizcaya, Álava, Guipúzcoa, and (in part) the provinces of Navarra in the north; the Catalans of Catalonia and Valencia; the Galicians of the far northwest; and the Andalusians of the south. The Basques, Galicians, and Catalans consider themselves separate nations within Spain; they enjoy considerable cultural, economic, and political autonomy.

### **B.) Immigration**

As a result of the significant waves of immigration over the course of recent years, Spain has faced a rapid increase in third country nationals who will eventually become residents.

Immigration and its effects are relatively new phenomena in Spain when compared with other countries (e.g. USA, UK or France). During the Franco dictatorship Spain received little external immigration; its own population was at that time migrating to Europe and the Americas (e.g. Switzerland, France, Germany, Mexico, Argentina). After Franco’s death Spain opened its doors not only to Europe but to Africa as well.

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<sup>2</sup> As indicated by the anthropologist M. Marfà Castan, the words ‘Caló’ and ‘Gitano’ are how the Roma/Gipsy community refer to themselves in Spain. The terms Gitano and Caló will, therefore, be used interchangeably to refer to the gipsy community.

<sup>3</sup> Ibidem

<sup>4</sup> <http://www.nationsencyclopedia.com>

During the course of the post-Franco years the creation of the new Constitution and the readiness of the society to accept outsiders into the labour market meant that immigrants found in Spain not only a new open corridor towards Europe but also a place to live and make a living while sending remittances to family members back home.

Initially opposition to immigration was minimal; however, the increasing visible presence of immigrants constantly portrayed in the media in a negative way has led to concern among the ordinary population.

By combining different sets of records and statistics<sup>5</sup> on the immigrant population it can be determined that the following collectives represent the most numerous groups in Spain. In order of significance these are: Moroccans, Ecuadorians, Colombians, Rumanians, British, Chinese and Italians.

There are some collectives of immigrants who are highly visible on the street and whose true extent in terms of numbers does not appear to be revealed by the statistics (e.g. Sub-Saharan). The population of de facto resident but illegal third country nationals is difficult to determine not only because these people may be in transit towards other European Countries but also because they are afraid of being expatriated and try to remain invisible. There are also not enough effectively coordinated national bodies and support organizations keeping track of these immigrants for them to be able to accurately approximate a figure.

(See table on following page.)

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<sup>5</sup> Figures for the immigrant population from different sources do not always match. Since illegal immigrants are not registered in the census it is hard to make an accurate estimate of their numbers.

**Population with work permit or authorization of residence, variation 2006-2007**  
**(According to country of departure)<sup>6</sup>**

<b>Nationality</b>	<b>31/12/2006</b>	<b>31/12/2005</b>	<b>Variation #</b>	<b>Variation %</b>
<b>Morocco</b>	543.721	493.114	50.607	10,26
<b>Ecuador</b>	376.233	357.065	19.168	5,37
<b>Colombia</b>	225.504	204.348	21.156	10,35
<b>Romania</b>	211.325	192.134	19.191	9,99
<b>Great Britain</b>	175.870	149.071	26.799	17,98
<b>China</b>	99.526	85.745	13.781	16,07
<b>Italia</b>	98.481	84.853	13.628	16,06
<b>Peru</b>	90.906	82.533	8.373	10,15
<b>Argentina</b>	86.921	82.412	4.509	5,47
<b>Germany</b>	77.390	71.513	5.877	8,22
<b>Portugal</b>	72.505	59.787	12.718	21,27
<b>Bulgaria</b>	60.174	56.329	3.845	6,83
<b>Dominican Republic</b>	58.126	50.765	7.361	14,5
<b>France</b>	56.170	52.255	3.915	7,49
<b>Ukraine</b>	52.760	49.812	2.948	5,92
<b>Bolivia</b>	52.587	50.738	1.849	3,64
<b>Poland</b>	48.031	34.600	13.431	38,82
<b>Cuba</b>	39.755	36.142	3.613	10
<b>Algeria</b>	39.433	35.437	3.996	11,28
<b>Brazil</b>	30.242	26.866	3.376	12,57
<b>Pakistan</b>	29.668	28.707	961	3,35
<b>Senegal</b>	28.560	27.678	882	3,19
<b>Venezuela</b>	28.188	25.372	2.816	11,1
<b>Uruguay</b>	26.571	24.272	2.309	9,51
<b>The Netherlands</b>	25.958	23.040	2.918	12,66
<b>Russia</b>	24.497	22.223	2.274	13,1
<b>Philippines</b>	21.190	18.735	2.455	13,1
<b>Chile</b>	20.397	18.748	1.649	8,8
<b>Rest of countries</b>	319.962	293.537	26.425	9
<b>Stateless &amp; Unregistered</b>	1.147	1.101	46	4,18
<b>TOTAL</b>	<b>3.021.808</b>	<b>2.738.932</b>	<b>282.876</b>	<b>10,33</b>

<sup>6</sup> From SOS Racisme, Informe Annual 2007, pp.211 Source, MTAS. Ed. Icaria. Barcelona 2008

### **C.) Established collectives and minorities**

#### *The Gitano community*

The Calo, who have been part of the Spanish social fabric for centuries, have suffered and continue to suffer from continued discrimination. Their rights as a collective were disregarded when the first Spanish Constitution was instated and later Constitutions did nothing to improve the situation as Gitano laws and ways of living were not adequately accommodated therein. As an itinerant group the Gitanos were excluded from general rights and privileges, including representation in government, causing them to become a highly disadvantaged group over time.

#### *Immigrants organized by religion*

There are collectives that exist to represent and bring together people professing the same religion. Although Spain became secular (with a formal separation of powers) in 1978, the Catholic Church still represents an influential source of power. Nevertheless religious plurality has become a reality in Spain and now different communities grouped by faith, such as Muslims, Protestants, Jews, Buddhists, Are Krishna etcetera, can be found across the country.<sup>7</sup>

Taking into account the considerable number of people arriving from North Africa, Sub-Saharan Africa and Asia, it is not surprising that religions like Islam have spread rapidly creating extensive networks and Muslim collectives. Part of the negative reaction directed against these groups results from biased media representations, the perceived fear of terrorism, propaganda and the real existence of different cultural practices. It should also be recognized that Islam is simply a more visible culture than, for example, Protestantism or Buddhism.

Religious collectives relating to Islam were created spontaneously and rapidly during the Spanish Transition. Two of these collectives, the Federación Española de Entidades Religiosas Islámicas (FEERI) and the Unión de Comunidades Islámicas de España (UCIDE) were merged by the government into the Comisión Islámica de España (CIE)

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<sup>7</sup> An interesting article published in El Pais (09/05/2008), ‘Las otras religiones piden pasos’, examines this phenomenon.

in order to manage their coordination better.<sup>8</sup> Because of the character of Islam (where religion and the general way of life are intertwined) these associations also act as immigrant collectives providing mutual support.

### *Immigrant Collectives*

It is a generally accepted fact that immigrants like to regroup once they arrive in their destination country. This strategy helps them to settle in quicker and to find jobs more easily as well as providing some relief from the pain of being far away from home. The group most eager to develop this network in Spain is the Latin American immigrant population, including its second generations.

These collectives are not simply formed spontaneously; because of their increasing numbers and the fact that they represent a significant labour force many mutual assistance organizations have been created to help immigrants and women from specific countries to maximize their employment opportunities. Local and regional NGOs tend to cover the needs of immigrants for specific countries (e.g. NGOs for Colombia and/or Latin American immigrants, or NGOs to help African women, and so on).

### *Gender*

As a result of the prolonged existence of a culture privileging men Spain still experiences a significant level of embedded sexism in the legal and educational systems. Gender collectives have organized themselves in order to fully realize the rights established in the Constitution. They campaign for full equality of treatment in Employment, Law, Housing, Sexual concerns etcetera and have grouped themselves into feminist associations and NGOs to defend women's right and freedom from exploitative power relations. We also commonly find collectives dedicated to promoting a truly free choice of sexual orientation.

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<sup>8</sup> 'Musulmanes en España: más allá de la memoria histórica' extract from: Jordi Moreras, '*Musulmanes en Barcelona. Espacios y dinámicas comunitarias*' (CIDOB 1999), pp. 85-97.

## **1.2 Manifestations of race and gender discrimination in the national context:**

### **A.) Gender**

Although gender issues are high profile in the media and continuously emphasized by support organizations, gender discrimination remains largely invisible. Gender appears to generate less extreme prejudice than race but, to an extent, this seems to mean that it is taken less seriously on a practical level. Broadly speaking, the gender equality struggle has been interpreted as a question of education and reforming laws, and consequently the women's rights movement has developed in a particular way. Although gender discrimination continues to affect the Spanish and immigrant population<sup>9</sup> in many different ways these have not yet all been taken into account by the relevant national bodies.

The government, for reasons that are not entirely apparent, has focused its fight against gender discrimination in the realms of employment and work, while little attention has been paid to the private lives of Spaniards and immigrants. Non-public relationships, less questioned for being domestic issues, have, indeed, never been spaces where the law could easily and openly interfere. The present government, however, galvanized by media coverage of frequent cases of domestic violence murders, massive gender discrimination and sexual harassment at work and the rapid increase in the trafficking of women and large-scale prostitution rings has decided to start creating specialised bodies to address these problems. The most active and well-developed implementations of legislation favourable to woman relate to cases of divorce, protection from violent partners and the custody of children.

Gender discrimination is most commonly related to the following:

- Discriminatory work situations and employment prospects (including domestic work and its knock-on effects)

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<sup>9</sup> Although the term *Intersectionality*, coined by Crenshaw, is of crucial importance for the study we prefer to develop the concept at a later date since it is more of an analytical than a practical tool.

- Sexual harassment at work
- Violence (including sexual aggressions)
- Trafficking in women
- Treatment by police and judges
- Negative media treatment
- Restricted involvement in education
- Limited access to health services and lack of sensitivity to particular cultural health issues

Positive developments in past years relate to:

- More work opportunities for women in what were previously male-dominated realms (greater visibility)
- The existence and effective coordination of many specialist NGOs and public institutions
- Improved procedures for handling domestic violence complaints by the police and in the courts
- The creation of national crisis and support help-lines
- The appearance of private microcredit businesses providing loans to women entrepreneurs.
- Greater involvement in education

## **B.) Race**

The situation relating to race discrimination is more complicated. While some reports link racism in Spain to prejudiced perceptions of economic status and cultural background others state that the phenomenon of mass immigration is to blame. These theories posit that the speed of the change has not allowed Spanish society sufficient time to adapt to the new social reality.

To put the above theory in perspective, however, it is important to remember that race discrimination is often experienced by Spaniards who are full citizens by right but who happen to be of a different colour, religion or status. Adopted children and Spanish born second generation immigrants can suffer race discrimination as well as collectives such as the Gitanos.

Racism in Spain is also strongly linked to xenophobia and to the pace at which ‘foreigners’ are arriving, sometimes apparently overwhelming certain outdated institutions as well as being perceived to flood the labour market (despite the fact that this influx can equally well be interpreted as helping to boost the economy). In the resulting atmosphere of social tension we find that the national bodies are not very involved in practical terms in the fight against race discrimination, especially with regard to the cases involving immigrants. These bodies advocate integration instead of expatriations, ignoring the problem or assimilation but take few practical measures to implement this policy.

The key indicators of race discrimination are:

- Work situation complicated by illegal status
- Restricted access to housing
- Social instability related to uncertain legal status
- Prejudicial treatment by police (including violence)
- Violent assaults in the streets
- Human trafficking (involving men, women and children)
- Limited access to health services
- Lack of free access to public, common and commercial spaces
- Lack of involvement in education
- Practical impediments to freedom of religion

Positive developments:

- Increased daily interaction between Spaniards and third country nationals
- Growing public acceptance of diversity
- Creation of national help-lines to facilitate the making of complaints
- Creation of new banking products and remittance services directed at immigrants
- Opening of shops directed specifically at immigrants’ needs

## 2. Spain's anti-discrimination legal framework

### 2.1 In the wider context

(Only the most relevant instruments have been documented in this subsection)

#### A.) International instruments

The *Universal Declaration of Human Rights* is explicitly referred to in Article 10.2 of the Constitution as a primary source to be used when interpreting standard norms relating to fundamental rights.

The *International Convention on the Elimination of all Forms of Racial Discrimination* was ratified by Spain in 1969.

The *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* were ratified by Spain in 1977.

The *United Nations Convention on the Elimination of all Forms of Discrimination Against Women* was ratified by Spain in 1984.

#### B.) European instruments (and Spanish state of adherence to these)

##### General instruments

*European Convention on Human Rights* ratified apart from Protocols 4, 7 and 12

##### Race related

*Directive 2000/43/CE* – relating to the application of the principle of equal treatment of all persons regardless of their racial or ethnic origins. Crudely and incompletely transposed.

*Directive 2000/78/CE* – relating to the establishment of a general framework for equality of treatment in the workplace. Crudely and incompletely transposed.

*Directive 2003/109/CE* – relating to long-term resident status for third country nationals. Not transposed in any significant or meaningful way.

### **Gender related**

*Directive 2002/73/CE* – relating to the principle of equal treatment between women and men in terms of access to jobs, professional training, promotion and adequate conditions at work. Effectively transposed.

*Directive 2004/113/CE* – relating to equal treatment of men and women in accessing goods and services. Effectively transposed.

*Directive 2006/54/CE* – reformulation of gender equality policy in relation to employment rights. Effectively transposed.

## **2.2 Description of the gender anti-discrimination national framework**

The basic foundations for a national gender anti-discrimination framework are enshrined in the Spanish Constitution of 1978, Article 14, which declares that all Spanish citizens are equal before the law regardless of birth, sex, race, religion, belief or any other personal or social condition.

In the absence of other empowered executive bodies dedicated specifically to the task, the development of a precise doctrine of the meaning of equality and non-discrimination based on sex depended for almost three decades on the Constitutional Court. The Office of the Ombudsman<sup>10</sup> played an important role in this development as one of the key bodies responsible for monitoring compliance with the mandates of the Constitution.

The creation of the Institute of Women's Issues<sup>11</sup> (an autonomous agency responsible for promoting and furthering gender equality in political, cultural, economic and social life at a national level) by the then Socialist government in 1983 broadened the array of instruments available for increasing and implementing women's rights.

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<sup>10</sup> The Ombudsman's Office is a government institution dedicated to defending the rights and freedoms given in the Constitution of 1978.

<sup>11</sup> The Institute was placed within the Ministry for Work and Social Affairs (MTAS).

In spite of the positive influence of the Institute during its twenty-five years of existence it has not managed to ameliorate or eradicate many aspects of gender discrimination. Certain key indicators of social trends reinforce this point:

The number of cases of domestic violence leading to the murder of women has increased over the last ten years and now hovers at around 70 per year. The number of registered cases of sexual abuse, harassment and aggression has also increased from 5,647 in 1997 to 6,845 in 2007 (Instituto de la Mujer).

Since the new law on domestic violence was passed in 2005 complaints of gender-based crimes have increased 18%. Although police and legal procedures for handling these types of cases and their general gender awareness have improved considerably, the new courts designed to deal with such cases are overloaded and more than 20% of requested protection orders are refused (Amnesty International Report on Spain, 2007).

In 2005 14.9% of women experienced some kind of sexual harassment. 4% (340,000) had suffered a serious incident and 2.2% (185,000) a very serious incident. Only 1.6% of women harassed handled the case through official channels (Ministry of Labour and Social Affairs).

In 2002 discriminatory wage differential remained at 17%. Women continue to hold significantly fewer senior management positions than men (Instituto de la Mujer).

#### **Additional specialized institutional bodies**

*National Observatory for Gender Equality* (founded 2000).

*National Observatory of Violence Against Women* (founded 2006).

*Inter-Ministerial Commission on Gender Equality*, with gender equality units in each Ministry (approved 2007).

*Council on Women's Inclusion* (passed into law in 2007).

*Ministry of Equality* (created 2008).

#### **Legal landmarks**

The Legal Code of 1995 classified discrimination based on sex, family situation, sickness or incapacity as a Criminal Offence punishable with prison sentences and disqualification from the holding of public offices and the practising of certain professions.

Article 153 (part of the 1999 reform to the Legal Code concerned with the protection of victims of domestic or family abuse) established prison sentences for acts of physical or psychological violence directed against spouses and partners.

LO 1/2004 of 28 December concerning Protective Measures to Discourage Domestic Abuse toughened penalties on gender violence and increased the number of police officers and courts dedicated to gender violence. It also increased measures to promote prevention, support, consciousness-raising and gender equality informed education.

LO 3/2007 of 22 March, Law for Genuine Equality Between Men and Women. The law defined the key concepts and categories (e.g., direct/indirect discrimination, sexual harassment); established the legal guarantees for the stated rights as well as the parameters for affirmative action; incorporated gender rights transversally across the whole system of public governance; and formalized balanced quotas of men and women in public and electoral bodies. Significant new developments contained in this law included:

- the establishment of non-sexist language for public institutions and requirement to include the variable of 'sex' in all government commissioned studies and statistics.
- the recognition of the right to combine professional, personal and family life based on the promotion of shared family responsibilities between men and women.

### **2.3 Description of the race anti-discrimination national framework**

To refer to the set of legislation and specialist bodies dealing with race anti-discrimination as a national framework would be to somewhat overemphasize the element of organized planning involved in the setting up of these instruments. Apart from the non-existence of a coherent, coordinated and capacitated national framework there is also a conceptual confusion as to what type of discrimination the disparate

instruments in existence are meant to be combating. There is a lack of clarity as to whether the framework is only for third country nationals or whether it should also be addressing the problem of internal racism directed at the Gitano community (according to a CIS national survey, the most socially marginalized group in Spain in 2006) and second generation and internal immigrants.

In order to be in line with the agreement made at the Treaty of Amsterdam (1997) the last three Spanish governments were theoretically obliged to work towards the objectives outlined in Article 13 of this directive, objectives aimed at the integration of immigrants and the full legal recognition of their civil and political rights. In reality, though, very few progressive policy developments have been incorporated into government policy over the last ten years. Many of the rights of third country nationals still depend on the relatively abstract and loosely defined articles contained within the 1978 Spanish Constitution in spite of the fact that this was written before the phenomenon of large-scale external immigration had become significant in Spain (8.7% of the population appearing in the 2006 census were of overseas origin).

The reformulation of the legal code in 1995 somewhat tightened and firmed up the interpretations of Constitutional law but still left a vacuum in terms of properly implemented measures designed to effectively combat race-discrimination. EU directives based on Article 13 should have helped in this process but the directives were initially not followed and were then applied in such a way that they lost most of their instrumentality. In fact the resulting laws turned out to be more repressive than its predecessors in many respects and left the real complex social situation on the ground unaddressed.

The lack of a positive socially-engaged strategy to accommodate the arrival of ever-increasing numbers of immigrants (totalling almost 4 million by 2007) led to various ad hoc solutions to what was publicly presented as a growing ‘problem’. Faced with the presence of hundreds of thousands of non-legal but de facto resident third country nationals successive governments have chosen to implement periodic but irregular large-scale ‘normalizations’. Instead of implementing a permanent and coherent system to legalize resident third country nationals, then, consecutive governments have decided to maintain restrictive visa, work and residence permit policies, only granting legal

rights on an unscheduled and unpredictable basis. This has led to a chronic structural situation with 750,000 to 1,000,000 irregulars at any one time.

The scale of the phenomenon and the way it has generally been negatively presented by the politicians and the media as a social problem has given rise to an increase in racial prejudice and social tension (70% of news on immigrants in 2006 was negative according to a study by the University of Salamanca) – both factors used by the government to justify the reinforcing of borders and the criminalization of what is essentially a social issue (half of the homeless population is now from the immigrant population compared with 15% ten years ago). By conceptualizing the situation as the result of a failed containment policy leading to a mass influx of ‘illegal aliens’, the government has justified its own abdication of social responsibility and its decision to hand over responsibility for the handling of the situation to the security forces and the courts. A crucial part of the structure of the national framework for race anti-discrimination therefore depends on institutions that are (in spite of various positive initiatives to promote, for example, cultural awareness, social mediation techniques and community policing) widely perceived to be indifferent or even hostile to potential complainants. These are, after all, the same bodies that enforce expatriations and who do not always react sympathetically to the complaints made by (or sometimes even the mere presence of) third country nationals.

As a consequence of the above the work of defending the rights of these citizens and providing support services has largely fallen to NGOs (most importantly, SOS Racism and the Movement Against Intolerance), unions (CCOO and UGT, in particular) and regional and municipal government (e.g., the Generalitat of Catalonia and Barcelona City Council) who, however, do not necessarily have the resources to carry out these tasks.

#### **Additional specialized institutional bodies**

The creation of a *Spanish Observatory Against Racism and Xenophobia* intended to carry out studies and analyses and to make recommendations for policy changes was legislated for by LO 4/2000 on 11 January 2000. This organization was constituted in 2006 but is not yet fully operational.

*The Council for the Promotion of Equal Treatment and Non-Discrimination of People on the Grounds of Racial or Ethnic Origin* (which forms part of Directive 2000/43/CE) has still not been fully constituted and convened.

### **History of legal framework**

Spanish Constitution of 31 October 1978, Article 14, declares all Spanish citizens to be equal before the law regardless of birth, sex, race, religion, belief or any other personal or social condition.

Non-Spanish citizens residing in Spain are also guaranteed certain essential and invulnerable rights by the Constitution regardless of their legal situation:

- Right to human dignity (Article 10)
- Right to life and physical and moral integrity (Article 15)
- Right to privacy (Article 18)
- Right to ideological freedom (Article 16)
- Right to individual freedom (Article 17)
- Right to effective legal counsel (Article 24)

The Legal Code of 1995 classifies discrimination based on ethnicity, religion or ideology as a Criminal Offence punishable with prison sentences and disqualification from the holding of public offices and the practising of certain professions. Racial violence is not distinguished as a separate crime, though. Within the current law racial motive is regarded as an aggravating circumstance which, if identified, ensures the severest of the available punishments for the crime.<sup>12</sup> However, as case law shows, the application of this criterion is extremely rare.

Law LO 4/2001 establishes the Right of Petition as a fundamental right. Legal redress against discrimination on the part of persons, institutions or the administration can therefore be sought by any person regardless of nationality or legal status.

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<sup>12</sup> See 'Report on the Implementation of Article 13 in Catalonia', Lola Valles, 2004.

Law LO 4/2000 was designed to extend the rights of foreigners in both regular and irregular administrative situations but was never properly put into force as it was replaced by Law LO 8/2000 which restricted to regularized immigrants only the major part of the rights envisaged for all non-Spanish citizens in LO 4/2000. The new reform meant that irregular immigrants were denied the right of freedom of assembly, demonstration, trade union membership, to strike, effective legal aid, non-obligatory education and family regrouping.

Law LO 62/2003 of 30 December 2003 represented a partial and ill-conceived transposition of EU Directives 43 and 78. In spite of its shortcomings the law did, however, include some features that will be progressive if actually properly implemented. The law:

- Introduces definitions of direct and indirect discrimination, the principle of equality and harassment into Spanish legislation.
- Reverses the onus of the burden of proof
- Recommends the modification of Spanish laws dealing with employment and social integration to put them in line with European directives.
- Proposes the inclusion of measures for promoting equality and fighting discrimination in collective agreements between government and business and trade unions.

## **2.4 Double discrimination**

The national frameworks for gender and race anti-discrimination are not coordinated in any meaningful sense, nor does this type of coordination appear to be an immediate priority being discussed by stakeholders. There is a general awareness that gender and race anti-discrimination movements still have a long way to go and a feeling that widening the scope and complexity of the struggle further at this point might be overly ambitious.

The problem of double discrimination appears only to be practically addressed very tangentially within national level agencies. National women's organizations, for example, do highlight the particular plight of immigrant women workers but do not fully expose the intersectional nature of the discrimination suffered. The high rates of drop out and absenteeism from school along with the low educational performance of girls from the Gitano community are also recognized as stemming from double discrimination but, in a similar way to the case above, the complex social roots of the problem are somewhat overlooked.

The only agencies specifically dedicated to dealing with double discrimination tend to appear at the local level and, at present, most commonly consist of collectives of immigrant or Muslim women.

From the legal perspective, in law technical double discrimination does not exist and the idea of applying the concept of *intersectionality* in court in the present environment is inconceivable. Although gender motivated crimes are legally recognized and distinguished as such, race crimes are not. This leaves a legal void which will have to be addressed before double discrimination and *intersectionality* can hope to be incorporated into the legal discourse.

### **3. National specialised bodies and support organizations**

#### **A.) National bodies**

##### **Race**

In Spain the main specialised body, the *National Observatory Against Racism and Xenophobia* ([www.oberaxe.es](http://www.oberaxe.es)), is linked to the MTAS (Ministry of Work and Social Affairs) and is strongly focused on the subject of immigration. Regional government and other public organisms such as Ombudsman's offices deal with the feedback generated in the form of public complaints. Stakeholders: Amapola Blasco, Marcelino Corbacho.

## Gender

The main national bodies created for Gender in Spain are known as the: *Instituto de La Mujer* (Women's Institute - IM) and the New Ministry of Equality created 2008. The IM was also placed within the MTAS.<sup>13</sup> Other national bodies include: *National Observatory for Gender Equality*; *National Observatory of Violence Against Women*; *Inter-Ministerial Commission on Gender Equality* (with gender equality units in each ministry); *Council on Women's Inclusion*. Stakeholders: Lorenzo Villanua, Maria Rosa Peris, Encarnacion Orozco.

The Ministry of Equality was created this year by President Zapatero directly after the elections. The new Minister for Equality is Bibiana Aido. Although it is too early to state anything definitive about its competencies, its broad task is to deal only with gender equality issues. General equality issues related to immigration may be addressed in the future. The Ministry at present is focused solely on women's issues and the development of policies to include their presence in the labour market and to promote their full equal rights in society.

## Other national bodies of relevance

All the Police: the Police Force was created to protect the free exercising of the public's rights and freedoms and to guarantee public safety. In Spain the Police bodies are made up of the following: Guardia Civil, Policia Nacional, Policia Local, Mossos d'Esquadra (Catalunya), Ertzaintza (Basque Country) and the secret services. Part of police training is addressed to respecting basic rights. Stakeholders: Blai Guarne, Lola Valles.

Hospitals, Health Centres and Hostels: the services offered by these centres are provided regardless of gender or race. Hospitals treat emergencies cases for any patient, although specific services beyond the minimal can not be provided if the patients are not at least registered in a Spanish city. Municipal and regional governments fund free hostels and public dining rooms for homeless or discriminated people. The Social Integration Services do their best with limited resources to cope with the large numbers

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<sup>13</sup> The Institute has recently moved out of the city centre and their webpage and centre for documentation does not have 100% on-line service making it difficult to access information.

of people who need places to sleep, eat and shower. These services are provided for free, and legal status in Spain is never required in order to receive help.

## B.) NGOs

### Relevant for race and gender:

- **Cruz Roja**, is a supporting body. Created in 1864 in Spain, it has developed humanitarian tasks over the last 138 years. It is not linked to the defence of race or gender in itself but covers these areas by applying its own human rights constitution and Red Cross impartiality to defend human rights. They have provided a springboard to help immigrants arriving in *pateras*<sup>14</sup>. They play an important role providing assistance and relief to the immigrants who arrive in Spain. Stakeholder: Juan Manuel Suarez del Toro (director).
- **Asociación Stop Discriminacion**, is a supporting body created by different lawyers interested in acting pro-bono. Based in Madrid.
- **MUGAK**. *Mugak* (word for *Borders* in Euskera) was founded on 2001. It is linked to and supported by SOS Racism; it is active fighting racism in Spain but also in fighting discrimination and is very effective when networking with similar institutions and presenting a 'positive' daily report of the news found in the media. Stakeholder: Ainitze Agirrezabala.
- **Movimiento Contra la Intolerancia**, was founded in 1993. Older than SOS Racism, has spread relatively fast across Spain and now has 10 offices in different important cities across the peninsula. Stakeholders: Esteban Ibarra, Laura del Villar.

### Relevant for race

- **SOS Racisme**, founded in 1989 in Barcelona. This NGO has its own branches in different Spanish communities, under the same name. SOS Racism, results from a genuine concern felt by various intellectuals, journalists and academics who perceived the need to put together an organization to raise awareness while providing information about the rights listed in the Constitution. Aiming to educate Spaniards on race and eventually double discrimination, SOS

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<sup>14</sup> Basic, often unseaworthy, floating devices

Racism has become an icon and example for many other NGOs in Spain.  
Stakeholder: Miguel Pajares.

- **Fundación de Secretariado Gitano (FSG)**, as explained by the director, the FSG endeavours to protect the rights of the Gitano population in Spain while providing information on rights, laws and events. Stakeholders: Raquel del Rio, Carmen Mendez, David Maranon, Marti Marfa.

### Relevant for Gender

- **Fundacion de Mujeres**, this Foundation is an NGO that has as the specific objective of implementing the new legislation related to gender and equality. Aiming to educate as well as to reach as many levels of the population as possible, it is a very active group represented in each region and has many branches all over Spain. These are connected through an extensive network, which rivals that of the *Instituto Nacional De la Mujer*. Stakeholder: Marisa Soletó.
- **MAGEEQ**, well known for introducing gender mainstreaming in Spain, is part of a European project on policies of equality of gender and is linked to the QUING.<sup>15</sup>
- **Relevant and active NGOs**. In Spain there are some specialised NGOs that appeared over the last decade lead by immigrant women (An interesting point here is that very often these organizations tend to be focused on in fighting double discrimination and promoting *intersectionality*)

**The Unions** (UGT, CC.OO. and USO<sup>16</sup>) perform an important role putting pressure on the government forcing it to deal with issues, especially those concerning gender in the work place and work discrimination determined by race or origin.

To resume: the national bodies appear to have mainly pedagogical objectives rather than taking practical measures. The new Ministry of Equality is designed to start addressing this lack of policy implementation. On the subject of racism, the government needs to create a more effective body to deal with it. The OBERAXE is simply an observatory

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<sup>15</sup> <http://www.quing.eu/>

<sup>16</sup> The USO (Union Sindical Obrera) recently requested the elimination of the mandatory field of 'nationality' from official forms.

institutionalized under the subdivision of Immigration in the Ministry of Labour and Social Affairs.

## 4. Description of key data sources useful to the study

Here we indicate some of the key relevant data sources for the study. Since this is multidisciplinary research it is difficult to exactly determine which will be the most important sources we will focus on.

To determine the State of the Art for Spain on gender and race, we need to examine official reports, statistics and carry out personal interviews.

The data sources in terms of figures are gathered from the INE (National Institute of Statistics) and also from SOS Racism and the Foundation for Women.

The Ministry of Labour and Social Affairs have commissioned different reports on race and gender from different centres of research, and these reports and the experts who compiled them are the ones we are counting in order to effectively combine quantitative and qualitative data:

- MTAS (Ministry of Labour and Social Affairs) Including *Instituto Nacional de la Mujer* and MTAS commissioned research institutions: CIDOB<sup>17</sup>, CSIC<sup>18</sup>, IESA<sup>19</sup>

Apart from the above an important part of the research in terms of data sources will be provided by the set of interviews to be held with experts and stakeholders:

- Academic researchers and scholars.
- Case laws, legislation, lawyers, Ombudsman offices, legal complaints registered by national bodies and support organizations.

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<sup>17</sup> Centro de Investigaciones de Relaciones Internacionales y Desarrollo.

<sup>18</sup> CSIC, Consejo Superior de Investigaciones Científicas

<sup>19</sup> Instituto de estudios sociales avanzados

- The Police: *Guardia Civil*, *Policia Nacional*, *Policia Local*, *Mossos d'Esquadra* (Catalunya), *Ertzaintza* (Basque Country) and the Secret Services.
- Experts from national bodies and support organizations

Other key data sources will be:

- Revista de Economía Española*, (Spanish Economic Review)
- Informe Anual del Banco de España*, (Spanish Bank National Report)
- Media and cinema

In addition, we are intending to incorporate our own first hand experience as researchers into the study including encounters with the police, real street situations, and everyday life. They will provide a data source to act as a contrast to documented material.

## **5. National literature review on racism and gender discrimination debate**

### **A.) On gender**

#### **Current debate and relevant research**

There is an extensive and growing literature on gender discrimination in Spain. The sheer quantity of material in circulation and the consistency of production over time demonstrate the importance attributed to gender discrimination at both the academic and institutional level. The fact that this literature is constantly being reviewed, revised and updated keeps the issue in the news and in the public eye.

To an extent debate and research are media and policy driven and are, therefore, normally of particularly topical interest. The fashionable and popular subjects of study tend to be the subjects about which journalists are writing articles and for which reports are being commissioned and research grants awarded by public bodies.

The flagship topic over the last ten years has been, without doubt, domestic violence, a powerful symbol of the negative effects of gender discrimination. The number of publications on this subject is extremely high and from a theoretical perspective the topic is covered from every possible angle:<sup>20</sup> history of gender discrimination; gender roles and socialization; the nature of the power relations between the sexes; the construction of masculinity; presentation in the media; physical and psychological impact; relation to human rights issues etc.

These studies tend to be written by academics, feminist scholars and special interest journalists with most of the work being funded directly or indirectly by public institutions. Despite the quality of much of this material the general literature still lacks a coherent synthesis effectively combining the different theoretical standpoints relating to the issue and the actual social reality encountered on the ground.

Although the extent of the material on domestic violence is not surprising (given its impact and its consequently high profile), what is surprising is the relative absence of material on the mass phenomena of sexual harassment at work, discriminatory wage differentials and prostitution and trafficking in women. It seems likely that these topics are not so commonly handled for a variety of reasons: (1) the difficulties experienced when undertaking theoretical analysis of such large scale, endemic problems; (2) the unfashionable and apparently intractable nature of certain social problems; and (3) the potential obstacles encountered during research hindering the collection of statistically and qualitatively reliable data.

Another point worthy of mention here is the tremendous influence of the Institute for Women's Affairs when setting the research agenda in general. Over the last two decades there has been a dramatic increase in academic feminism mainly due to the promotion and funding of women's studies by the Institute. Apart from this positive aspect, though, there has also been a negative side effect to this, namely the limited material investigating and critiquing the activities of the Institute itself. This lack of a self-critical eye has led to a shortage of studies looking into the institutionalization of

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<sup>20</sup> In the form of documentaries and general-release films as well as articles, reports and books.

feminism and the strategies, such as gender mainstreaming, on which this institutionalization is based.

A current trend that is noticeably popular at present consists of studies on the reconciliation of professional, personal and family life, revisiting the issue of the importance of sharing the domestic workload in order to achieve genuine gender equality. There is a rapidly growing body of contemporary work on this subject stimulated by the 2007 Law on Equality and current government policy informed by the Institute of Women's Affairs. The recent creation of a Ministry for Equality (headed by a woman) and the presence of more female than male ministers in the present government has generated media interest and brought the debate to public attention.

### **Existence and real impact of anti-discrimination tools**

The literature on the existence and impact of anti-discrimination tools is generally published by public institutions, women's organizations and support groups. This material appears in various typical formats: statistical studies detailing the changing incidence of discriminatory behaviours; research examining how cases of discrimination are handled by police, social and health services; investigations looking into the protection afforded by the law, the legal recourses available to complainants who have suffered discrimination and the actual legal procedures involved in court hearings; manuals of practical prevention strategies; and awareness-raising educational material promoting genuine gender equality.

As mentioned above a high proportion of this material addresses the problem of domestic violence. There is, therefore, an extensive literature on the practical handling of, support for victims of, and strategies for the prevention of domestic violence. Compared to this, equivalent literature on sexual harassment at work and discriminatory wage differentials is in extremely short supply. The limited material on these subjects restricts itself to surveying and assessing (at irregular and long intervals) the current situation with, typically, very general policy recommendations.

It can be seen, then, that there is a very apparent gap in the literature as regards the application of anti-discrimination tools apart from those relating to domestic violence. Summaries of national policy and surveys of the status quo are plentiful but studies of

how to effectively implement national policy in local and specific cases are few and far between.

## **B.) On race**

### **Current debate and relevant research**

The current debate is still very much dominated by studies on the theoretical causes of racism, a subject that has now been in vogue for decades but which has failed to reach any definitive general conclusions concerning root causes or universality. Although the general interest in this debate has been consistent for some years the particular focus of the debate is constantly changing and is somewhat led by fashion. Current studies, implicitly accepting the ongoing and extensive presence of racism, tend to focus on the promotion of human rights as the antidote-like solution to the problem. Social analyses of the particular situations and social dynamics that generate racist attitudes and behaviour within communities appear to be out of favour and now represent exceptions to the general rule.

The related social debate concerning the controversy between integration and assimilation policies has been superseded and replaced by the elaboration of a multicultural discourse within progressive circles but continues to be relevant at the institutional level where 'integration' has become the new coverall watchword. Politicians with traditionally right-wing views on immigration have had to abandon *assimilationist* rhetoric because of its chauvinistic connotations but hide a not-much-changed conservative agenda under the rubric of 'integration'. The positive associations of the term 'integration' allow public administrators to dress up conservative social policies as progressive ones, thereby freeing them from the obligation to adopt an approach accepting the necessity and wisdom of a multicultural perspective. The uncritical acceptance of the term 'integration' in much of the literature demonstrates the lack of attention being paid by social analysts to political demagoguery, the opaqueness of bureaucratic language and the questionable handling of racist discrimination on the part of the media and the effects all these have on public opinion.

The key issue in contemporary social debate, then, can be seen to now centre on the public representation of the tension between large-scale immigration and (apparently) low levels of social integration. By accepting these terms for the debate, however, even

liberal social analysts have fallen into the trap of oversimplifying the issue. Much of the current literature, for example, fails entirely to mention the discrimination suffered by the 650,000-strong Gitano community or to examine the situation of second generation and internal immigrants.

Indeed, even authors sympathetic to immigrants' rights tend to present immigrants in an overly analytical way as legal 'anomalies' and 'factors' influencing the labour market. By doing so, such studies unintentionally adopt a reductionist stance failing to give sufficient weight to the personal histories, complex motivations and varied cultures of their subjects.<sup>21</sup> Many questions requiring a qualitative approach are thereby reduced to numbers, inevitably generating a sterile and morally uninformed debate. The agency MUGAK (Racism Research Centre, San Sebastian), recognizing the gravity of this problem, has started to publish positive news about immigrants as real people in order to counter this negative trend.

#### **Existence and real impact of anti-discrimination tools (for race)**

One problem of focusing so much on the theoretical causes of racism has been the drawing of attention away from the practical consequences of racism, namely discrimination, and the effectiveness of the instruments dedicated to combating this. There is a marked shortage of literature on this subject partly reflecting the lack of instruments actually operating in this field and partly reflecting the lack of the ongoing monitoring of developments.

The existence of numerous institutional reports on the recent changes in race anti-discrimination legislation is (ironically) indicative of the lack of progress being made in relation to the actual practical implementation of this new legislation. Perhaps unsurprisingly, then, most of the relevant and regularly updated statistical data comes from NGOs, unions and specialist European agencies periodic country reports on Spain. Although government ministries do commission and publish surveys and reports they do not do so on a regular and systematic basis making it difficult to keep abreast of changes affecting the current situation. The Centre for Sociological Research (CIS) also

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<sup>21</sup> Indeed, we have only been able to identify one recent detailed report on actual experiences of discrimination and this contained very little qualitative background information.

provides useful data but, again, not on a systematic or regular basis. The National Observatory Against Racism (OBERAXEN) does not presently fulfill a monitoring role. Information on extreme right-wing groups is available from the National Police but for data on racist violence researchers and analysts are very dependent on the complaints bureaus of SOS Racism and various municipal institutions. The Police do not categorize crimes according to whether there is racist motivation so relevant data is hard to trace; similarly, the law does not recognize race crime and only the high courts publish court proceedings so relevant case law is difficult to obtain.

The area where the government provides the most consistent monitoring is in the realm of the labour market. Annual reports produced on behalf of the Ministry of Work and Social Affairs present detailed statistical information on immigration, the labour market and the relation between the two. Similar periodic reports on housing, education and deportations by the relevant ministries would be particularly useful but at present are not produced. The Consejo General de la Abogacia (CGA) provides important information on ‘regularization’ and on the obtaining of work and residence permits while Police Training Schools supply reports documenting the effectiveness of new more culturally-aware training procedures

### **C.) On double discrimination**

#### **Current debate and relevant research**

Technical double discrimination and *intersectionality* are only now emerging as part of the current race and gender anti-discrimination debate. At present the discussion is restricted to describing what double discrimination and *intersectionality* are, outlining the potential advantages of this approach over previously adopted analytical frameworks and suggesting possible practical applications for these concepts in the anti-discrimination struggle. At present there is a very limited amount of published material in Spain relating to this topic although sociologists and anthropologists such as Jubany, Monnet, Bramon and Soler are now introducing the key concepts which had previously only been developed with reference to sexual orientation and disability.

#### **Existence and real impact of anti-discrimination tools (for double discrimination)**

Since the double discrimination and *intersectionality* analytical framework has not yet been either accepted or adopted in Spain there is no dedicated literature on the

implementation of this approach. The only tangentially relevant literature addresses cases of multiple discrimination (e.g., women immigrant workers and girls and young women from the Gitano community); this material has been produced by specialist NGOs or European agencies such as the European Commission Against Racism and Intolerance (ECRI).

## 6. Concluding remarks

### **Race discrimination**

Although the laws directed against race-discrimination are outdated, limited, insufficiently clear and sometimes even directly discriminatory themselves there is still little doubt that significant progress could be made even with these flawed instruments if there was a genuine political will to do so. Currently racism appears to be more of a social than an institutional concern.

Apart from the lack of any moves to pass more progressive legislation, then, the biggest problem which we have encountered is the failure to effectively implement the already existing legislation. This failure appears to be due to three main factors:

1. A significant proportion of the actual legislation appears to have been drawn up purely for the purposes of ‘window-dressing’ to satisfy the requirements of European directives and to placate the more liberal sector of the electorate.
2. Even when there was a political consensus that implementing changes was desirable the proposed reforms were never prioritized highly enough to merit the allocation of the resources necessary for the implementation to be meaningful.
3. In the few cases where resources have been allocated, these resources have mainly been dedicated to the creation of administrative level coordination agencies and specialist advisory bodies not to practical measures taken at community level such as, for example, properly legally supported and effectively publicized public complaints bureaus.

Other important concerns relate to the almost total absence of a meaningful social debate, an absence which has led to discontinuities between social policy and dominant societal values and the concomitant risk of social conflict this inevitably gives rise to. Politicians and the media, in particular, appear to be guilty of polemicizing and oversimplifying the discussion (focusing almost exclusively on immigration), obliging human rights organizations to respond in kind. The resulting partisan propaganda war is basically unhelpful to both sides in that it essentially confuses and alienates the public. Positive responses to this problem depend on:

1. Broadening the debate in order to address people's real (and complex) concerns.
2. Allowing for the regular provision of data from independent bodies to impartially inform the debate and social policy.

In spite of various initiatives aimed at internal reform the attitude of the Security Forces towards racism remains contradictory and problematic.

### **Gender discrimination**

The gender anti-discrimination movement is now well provided for in terms of modern and extensive legislation, legislation that appears to reflect a genuine consensus that women's rights and gender equality are an important priority in today's Spain.

Despite this consensus discrimination in the domestic and professional sectors is still prevalent and deeply embedded. One of the important factors contributing to this contradictory situation is the heavy and continued emphasis placed on an institutional, top-down approach to combating gender-discrimination. The preponderance of administrative instruments incorporating and promoting gender mainstreaming is representative of a philosophy that has failed to fully appreciate the importance of grassroots organizations for effecting social transformation.

The importance of the functionality of employment law has also been underestimated. Given the grand scale of the problems represented by sexual harassment at work and discriminatory wage differentials and given the general recognition that these are extremely common phenomena we conclude that problems must exist in identifying and handling individual cases in practice. A study of how these procedures operate with a

view to a reform allowing for the creation of effective and user-friendly employment tribunals is a high priority.

Domestic violence remains a terrible problem despite the toughening of punitive legislation and the improving of complaints procedures. It appears necessary to continue the gender equality struggle on all fronts if there is to be any hope of a downturn in this phenomenon.

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*The GENDERACE Team is responsible for the content of the report which does not necessarily reflect the view of the Commission, nor can the Commission accept responsibility for the accuracy or completeness of information it contains.*