

Annex 2

National report Spain

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Introduction

This report is the result of data analysis from the Excel table for WP4 representing Spain with information of the 140 claims and complaints from which we have elaborated a set of statistics, tables and graphs. Several comments from experts have also been added in order to provide a wider range of information and recommendations from specialised bodies. In addition, we have included extra notes taken during the process of gathering cases which include internal organisation and treatment of complaints

- General figures for the number of complaints made annually and presentation of different sources used

OBERAXE is the sole organisation in Spain which collects data relating to racism and xenophobia, however, they do not record all cases of discrimination in the country. As there is an absence of unified criteria between specialised bodies when recording complaint data, we have formulated our own approach. We have done so by adding together all data from the following organisations and institutions dealing with claims and complaints made in 2007 in order to get a vague overview of the level of discrimination within Spain:

1. Ombudsman Barcelona- 23
2. Ombudsman Catalonia – 12
3. Ombudsman Spain – 21¹
4. Fundación Secretariado Gitano – 68
5. Antidiscrimination Office – 75
6. SOS Racism – 160
7. Movimiento contra la Intolerancia² –133
8. Asociación Stop Discriminación³ – 17

This makes a total of around 509 claims and complaints. However, we must bear in mind that at least other Ombudsman's Offices and SOS Racism offices are missing.

From all sources, we have used information from the Antidiscrimination Office⁴ of Barcelona City Hall, SOS Racism⁵ and Fundación Secretariado Gitano (FSG)⁶, both of which are NGOs with offices throughout Spain.

¹ Records 2007

Sectors	Individual	Group	Oficio ??	Total
Immigration and Foreign Affairs	1.282	---	18	1.300
Immigration law	1.167	---	15	1.182
Foreign Affairs	94	---	3	97
Racism and xenophobia	21	---	---	21

² This organisation annually publishes 4 reports covering all cases of "urban violence" and "racial violence" in Spain. From these we took the ones which refer to issues of gender, racism and homophobia. In some cases they take a more active role and have been assisting victims together with other organisations.

³ This organisation has little representation as some complainants did not locate the organisation in Spain and instead have made a complaint about an issue that occurred in Latin America. Further, this organisation does not provide much assistance to complainants "due to the lack of institutional support", according to the President. However, we have considered that it is worth including them because they also show the cases of many people who felt discriminated against.

⁴ www.oficinadiscriminacio.com

- Access to data and process of gathering cases

Access to data within Spain has proved rather difficult due to the lack of a consolidated and structured system of organising complaint data. Many NGOs and other institutions working with antidiscrimination issues exist. However very few of these have a formal complaints office for personal cases. Some of the organisations publish annual reports with brief descriptions of all recorded cases, however, these are not focused wholly on racial issues and do not specify how they have been dealt with.

In addition, many organisations do not have adequate economic and human resources, and often data is not structured for statistical or research purposes, and may require too much time to examine cases and extract the necessary information for the guide. This was the case for sources such as “Movimiento contra la Intolerancia” and the “Unidad Antidiscriminación Madrid”.

Finally, it is important to mention the restrictive Data Protection Laws existing in almost all organisations that we dealt with. This posed difficulties as we were denied access to all Ombudsman Offices. From the three sources within our sample, it was only in the Antidiscrimination Office that we were permitted access to original files. This has affected the results, as there is a marked difference between information from original cases from the Antidiscrimination Office and information from SOS Racism and FSG public records. In the latter two organisations, the records are presented in a format which serves to reinforce the objectives of the organisations in expressing dissent.

Almost all cases registered in the public records from SOS Racism have a medium or high degree of representativity of experience of racism. However, it is important to bear in mind, the way in which this information is presented, as the organisation holds team meetings to distinguish whether cases are based on issues of racism or not. Those that aren't based on racism issues are normally redirected to other organisations or institutions and thus, are not included in their public records. We believe that this may have a significant effect on the interpretation of the data.

For the purposes of our research, we were allowed access to all original files from the Antidiscrimination Office. These records revealed varying levels of discrimination, between those we perceived to be clearly indicative and those less so, to those we felt were unrepresentative of discrimination. At times, it proved difficult to interpret the records, especially when reading the notes provided by the different legal advisers in cases of varying descriptions of discrimination. To this extent, I have included a “degree of representativity” category in the Excel table as well as some notes relating to “perception” and/or “real” discrimination from information received from the Antidiscrimination Office.

⁵ www.sosracisme.org

⁶ www.gitanos.org

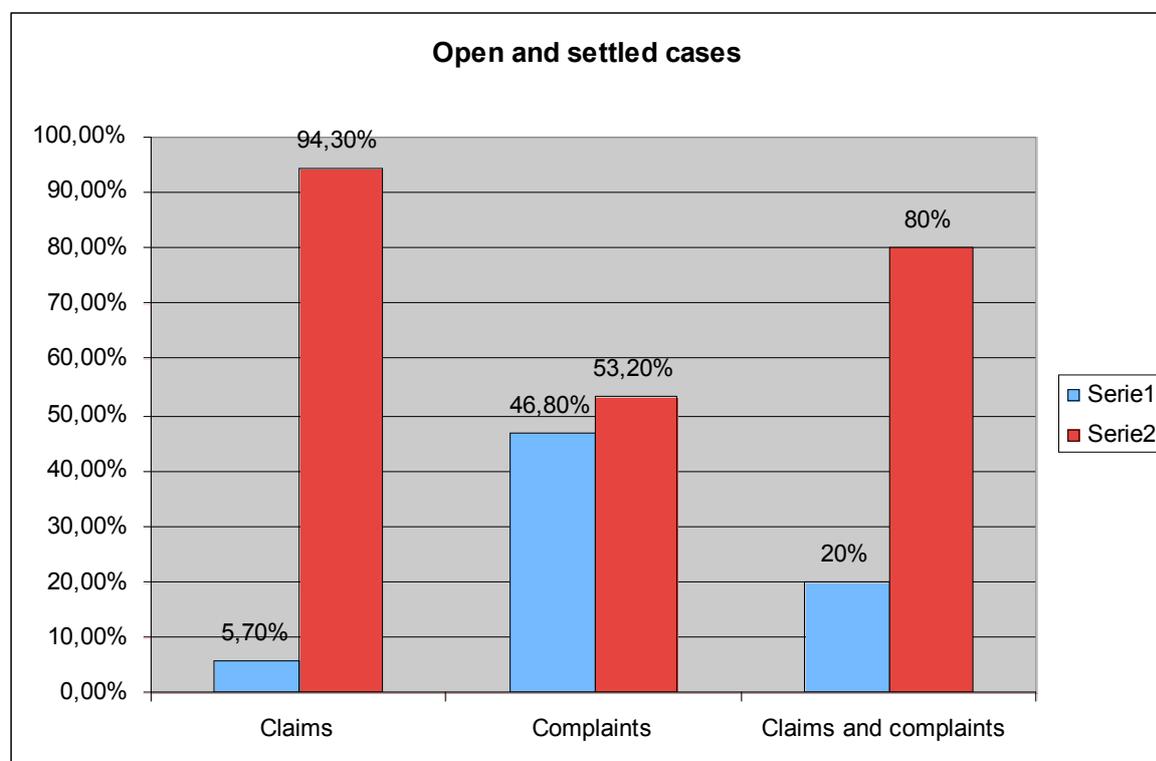
- Classification of cases

Found in the table below, are the total numbers and percentages of the number of claims and complaints registered in our sample. Please note that the number of claims is almost double to the number of complaints, this is because they are more common and as a general rule, the three sources that we have dealt with view mediation or conciliation as a more effective means of addressing issues than the legal process.

% Claims and complaints	Total	Percentages
Claims	88	62,85%
Complaints	47	33,60%
Claims and complaints	5	3,57%
Total	140	100%

It is worth mentioning that from all claims made within Fundación Secretariado Gitano, the majority are from the victim of discrimination. However, there are several which the organisation has made on behalf of a group or the concerning the Roma community as a whole, this is especially the case in those claims related to the media.

The following graph shows data relating to open and settled claims and complaints. Note that there are a higher number of open complaints as these take longer to settle than open claims. This is a further reason why the organisations prefer not to take claims to court, in addition to the aggravation that this usually provokes to the victim.



Serie 1 = Open

Serie 2 = Settled

1. Presentation of the sample

The series of tables and graphs below reveal general information about complainants, such as age, country of origin, family status, residence status and socioeconomic status. The most indicative results are highlighted in red.

Age

Age	Total	Percentages (out of 70)
Juvenile	5	7,14%
18-25	10	14,28%
26-35	25	35,71%
36-45	16	22,86%
46-55	11	15,71%
56-65	2	2,85%
more than 65	1	1,42%
Unknown	70	
Total	140	

Considering that we have obtained data on the age of only half of the sample, we can see that people aged between 26 and 35 years old are the largest group in making complaints.

Country of origin

Country of origin complainant	Total	Percentages	Ethnicity
1. France	1	0,71%	
2. Germany	1	0,71%	
3. Spain	43	30,71%	31 Roma, 7 white and 5 unknown
4. UK	1	0,71%	
7. Western Europe	1	0,71%	
8. Eastern Europe	3	2,14%	
10. Algeria	3	2,14%	
11. Morocco	16	11,42%	
13. Ecuador	8	2,14%	
14. Colombia	7	5%	
15. Romania	2	1,42%	
16. China	1	0,71%	
19. Ghana	1	0,71%	
21. Sub-Saharan Africa	4	2,86%	
22. Indian Subcontinent	2	1,42%	
23. South/Central America	39	27,85%	
25. Other	1	0,71%	
26. Unknown	4	2,86%	
Total	140	100%	

Here we can see that the highest percentage belongs to Spain, as the majority of complainants belong to the Roma community. This is followed by members of the South/Central American community (mostly from Ecuador, Colombia and Argentina) and the Moroccan community.

Family status and residence status

Data concerning residence status and family status was difficult to establish as specialised bodies do not usually register it for reasons of privacy. We were able to collect more information about residence status (about half of the sample) as it was easier to deduce citizenship in those cases affecting Spanish Roma. We were only able to ascertain ‘family status’ data for 37 cases in which the majority were listed as either “married” or “single”.

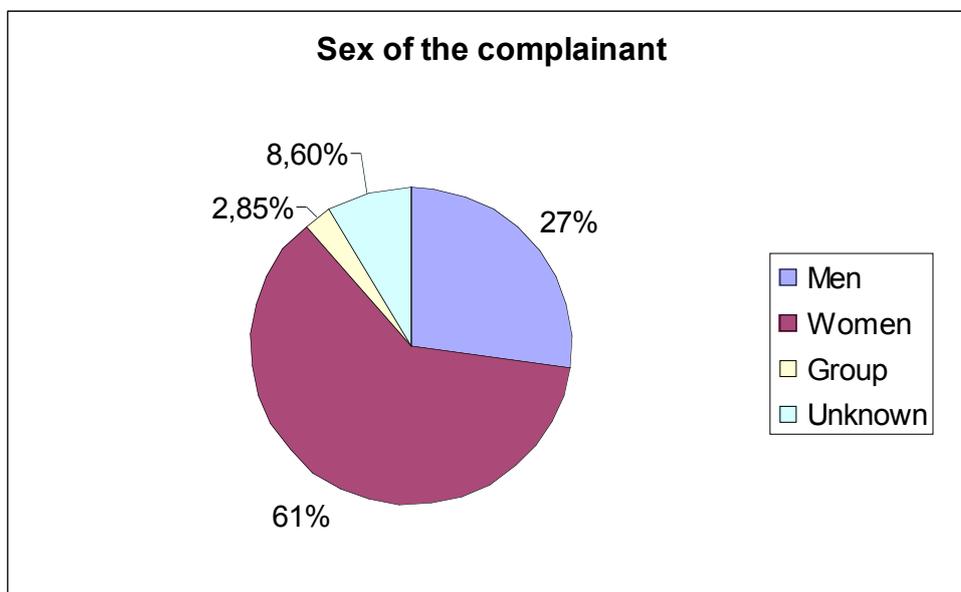
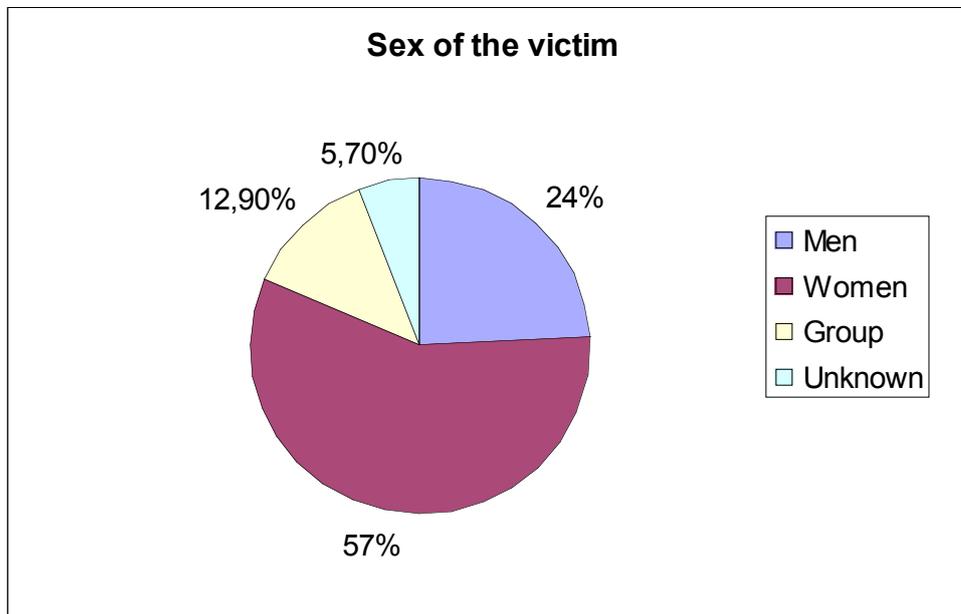
Residence status	Total	Percentages (out of 73 known cases)	Ethnicity
Citizen	58	79,45%	31 Roma, 8 white, 8 South/Central American, 7 unknown and 4 « other »
Temporary resident with work permit	2	2,73%	
Short-term resident	1	1,36%	
Provisional status	1	1,36%	
Undocumented	8	10,96%	4 South/Central American, 2 North African, 2 « other »
With expired documentation	2	2,73%	
Other	1	1,36%	
Unknown	67	47,86% (out of 140 cases)	
Total	140	100%	

Employment status and education

Information relating to the socio-economic status of respondents was also difficult to collect for similar reasons as described above. It seems that organisations do not seek to gather information concerning the level of education of complainants, as we were only able to determine it from 9 cases, 5 of which are in the category of “secondary education”. Employment status was easier to establish as there are a large number of cases in connection with the employment sector. Despite this, we reached a number of only 68 known cases, which, again, is half of the sample. From these, 44 are “employed”, 21 are “unemployed” and 3 are within “other categories”. If we look at the ethnicity of employed and unemployed persons, we can see that the two largest groups are Roma and South/Central American, which constitute the two largest ethnic groups in our sample.

Further comments on socio-economic status are provided in the ‘experience of discrimination’ section under “ground of discrimination” within this report.

- Main differences between women and men



By looking at the graphs above, we can see that the vast majority of victims and complainants are women. This is influenced by the fact that 60 out of 65 cases from the Antidiscrimination Office are female complainants, as during the initial phase of the research we believed that the sample was designed towards containing a higher percentage of women than men. As a consequence, most of our sample not being completely gender random, it is difficult to state whether patterns observed in the sample can be applied to society in general.

Having said this, we can observe some general figures and statistics provided by the organisations which we will test through our findings.

Contrary to the data presented, Antidiscrimination Office records reveal that from the 75 claims presented by immigrants, 45 have been put forward by men and only 24 by women.

This tendency is sustained in the annual records of SOS Racism. If we look at the statistics from last year, we can observe that there is a higher percentage of male European complainants with a legal status and a higher percentage of female non-European victims without full legal status⁷.

However, at the interview with Mar Llopis⁸, Director of the Office of Complaints of SOS Racism she has stated that women usually make complaints more when the sector of discrimination has been within the private spheres, such as neighbourhoods or goods and services. European women also make complaints more than European men when they have been the witness of a racially motivated action, especially related to attacks from extreme right-wing groups. It is difficult to state whether this pattern is also common for immigrant women.

Within the Roma community, we can see that complainants and victims are usually the same person, and in the vast majority, are women. This is reflected in the complaints registered by Fundación Secretariado Gitano. The 35 cases incorporated within our research were selected on a gender random basis, and we believe that this sample is representative. When interviewed for our project, Sara Giménez, Head of the Equality Department of the organisation revealed that approximately 70% of their records involve women. Roma women are much more likely to make a complaint than men within the community, as it could be said that it is women who have much more initiative in their own internal social structures. Ms. Giménez further stated that, “Roma women are the driving force of changes in our community⁹”.

It is worth stating that this organisation is currently focused towards the treatment of cases from the perspective of multiple discrimination, particularly in relation to gender. This is coordinated by the organisation’s Gender Department as an initiative towards the provision of a more inclusive solution to queries. Note that the 3 cases of multiple discrimination entered in the Excel table are derived from this organisation.

On the whole, there is no clear pattern amongst women complainants. European women including those from the Roma community generally make more complaints than European men when they have been witness of an act of racism, whereas immigrant women complain less than immigrant men although they might suffer more discrimination. At the same time, this pattern changes considerably when looking at the sector of discrimination. Further comments in this regard are included in the following sections.

⁷ <http://www.sosracisme.org/denuncia/oid.php#part7>

⁸ i/v UB-EX-1

⁹ i/v UB-EX-4

2. Use of resources

When evaluating the use of available resources made by victims of discrimination, it is difficult to determine the extent of both awareness and their utilisation. As a general rule, Roma victims of discrimination use the FSG as the primary organisation in registering a complaint. However, this usually occurs when an individual is already using other services offered by the organisation at which point they are informed of the existence of an Office of Complaints. SOS Racism appears to be a more recognisable place for immigrants to file a complaint in comparison to the Antidiscrimination Office. The latter seems to not be so visible within the immigrant community, but more so for society in general for other antidiscrimination issues. Other users of the Office may have also been redirected from other institutions belonging to a wider social network.

- Organisations involved, agents and contact persons

In the case of Spain, the main agents involved in assisting the victim are lawyers or legal advisers and psychologists within the mentioned organisations. The Antidiscrimination Office, which belongs to the City Hall, often has more resources than NGOs and provides the help of lawyers specialised in four different areas, whereas for example SOS Racism has only a lawyer dealing with criminal issues. The Antidiscrimination Office attempts to resolve all claims in working together with the victim until the process reaches a conclusion. In instances where victims choose to make a complaint in court, the Office usually redirects them to the “Juridical Orientation Service” so that they are provided with a lawyer who will follow the appropriate legal processes. However, this service is only applied within the municipality of Barcelona.

Alternatively, the Fundación Secretariado Gitano is a relatively large NGO with a presence in all 14 regions of Spain receiving substantial government funding. However within the organisation, it has been expressed that a lack of resources exists, as stated by Sara Giménez, Head of the Equality Department. As such, it remains that many Roma victims of discrimination are unrepresented in many stages of the legal process in regard to misdemeanours due to a lack of lawyers.

SOS Racism is a smaller NGO with fewer resources that often works alongside organisations in the field of social services in providing help to immigrants when basic necessities such as food, accommodation or psychological support are required.

While Trade Unions are not often involved in providing assistance to the organisations that we dealt with, their biggest presence has been in instances of discrimination occurring within the employment sector. Unions including CC.OO.¹⁰ or UGT¹¹ devote attention to immigrants and may be involved in the resolution of discrimination issues within their sector, however they are not recorded as systematically as within an office of complaints.

Almost all agents providing assistance to complainants are women, and victims are not required to pay for legal advice or psychological counselling.

¹⁰ <http://www.conc.es/cite>

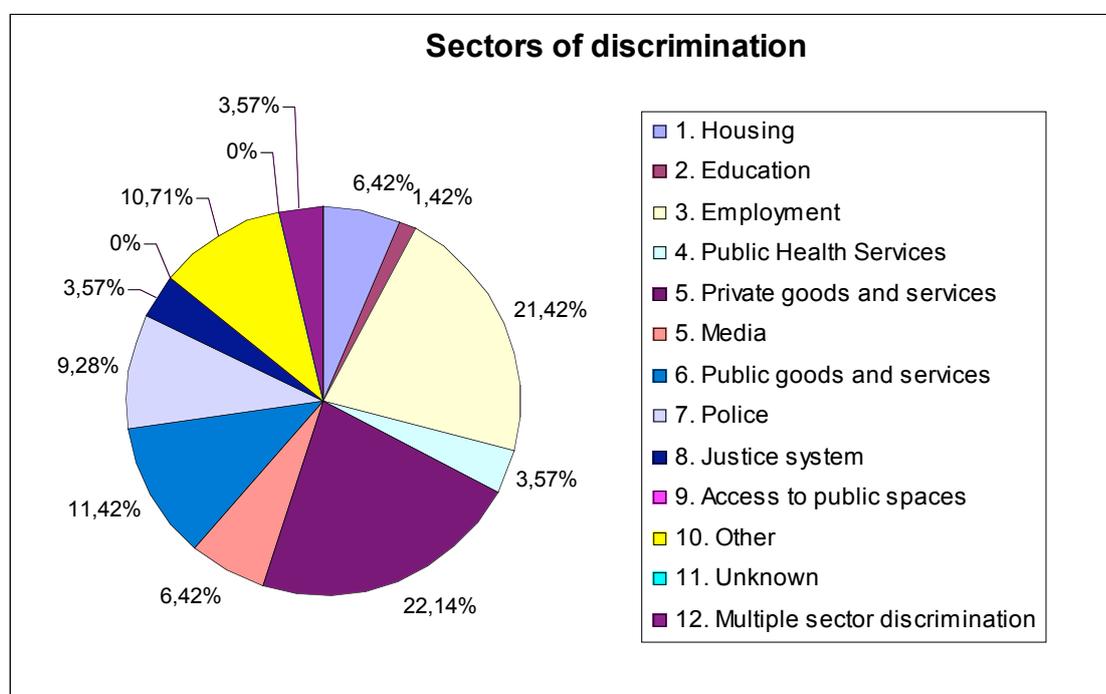
¹¹ <http://www.ugt.es/inmigracion/direccionugt.htm>

The involvement of contact persons in settling complaints is difficult to determine. Although we have observed that victims are usually accompanied by friends or members of their family, if their personal data is registered within the files, they are recorded as the complainant and rarely as the contact person.

3. The experience of discrimination

In this section we will analyse the experience of discrimination in relation to the themes of sectors, authors, grounds and types. We will also provide some statistics to illustrate our findings within the framework of a gender perspective.

- Sectors of discrimination



The sectors most affected by discrimination issues are:

- private goods and services (31 + 9 media cases)
- employment (30 cases)
- public goods and services (16 cases)
- “other” which mostly are recorded as private conflicts (15) and
- police (13 cases)

From these, men are more affected within the employment (29,4% versus 23,5%) and police sectors (26,5% versus 2,5%) and female victims are more frequent within the private goods and services (27,5% versus 23,5%) and the public goods and services sectors (13,75% versus 8,8%).

- **Author of discrimination**

Alleged author of discrimination's relationship to complainant	Total
Superior/employer	25
Colleague	4
Property owner	7
Neighbour	8
Passer-by	2
Law enforcement agents	18
Private goods or services provider	30
Public goods or services provider	28
Personal relations	5
Unknown	2
Multiple agents	11
Total	140

The author of discrimination in almost 45% of cases is an employee within the private or public goods and services sector. We must bear in mind that authors involved in education, public health or justice system must be added in the category of “public goods or services provider”. In employment environment, superiors and employers are much more the discriminatory agents in comparison to colleagues. And the other big group is law enforcement agents including private security agents.

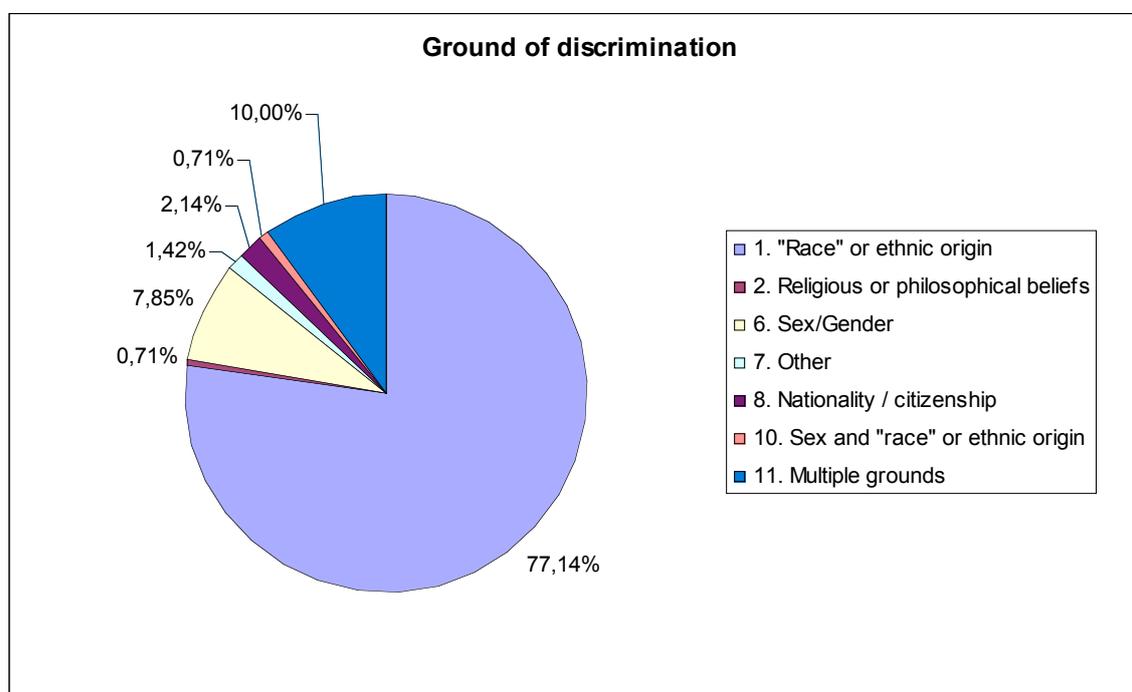
Sex of alleged author of discrimination	Total	Sex victim
Man	67	27 M and 35 W
Woman	33	3 M, 26 W and 4 « other »
Unknown	32	
Group or family	1	
Man and woman	7	
Total	140	

By looking at the sex of alleged authors of discrimination, we can notice a much larger presence of men. It is interesting to observe their relation with the sex of the victim. When the alleged author is a man there are more female victims, but when the alleged author is female, there are only 3 men victims and 26 women. This may be seen as an example of power relations existing between the sexes in situations where discrimination occurs.

It has proved difficult to retrieve data concerning the age of alleged authors of discrimination, as in almost all cases it has not been recorded. When evaluating the origin of these individuals, there are many situations in which it could be assumed that the alleged author comes from Spain due to the racist verbal and/or physical aggressions¹², however, this cannot be stated as definite. In these instances blank spaces have been left within the Excel table.

¹² An example of a racist verbal aggression is when a taxi driver rejects to take two Roma citizens and he shouts at them “you should all go back to your countries! Then things would be much better!” (not sure it is necessary to include this)

- Grounds of discrimination



As can be seen in our sample, the grounds of discrimination have been “race” or ethnic origin, in 77.14% cases. We feel that these results could be related to the type of organisations from which we have taken our sample and, generally by the ones existing that deal with a complaints’ system in Spain. It is very important to note that during the research that we have conducted for WP4, we have encountered institutions or organisations focused only on either different antidiscrimination issues or on racism. None of the organisations dealing with issues of discrimination within a gender specific focus have formal complaints offices, but more in the context of attention for victims of domestic violence or sex workers.

From a total of 105 cases in which the grounds of discrimination was ethnic origin, 31 belong to men, which out of a total of 34 men victims represents 91%, whereas the 50 cases of women represent 62.5% from the total female victims. Despite the difference in percentage between both sexes, these results demonstrate that in many cases, immigrant women may first identify ethnicity rather than gender as the key factor pertaining to the grounds of discrimination.

Cases recorded under “sex or gender” have been mostly private conflicts in which women were abused at some time or pregnant women were dismissed from work. We only found one single case of a male immigrant who felt discriminated against for his gender because he was denied information regarding his daughter’s health.

The category of “multiple grounds” constitutes the second largest percentage (10%) within our data and is very closely preceded by “sex and gender”, which is around 8%. We have considered “multiple grounds” to represent all combinations except “gender and race” which we have included as a separate category. The term refers to that of ethnic origin plus

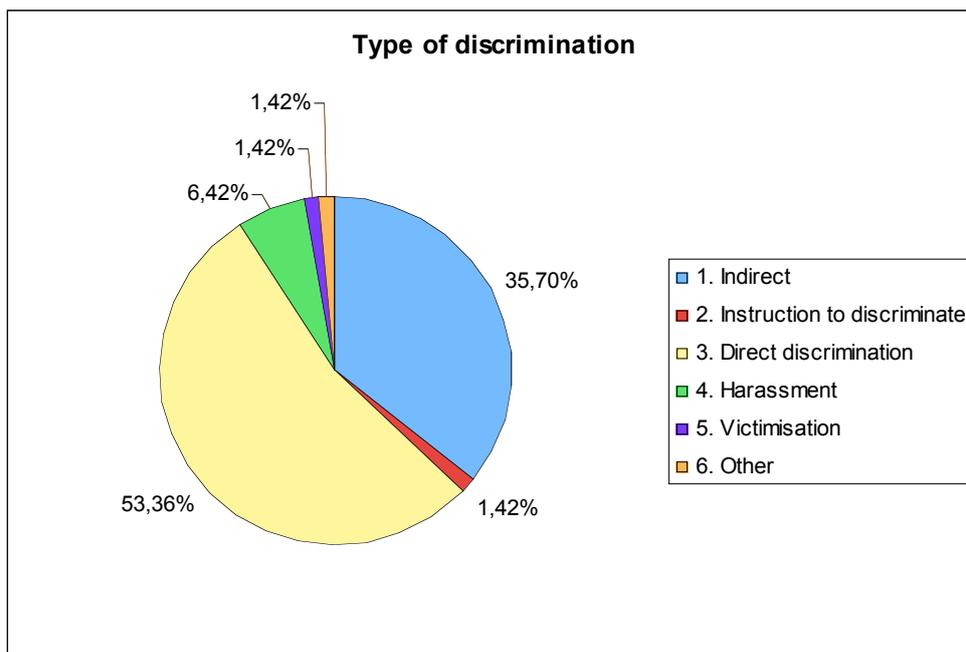
economic or legal status (particularly related to undocumented migrants), or alternatively, refers to a combination of gender, religion or age.

It is useful to point out that no organisation except FSG works within the paradigm of multiple discrimination. In part, this is influenced by the fact that the law prohibits a consideration of more than one ground of discrimination in court, but also because the paradigm is one that many organisations are either unaware of or do not utilise. This explains the presence of only 1 case categorised as “gender and race” within our data. Other cases may exist which may be categorised as that of multiple discrimination however, as specialised bodies have not treated and/or recorded them as such, we have only considered one single ground of discrimination.

Several experts (that we have made contact with) from specialised bodies have argued that two extra factors should be included as grounds of discrimination¹³. Firstly, that of legal status which, as mentioned, is related to undocumented migrants and, secondly, that of socioeconomic status, both of which are usually interconnected. These sometimes may be the most dominant factors of discrimination (usually over ethnic origin) for many economic migrants that suffer discrimination, for example within employment. This is especially relevant considering that in Spain there is only a small number of “second generation” migrants and that the vast majority belong to the mass of economic migration from the last decade.

Members of the Roma community living in the suburbs of cities may be frequently subject to multiple discrimination related to their ethnicity and socioeconomic situation, as can be seen in the three cases presented in the Excel table.

- Types of discrimination



¹³ i/v UB-EX-1 and i/v UB-EX-4

When speaking of types of discrimination that we have encountered within our research, we can see from the graph above and the two tables below that as a general rule women and men suffer much more direct discrimination than indirect especially within the employment, police and private goods and services, sectors. However, we must bear in mind that in most of these cases, organisations have not specifically categorised them as direct or indirect discrimination. In addition, our sample does not include a single legal complaint that has been judged as an act of discrimination as such. It has been from using information from the files that we have employed our own interpretation and classification of cases under this typology.

Having said this, it can be seen that indirect discrimination occurs mostly within the private goods and services sector considering a high number of cases involving the media and secondly, in public goods and services. Note the higher frequency of indirect discrimination within the latter, in which we must take into consideration many cases such as instances where immigrants went to the Foreign Affairs Office to request a residence and/or a work permit and felt discriminated against not necessarily because they were badly treated, but because they were not given the information they had asked for.

On the other hand, harassment and victimisation, suffered more by women, takes place mostly within work environments and within neighbourhoods.

Type discrimination according to sex victim	Men	Women	Unknown	Group	Total
Indirect	11 (32,35%)	26 (32,5%)	8 (100%)	5 (27,7%)	50 (35,71%)
Instruction to discriminate		2 (2,5%)			2 (1,42%)
Direct	21 (61,76%)	41 (51,25%)		12 (66,6%)	74 (52,86%)
Harassment	2 (5,9%)	7 (8,75%)			9 (6,42%)
Victimisation		2 (2,5%)			3 (2,14%)
Other		1 (1,25%)		1 (5,5%)	2 (1,42%)
Total	34	80	8	18	140 (100%)

Sector of discrimination according to type of discrimination			
Sector	Indirect	Direct	Harassment
Housing	4	4	
Education	1	1	
Employment	8	17	5
Public Health	3	2	
Private goods and services	16 (8+8 Media)	21	
Public goods and services	12	3	
Police		12	1
Justice System	5		
Other	1	10	3
Combined sectors		3	
Total	50	74	9

4. Processing of complaints

In relation to the resolution of conflicts, the three bodies that we have consulted prefer means of mediation or conciliation to judicial proceedings, when possible. These can be especially effective when used within private spheres such as neighbourhoods, within the private goods and services sector or in employment cases. However, at various times, it may be more beneficial for the victim if the case is taken to court, especially in instances of racist aggressions which may be prosecuted by criminal proceedings. This is why we have many complaints from SOS Racism and FSG. These are usually related to enforcement agents or unnecessary references to Roma ethnicity, but compared to the whole sample it is still a low percentage considering that the 63% of the cases are claims.

During the course of our research, we have uncovered many cases in which methods of mediation or conciliation have been used in conflict resolution. This has mostly been the approach employed by the Antidiscrimination Office, who refer to these methods as “alternative management of conflicts” and consider them as the most successful means towards a holistic approach.

In regard with the current status of the case, we find 43 cases out of 46 where mediation was favourable to the complainant. There are 39 out of 88 claims that weren't resolved, but there was a “minor” investigation. This investigation was in many cases all what the organisation could have done according to their competences. To these we must add 10 claims more that weren't resolved because they were withdrawn.

From a total of 44 claims that were taken to court, we cannot achieve conclusive results. In 13 cases the manner in which they have been settled is unclear and they are still awaiting resolution. In 11 cases the ruling was in favour of the defendant, and only in 5 were in favour of complainant. There were also 7 claims that were dismissed.

On the whole, in those cases where police were involved, it is very common to find mutual complaints made between police and the victim of discrimination which end up duplicating the juridical proceedings and the rulings (one put forward by the police and the other by the complainant).

It is also common to discover processes being addressed concurrently, for instance, those people who go to SOS Racism or the Antidiscrimination Office once they have already put a complaint in the police station or in the court. These claims and complaints follow different methods towards the resolution of conflict and depending on the case, the different bodies involved in each case coordinate them in a more or less degree. As a consequence, this sometimes makes the reading process of records more difficult to understand.

According to the WP4 Guide, “actions that have been taken in relation to the environment” are not very common within our sample. This is because there are few cases where the judge could decide whether to move the victim to a new environment or to leave him/her at the same one with or without improved conditions. This can be illustrated by an instance that we discovered in which social services were able to relocate a young Moroccan person who experienced tensions within the family home due to religious differences.

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.