



**shadow report**  
**CEDAW interim follow-up \***

**July 2017**

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

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

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

These issues correspond to a selection made by the CEDAW Committee (articles 12.a, 21.b, 21.f, and 37.c) from the CEDAW Committee Concluding Observations report, in which the Committee requested the Spanish State to report on how it has progressed towards applying the recommendations in this intermediary period between reports. The recommendations whose implementations are analyzed are the following:

*21.a) To revise its legislation on violence against women to include other forms of gender-based violence, such as violence by care providers, police violence and violence in public spaces, workplaces and schools.*

*21.b) To provide mandatory training for judges, prosecutors, police officers and other law enforcement officials on the Convention and the Optional Protocol and on the strict application of criminal law provisions on violence against women and on gender-sensitive procedures for interviewing and treating women who are victims of violence.*

*21.f) To collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and the perpetrator.*

*37.c) To provide adequate treatment for women and girl asylum seekers with specific needs and adopt a gender perspective when developing programs for assistance.*

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

The following organizations are Signatories to this Shadow Report:

1. Abogadas para la igualdad
2. Acción para el Desarrollo y la Igualdad
3. ACCOES - Casa de Colombia en España
4. ACDESA Castelló
5. ADIBS - Associació de Dones de les Illes Balears per a la Salut
6. Agencia Comunicación y Género
7. AIETI (Asociación de Investigación y Especialización Sobre Temas Iberoamericanos)
8. AIRI (Asociación Internacional de Reflexología Infantil)
9. ALIA. Asociación por la Igualdad de Oportunidades entre Mujeres y Varones
10. Alianza Por La Solidaridad
11. Almena Cooperativa Feminista
12. Alquimia Feminista de Fuenlabrada
13. Alternativas Insólitas (Tertulia feminista)
14. AMESDE
15. Amigas Supervivientes
16. AMILIPS
17. Amycos.org
18. Área de Mujer de Asociación Libre de Abogadas y Abogados
19. Asamblea Feminista de Madrid
20. Asoc. PROMETEO - Hombres por la Igualdad
21. Asociación Lilith de Sobrevivientes a la Violencia de Género
22. Asociación ANDREA
23. Asociación Colectivo Urbanas
24. Asociación con la A
25. Asociación contra la violencia de genero Maeve
26. Asociación contra los vientres de alquiler (Acvial)
27. Asociación Cultural Social y Empresarial de Hispano Americanos en Valencia
28. Asociación de Asistencia a Víctimas de Agresiones Sexuales y Malos Tratos (ADAVASYMT)
29. Asociación de Mujeres Feminista Puntos Subversivos
30. Asociación de Mujeres Feministas Marcela Lagarde
31. Asociación de Mujeres Feministas Tomando Partido
32. Asociación de Mujeres Inmigrantes en Castellón-Amuinca
33. Asociación de Mujeres Internacional Costa del Sol
34. Asociación de Mujeres Juezas de España (AMJE)
35. Asociación de Mujeres Latinoamericanas AMALGAMA
36. Asociación de Mujeres Malvaluna
37. Asociación de Mujeres Montserrat Roig
38. Asociación de Mujeres Nerea
39. Asociación de Mujeres Separadas y Divorciadas de Valencia
40. Asociación de Mujeres Zuleima
41. Asociación Domitila Hernández-FADEMUR-Canarias
42. Asociación Dorotea
43. Asociación Egeria Desarrollo Social
44. Asociación Feminista Leonesa "Flora Tristán"
45. Asociación Humanos con Recursos
46. Asociación Intercultural KOLORE GUZTIAK
47. Asociación Leonesa Simone de Beauvoir
48. Asociación Mercedes Machado
49. Asociación Mujeres Gitanas ALBOREÁ
50. Asociación Mujeres por la Paz
51. Asociación Nosotras en el Mundo. Cooperación y Comunicación
52. Asociación para la Defensa de la Imagen Pública de la Mujer
53. Asociación Por Ti Mujer
54. Asociación Rural de Mujeres Tiemar
55. Asociación Servicio Doméstico Activo. SEDOAC
56. Asociación Social y Cultural para las Mujeres Mararí
57. Asociación Terapia y Genero
58. Associació Ca la Dona
59. ASSOCIACIO DONES ILLES BALEARES PER A LA SALUT (ADIBS)
60. Associació Hèlia, de suport a les dones que pateixen violència de gènere
61. C.UNESCO Málaga Centro de Educación, Cultura y Paz

62. Calala Fondo de Mujeres
63. Católicas por el derecho a decidir
64. CEIPAZ
65. Centro de Estudios e Investigación sobre Mujeres (CEIM)
66. Clásicas y Modernas, Asociación para la igualdad de género en la cultura
67. Club de las 25
68. Col·Lectiu Feminista Victoria Sau
69. Col·Lectiu 8 de Març
70. Col·Lectiu de Dones Feministes de Montcada
71. Colectiva de Mujeres Refugiadas, Exiliadas y Migradas
72. Colectivo Feminista Autónomo Las Tejedoras
73. COMFIN (Coordinadora de Organizaciones Feministas por la Igualdad en Navarra)
74. Comité de Culturas Lesbianas
75. Comité Reivindicativo y Cultural de Lesbianas
76. Confederación de Asociaciones de Mujeres del Medio Rural CERES
77. Confederación Sindical de CCOO
78. CooperAcció
79. Coordinadora de Mujeres de Valladolid
80. Coordinadora de Organizaciones de Mujeres para la Participación y la Igualdad. COMPI
81. Coordinadora ONGD España. CONGDE
82. Creación Positiva
83. Custodia en Positivo
84. Del Canto Chambers
85. DENON
86. Derechos humanos de las mujeres y desarrollo (DEHMUDE)
87. Dones de Xirivella en Acció
88. Dones Decidim PV
89. El Parto es Nuestro
90. En Clau de Dona
91. ENDOMadrid
92. Escola de Pensament Feminista Amelia Valcárcel
93. Federación de Asociaciones de Mujeres Arena y Laurisilva
94. Federación de Asociaciones de Mujeres de la Comunidad de Madrid (FAMCM)
95. Federación de organizaciones de Mujeres de Lorca
96. Federación Guadalhorce Equilibra
97. Federación Mujeres Jóvenes (FMJ)
98. Federación Mujeres Progresistas de Navarra
99. Federación Planificación Familiar Estatal
100. Federación Provincial de Asociaciones de Mujeres Ágora
101. Feminismos Entrepueblos Entrepoblos Entrepobos Herriarte
102. Foro de mujeres MIRaN
103. Foro Feminista de Castilla y León
104. Fórum de Política Feminista
105. Fórum de Política Feminista de Córdoba
106. Fórum de Política Feminista de Málaga
107. Fórum de Política Feminista de Murcia
108. Fórum Feminista de Madrid
109. Frente Feminista
110. FSS-CCOO
111. Fundación Anas
112. Fundación Atenea
113. Fundación Cruz Blanca
114. Fundación Mujeres
115. Fundación Triángulo
116. Galarazi Fundazioa
117. Grupo Antígona
118. Grupo Mujeres Av. Zarzaquemada
119. Haurralde Fundazioa
120. ICID (Iniciativas de Cooperación Internacional para el Desarrollo)
121. Incide (Inclusión, Ciudadanía, Diversidad y Educación)
122. Instituto de Estudios de Conflictos y Acción Humanitaria (IECAH)
123. InteRed
124. Kulunkari Hazkuntza Elkarte
125. La Volaera
126. Liceu de Dones Castelló
127. Lobby Mujeres de Izquierdas
128. Lunes Lilas
129. Malen Etxea, mujeres inmigrantes
130. Médicos del Mundo España
131. Médicos del Mundo Málaga
132. Médicos del Mundo Navarra
133. Medicusmundi
134. Mugarik Gabe

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| 135. Mujeres de Negro Contra la Guerra de Madrid   | 150. Plataforma Unitàra contra les violències de gènere  |
| 136. Mujeres Jóvenes de Asturias   | 151. Plazandreok   |
| 137. Mujeres Jóvenes de la Región de Murcia: 8 de marzo (MUJOMUR)                          | 152. Red AMINVI  |
| 138. Mujeres Juristas THEMIS   | 153. Red de Mujeres Latinoamericanas y de Caribe en España                                     |
| 139. Mujeres Pa'lante  | 154. Red de ONGD de Madrid   |
| 140. Mujeres por la Salud y la Paz   | 155. RedGFU Red cultural para la fraternidad humana. Centro de Yoga y Cultura Integral Salomón |
| 141. Mujeres Supervivientes de violencias de género desde el sur construyendo la igualdad. | 156. Secretaria de Dones de CCOO de Catalunya  |
| 142. Nosotras Mismas   | 157. Secretaria de la Mujer de CCOO de Málaga  |
| 143. Observatorio de Igualdad de Género de la URJC   | 158. SOTERMUN  |
| 144. Otro Tiempo   | 159. SOTERMUN Madrid   |
| 145. PDN (Plataforma pro Derechos del Nacimiento)  | 160. STECYL Valladolid   |
| 146. Plataforma Abolicionista Canaria  | 161. TAMAIA. Viure sense violencia   |
| 147. Plataforma Cedaw Sombra País Valencià   | 162. Unión General de Trabajadores   |
| 148. Plataforma contra los malos tratos a mujeres Violencia Cero                           | 163. Unión Sindical Obrera   |
| 149. Plataforma Igualdades   | 164. Unión Sindical Obrera de Madrid   |
|  | 165. Women's Link Worldwide  |
|  | 166. Xarxa de Dones per la Salut   |

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## ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS REGARDING PERPETUATION OF GENDER VIOLENCE

### 1. LEGISLATIVE REFORM (#21 A CONCLUDING OBSERVATIONS)

#### 1.1 State legislative reforms are still pending

Organic Act 1/2004, 24 December on Comprehensive Protection Measures against Gender Violence, hereafter referred to as the Violence Act, has not been adapted in order to guarantee and protect the rights of women that suffer forms of violence other than violence perpetuated by current or former intimate partners. This is despite the implications of ratifying the Istanbul Convention in 2014, as well as the points laid out by the United Nations Working Group on the issue of Discrimination Against Women in Law and in Practice, and the recommendations whose analysis is the subject of the present report.

In this way, the other forms of GV committed in an everyday and systematic manner against women equally in public spaces as in private, as well as sexual violence or feminicides committed outside of intimate partner settings, continue to not receive the attention that they deserve. This includes victims of sexual violence in its diverse manifestations (harassment, abuse, assault, stalking) and other forms of GV, like female genital mutilation, forced marriage, obstetric violence, violence committed by caretakers against elderly or differently-abled women or violence against migrant female workers in the domestic service industry, among others.

Despite the fact that 14 of the 17 A.C. already have legislation about GV in order to incorporate other forms and spheres of violence,<sup>1</sup> this does not translate into attention to all of them, in part due to the difficulty that some rules have full effectiveness only if appropriate amendments to the state laws occur.

The state has not developed comprehensive measures to prevent, penalize, attend to and make amends for these various forms of gender violence, failing to fulfill its duty to “formulate and implement, at all appropriate levels, plans of action to eliminate violence against women,” as is laid out in the Beijing Platform for Action.

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

#### 1.2 Women in violent situations do not receive adequate care

This fact, added to the restrictions of the Violence Act, means that women in especially vulnerable situations, like migrant women with undocumented status, cannot turn to police or legal authorities to report other forms of violence for fear that deportation proceedings will be initiated against them. Their situation is aggravated by the fact that other legislative reforms, like those that affect the National Health System, limit the opportunities that non-urgent primary care can offer for identification and care of victims if they do not have insurance. The frequent consultation with medical personnel and other health professionals in primary care offers a much more adequate and humane context for the establishment of a dialogue that allows evidence of violent situations to surface that is not seen in signs of recent physical assault.

#### 1.3 State Treaty in development

In February 2017, following the reiterated demands for the Spanish Government to consider violence against women as an State Matter and mobilizations by the feminist movement, NGO human rights

<sup>1</sup> As is the case in Andalusia, Aragon, the Balearic Islands, the Canary Islands, Cantabria, Castile and León, Catalonia, the Community of Madrid, Basque Country, Galicia, Murcia, Navarra, Valencia and Rioja.

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

## **2. MANDATORY TRAINING (#21 B CONCLUDING OBSERVATIONS)**

### **2.1 Training on identification of gender violence is only obligatory initially and for professionals in specialized fields**

People who work in fields specialized in GV, as is the case with Judges and Prosecutors of Violence or State Security Forces, are the only ones who must receive specialized and obligatory training, but only before starting at their position.<sup>2</sup> In this way there is no outlined process of continuing education, this continuation having an entirely voluntary character.

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

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

With regard to the training of professionals in the health field, this is carried out in a very unequal manner in the various A.C., with no overall data regarding it. In any case, despite the fact that there exists a certain quality in the intervention protocols, this is not accompanied by adequate training, especially in the detection of the situations that make up the diverse forms of violence, and that are unfamiliar to the majority of health teams.

### **2.2 Deficits in the quality and comprehensiveness of the training (without content on CEDAW or the Istanbul Convention)**

Although there is no study or evaluation on the quality and impact of the specific training developed up until this point, one can conclude that it consists of a relatively limited training, given that in the majority of cases, GV is considered to be only what is demarcated in the Violence Act. The topics referenced in the CEDAW Convention and its Optional Protocol, or in the Istanbul Convention are not identified as such.

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<sup>2</sup> The Organic Law on the Judiciary recounts, in article 310, that “All examinations for induction into and promotion within a career as a Judge or State Prosecutor will entail the study of the principle of equality between men and women including measures against gender-based violence, and their transversal application within the sphere of the jurisdictional function,” however, it only requires specialization in GV as such for accession to juvenile and GV courts (articles 329 3 and 329 3bis).

It is essential to train in a continuous manner on gender-perspective, equality and violence against women (in the broad sense that is given in the Istanbul Convention or the CEDAW Convention), with material which reinforces the intersectional approach and the intercultural perspective, in order to be able to understand all victims and give them the attention and support that they need, regardless of their nationality and/or legal status.

### **2.3 Effects of the lack of continuous training, scarcity in resources and inadequacies in proceedings**

It is necessary to emphasize that due to the lack of professional training in gender-perspective and the prevention of GV there is prevalence of a sexist and discriminatory view in expert reports as well as in judicial processes and sentences. This encompasses, among other issues, an increase in the number of sentences with conviction for mutual aggressions and medical reports done “by eye” by expert witnesses without any training, determining that the woman “*is not a victim of VG.*” In the same manner, there is a permanent reduction in estimations of risk, based on making conclusions looking only at the last aggressive act, without taking into account the social, economic, cultural, religious and family background of the victim; rejecting in many cases the reports from services specialized in children or violence against women.

Besides the effects of the lack of mandatory training, there are important structural deficiencies, and a scarcity in resources in various aspects, the most significant ones being those in the judicial process. Just as set out by the “*Guide of criteria for judicial action against GV,*”<sup>3</sup> there exists a series of provisions guaranteed to victims. These are: to take appropriate measures so that authorities only interrogate victims in the manner necessary for the penal process; to guarantee an adequate level of protection to victims in terms of security, privacy and image; to avoid contact between victim and accused in court premises, allocating spaces within these reserved for the victims; offering legal protection for the victims, above all for the most vulnerable, when it is necessary for their protection from the consequences of making a statement before a public hearing; and allowing them to testify in conditions that will guarantee this objective by whatever means are compatible with the fundamental principles of the legislation. In these regards, one can say that there exists an unequal compliance with what has been established. These criteria are not carried out with the necessary rigor in courts that deal with violence against women in the various A.C. There does not exist any common criteria (it depends on each A.C) with respect to the necessary structures in the court premises to avoid contact between victim and accused. As well, there are important differences in structural conditions between specialized and non-specialized courts, and depending on their location. Nor are adequate resources available to exercise the right to declare in an environment that avoids contact with the accused.

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

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

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<sup>3</sup> Guiding document drawn up by the General Counsel of the Judiciary that was last updated in 2013, which covers updated information about jurisprudential interpretation—regarding the courts of appeal in addition to the Supreme Court, Constitutional Court, and European Courts—as well as the most relevant international regulatory frameworks and the latest news about issues that can come up in family proceedings. Also includes risk assessment tools that judges have at their disposal, including the “*Action Protocol for the Law Enforcement Agencies and Coordination with the Judiciary Bodies for the Protection of Victims of Domestic and Gender Violence*” as well as the treatment that must be given to victims in judicial offices.

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

#### 3.1 Deficiencies in the collection and analysis of data

The diverse sources of official data at the state level that collect information about the situation of violence against women in Spain<sup>4</sup> in general consider GV to be that exerted by the partner or ex-partner of the victim and focus the analysis on cases with fatal outcomes and the analysis of allegations.<sup>5</sup>

In one way or another, almost all of the sources reflected the variables indicated by the CEDAW committee (*sex, age, nationality and relationship between the victim and the author*).<sup>6</sup> However, the logic behind the collection and use of the data means that not all of the statistics and studies are measured in the same way, leaving out important aspects of the reality.

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

In the A.C. whose regulations cover the issue of gender violence independently from that which occurs in the context the partner or ex-partner relationship, these feminicides are recorded in some cases which produces a disparity in the same region depending on if the state or regional statistics are looked at.<sup>7</sup> These problems mean that civil society organizations turn to their own count of victims, including in them those victims that are hidden in the official statistics.

On the other hand, in reference to the quality of the data and its analysis, it is necessary to rely on a structure for collection and treatment of data, with a shared methodology that, besides permitting comparisons and overall views, also allows access to the victim's histories, and doesn't exclusively produce aggregate information in which the victims and their judicial route are counted for determined time periods. In this regard, there are women in extremely vulnerable situations, as is the case with women with disabilities (or differently-abled women)<sup>8</sup> or undocumented migrants, who remain outside of the scope of the analysis by not having a mechanism for data and analysis that looks at their situation.

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

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

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

<sup>4</sup> View list of sources in Note 1.

<sup>5</sup> There are two exceptions, which are the Macrosurvey of Violence against Women and the reports completed by the Interterritorial Health Council.

<sup>6</sup> See analysis of the main content of these statistics in Note 2.

<sup>7</sup> This is the case, for example, with data for the Canary Islands in 2016, in which were counted 8 feminicides in 2016, while according to the State statistics there were only 5 feminicides.

<sup>8</sup> According to the report "GV Against Women with Disabilities," conducted by the CERMI Women's Foundation (CFM), almost 1 in every 3 disabled women at some point has suffered some type violence on the part of their partner or ex-partner, which proves this group to have the biggest exposure as victims of sexist violence.

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

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

With respect to the victims of FGM, it is a phenomenon with complicated demarcations which requires mapping to locate and characterize (by sex and age) the populations from countries where it is practiced. In Spain, these maps of FGM have been developed by a specialized entity, the Wassu Foundation – UAB (Universidad Autónoma de Barcelona), the last of which was completed in 2012.<sup>11</sup> In this study, 57,000 women numbered in the FGM population,<sup>12</sup> of which close to 17,000 are girls ages 0-14. From the standpoint of territorial distribution for the year 2012, the largest concentration of the female FGM population was in Catalonia (18,000), followed by the Community of Madrid (7,500) and Andalusia (6,000).

However, despite the notable amount of potential cases, there does not exist at the state level a registry of cases of mutilated women and girls that live in Spanish territory. Neither does there exist of registry of girl residents in Spain that have suffered the practice in trips to their countries of origin or that have arrived already mutilated through a process of family reunification or adoption, even though there exist case registries in some A.C. due to the recognition of this form of violence in their legislation.<sup>13</sup>

At the state level, FGM is recognized in measure 185 of the National Strategy for the Eradication of Gender Violence (2013-2016). In this framework, a Common Health Protocol was developed in 2015, directed at health service professionals with the goal of bettering the health of victims and carrying out the work of detection and prevention.

#### ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS REGARDING THE CONDITION OF REFUGEES

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

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

<sup>10</sup> See the status of the situation in Note 3.

<sup>11</sup> Data published in “Genital Mutilation in Spain,” a report prepared by the Wassu Foundation for the Government Delegation on Gender Violence.

<sup>12</sup> Women from countries in which FGM is practiced.

<sup>13</sup> Catalonia and the Community of Valencia have included references to FGM in their respective regulations on protection of childhood and Aragon, Cantabria, Community of Madrid, Community of Valencia, Catalonia, the Canary Islands, Murcia, Navarra and Rioja have included references to FGM in their regional regulations regarding equal opportunity and violence against women. Andalucía and Castilla-La Mancha have considered aspects of FGM in their draft legislation.

#### **4.1 Milestones in the breach of EU and Spain reception commitments – absence of a gender-perspective in the collection of data on the part of the Office of Asylum and Refugees (OAR) – response of civil society**

The European Commission committed itself in June 2015 to relocate, in the period from 2015 to 2017, 160,000 asylum applicants that were already in the EU and to resettle 22,504 of those in refugee camps, with “solidarity quotas” for each of the 28 member states.

In May 2017, four months before the deadline, the EU had only received 16% of the 182,504, and in Spain only 1,292 of its 17,337 quota, 5.6% of the relocation of 15,888 coming from Greece and Italy and 28% of the resettlement of 1,449 coming from Lebanon and Turkey.

In addition to the EU 2015-17 program, application for asylum and refuge in Spain offers the following data on applicants: 14,887 in 2015, 39% of which are women and 15,755 in 2016. This constitutes the highest ever recorded figure in Spain, but only represents 1% of those received by the 28 EU countries, despite the fact that Spain accounts for 9% of the EU population.<sup>14</sup>

At the close of this report and two months before the expiration of the deadline, in September 2017, the OAR still has not published the 2016 data. Furthermore, in the statistics and in the report “Asylum in numbers 2015,”<sup>15</sup> only 4 of 22 data tables are broken down by sex, failing to abide by Spanish law as well as the CEDAW Convention itself in that regard.<sup>16</sup> One of the few pieces of data that can be pulled out about female refugees reveals that 40% of applications and decisions correspond to women.

This lack of information has prompted the Ombudsperson to request greater publicity of data, including a disaggregation of refugees that includes not only the variable of gender but also membership in vulnerable populations and the time it takes to resolve applications. Furthermore, this almost total lack of official data has led to us relying on only the information provided by the Spanish Refugee Aid Commission (hereafter, CEAR in its Spanish acronym), a civil society organization with extensive experience on the subject.<sup>17</sup>

Beyond the data, with respect to social perceptions, society on the whole not only does not perceive immigration or refugees as a problem,<sup>18</sup> but also carries a strong current of support for them,<sup>19</sup> views which some regional and local administrations also share.<sup>20</sup>

<sup>14</sup> Note 4 contains a brief analysis of the composition of the data.

<sup>15</sup> The data from this first paragraph is taken mainly from data provided by the Spanish Refugee Aid Commission, drawn from EUROSTAT data.

<sup>16</sup> Article 20 of Organic Act 3/2007, of March 22, on effective equality of men and women, (hereafter, the Equality Act), and paragraph 30 of CEDAW General Recommendation 32.

<sup>17</sup> The majority of data about refugees provided in the present report come from the document prepared by CEAR: “2017 Report: Refugees in Spain and Europe.”

<sup>18</sup> According to the October 2016 Barometer, produced by the Sociological Research Center, only 3.2% of the population perceives immigration as an important problem, while only 0.2% consider refugees a problem.

<sup>19</sup> This is the case with the humanitarian campaign for the collection of tampons, pads and diapers for refugee camps in Greece by the Gijon Council of Women in 2017 or the feminist hashtag: <http://www.pikaramagazine.com/tag/refugiadas/>. Other campaigns organized by civil society include the substantial presence of volunteers in camps in Greece, and initiatives like SOS Refugees, Solidarity Welcome Network, Opening Borders and the Caravan to Greece in 2016 and to Melilla in 2017. In this line of action, several conferences were organized, and a document was prepared by the CEDAW Shadow Platform and 183 social organizing and feminist NGOs requesting that the Ministries of Foreign Affairs and Cooperation, of the Interior and of Health, and of Social Services and Equality, among other things, approve the regulations of Act 12/2009, from October 30, regulator on the right of asylum and auxiliary protection (hereafter the Asylum Act), with the goal of requesting that article 46 be made effective. The recognizes as refugees women with risk of persecution motivated by gender (sexual violence and gender-based violence, genital mutilation, trafficking, forced marriage, LGBTI, honor crimes or sex discrimination permitted by States). This request, to this day, has not been answered.

<sup>20</sup> In addition to various demonstrations and protests, at some of which have assembled tens of thousands of people, as was the case in Barcelona, Madrid and other cities, some regional and local governments, such as the Community of Valencia, Navarra and the Basque Country, and the City Councils of Madrid, Barcelona and Valencia, and another 19 from the Madrid

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

The OAR, the Police and the rest of the responsible organizations not only do not have the focus on interrelation, complementarity and cumulative protection in terms encompassed by international legislation,<sup>21</sup> but they also do not always follow the gender guidelines of the United Nations High Commission for Refugees (UNHCR) about integrated strategies—in health, law, social and security—against GV.<sup>22</sup> In the same way, they do not allocate the necessary budgetary resources.<sup>23</sup>

Specifically, in reference to the OAR's procedures, human and material resources, it can be said that these do not completely guarantee compliance with the UNHCR guidelines in regards to gender equality, which refers to the right to: present an independent asylum application and be interviewed separately by trained personnel, without relatives being present; to receive information, assessment and translation administered by a woman; to rely on the assurance that motivations for asylum rejections allow appeal; and to have conditions of personal, social and economic security and dignity assured. In this regard, in accordance with the results collected in the study carried out by the Ombudsperson, these deficiencies are fundamentally due to the fact that an effective transposition of community directives in terms of asylum, especially procedures of granting asylum and reception regulations, has not yet been completed.<sup>24</sup>

According to the 2017 CEAR report, this situation is aggravated in the case of applications presented in border posts. The majority of these are in Melilla, which continues *hot returns* that affect women and girls in such a way that each case can not rely on having an individual evaluation specifically on gender issues.

At border posts, ports and airports there are not suitable personnel to process asylum applications which, added to the closing and externalization of borders, restricts a large part of the right to asylum. The procedures and time frames are not applied with due diligence either, and the lack of personnel, translators, lawyers and the tight deadline to appeal impedes the application of a gender-perspective and the rights of the child in an individualized manner.

#### **4.3 Lack of guarantees of adequate procedures and resources on the part of the OAR in cases with gender violence victims: refusal of applications for trafficking, female genital mutilation and forced marriages victims, as well as those identified as LGBTI**

Partly derived from the European guidelines not being transposed into national directives, this lack is producing an extremely grave situation, described in the Ombudsperson's report, with regard to female victims of GV. This discrimination is taking place due to a restrictive interpretation that the OAR imposes on the conditions for female asylum seekers, totally disregarding reports from the UNHCR. The OAR, whilst being the organization responsible for the examination of applications, and after the most recent changes enacted by the Asylum Act, continues not considering binding reports from the UNHCR, an entity widely recognized in all legislation as an expert in the field and guarantor of proceedings. The largest discrepancies exist in the assessment of applications related to female victims

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area, urged the government on May 9th to accept the 17,377 promised refugees, and to make available housing and reintegration activities.

<sup>21</sup> Convention Relating to the Status of Refugees (1951) and its Protocol (1967), as well as the CEDAW Convention itself.

<sup>22</sup> Manual and guidelines on proceedings and criteria to determine refugee status by virtue of the 1951 Convention and 1967 Protocol on the Status of Refugees. Reissued Geneva, December 2011.

<sup>23</sup> See Note 5 for a description of the resources and budgets available with regard to asylum and refuge.

<sup>24</sup> Guideline 2013/32/UE, on common proceedings for the granting or withdrawal of international protection; Guideline 2013/33/UE, on regulations for the reception/welcoming of international protection petitioners.

of gender violence (trafficking victims, forced marriages and female genital mutilation), as well as applications related to sexual orientation and gender identity, focusing on the evaluation of credibility of the allegations and on the analysis of information from the countries of origin in these cases. The Supreme Court itself has ruled in several instances on this issue,<sup>25</sup> with the Ombudsperson calling attention to this issue in the aforementioned report.

Even though the situation has improved up to a certain point, with the OAR taking on adopting the jurisprudence established by the Supreme Court, female victims of trafficking continue to encounter serious difficulties obtaining adequate protection for their specific needs in airports and Immigration Detention Centers (IDC).<sup>26</sup> Even though a portion of applications for international protection from possible trafficking victims are admitted for processing, *none are officially identified as such*. During 2016, the OAR maintained good practices of communicating to the National Police Central Unit on Illegal Immigration Networks and False Documents (CUINFD) all the cases in which it detected indicators that a person could be a victim of trafficking, in compliance with section V.D.3 of the Framework Protocol for the Protection of Trafficking Victims of 2011. However, the police only completed 37% of interviews, and in no case did it grant the Period of Restoration and Reflection. In some cases it conducted a “pre-identification” interview, a device not specified in the Aliens Act, the Regulation, or in the Framework Protocol for Protection of Trafficking Victims, and it did not reference a motivating resolution that could be appealed.

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

Similarly, with respect to European institutions, the recommendations put forth in March 2016 in a European Parliament Resolution on the situation of female refugees and asylum seekers in the EU are still pending adoption by the Commission, the Council and Member States.<sup>27</sup> This document puts forth an analysis of the serious situation, recognizing as a baseline the urgent need to “improve the security and safety of women and girl refugees” opening “safe and legal routes to the EU... for those fleeing conflict and persecution,” taking gender into consideration and emphasizing “in particular that more Member States should participate in the EU Resettlement Programs” stressing that “legislation and policies relating to irregular migration should not prevent access to EU asylum procedures” (just as is enshrined in article 18 of the EU Charter of Fundamental Rights). This special vulnerability of women and girl refugees means that this resolution, among other issues,<sup>28</sup> calls upon the Member States to incorporate both measures and interventions for the detection and protection against gender violence, as well as the ratification of the Istanbul Convention.

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<sup>25</sup> This court notes the following in the sentence of February 18, 2014, seventh legal basis: “*There is no indication that the Administration took into account that which is outlined by the UNCHR in its reports dated February 15 and 18, 2011, in which it recommended the admission for processing of the petition. There does not appear any mention or reasoning, which entails an evident infraction of Act 12/2009, which attributes to this organization a key role in the investigation of asylum applications, just as is emphasized in the explanatory preamble itself, which indicates: ‘Specific mention should be made at this point to the United Nations High Commissioner for Refugees (UNHCR), which is recognized in the important role that it carries out in the processing of asylum applications in Spain, in this way reinforcing the procedural guarantees.’*”

<sup>26</sup> In accordance with the data of the 2016 Report (“Violated Vulnerables”) of the Jesuit Migrant Service Spain (JMS), women represented in 2016 merely 6% (455 people) of the population in IDCs. This report, like the case study carried out by Women’s Link Worldwide (“Women in IDCs, the Reality Behind Bars”), reflects the special hardship of living conditions for women in IDCs. In this way, the situation as an unidentified victim of trafficking is added to being in a place without access to psychosocial resources and legal assistance to pursue a complaint or solicit international protection. Compounded upon this is the experience of violent sexual situations and especially precarious hygienic and health conditions. The passage through an IDC has precipitated, in many cases, the creation of a situation of subsequent irregularity for women that have a stay of longer than 7 years.

<sup>27</sup> Situation of women refugees and asylum seekers in the EU. European Parliament Resolution of March 8, 2016. (2015/2325(INI))

<sup>28</sup> In Note 6 is provided a brief description of the contents of the resolution.

Regarding this area, despite the fact that protection could be covered under the Equality Act or the Violence Act, neither the Women's Institute nor the Government Delegation on Gender Violence by any means have in mind care for women and girl refugees.

## notes

**NOTE 1:** All of the data sources on gender-based violence refer to an annual period although their update does not necessarily take place in year following the collection of data. Below are listed the publications and the date of their last update.

Responsible Entity	Publication	Completion date	Publication date
Government Delegation on Gender Violence. Ministry of Health, Social Services and Equality (MHSSE)	State Observatory Report VIII on Violence Against Women	2014	2016
	Macrosurvey of Violence Against Women (conducted every four years since 1999)	2015	2015
Ministry of the Interior	Annual Statistics	2015	2016
Interterritorial Council of the National Health System, MHSSE	Annual Report from the National Health System on the subject of Actions Against Gender Violence	2014	2015
Observatory Against Domestic and Gender Violence. General Council of the Judiciary	Quarterly statistical bulletins / Annual reports that incorporate data on complaints, protection orders, and manner of termination of proceedings, based on information from gender violence courts.	1st trim 17 Annual report 2016	2nd trim 17 Published 2017
	Report on victim fatalities resulting from Gender-based violence and Domestic Violence in the partner/ex-partner context	2014	2016
National Institute for Statistics in collaboration with the Central Registry for the Protection of Victims of Domestic and Gender Violence	Data on victims and reported people, analyzing their socio-demographic characteristics, and on charged criminal offenses and preventive measures issued.	2016	2017

**NOTE 2:** The most recent data on gender violence comes from the Statistics on Domestic and Gender Violence conducted by the National Statistics Institute, using data from the Ministry of Justice's Central Registry for the protection of victims (on proceedings instituted and final judgments). The victims are broken down by sex, age, origin and relationship with the assailant, which in the case of domestic violence refers to persons enumerated in article 173.2 of the Penal Code (descendants, ancestors, married couples, siblings, etc.) with the exception of specific gender violence cases.

The annual report from the National Observatory on Violence Against Women gives multiple data on assailants, allowing focus to rest on them. This includes, for example, the type of offense committed, length of sentence, type of offense committed for which they are in pre-trial detention, nationality of the assailant, cultural origin (so that cases which involve a change of nationality are not omitted), age of the assailants, etc.

The Annual Statistics from the Ministry of the Interior is based on data from the Statistical System of criminality, which registers victimizations by grave criminal acts on the family level. This sums up victimizations from gender violence (committed by spouse, separate/divorced, significant other, ex-significant other, boyfriend, ex-boyfriend), with victimizations committed by those who are or have formed part of the family context (parent, child or other relative). The data from 2015 show 60,044 victimizations from gender violence (with 60 women deceased), to which must be added those victimizations in the family level, which accounted for 82,188 cases. There are no figures for victimizations by people outside the family level and/or unknown.

The Reports on Gender Violence from the Interterritorial Council of the National Health System (MHSSE) are based on gender violence as defined by the Common Health Protocol, which outlines all the forms of GV which can be attended to in the health services, not only that of partner or ex-partner. It collects the cases detected by the health system, either at the level of Primary Care (PC) or Specialized Care (SC), through the Clinical History (CH) or Reports of Injuries (RI).

The data referring to 2014 (last report) assumes 98% population coverage, which is to say, there still is not total coverage at the State level, and the data is not homogenous in origin. There are A.C. which use as a major source of data CHs (73.5%), others which use exclusively RIs (24.1%), and others that use both sources (23.1%).

The detection of the type of mistreatment depends on the source that the data come from, the most frequent being physical mistreatment when the source is the RI. When the source is the CH, above all in PC, physical and psychological mistreatment are perceived in greater amounts. Sexual mistreatment continues to be the least reported, with higher percentages reported in SC. However, the data lose relevance due to the large number of data missing in almost all indicators. The indicator of relationship of the mistreated woman with the assailant is not of a good quality, in addition being biased towards the partner and ex-partner, as the information system itself conditions the non-emergence of other types of assailants.

**NOTE 3:** The implementation of Comprehensive Plan II to Combat the Trafficking in Women and Girls for Purposes of Sexual Exploitation, finally approved for the 2015-2018 period, has been delayed since 2013 due to the political situation and economic crisis. Regarding the different measures of the aforementioned Plan, it should be noted there is: a lack of clarity about the resources and budgets that will be available to each institution to carry out the measures and a lack of communication and coordination with consular authorities of the countries of both victims and traffickers, with the end of carrying out pertinent measures in accordance with the fulfillment of the Palermo Protocol and the Warsaw Convention.

There is an absence of special mention to differently-abled victims, even though the law applies to these persons as to minors, where there do not exist adequate resources or politics for reintegration for these people. With respect to the impact of Organic Act 4/2015, for the Protection of Citizen Security, progress has been scarce. Some data are known at the regional level, but this does not account for all of the information necessary to establish a state of play.

The situation is worrisome in the Centers for Temporary Stay of Immigrants (CTSI) that are found in the Autonomous Cities of Ceuta and Melilla. These centers are spaces of heightened vulnerability, given that potential victims are living there alongside their exploiters.

**NOTE 4:** In 2015, Spain resolved 3,240 applications for international protection, denying 7 out of 10. In 2016 the amount of resolutions tripled, up to 10,250, and almost 7 in 10 (67%) were admitted, almost all of Syrian nationality, of which only 3.4% were given refugee status, and 96.6% were given subsidiary protection. As of December 31, 2016, 20,635 applications pending resolution had accumulated.

**NOTE 5:** In the 2016 State Budget, the Ministry of the Interior Program 131P, "Right of Asylum and Statelessness," has €6.2 million. Of this, 48.4% is for the program of resettlement and relocation to the EU, 33.5% for personnel and €270,850, or 4.4%, for contributions to the UNHCR to issue only 300 (out of 10,250) assessment reports on the subject of asylum. In the Ministry of Employment and Social Security, program 321H "Actions in favor of immigrants," has €321.7 million, 90% for grants and subsidies to 7000 immigrants and refugees, a subsidy of €2 million to Red Cross for care of immigrants arriving to Spanish coasts and settlements, and €3.4 million to A.C. for the social integration of immigrants.

In the 2017 Budget there is €102 million for the EU Fund for European Aid to the Most Deprived (FEAD), for food aid and for the fight against childhood poverty, of food surpluses distributed in previous years in the same quantity. There is €140 million for attention to families with children for the program of resettlement and relocation of refugees, funds which during the year of 2016 was not spent, given that refugees were not received.

The Spanish Official Development Assistance has decreased from 0.4% of the GNI in 2009 to 0.14% in 2014 and 0.21% in 2017, 2,450 million euros, and is reoriented to strengthen armies and borders to the detriment of the goal of the eradication of poverty and inequality between countries, social classes and gender.

**NOTE 6:** This resolution recounts, in 65 articles in total, various issues for improvement of the situation of refugees, relating to general questions (as it relates to the need for women to apply individually and have the right to freedom of movement) and to four specific questions, which are:

- *the gender dimension to refugee status*, highlighting, among other issues, that the forms of violence and discrimination based on sex (including female genital mutilation, forced marriage, domestic violence, so-called honor crimes and sex discrimination permitted by the State) constitute persecution and should be valid motives to request asylum in the EU, which must be reflected in new guidelines on gender.
- *specific needs of women in asylum proceedings*, among which are included the investigation of all reports of sexual abuse and gender violence in Immigrant Detention Centers or in border posts, and the eradication of the confinement of migrants or asylum seekers.
- *reception and confinement*, a sphere which results in the revictimization that imprisonment entails for refugees, gives rise to the urgent need that this be put to an end immediately, in all Member States, as regards imprisonment of children or pregnant/nursing women or those that have been the victims of rape, sexual violence or human trafficking, and necessitates that they be afforded adequate psychological support;
- *inclusion and social integration*, this last dimension requests, among other issues, that the State Members elaborate and apply specific measures that will facilitate the participation of refugees and asylum seekers in the job market, emphasizing the relevant role that regional and local authorities play in the integration of refugee women and asylum seekers, in particular relating to their insertion into the job market, and encourages these authorities to promote dialogue and contact between refugee and native women.