



SPAIN

**SUBMISSION THE UN COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN
85TH SESSION, 8 - 26 MAY 2023**

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INTERNATIONAL**



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INTRODUCTION

Amnesty International presents this submission in advance of the review of Spain's ninth periodic report on measures taken to implement the Convention on the Elimination of All Forms of Discrimination against Women. It focuses on sexual and gender-based violence, including barriers to justice as well as discrimination against migrant and refugee women, including victims of trafficking and lack of protection of the right to adequate housing. It should not be seen as an exhaustive account of the organization's concerns on the wider topic of discrimination against women. Amnesty International has also joined the European Coalition on Sex Worker's Rights and Inclusion's submission to the Committee.¹

The Government continues to take small steps to raise awareness of the rights under the Convention, the Committee's recommendations, or information on access to individual complaints under the Optional Protocol. This is relevant given recent CEDAW Committee decisions for violations of articles 2(b), (c), (d) and (f), 3, 5 and 12 of the Convention for obstetric violence.²

GENDER-BASED VIOLENCE BY INTIMATE PARTNERS OR EX-PARTNERS AND SEXUAL VIOLENCE (ARTICLE 2, GR 35 & LOIPR PARAS. 9-10)

From 2003 to 11 April 2023, 1,196 women were murdered by their partners or ex-partners.³ According to data available since 2013, 49 children were killed by their fathers, and three by their mother's partner.⁴ According to the 2019 Government's Macro-survey on Violence Against Women, 57.3% of women and girls over 16 have experienced gender-based violence during their lifetime.⁵

¹ The European Coalition on Sex Workers' Rights and Inclusion, *Spain: Submission to the United Nations Committee on the Elimination of Discrimination against Women* (EUR 41/3929/2023), 11 April 2023.

² UN Committee on the Elimination of Discrimination against Women (CEDAW), *Views: S.F.M. vs. Spain*, 28 February 2020, UN Doc. CEDAW/C/75/D/138/2018; *N.A.E. vs. Spain*, 27 June 2022, UN Doc. CEDAW/C/82/D/149/2019; *M. D. C. P. vs. Spain*, 24 February 2023, UN Doc. CEDAW/C/84/D/154/2020.

³ Government delegation against gender-based violence. *Portal estadístico*.

⁴ Government delegation against gender-based violence. *Previously cited*.

⁵ Ministry of Equality: Executive Summary of the 2019 Macro-Survey on Violence Against Women, November, 2021

SEXUAL VIOLENCE: THE STATE FAILS TO ACT WITH "DUE DILIGENCE".

According to the 2019 Government's survey, more than 2.8 million women and girls in Spain over the age of 16 have suffered sexual violence that is 13.7% of the total number of women and girls living in Spain. Only 8% of them, have reported it to the authorities.⁶

Reported crimes of sexual violence have increased over the years: in 2018, 9,381 and in 2019, 10,380; in 2020, 13,240; in 2021, 14,608. From January to September 2022, 14,674 persons (the data is not disaggregated by gender or gender identity).⁷

However, migrant women, domestic workers, women with disabilities or women victims of trafficking are particularly unprotected.⁸ According to the Ombudsman Office, girls in the protection system of public entities have reported to have been subjected to sexual abuse and exploitation.⁹

In September 2022, the Parliament passed the *Organic Law on the Comprehensive Guarantee of Sexual Freedom*,¹⁰ (thereafter *OLCGS*) with measures for the prevention, detection, investigation, prosecution, and redress of sexual violence. The law provides for measures to ensure specialized and accessible comprehensive care services, specialized police forces and forensic examination, access to information and legal aid in the judicial process, an administrative programme for victim reparation and a fund for victim reparation.

The law amended the definition of rape in the penal code to make it consent-based in line with international human rights law and standards.¹¹ With the new law, the fact that non-consensual sexual acts are committed by a current or former partner is considered aggravating circumstances of the crime of rape and sexual assault.¹² The reform of the Penal Code does not define rape committed by or at the instigation of or with the consent or acquiescence of public officials torture.

The law introduces, in article 37, which establishes the mechanisms of documentation of sexual violence linked to the recognition of victims' rights and access to services established by the law, introduces administrative mechanisms to evidence sexual violence by authorities. However, in the final approved law, article 37 excluded the "judicial mechanisms", provided for in the preliminary bills. This means that victims that reported the violence and have a judicial conviction are not included under this provision.¹³ Given that many provisions refer to it, it could create important discrepancies between those whose attacker was convicted and those who have decided not to report the violence.

Despite important new measures in the law,¹⁴ including the provision of comprehensive, specialized and accessible care as one of the most important advances of the law, it requires resources and the development of implementation and coordination mechanisms, especially with the Autonomous Communities with devolved powers in areas such as health or justice in order to be effective. Some aspects that have entered into force, but have not been implemented yet, are: production of statistical and disaggregated data on a quarterly basis; specialized judges and prosecutors; guarantee of professional specialization through training in the teaching and educational field, health and social services sectors; law enforcement agencies; judicial and prosecutorial careers and all justice administration personnel.

Therefore, women still face serious obstacles due to the lack of implementation of public policies that comprehensively address sexual violence; lack of specialized assistance in key sectors such as health or justice, where WHO guidelines are not met neither for health personnel in emergency hospital care nor forensic personnel;¹⁵ lack of professional treatment of victims and a specialized judicial system with a gender responsive and human rights compliant approach.

Amnesty International recommends that Spain:

⁶ Macro-survey on Violence Against Women, *previously cited*, page. 3,

⁷ Ministry of Interior: Portal Estadístico de Criminalidad.

⁸ GREVIO's (Baseline) Evaluation Report on Spain. GREVIO/Inf(2020)19, pag. 14 to 16. Amnesty International, *Ya es hora de que me creas: Un sistema que cuestiona y desprotege a las víctimas*, November 2018.

⁹ Spanish Ombudsman, annual report, 2022, page 36.

¹⁰ Organic Law 10/2022 on the Comprehensive Guarantee of Sexual Freedom.

¹¹ Penal Code, Articles 178-179.

¹² Article 180(4).

¹³ Article 37, Organic Law 10/2022.

¹⁴ Amnistía Internacional, *Comentarios al Proyecto de Ley Orgánica de Garantía Integral de la Libertad Sexual*, November 2021 (Spanish only).

¹⁵ WHO requires that *Guidelines for medico-legal care for victims of sexual violence*. World Health Organization, 2003.

- Ensure that a gender perspective (including based on the provision of disaggregated data) is integrated in the analysis of the impact of measures, especially those measures that disproportionately affect women and girls in vulnerable situations.
- Guarantee the implementation of the *OLCGS* through adoption of a framework of comprehensive assistance and care services on a mandatory basis in all regions, with equal standards of availability, accessibility, and non-discrimination to address sexual violence
- Amend the *OLCGS* Freedom to include the judicial certification mechanisms.
- Amend the Penal Code to recognize rape as torture when it is committed by or at the instigation of or with the consent or acquiescence of public officials, in alignment with international human rights law and standards, and international criminal law.¹⁶

BARRIERS TO JUSTICE AND PROTECTION FOR SURVIVORS OF GENDER-BASED VIOLENCE AND GENDER STEREOTYPES (ARTICLE 5 (A) & LOIPR PARAS. 7, 9-10)

Despite the provisions on a specialized justice system of Integral Law on Gender-based Violence, which entered into force in 2004, obstacles to protection and access to justice for victims of gender-based violence remain, including the following:¹⁷

- Lack of "due diligence" in the investigation and prosecution of these crimes, with a high number of dismissals and closure of cases by the judiciary due to lack of proper investigation; with an average of 42% (years 2017 to 2022).¹⁸
- Deficits in the protection of victims/survivors. The Comprehensive Forensic Assessment Units (CFAU)¹⁹ tasked with risk assessments, continue to be unevenly implemented.²⁰ In 2017, the Ministry of Justice acknowledged deficits in training, institutional coordination, and human and material resources in the Crime Victims' Offices. No further reports are publicly available with updated information about the work of the offices.²¹

In 2020, the State Attorney General's Office reported that the different resources by the Autonomous Regions to protect victims and survivors lead to differences among them "causing a certain unjustifiable inequality"²² and it is "worrying to note (...) the great contrasts in the number and composition of the offices and Forensic Assessment Units, which attacks the principle of equality of resources for victims who turn to the judicial system".²³ For instance, in 2020, 28% of protection orders in cases of gender-based violence were denied,²⁴ with significant differences between regions according to the Attorney General.²⁵ Amnesty International considers that the lack of equal standards of protection among all regions may lead to some women being at higher continued risk and count with less protection simply due to the region where they live in.

According to the Ombudsman, incorrect risk assessments by personnel in charge such as forensic doctors, or even lack of application of the forensic protocol to issue protection orders, continue to negatively affect the

¹⁶ *Report of the Special Rapporteur on torture*, 2016, A/HRC/31/57, para. 51. See also *Report of the Special Rapporteur on torture*, 2008, A/HRC/7/3, para. 35. Committee against Torture decision *V.L. v. Switzerland* (CAT/C/37/D/262/2005) concluding that "the sexual abuse by the police in this case constitutes torture even though it was perpetrated outside formal detention facilities", para. 8.10;

¹⁷ Amnesty International, *¿Que justicia especializada?*, November 2012, p. 11.

¹⁸ General Council of the Judiciary, *Annual reports on gender violence: Datos estadísticos* (including various years, Spanish only).

¹⁹ Ley 27/2003, de 31 de julio, reguladora de la Orden de protección de las víctimas de la violencia doméstica (Spanish only).

²⁰ Attorney General Annual reports. *Years 2020 and 2021*.

²¹ Ministry of Justice, *Informe sobre la evaluación periódica de atención a las víctimas del delito (2017)*, (Spanish only).

²² Attorney General report 2020, page 784.

²³ Attorney General report 2021, page 728.

²⁴ Delegación de Gobierno contra la Violencia de Género: Boletín estadístico anual, 2020, page 77.

²⁵ Attorney General report 2020, page 787; and Attorney General Report 2021, page, 741.

protection of victims.²⁶ In a report, the General Council of the Judiciary admits that in 261 cases of women killed (25%) of the 1,000 cases analysed, there was evidence of a prior complaint by the victim.²⁷

Judges continue to manifest negative gender stereotypes in their assessment of evidence, and sexist notions of consent also persist in cases of rape.²⁸ For instance, in the widely reported gang rape case "la Manada", in 2019 judges in a lower court found there was lack of intimidation by the perpetrators due to the "lack of resistance" of the victim, which resulted in the crime being considered a sexual abuse -rather than aggression - carrying lower penalties.²⁹ In another case, a judge asserted that, when a woman consents to kissing, this implied consent to other sexual acts.³⁰

There are insufficient measures for the protection of children victims of violence, including from violence perpetrated by a partner or ex-partner of the mother against the children, with the aim of provoking extreme harm to the mother. In 2021, seven children were killed, in four of the cases the mothers made previous complaints. In 2022, two children were killed.³¹

In 2018, Nerea and Martina (two- and six-years old girls) were killed by their father during the visitation period. Previously, the mother, who suffered gender-based violence, had requested protective measures for her and her daughters from the judge, including to suspend custody rights of their father, which were not granted, as the risk was considered low by the judge.³²

In 2021, the Civil Code and the Criminal Procedure Act were amended to provide for the suspension of visits with children, in cases of criminal proceedings concerning crimes against the spouse or children or well-founded indications of gender-based violence or violence witnessed by the children.³³

Amnesty International recommends that Spain:

- Conduct a systematization of judicial data and continuous evaluation and introduce accountability mechanisms for quality assurance.
- Guarantee specialization of the judiciary, prosecution and CFAU staff and training on consent and gender stereotypes.
- Review of protection measures for survivors of gender-based violence to ensure their effective protection and of their children.

LACK OF IMPACT ASSESSMENT OF THE INTEGRAL LAW ON GENDER-BASED VIOLENCE

The Comprehensive Law of Gender-Based Violence does not have an evaluation strategy that incorporates the participation of survivors.

The State Agreement against Gender-based Violence incorporates mechanisms for the monitoring and evaluation of its implementation by the non-legislative Standing Committee of the Congress of Deputies.³⁴ However, five years since its approval, in none of the twenty-two meetings of the Committee held, has the agreement been evaluated using measurable criteria.

The Government Delegation against Gender-Based Violence has incorporated in a working document a mechanism for visualizing compliance by traffic light system without information on the indicators used to

²⁶ <https://www.defensordelpueblo.es/resoluciones/aplicar-el-protocolo-medico-forense-de-valoracion-elaborado-por-el-ministerio-de-justicia-en-2011-en-todos-los-casos-de-valoracion-de-riesgo-de-violencia-de-genero/>

²⁷ General Council of the Judiciary, Observatory against Domestic and Gender-Based Violence, Informe sobre los 1000 primeros casos de víctimas mortales por violencia de género en el ámbito de la pareja o expareja. May 2020 (Spanish only),

²⁸ Sentencia n.º 14/2020 del Tribunal Superior de Justicia de Castilla y León. (Spanish only).

²⁹ STS núm. 344/2019 de la Sala Segunda de 4 de julio (conocida como el caso de "la Manada"). (FJco Quinto) (Spanish only). The case was judged under the previous Penal Code that distinguished between the crimes of sexual assault or rape with intimidation and violence and sexual abuse.

³⁰ STS 147/2020 de la Sala Segunda de 14 de mayo on the ruling of a lower court, (First Factual Background).

³¹ <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/victimasMortales/fichaMenores/home.htm>

³² Spanish Ombudsman.

³³ Art 94, Civil Code, as amended by Ley 8/2021, 2 June 2021 and Article 544 *ter.* of Law on Criminal Proceedings as amended by Organic Law 8/2021, 4 June.

³⁴ Measures 282 to 290 of State Agreement against Gender-based Violence.

consider what measures have been implemented or are in a process of implementation. This document has not been updated since 2019.³⁵

From 2016 to 2022 there was no National Strategy for the Eradication of Violence against Women. In November 2022, the Government approved the National Strategy to Combat Gender-Based Violence (2022-2025) which incorporates a strategic line on periodic evaluation, which has yet to be implemented.³⁶

Amnesty International recommends that Spain:

- Periodically evaluate the Comprehensive Law through a participatory and transparent process and based on clear and measurable indicators.

LACK OF PROTECTION OF MIGRANT AND REFUGEE WOMEN (LOIPR PARAS. 20-21)

There is no comprehensive data on how poverty and gender-based violence affect migrant women in Spain.³⁷ There is no systematic collection of disaggregated data to detect and design policies aimed at combating discrimination affecting migrant women.

Migrant women in an irregular situation who report sexual violence or gender-based violence in the context of intimate partner or ex-partner violence are at risk of deportation, if the perpetrators are not prosecuted and convicted in criminal proceedings.³⁸

Amnesty International recommends that Spain:

- Ensure the protection of victims of all forms of violence against women, including sexual violence, without discrimination on the basis of migration status. Ensure that immigration enforcement is clearly separated from protection of survivors of gender-based violence, and refrain from initiating sanctioning and deportation procedures for irregular stay when migrant women report gender-based violence.
- Ensure refugee and migrant women and girls survivors of gender-based violence receive adequate information and access to protection mechanisms without discrimination.

VICTIMS OF TRAFFICKING (ARTICLE 6, LOIPR PARAS. 11-12)

Authorities do not adequately identify trafficked migrant women. Between 2016 to 2020, only 28 girls and one boy were identified as victims of trafficking. There are important shortcomings in the training of the agents involved in the identification of victims of trafficking.³⁹ The police continue to make the victim's protection conditional on their cooperation in the investigation.⁴⁰ Despite trafficking indicators and support reports by NGOs and the UNHCR, asylum authorities do not always admit those as grounds for international protection.⁴¹

Amnesty International recommends that Spain:

- Ensure a human rights, gender and child rights perspective are integrated in the detection and identification of potential victims of trafficking and their assistance and protection.
- Refrain from conditioning the protection of victims of trafficking upon their collaboration with the police investigation of an alleged trafficking case.

³⁵ Ministry of Equality: Pacto de Estado en materia de violencia de Género, May 2019, page 15 to 50

³⁶ Ministry of Equality: Estrategia Estatal para combatir las violencias machistas, 2022-2025 (Spanish only)

³⁷ CEDAW, *Concluding Observations: Spain*, 7 August 2009, UN Doc. CEDAW /C/ESP/CO/6, para 31.

³⁸ Organic Law 4/2000 on the Rights and Freedoms of Aliens in Spain and their Social Integration. n. art. 31 bis. 2 a 4. See also CERD, *Concluding Observations: Spain*, March 2011, UN Doc. CERD/C/ESP/CO/18-20, para. 12

³⁹ Ministry of Interior: Balance estadístico Ministerio del Interior 2016-2020 (Spanish only).

⁴⁰ Amnesty International, *Cadenas invisibles, identificación de víctimas de trata en España* (Spanish only).

⁴¹ Ombudsman Annual Report, 2022, page 195.

LACK OF DISAGGREGATED DATA ON EVICTIONS AND THEIR IMPACTS ON WOMEN: PROTECTION OF THE RIGHT TO HOUSING (ARTICLE 2 AND GR35)

In Spain, the 2007 housing crisis is still ongoing.⁴² Since 2020 there have been 109,032 evictions.⁴³ Since 2016 the price of rental housing has risen by 54% on average⁴⁴, without a corresponding increase in wages and with virtually no social housing stock.⁴⁵ This situation will inevitably lead to an increasing number of households living in precarious and inadequate housing and even homelessness. It is particularly significant where women are at greater risk of poverty (28.9% compared to 26% for men), and where 54.3%⁴⁶ of single-parent households are headed by 81% by women.⁴⁷ In this context, there is no disaggregated data to show how many women and households with women as the single parent have lost their homes due to rising rents or are living in inadequate housing.

The Government passed a bill on the right to housing in February 2022 that it is still under discussion in Parliament. The bill emphasizes that public authorities must guarantee gender equality,⁴⁸ but it does not contain concrete provisions that guarantee women's right to housing without discrimination.⁴⁹ It also establishes that courts may assess social vulnerability and may consider that women victims of gender-based violence may be affected.⁵⁰ Although currently vulnerability is considered a ground to suspend an eviction,⁵¹ in order to adequately protect the right to housing, the bill must also require courts to consider whether evictions are reasonable and proportionate, especially since they could result in homelessness, as the United Nations Committee on Economic, Social and Cultural Rights has requested.⁵²

Amnesty International recommends that Spain:

- Adopt a housing law with a gender perspective that contains a price control system for rental housing, a judicial obligation to analyse the reasonableness and proportionality of an eviction and the obligation to increase the social housing stock.
- Collect disaggregated data including according to the gender on the impacts of cost-of-living crisis on access to adequate and affordable housing.
- Ensure that the law on the right to housing has clear commitments to address discrimination including gender-based discrimination in access to housing; ensure that housing including rental housing is truly affordable; and build more social housing stock.

⁴² Amnesty International, *La crisis de la vivienda no ha terminado* (2017). (Spanish only)

⁴³ 77.671 evictions due to non-payment of the rent; 25.527 due to non-payment of the mortgage and 5.834 due to other reasons, <https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Efecto-de-la-Crisis-en-los-organos-judiciales/>

⁴⁴ <https://www.idealista.com/sala-de-prensa/informes-precio-vivienda/alquiler/historico/>

⁴⁵ <https://www.es.amnesty.org/en-que-estamos/espana/derecho-vivienda/>

⁴⁶ <https://www.ine.es/jaxiT3/Datos.htm?t=52214>

⁴⁷ National Institute of Statistics, *Encuesta continua de Hogares*, 2020.

⁴⁸ Article 2. The preamble gives special attention to those who have lost their houses, especially single mothers and elderly women.

⁴⁹ Amnesty International, *Proyecto de ley por el derecho a la vivienda. Comentarios de Amnistía Internacional*, 2022 (Spanish only).

⁵⁰ Additional Provisions 5 and 7 of the Bill.

⁵¹ See art. 3 g) of Law 1/2013, of 14 May, on measures to reinforce protection of mortgage debtors, debt restructuring and social housing, amended by Royal Law Decree 1/2015, 27 February on second chance mechanism, reduction of financial burden and other social measures, that extended the period of suspension of the eviction from 2 to 4 years.

⁵² CESCR, *Concluding Observations: Spain*, April 2018, UN Doc. E/C.12/ESP/CO/6, paras. 9-11



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SUBMISSION THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 85TH SESSION, 8 - 26 MAY 2023

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