

Spain

1. Discrimination in the family

a) Overarching legal framework for marriage

Women have the same rights as men to enter into marriage (Constitution, Article 32). De facto unions are recognised (Civil Code, Article 66). Forced marriage is punishable from six months to three years in prison, carrying similar penalties as coercion (Criminal Code, Article 172bis). The Civil Code (Articles 44-49) provides for civil marriages and Roman Catholic, Protestant, Jewish and Muslim marriages can also be celebrated without requiring a second civil marriage. However, the certificate of marriage issued by the Church after the ceremony must be registered with the Spanish civil registry in order to get an official marriage certificate. The Spanish Civil Code does not contain a special legal regime governing informal relationships but these relationships are dealt with by the Civil Code and special statutes in connection with certain matters (e.g. kinship, inheritance and property rights).

b) Child marriage

The minimum age of marriage for women and men is 18. In 2015, Spain amended the Civil Code, raising the minimum age with parental and judicial consent from 14 to 16 years old (Civil Code, Articles 48, 314, and 317). Child marriage is prohibited and legal sanctions exist for those facilitating marriage of an individual who is under the minimum age (Criminal Code, Articles 218 and 219). There are currently no measures, awareness- or education-raising programmes to generate social support for the enforcement of the law on the minimum age of marriage.

Although average age at marriage is relatively high in Spain, early marriage is more common among immigrant groups from the Middle East and North Africa and the Roma community (CEDAW, 2015b).

c) Household responsibilities

Women have the same rights as men to be head of the household and wives are not required to obey their husbands (Civil Code, Articles 66-68). The Constitution and the Civil Code establish that both parents, in formal or informal unions, have the right to be the legal guardians of their children, and the same rights and responsibilities with regard to the latter during marriage (Constitution, Article 39; Civil Code, Articles 110 and 143). Married and unmarried women have the same rights as men to choose where to live (Civil Code, Article 70).

A reform of the Civil Code in 2005 mandated that marriage contracts in Spain must include a pledge to share housework, child rearing and care for the elders. However, women continue to perform on average more household tasks compared to their male counterparts, despite a growing percentage of women in the labour force (CEDAW, 2013). The government has carried out a variety of campaigns at the national level to raise awareness concerning shared responsibilities within the household (CEDAW, 2013; CEDAW, 2015).

d) Divorce

Women and men have the same rights to initiate and finalise a divorce (Civil Code ,Article 86) and low-income citizens have the right to free legal counselling through the *Colegio de Abogados* (Law Society). Women have the same rights as men to be the legal guardians, and have the same rights and responsibilities, with regard to their children after divorce (Civil Code, Articles 90-92). If the parents cannot attain a mutual agreement, child custody will be decided by a judge (Civil Code, Article 159). An amendment to the law in 2005 encouraged joint custody and put an emphasis on defining dual parental roles.

Although divorce carries some stigma, divorce rates have steadily risen over the last decades.

e) Inheritance

Women's land and non-land inheritance rights, as wives and daughters, are protected under the Civil Code (Articles 807, 808, 931-32, 954), although in places such as Galicia, Asturias and Leon, local laws on the inheritance of agricultural land benefit sons to the detriment of daughters (FAO, n.d.).

Women have the same rights as men to make a will. Spanish inheritance law abides by 'forced heirship' rules (Law of Obligatory Heirs), which states that if the deceased was married at the time of death, the spouse keeps 50% of all jointly owned property. The remaining 50% are put towards the estate, to be divided into three equal portions: one third divided between surviving children in equal shares; one-third reserved for surviving children but can be distributed equally or unequally according to the will's instructions; one-third that can be disposed of freely in a will (Civil Code, Articles 806-808).

2. Restricted Physical integrity

a) Violence against women

Spain ratified the Istanbul Convention in 2014. The pre-existing legal framework in Spain is Law 1/2004 of 23 December 2004. It provides protection against intimate partner violence and the creation of dedicated courts, accompanied by the development of a system to monitor cases of gender-based violence (Sistema VioGén). The CEDAW committee (2015b) has, however, noted that Law 1/2004 does not protect women from all forms of gender-based violence and that there has been a deterioration of protective services for women who are survivors of violence, including the limited availability of shelters (CEDAW, 2015b). In addition, Spain does not have a standardized system to collect information on sexual violence (CEDAW Shadow report, 2015d). Amnesty International has similarly expressed its concern over the lack of effective implementation of law 1/2004 (CEDAW Shadow report, 2015c).

A national strategy for the elimination of violence against women was adopted by the government for 2013-2016. The objectives of the strategy include improving the institutional response provided by public authorities through the provision of personalised schemes, assistance to minors and women that are particularly vulnerable to violence; raising the visibility of and assisting in other forms of violence against women. The national strategy also endeavoured to expand the scope of the definition of gender-based violence from intimate-partner violence to include sexual assault, female genital mutilation, forced marriages, sexual harassment, and other forms of violence against women (CEDAW,

2015b). In addition, the budget for action to fight violence against women was increased by 7% in 2015 and one million euros were allocated for customized plans for victims of gender-based violence. The national strategy also saw the adoption of a protocol for better management of shelters, the addition of an Arabic dialect in the national help line, the adoption of a common health protocol for female genital mutilation and the elaboration of a strategy to fight female genital mutilation.

The CEDAW committee (2015b) has expressed concern over the prevalence of violence against women, including sexual violence, and the high percentage of women who have died as a result of intimate partner violence.

b) Domestic violence

Several bodies of laws address domestic violence. The Criminal Code (Article 173) was modified by Law 11/2003 so that actions formerly considered as simple misdemeanours, such as physically aggressing someone or threatening them with a weapon became crimes punishable by imprisonment when occurring within the family. Law 27/2003 provides a framework for issuing protection orders for victims of domestic violence. The protection order gives victims a comprehensive protection status that may include precautionary measures of a civil and criminal order and other measures of assistance and social protection. In 2004, Law 1/2004 was passed to address the recommendations of the international organizations and treaties signed by Spain, such as CEDAW, and to establish integral protection measures aimed at preventing, sanctioning and eliminating gender-based violence (Article 1.2). The law covers sexual, psychological and physical violence, but not economic violence (Law 1/2004, Article 1; Criminal Code, Article 173(2)). It protects family members and former spouses and sets prison sentences of six months to a year for domestic violence, threats of violence, or violations of restraining orders, with longer sentences in case of serious injuries (Law 1/2004; Criminal Code, Article 173(2)). Law 1/2004 prohibits the use of mediation in domestic violence cases (Article 44). It also includes actions for awareness-raising, prevention and detection in areas as diverse as education, health, advertising and media dissemination.

Law 1/2004 on Integrated Protection Measures against Gender Based Violence (2004) created two institutions responsible for monitoring the implementation and effectiveness of the law: the Special Government Delegation on Violence against Women and the State Observatory on Violence against Women. Women's associations also play an important role in the State Observatory as members of this collegiate organization.

There have been several national action plans against domestic violence in Spain, the first of which began in 1998, and the most recent of which ran from 2013-2016. The action plans have included a range of activities, from information sessions for victims, trainings of police departments, the creation of specialised care and information centres, sensitization campaigns, the establishment of a 24-hour toll-free national hotline in multiple languages, and a specialized unit for treating gender-based violence cases within the National Police. Moreover, the *Web de recursos de apoyo y prevención ante casos de violencia de género* (Online portal for means of support and prevention of gender-based violence) was created in order to help victims of domestic violence find support systems within their region (operated by the Secretary of State for Equality). There are 454 shelters for women victims of domestic violence.

In 2016, the Ministry of Health, Social Services, and Equality spent 4.8 million euros on awareness campaigns across the country, the same amount as in 2015. The National Strategy for the Eradication of Violence against Women (2013-2016) had a budget of 1.6 million euros (CEDAW, 2015). The 2015 appropriations for measures against gender-based violence, including the budget of the Government Office on Gender-based Violence, totalled 23.7 million euros, 7% more than the total for 2014. CEDAW shadow reports (2015d) expressed concern, however, that budgetary cuts meant a reduction in resources and structure. In addition, Amnesty International and the UN Human Rights Committee estimate that the majority of domestic violence cases go unreported, are filed without the pursuit of a judicial process, and a high percentage of protection order requests are rejected. Moreover, Amnesty International noted that members of the judiciary and health professionals continue to lack proper training for dealing with domestic violence cases (CEDAW Shadow report, 2015c).

c) Rape

Article 179 of the Criminal Code defines rape as sexual assault with vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices and punishes the latter with 6 to 12 years of prison. Aggravating circumstances for the crime are enumerated under article 180: if there is more than one aggressor, when the victim is vulnerable (minor, etc.), when the victim is a subordinate to the perpetrator, when weapons are used, and if it is a recurring event. The Spanish Penal Code also makes the distinction between sexual assault (Article 178) and sexual abuse (Article 181). Article 178 stipulates that anyone who infringes upon the sexual freedom of another person through violence or intimidation commits the crime of sexual aggression, with imprisonment from one to five years. Article 181.1 establishes that infringing upon someone's sexual freedom without their consent, even when violence or intimidation are not used, is considered as sexual abuse, punishable by imprisonment from 12 to 24 months. The definition of rape does not specifically include marital rape. However, in 1992 the Supreme Court ruled that husbands must have the consent of their wife in order to engage in a sexual act (Supreme Court Ruling 3423/1992) and Article 3 of law 1/2004 protects against sexual assault from current or former partners.

Although the US State Department reports that the law is generally enforced effectively, a CEDAW Shadow report (2015c) expressed concern that not all victims of sexual violence have access to medical and psychological treatment and that there are geographical disparities in terms of access to the latter. Moreover, as with domestic violence, members of the judiciary and health professionals continue to lack proper training for dealing with rape cases (CEDAW, Shadow report, 2015c).

d) Sexual harassment

The Criminal Code (Article 184) and Law 3/2007 (Article 7) address sexual harassment, which is punishable by a fine (six to eight months' salary) or incarceration from three to five months, longer with heavier fines if there are aggravating circumstances. Sexual harassment is defined in the Penal Code as the solicitation of sexual favours in the workplace, in educational settings or during the delivery of services. Law No. 3 defines sexual harassment as verbal and non-verbal behaviour of sexual nature that creates a hostile, offensive or degrading environment for the victim. The law requires private and public entities to acknowledge and address cases of sexual harassment (Law 3/2007, Articles 14, 27, 46)

CEDAW Shadow reports (2015c, 2015d) and the State Observatory on Violence against Women note that sexual harassment in the workplace continues to be an issue, and include unwanted invasion of personal space, pressure to establish a non-professional relationship, solicitation of sexual favours in exchange of professional advancement, and physical aggression by superiors. While the Criminal Code (article 184) and Law 3/2007 (article 48) cover sexual harassment in the workplace and in educational establishments, the definition of sexual harassment does not cover sporting establishments, public places, cyber harassment or cyber stalking.

In addition to actions under the National strategy for the elimination of violence, the Ministry of Education has developed an action plan that includes measures to eliminate gender-based violence, a protocol on how to act in the face of sexual harassment and harassment on the grounds of sex, and has designed various measures to avoid the use of sexist language in public administration (CEDAW, 2013). However, the US State Department (2016) noted that few sexual harassment cases come to trial despite being widespread.

e) Female genital mutilation

The Criminal Code specifically addresses female genital mutilation (Article 149.2). In 2015, the government passed the Children Protection Law, which specifically provides for protection of minors against any type of violence, including FGM/C. The law authorises courts to prosecute residents who have committed this crime within Spain or anywhere in the world.

Under the 2013-16 National Strategy for the Eradication of Violence against Women, a protocol was introduced in 2015 requiring doctors to ask parents to sign a declaration promising their daughter(s) would not undergo FGM/C when they visit countries where the practice is common. Once a family returns to Spain, a doctor must examine the girl(s) again and can start legal action against the parents if examination finds that they underwent FGM/C during their trip. Doctors must also inform the parents of the health consequences of FGM/C.

f) Abortion

Law 2/2010 established women's right to access the voluntary interruption of a pregnancy (up to 14 weeks), as well as to other reproductive services, such as contraception (Article 12). The law also permits abortion at up to 22 weeks if two doctors certify that the pregnancy poses a serious threat to the woman's life or physical or mental health, as well as in cases of foetal impairment, and beyond 22 weeks in cases of severe foetal impairment. Law 2/2010 also allows 16- and 17-year-olds to obtain an abortion without parental consent.

Abortion remains a controversial political issue in Spain, and regular attempts to restrict or liberalise it occur (CEDAW Shadow report, 2015c).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Married and unmarried women have the same rights as married and unmarried men to own, use, make decisions and use as collateral land and non-land assets (Civil Code, Articles 66, 348 and 1375-

1377; Constitution, Article 33). The default marital property regime is partial community of property (Civil Code, Article 1316) and both spouses must agree on the administration of property (Civil Code, Articles 1375 and 1377).

Constitutional Act 3 of 2007 establishes that the State must promote new business activities to support the economic activities of women in rural areas (Article 8). This was followed by the approval of Royal Decree 297/2009 and of Law 35/2011 on shared ownership of agricultural enterprises for married couples. The Ministry of Agriculture, Food and Environment has carried out a series of activities to implement Law 35/2011 including establishing the Register of Shared Ownership of agricultural enterprises (RETICOM); drawing up a dissemination plan to raise awareness of shared ownership legislation; and collaboration and coordination actions carried out with the competent bodies of the Autonomous Communities and other ministries involved, with rural women's organizations that are most representative at the national level, as well as with rural development networks.

The Ministry of Agriculture, Food and Environment has carried out several action plans to promote gender equality in rural areas. The Strategic plan for gender equality in rural sustainable development ran from 2011-2014 and aimed to promote women's participation in cooperatives, producer organisations and rural committees (Ministry of Agriculture, Food and the Environment, 2017). While the CEDAW committee (2015b) has noted the increase in grants for the advancement of rural women and training for rural professions, it expresses concern that, notwithstanding the provisions of Law No. 35/2011 on shared ownership of agricultural enterprises, more than 70% of agricultural holders are men.

However, implementation of the law remains weak and recognition of shared ownership of farms is not always implemented (Shadow Report, 2015d). Women's agrarian movements reported that data on land ownership is seldom disaggregated by sex (CEDAW Shadow Report, 2015d). Moreover, in some regions of Spain, agricultural labour, decisions over, and use of land are still considered an activity reserved for men (CEDAW Shadow Report, 2015b).

b) Secure access to formal financial resources

Married women have the same rights as married and unmarried men to open a bank account at a formal financial institution and to obtain credit (no restrictions found). Moreover, Law 3/2007 (Articles 69 and 71) prohibits discrimination by creditors on the basis of gender in access to credit.

c) Workplace rights

Spain has ratified ILO Conventions 100, 111, and 156, but not 183 or 189.

Law 3/2007 on Effective equality between women and men mandates non-discrimination on the basis of sex in employment and specifically covers job advertisements, selection criteria, recruitment, hiring, terms and conditions, promotions, training, assignments, and termination (Article 5). It also mandates equal remuneration for work of equal value (Article 5; See also Royal Decree 1/1995, Article 28; Labour Code, Article 28). The law does not prohibit women from entering certain professions and they may work at night under the same conditions as men. Moreover, the 3/2007 Equality Law

(Articles 45-49) prescribes the mandatory adoption of equality plans not only at the governmental level but also for private companies with more than 250 employees. Equality plans are not compulsory for small and medium-size companies, but a 2011 resolution regulates economic incentives for companies with less than 250 employees that voluntarily negotiate and implement an equality plan. In addition, Article 22 of Law 56/2003 stipulates that the Public Employment Agency has the obligation to monitor all job offers so that they do not contain discriminatory criteria of access to employment.

Royal Decree 1/1995 mandates entirely paid maternity leave (Articles 45 and 48) of 16 weeks, financed by the government (Article 133). Royal Decree 2/2015 (Articles 37, 45 and 48) also mandates an entirely paid paternity leave of 30 days financed by the government (Articles 37 and 48). Paid parental leave is not available, although an unpaid leave of up to 1095 days may be taken (Royal Decree 1/1995, Article 46). The law protects women's employment security when they are on maternity leave (Royal Decree 1/1995, Articles 45 and 48). It is not prohibited for an employer to ask about a woman's pregnancy or her intention to have children during the recruitment and promotion process.

For women contemplating motherhood a main concern is that inflexible working hours and continued discrimination in the division of family labour will hinder their pursuit of a career should they have children. Unstable economic conditions, high levels of unemployment for women and youth, a lack of part-time work, and evidence of an 'employment penalty' (or downward occupational mobility) for those who do return to work after childbirth further compounds such concerns (Social Issues Research Centre, 2016)

Although women's participation in the labour force has steadily risen over the last few decades in Spain, there remains a persistent gender gap in the labour market which includes a gender pay gap as well as horizontal and vertical segregation (European Parliament, 2016). The Institute for Women and Equal Opportunities has the possibility to initiate proceedings against offenders in cases of discrimination, but rarely does so. Similarly, the Labour Inspectorate can investigate employers who discriminate against women, but its intervention depends on the instructions and preferences given by the Labour Authority, and the latter does not take action to identify collective agreements with discriminatory provisions (European Commission, 2016). Employers do not have a legal obligation to disclose gender-disaggregated information on payment at the company, making legal claims of payment discrimination complex (European Commission, 2016).

4. Restricted Civil liberties

a) Citizenship rights

Women have the same rights as men to acquire, change and retain their nationality, regardless of their marital status (Constitution, Article 11). They also have the same rights to confer nationality to their children (Civil Code, Article 17) and married women have the same rights to confer nationality to their spouse (Civil Code, Article 22). Women have the same rights as men to register the birth of their children (Law 20/2011, Article 44). Births must be registered within eight days (but can be up to 30 days with good reason) at the local civil registry office. Article 48 of Law 20/2011 provides for late or delayed registration for unregistered adults or children. There do not appear to be discriminatory

customary, traditional, or religious practices or laws that discriminate against women's legal rights regarding nationality or birth registration.

Although multiple discrimination is not prohibited, Organic Law 3/2007 on the Effective Equality of Women and Men provides that 'the public authorities shall, in the preparation of studies and statistics, devise and introduce the necessary mechanisms and indicators to show the incidence of other variables whose recurrence generates situations of multiple discrimination in the various spheres of action' (Article 20; European Commission, 2016).

Married and unmarried women have the same rights as married and unmarried men to apply for identity cards (Royal Decree 1553/2005, Articles 2 and 11; ID application procedures) and passports (Royal Decree 896/2003, Article 4). Women also have the same rights as men to acquire passports and other travel documents for their minor children (Royal Decree 896/2003, Article 4) and to travel outside the country (no restrictions found).

b) Voting

Married and unmarried women have the same rights as men to vote (Constitution, Article 23). There are no specific legal measures to ensure that women understand their right to vote and how to exercise it, but there do not seem to be any customary, religious, or traditional practices or laws that discriminate against women's legal right to vote.

c) Political voice

The law provides women with the same rights as men to hold political and public office in the legislature, executive and judiciary (Constitution, Article 68).

There are legislated quotas at both the national and local levels (municipal elections in places with more than 5,000 inhabitants). Law 3/2007 (the 'Equality Law') introduced the principle of gender-balanced political representation by mandating candidate lists for all elections to include a minimum of 40% and a maximum of 60% of either sex, a proportion to be respected in each stretch of five candidates. The sanction for non-compliance is the withdrawal of the party list, enforced by the Electoral Commission. Since 2009, a number of parties have also adopted voluntary measures whereby women and men alternate throughout candidate lists (European Commission, 2016). In addition, Article 60 of the Equality Law stipulates that at least 40% of the training places for promotion in the Public Administration must be reserved for women.

While Spain has seen an increase in the representation of women in parliament and the legislatures of the autonomous communities, the CEDAW committee (2015b) has expressed concern over the generally low participation of women in political and public life, in particular in decision-making positions at the autonomous community level, in the diplomatic service and judiciary, as well as the absence of awareness-raising activities on the importance of the participation of women in decision-making (CEDAW, 2015b)

d) Access to justice

The law provides women with the same capacity as men to sue and be sued (Civil Code, Article 38) and their testimony carries the same evidentiary weight in court as a man in all types of court cases (no restrictions found). There are no specific legislation or measures in place to protect women from violence in public and political life, although the Government does have a program for the support and protection for human rights defenders at risk, both domestically and abroad. There is also an Ombudsperson, charged with protecting the rights of citizens and overseeing the administration's activities (Constitution, Article 54).

In terms of enforcing, monitoring, and promoting women's access to justice, Law 1/2004 stipulated the creation of Courts for Violence against women. The same law (Article 70) also creates the position of "Public Prosecutor for cases of Violence against Women," who must supervise, coordinate, and report on matters and prosecutions in the Violence against Women Courts. The legislation also requires prosecutors to notify the complainant/survivor of the release of a violent offender from prison and requires prosecutors who dismiss cases of violence against women to tell the complainant/survivor why the case was dismissed. Law 1/2004 (Article 30) also provides for a State Observatory on Violence against Women to provide advice and analysis of gender-based violence matters, prepare reports and proposals for action, supervise collaboration of the institutes involved, and monitor the judicial response to the implementation of Law 1/2004.

Alleged victims of gender discrimination have access to legal aid provided by public entities (e.g. the Women's Institute and equality entities in the Autonomous Communities and municipalities). If the victim does not have sufficient economic resources to initiate judicial proceedings against the offender she can benefit from the programme of free legal assistance that, in addition to legal assistance, provides exemption from payment of attorney's fees, costs of expert testimony, judicial fees, etc. (Law 1/1996).

The law has established a specialized body tasked with monitoring gender equality, titled the 'Women's Institute for Equal Opportunities (Law 15/2014, Article 17). The Institute has the following competences: a) provide independent assistance to victims of discrimination in pursuing their complaints; b) conduct studies on discrimination; c) publish reports and make recommendations regarding any issue relating to discrimination (see also Law 16/1983, Article 3, as amended by Law 15/2014, Article 17).

CEDAW shadow reports and the European Commission (2016) expressed concern that while the Women's institute for equal opportunities theoretically has the possibility to initiate proceedings against offenders in cases of discrimination, it rarely does so. Organic Law 3/2007 recognised the interaction of the government with civil society organisations specialised in equality of opportunities and led to the creation of the *Consejo de participación de la Mujer* (article 78) as a consulting and advising body in which civil society organisations can participate. Civil society organisations can also participate in other bodies responsible for the follow-up of public policies, such as the State Observatory on Violence against Women.

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