

# TACKLING DISCRIMINATION AND VIOLENCE: THE RECOGNICE AND CHANGE EXPERIENCE

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# FORWARD

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The *Recognize and Change* project aims to promote among the citizens of the countries involved, particularly young people, a culture based on the plurality of identities and their mutual recognition, opposing all forms of discrimination and violence, mainly those based on gender and cultural diversity.

The main actions are:

1. School initiatives implemented through mutual learning activities and *peer education* on three main themes (one per year):
  - 1.1. *Relationships: personal and social identity;*
  - 1.2. *Diversity and discrimination: equal and different;*
  - 1.3. *Violence: action and reaction;*
2. Awareness-raising campaigns implemented through events, contests and a multimedia platform;
3. Promotion of local public policies/interventions (local and international workshops, meetings with policy makers that communicate with youth associations).

Project partners are Prefeitura Municipal de Fortaleza (Brazil), Caritas Ruse (Bulgaria), Delphi Association for Strategic Management (Bulgaria), Câmara Municipal da Praia (Cape Verde), Ville de Dunkerque (France), Vardakeios School for Indigent Children – Ermoupoli (Greece), Collegno Municipality (Italy), the City of Turin (Italy), ISCOS Piemonte NGO (Italy), Comunidade Intermunicipal do Alto Alentejo – CIMAA (Portugal), Serviciul Public Asistență Socială Baia Mare (Romania), Direcția Generală de Asistență Socială a Municipiului București (Romania), Asociația Caritas București (Romania), Diputación Provincial de Huelva (Spain), and Diputación Provincial de Jaén (Spain).

The project beneficiaries are students, young people, schools, parents, youth associations, researchers, and local administrators<sup>1</sup>.

*Recognize and Change* (R&C) entails various project activities, several scientific disciplines, and an interdisciplinary approach involving multiple players (indeed, it involves different players such as *young educators*, schools, associations, experts in communication, university scholars, and local administrators). These multiform activities are accompanied and supported by the research we are here presenting. This research intends to illustrate legislative reforms recently introduced in each country involved in the project as well as local commitments and best practices to combat discrimination and violence at the local level. The ultimate goal is to contribute to the promotion of societies which are either aware of and resilient to different kinds of discrimination and violence based on gender and migration and, consequently, are more engaged in tackling these phenomena. For this reason, this research focuses on best practices contrasting discrimination and violence implemented over the last three years by local authorities of the territories that are partners of the project. This choice enables the project (extraordinary in its nature) to analyse not only local public policies, but also to trace sustainable routes for achieving (*de facto*) equality, analysing the different approaches that were at the basis of each local activity (such as educational activities, participatory processes, intercultural communication and local monitoring exercises of the regulatory frameworks and the current public policies).

As stressed by the final comparative analysis,<sup>2</sup> even where the regulatory framework is advanced, individual fundamental rights are still being violated: either because these rights may be *formally* protected but *substantially* not taken into consideration in a domestic context, or because there may be regulatory shortcomings and legal vacuums in providing individuals with effective safeguards. The need to fulfil the proclaimed fundamental (equal) rights calls forth many institutional commitments not only from the legal authorities to which anyone can claim individual protection, but mainly from administrative institutions which, through public policies (local, national, European and international), can remove

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<sup>1</sup> For more, go to the official website [www.recognizeandchange.eu](http://www.recognizeandchange.eu); see also the video-promos: (<https://recognizeandchange.eu/PromoRCShort.mp4>); the videos made by young people involved in the 2019 video contest: (<https://videowall.recognizeandchange.eu/contest/>) and the game Choose and Change (<https://game.recandchange.eu/>)

<sup>2</sup> See more at page 47, Finelli - conclusions

obstacles to substantive equality and create those positive conditions to better safeguard and completely fulfil anyone's right.

This project has both strengths and weaknesses. Its main strength concerns the influence on (local) cultural processes which are the basis and the target of each activity concerning the protection of human rights; not by chance it encourages dialogue between institutions (Local authorities and Schools) and fosters participated and structured interaction between young people and local politicians. Its main weakness is the awareness of the fact that the project alone cannot change laws or policies, directly.

This research activity has to be contextualized in an unavoidable and concrete frame, namely "global education". What is "global education" exactly? There is a lot of confusion and disagreement about terminology and conceptual frameworks in relation to Global Education, Development Education, Education to Global Citizenship and a host of other definitions.<sup>3</sup> Despite these differences, what is important is that – within the framework of the different levels of Global Education strategy (international, European and national) – local authorities, such as the partners of *Recognize and Change*, can contribute to the implementation of different global education strategies (*inter alia* providing for specific funding programs, both direct or indirect).

The R&C partners promote Global Education projects through the action of Global Youth Work;<sup>4</sup> this aims to protect and fulfil all fundamental rights and, in particular, those of young people, women, the LGBTQI community and migrant people.

In addition, the R&C project would like to contribute to achieving:

The Global Agenda for Sustainable Development 2030, especially Goal number 4 which commits the international community to providing "quality, fair and inclusive education and learning opportunities for all".<sup>5</sup> The Council of Europe perspective on Global Education, according to the view that "Global education is education that opens people's eyes and minds to the realities of the globalised world and awakens them to bring about a world of greater justice, equity and Human Rights for all".<sup>6</sup> The European Union objectives of *Development Education*, especially those pursued through the program Dear (Development Education and Awareness Raising Program).<sup>7</sup> According to the Europeaid view, "the *Development education and awareness raising (DEAR)* aims to inform EU citizens about development issues, mobilise greater public support for action against poverty, give citizens tools to engage critically with global development issues, to foster new ideas and change attitudes".<sup>8</sup> The National issues of Global Education. E.G. according to the Italian law, which calls Global Education: "*Education to Global Citizenship (ECG)*"; ECG is a specific dimension of international cooperation policies and - alongside Development cooperation and Humanitarian Aid – is one of the objectives of the Italian Foreign Policy in this field.<sup>9</sup>

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<sup>3</sup> See more among others, an overview of Momodou Sallah, A Scholar-Activist's Heretic Attempts To "Eradicate Poverty" From A Southern Perspective, Through Disruptive Global Youth Work on Sinergias – diálogos educativos para a transformação social | junho 2020 – n. 10.

<sup>4</sup> M. Sallah, 'Global youth work: A matter beyond the moral and green imperatives?' in M. Sallah & S. Cooper (Eds.), *Global youth work: Taking it personally*, (2008), Leicester, UK: National Youth Agency, p. 1-13.

<sup>5</sup> *General Assembly*, Resolution adopted by the General Assembly on September 25, 2015 - Transforming our world: the 2030 Agenda for Sustainable Development - A/RES/70/1, October 21, 2015 ([www.un.org](http://www.un.org)).

<sup>6</sup> North-South Centre of the Council of Europe (2019). *Global education guidelines: Concepts and methodologies on global education for educators and policy makers*. Lisbon, Portugal: North-South Centre.

<sup>7</sup> The Dear Programme also involves Local Authorities, as stated by art. 14 of Regulation (EC) no 1905/2006 of the European parliament and of the Council of December 18th, 2006 establishing a financing instrument for development cooperation. See the Text of Regulation (EC) 1905/2006 of the European parliament and of the Council of December 18<sup>th</sup> on <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006R1905>

<sup>8</sup> About DEAR programme, see more on [https://ec.europa.eu/europeaid/node/655\\_fr](https://ec.europa.eu/europeaid/node/655_fr)

<sup>9</sup> See Art. 1(4) Law n. 124/2015: "Italy promotes education, awareness and participation of all citizens to international solidarity, cooperation and sustainable development".

# CHAPTER III - THE RESEARCH PROJECT

## INTRODUCTION

One of the outcomes envisaged by the R&C project entails context analysis reports drafted by each partner during the first and third year (see the full Application Form of the project under Activities 3.2). These reports were drafted by purposely-contracted researchers, or better, by specialized researchers from universities and research centres of the different territories involved in the project. The first-year reports (concluded in September 2018) had the goal of analysing the initial situation of discrimination and violence in the territories involved in the project whereas third-year reports (concluded in September 2020) aimed to assess the results achieved by R&C from the point of view of local policies impact. Focusing on the second round of reports, this Section is intended to present 9 research abstracts from the 9 partners involved in the project. These abstracts aim to summarize (in approximately 5 pages per partner) the context analysis reports drafted in the third year of the project. In this way, each abstract presents how decision-makers have faced intolerance and inequalities in their territories over the past 3 years, *inter alia* by means of legislative reforms, case-law, local interventions and the development of good practices on behalf of public institutions. Indeed, each abstract assesses the most relevant initiatives (mainly positive actions)<sup>10</sup> implemented on both at the national and local level, involving institutions, territorial bodies, citizens, particularly youths, and schools.

The cross-cutting themes are (i) gender and (ii) migration, more precisely discrimination and violence based on gender and for reasons of migration. Accordingly, the research abstracts are structured in the following way: firstly, an introduction which generally presents the domestic legal order (including its constitutional system, centralized or decentralized governance, territorial autonomous powers and supranational – binding – legal sources protecting and promoting equality); secondly, a specific analysis of gender-based violence and discrimination in the territory concerned; thirdly, a specific analysis of discrimination and violence for reasons of migration in the territory concerned. Each abstract gives equal attention to the two cross-cutting themes, by showing national and (if possible) local data and statistics on gender and migration issues, then, illustrating latest legislative interventions in both fields, and, finally, presenting recent local policies aiming at achieving substantive (*de facto*) equality. Lastly, each abstract is followed by a short bibliography. It does not entail a comprehensive list of references, but it is an indicative bibliography displaying the main relevant sources, websites and databases used to write the context analysis report.

Research abstracts are followed by a final comparative analysis, which represents not only an additional research output in the context of the R&C project, but also an additional commitment of the City of Turin, as project leader. In fact, in order to draft this final research outcome, the City has developed further collaboration with the University of Turin and CIRSDe (the Research Centre for Women's and Gender Studies). The final comparative analysis is intended to (critically) present different public policies and territorial interventions against discrimination and violence. It ultimately aims to share best practices and inspire future positive actions for the promotion of social inclusion and citizen participation.

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<sup>10</sup> Defined by the European Union Agency for Fundamental Rights (FRA) as “all measures to increase the participation of particular groups in certain spheres of economic, political or social activity, in which those groups are regarded as underrepresented”, in “The Benefits of Positive Action”, (2008), available at [https://fra.europa.eu/sites/default/files/fra\\_uploads/220-FRA\\_thematicpaper\\_positiveaction\\_ICMPD\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/220-FRA_thematicpaper_positiveaction_ICMPD_en.pdf).

# TACKLING DISCRIMINATION AND VIOLENCE IN THE R&C TERRITORIES: THE EXPERIENCE OF FORTALEZA (BRAZIL)

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## 1. INTRODUCTORY OVERVIEW

Brazil is a federal republic, which is based on the principle of decentralized governance. The State of Ceará represents one of the 27 federal states of Brazil and the city of Fortaleza is its capital.

In recent years, the amount of news related to **hate crimes** has grown, especially as a result of extreme right ideology and the polarization between conservative and liberal views. The main reasons for these crimes are ethnicity, country of origin, sexual orientation, gender identity, religion, ideology, and social condition. Normally, these crimes present inequalities which are perpetuated for years due to social life mechanisms.

In this context, **the most significant prejudice crimes are linked to race, gender and homophobia**; these deserved more attention on behalf of society and public administration. According to Hate Map (2019), Brazil registered 12.098 cases of hate crimes in 2018, with 70.47% of them motivated by racial prejudice, 17.9% due to the sexual orientation of the victims, and 9.43% related to gender prejudice. 9.71% of all cases resulted in homicide. This intentional lethal violence particularly victimizes black men, the LGBT community and women, according to the Violence Atlas (2019). In reference to racial prejudice, the *Disque 100* service, a channel of the Ministry of Women, Family and Human Rights (MMFDH) for the denouncement of human rights violations, states that **discrimination was the most significant type of violation registered in the 2015-2019 period** (97.73% of all records). Furthermore, in 27.66% of these cases of discrimination, there was also psychological violence. The discrimination mentioned above, in most of the cases, are racial or ethnically motivated and result in bullying, humiliation, harassment and persecution. Many of the victims are aged 15 to 30 (31.92%), are black or brown (72.94%), are female (48.85%).

Despite the abovementioned landscape, the **Brazilian Constitution (1988) has equality in its core values**. According to Art. 5 *“Everybody is equal before the law, without distinction of any kind, with the inviolable guarantee of the rights of life, freedom, equality, security and property, for Brazilian and resident foreigners”*. And there are many legislative measures in place to promote equality and to protect victims of actions that violate these rules.

In terms of **federal legislation**, it is worth mentioning Law no. 12.288/2010, which instituted the Statute of Racial Equality, and Law no. 11.340/2006, known as The Maria da Penha Law, which created mechanisms to curb domestic and family violence against women. In case of **local legislative measures**, there is Law 9.956/2012, which created the Municipal Plan of Racial Equality Promotion Policies, in Fortaleza. But there is no local law related to protecting women who are victims of violence (everything is based on the Maria da Penha Law). These legislative measures support the victims of racial prejudice and violence, while helping to make equal opportunities a reality. However, it needs to invest in educational actions that can promote a sense of equality and reduce the differences expressed by discriminatory issues.

## 2. DISCRIMINATION AND VIOLENCE BASED ON GENDER

Violence in general, and in particular violence caused by **gender issues**, is a major aspect of daily life in the city of Fortaleza, in the state of Ceará and in Brazil as a whole.

In 2017, the state of Ceará had the highest youth homicide rate among Brazilian states, at approximately 140 for every 100 thousand inhabitants. In this context, **violence against women** has also gained representation. There was a 176.9% increase in the number of women murdered in Ceará (about 87% of them were black) from 2007 to 2017. This exposes the persistence of the racial characteristic of violence against women, and makes them doubly vulnerable. There was also an increase in homicides inside homes which entailed the use of firearms.

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The **situation for the LGBT population** is worse because their plight is invisible. This is because crimes against the LGBT community are often not reported as homophobic/transphobic crimes but as common crimes. However, despite this problem, there is an increase in violence, especially after 2016, with the following general characteristics: more than 70% of the perpetrators are male, more than 90% of homicides occur in urban areas, 60% affect single individuals and most victims are female. According to *Disque 100*, between 2011 and 2019, there were 634 reports of crimes against the LGBT population in the state of Ceará, of which 34.22% are related to discrimination, 19.26% physical violence and 37.58% psychological violence. The sexual orientation and gender identity of the victims are the main reasons for this violence, and they translate to bodily injury, mistreatment, threats, humiliation and homicide. An overview of the victims appoints that 41.11% are aged 15 to 30, 34.66% are black or brown, and 51.44% are male.

The 2019 Report of the *Gays da Bahia* Group shows that the northeast region accounts for the highest number of LGBT violent deaths in Brazil (35.56%). The state of Ceará is the 6th in the same ranking, comparatively with other Brazilian states (6.08% of the cases). The main victims of LGBT violence in Brazil are gay people (52.89%) and transvestites (27.05%). It is important to highlight that, before suffering a violent death, these people are subjected to many **symbolic deaths** caused by the discrimination and its violence, which makes them more vulnerable to extermination policies.

Due to this disconcerting situation, **new legal provisions have been created to protect women and LGBT people** on the three governmental levels, namely:

- *Federal* measures, aimed at stiffening denunciations against aggressors, as well as promoting their rehabilitation through psychosocial monitoring (Laws 13.931 / 2019 and 13.984 / 2020); Initiatives to characterize homophobia crimes, when bodily injury or homicide is a result of the victim's transsexuality and / or sexual orientation (Project-of-Law 3.453 / 2019).
- *State* (Ceará) measures, mainly to highlight the fight against gender and LGBT violence, publicizing the channels to report these crimes and adding dates and events dedicated to raising awareness on the official calendar (Laws 16.892/2019, 16.935/2019, 16.962/2019 and 17.062/2019).
- *Municipal* (Fortaleza) protection mechanisms of the LGBT population, guaranteeing symbolic rights such as the official use of the social name for lesbians, gays, transvestites, transsexuals, and intersex people in school records (CME Resolution n. 13/2016).

In addition to these legislative measures, a series of decisions and laws have been issued in favour of expanding the rights of victims of gender discrimination and violence. For example, the verdict of ADO no. 26/DF, in which the members of the supreme court recognize that "homotransphobic practices qualify as a form of racism, insofar as such conduct matters in acts of segregation that lower members of the LGBTI+ group, due to their sexual orientation or gender identity".

Moreover, there are **public actions and programs** aimed at preventing violence, expanding reporting channels and providing assistance to victims. On a national level, the creation of the Observatory of Women against Violence (OMV) in 2019 stands out, as does the Map of Gender Violence of the Metropolis Observatory, both created with the goal of gathering data and research on domestic violence against women and LGBT people, among other groups.

This theme is particularly relevant in **Fortaleza**, whose City Hall has an exclusive secretariat for Human Rights and Social Development (SDHDS), with **three specific delegations dedicated to minority groups**: Public Policies for Women, Racial Equality, and Sexual Diversity. There is also the Special Coordination of Public Policies for Youth (CEPPJ) and its CUCAs (Urban Centres of Culture, Art, Science and Sports), which carry out **positive actions** (empowerment and emancipation) and improve possibilities for young people in circumstances of vulnerability through training courses, workshops, sports practices, the promotion of health, citizenship, human rights, communication, entrepreneurship, cultural dissemination and creative economy activities.

The CUCA network has promoted events and campaigns that deal with sexual diversity and the **prevention of gender, LGBT and racial-based violence**, such as the Young Action program, the *Mente Livre CUCA Crespa* campaign (to promote Afro-Brazilian culture and, especially, the rights and importance of black women), the celebration of the Municipal Day for the Visibility of Transvestites and Transsexuals, and the campaign *Mulheres de Todas as Cores* / Women of all colours (conversation circles, debates, meetings, activities, scenic and cinematic shows to promote rights and fight violence against women).

Other relevant local positive actions to promote equality and protect women victims of violence are: 1) **Reference Centre to Assist Women in Situation of Violence - CRM Francisca Clotilde** (public administration), which offers shelter to women in situations of violence resulting from domestic and family inequality of gender (psychological, sexual, physical, moral and patrimonial violence), sexual violence (abuse and exploitation),

institutional violence, moral harassment and women trafficking; 2) **Casa da Mulher Brasileira / House of the Brazilian Woman – Fortaleza Unit** (a federal program that is managed by the State Government of Ceará in Fortaleza), which is a public space that offers specialized and multidisciplinary services to take care of women in violent circumstances, by providing psychosocial support, promoting women's autonomy, and women's empowerment; and, 3) **Ceará Women's Forum (FCM)**, a feminist political movement (non-state association) that participates in national and local political constructions stimulating the governmental formulation of public policies for women.

### 3. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

The Brazilian legal system defines the concept of 'migrant', 'refugee' and/or 'asylum seeker'. Federal law 13.445/2017, called "**The Law of Migration**", describes the concepts below in its first paragraph:

- Immigrant: a person from a foreign country or stateless who works or lives temporary or permanently in Brazil.
- Emigrant: a Brazilian inhabitant who temporarily or permanently makes residence in a foreign country.

This law also defines visitors (tourist), stateless people (according to Stateless' Statute from 1954, proclaimed by decree 4.246/2002), and border residents. In the case of **specific legislation for refugees and asylum seekers**, there is the law 9.474/1997 which recognizes as a refugee (1st paragraph):

- A person without nationality (stateless) or who left his own country to escape from persecutions based on race, religious, nationality, social group or politics opinions.
- A person that was obligated to leave his own country and requires refuge in another country due to a grave and generalized human rights' violation.

**Brazilian legal order respects supranational obligations in the field of migration and asylum law.** This can be confirmed by analysing both Law 13.445/2017 (art. 46) and Law 9.474/1997 (arts. 4, 5, 6, 12, 18, 48). Additionally, Brazilian Constitution establishes the right to political asylum in its 4<sup>th</sup> article, item X: "*The Federative Republic of Brazil governs its international relations by the following principles: (...) X – Concession of political asylum.*" Such legal framework, in addition to defining the condition of immigrant, intends to guarantee to foreigners access to fundamental rights, as well as the possibility of regularization in the country, particularly to those from countries affected by wars or climate disaster, or even people persecuted for their political opinions, racial situation, or religious beliefs in their country of origin.

Thus, it can be said that **Brazil has a certain tolerance to immigration, having a long history of receiving immigrants**, whose descendants even constitute a relevant part of the Brazilian population itself. An illustration of this is the high number of foreigners domiciled in Brazil, about 750,000 according to data from the Federal Police. In terms of refugees, 11,231 people in this situation were recognized by Brazilian government up to December 2018 (mainly from Syria, 51%), and 161,057 requests for the recognition of the condition of refugee were in process (80,057 requested in 2018 alone, mainly from people from Venezuela, who account for 77%).

Despite being considered a country receptive to foreigners, **the recent crisis in Venezuela has placed significant stress on these institutes**, since, on the one hand, there is a humanitarian character in this movement, but on the other hand, it exerts significant pressure on the public services provided, in particular, by the municipalities on the border, located in the state of Roraima. In order to address this issue, the **Federal government has restricted the entry of Venezuelans in Roraima and sought to distribute these immigrants among other Brazilian states**. Among the 61,681 requests for recognition of refugees made by Venezuelans in 2018, the states with the highest acceptance records were: Roraima (49,900 or 81%), Amazonas (9,703 or 15.7%) and São Paulo (636 or 1.03%). Ceará registered 323 requests, which represents 0.52% of the total requests made by Venezuelans in 2018.

According to data from the National Survey by sample of households (PNAD), carried out by the Brazilian Institute of Geography and Statistics (IBGE), between 2014 and 2015, 61.8% of residents of Brazilian municipalities are native to these locations, while 38, 2% are not. In this regard, the Central-West region stands out as having the largest number of non-natural individuals in the municipalities. In Ceará, the data shows a greater internal migration, with the displacement occurring between the municipalities, where 72.1% are natural and another 27.9% are not natural. The migration of individuals from other federal units is still low, with only 4.2% of non-natural persons present in the state.

**In general, discrimination against immigrants in Brazil is closely associated with cultural and economic issues, such as competition in the labour market**, predominating in the wealthier regions, which are the main destinations of these migratory flows (both for those who enter the country legally and for illegal

immigrants). This process is intensified due to the low schooling profile of intranational immigrants, who, as a rule, compete for less qualified vacancies, accepting lower wages and/or worse working conditions, when compared to local residents (Brazilians).

Despite receiving a lower number of immigrants/refugees every year, the **city of Fortaleza has a strategy: they welcome these people** to a public residence called *Centro-Dia* in order to guarantee minimum life conditions (habitation, food and safety) and support other partners (public administration, judiciary system and non-state associations). Recently, the Ceará State Government's Secretariat for Social Protection, Justice, Citizenship, Women and Human Rights (SPS) has been promoting the social and labour inclusion of immigrants attended by **State Program in Attention for Migrant, Refugee and fighting against People's Traffic**. In the first half of 2020 (January to June), 840 migrants from Venezuela, Colombia, Cuba, Haiti, Cape Verde, Guiné Bissau and other nations attended this program. They came to Ceará (Fortaleza, in particular) and are now looking for a job opportunity.

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# THE EXPERIENCE OF BURGAS AND RUSE (BULGARIA)

Mihail Fenerov

## 5. *in collaboration with Apostol Stoichev\*Introductory overview*

The formation process of the contemporary legal system of Bulgaria starts with the liberation of the country from the political dominion of the Ottomans in 1878. It is symbolized by the adoption of the first Bulgarian constitution – the Turnovo Constitution – signed on 16 April 1879, a founding document upholding the most progressive and democratic principles seen in Europe in the nineteenth century. Today, the modern Bulgarian legal system is influenced by two very important factors: the **democratization and liberalization** of the country's economy, which started after the fall of the Communist regime in 1989, on the one hand, and the **accession of Bulgaria to the European Union**, on the other. The Bulgarian legal system has evolved through a profound and strictly-monitored alteration in order to achieve coherence with the *acquis communautaire*. Since Bulgaria's accession to the Union in 2007, the country is an EU member State and EU legislation has become an integral part of Bulgarian legal system.

Bulgaria is a **parliamentary democracy** where the prime minister is the head of government and holds the most powerful executive position. The political system has three branches – legislative, executive and judicial – with universal suffrage for citizens aged 18 and over. The Constitution also provides possibilities of direct democracy, namely petitions and national referenda.

In the Bulgarian **Constitution**, Article 6 affirms that each person is equal to the law. It is forbidden to restrict rights and privileges based on race, nationality, ethnicity, gender, origin, religion, education, disability, political orientation, personal and community state or property status. However, in Bulgaria there are no specialized national programs for prevention and protection from discrimination. In this context, such an element has an operative program, "Human resource development" (2014-2020), which is financed by the European social fund. Priority Axis 2 included the investment priority "Integration of marginalized communities as Roma" candidates for "Development of local communities and overcoming negative stereotypes", as prevention from discrimination against marginalized groups.

In 2003, the Parliament accepted a law for the protection of discrimination which is in power and has been active from the year 2004. This law regulates protection against all forms of discrimination and helps to prevent it. The purpose of the law is to provide every person with the right to equality before the law, equality in treatment and opportunities for participation in public life, and effective protection against discrimination. This law protects all individuals on the territory of the Republic of Bulgaria against discrimination, as well as associations of individuals and legal entities. Any **direct or indirect discrimination** based on sex, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family position, property status or any other features established by law or in an international agreement to which the Republic of Bulgaria is a party is prohibited. Harassment on the basis of the signs under Art. 4, para. 1, sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the construction and maintenance of an architectural environment that hinders the access of persons with disabilities to public places, shall be considered discrimination. Nonetheless, the fact that discrimination is not an object of criminal persecution according to the Bulgarian criminal code makes the means of protection against it ineffective.

## 6. DISCRIMINATION AND VIOLENCE BASED ON GENDER

Gender discrimination (also known as **sexism**) is gender-based manifestation of **prejudice**, discrimination, and/or hatred towards people. According to sexist ideas and prejudice, there are basic differences between the sexes, which predetermine different social roles, sexual freedoms and legal statuses for men and women. An example is the understanding of the **dominant position of men**, who are superior to women in all areas of life except housekeeping, parenting, needlework, etc., as a result of which women are denied access to certain professions, and – in some countries – to education and social expression.

In Bulgaria, the phenomenon of discrimination against women is highly spread. Taking into consideration **the Global Gender Gap Index (2020)**, the country still does not have a clear policy for encouraging parity between genders. The Bulgarian score is 0.727 (where 1 equals parity of genders), which means that the level of discrimination has not been reduced. In Bulgarian society, there is a certain harmful gender-based prejudice according to which a woman is better able to care for dependent family and household members. Expression of its effect can be seen in the statistics of the **National Social Security Institute (NSSI)**, where there is very serious

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gender inequality in the use of paid leave to care for dependent family members. NSSI data show that, in almost 100% of cases, women are expected to take care of sick members of the family and young children, even when, legally, leave can be used or transferred for use to the man. Another aspect which highlights the discrimination women are facing is the so-called **time** indicator. This indicator measures the time women and men spend dedicated their time to unpaid housework and care for children, the sick and the elderly, as well as the time they dedicate to themselves, through sports activities, and participation in cultural events or other. For example, the proportion of women who are daily engaged in cooking or other domestic duties in Bulgaria is 72.9%, while for men it is only 13%. At the same time, the percentage of men who spend at least one hour on entertainment is 60% higher than women. The result of the indicator is **lower wages** (by 15.4%) and **pensions** (by 35%), as well as the **higher risk of poverty and social exclusion** for women in Bulgaria compared to men. From the research conducted, we can also state that – compared with men – women in the private sector in Bulgaria occupy a disproportionately low number of managerial positions, and national legislation does not require a balanced representation of men and women in the composition of company management bodies. The results obtained are based on the total population and show that women earn a lower monthly net wage than men.

In 2006, a law for equality between men and women was accepted. The goal of the law was to promote equality between men and women and promote national politics for equality between men and women. The law also defines a national body – the National Committee for equality between men and women – tasked with adopting and implementing a national action plan.

According to a national representative survey of the “Partners Bulgaria Foundation”, 1 in 4 women are subjected to violence. Roma women are forcibly subjected to early marriages and early pregnancies by their own families in order for them to gain material compensation and goods from their spouse’s family. Some groups of women are particularly vulnerable to **invisible domestic violence**: women with disabilities, elderly women, ethnic and religious minority women, and refugee women. Almost one million Bulgarian women are subjected daily to psychological, physical, sexual and/or economic harassment on the part of their partners. Women are becoming more often victims of gender-based crimes because of traditionally stereotypical notions that a woman is (or better, should be) subordinate to a man. Violence against women is evident in our society. The country is flooded with cases of domestic violence. In 2017, there were four cases of domestic violence against women that resulted in death.

In Bulgaria there is a law that protects individuals from domestic violence. This law regulates the rights of victims of domestic violence, the protection measures, and the procedure for their enforcement. Domestic violence is any act of physical, sexual, mental, emotional or economic violence, as well as the experience of such violence, the forced restriction of privacy, personal liberty and personal rights committed against persons who are related, who are or were in a family relationship or in a de facto cohabitation. In the case of domestic violence, the victim has the right to apply to the court for protection.

When it comes to the Istanbul Convention, the **Bulgarian Constitutional Court** ruled that the Council of Europe’s convention on preventing and combating violence against women and domestic violence, known as the **Istanbul Convention**, does not conform with the Bulgarian constitution. Bulgaria is one of the 21 countries that signed it but did not ratify it. The country’s top court rules that the Istanbul Convention would be anti-constitutional, making its adoption by parliament almost impossible. The 12-member court ruled by eight to four that the convention’s definition of “gender” as a social construct “relativizes the borderline between the two sexes – male and female as biologically determined”. It added that, if society loses its capacity to distinguish between a man and a woman, the fight against gender violence would become a formal and unfeasible commitment. The Istanbul Convention was approved by the Bulgarian government in January 2018, but the plan to pass it for ratification in parliament stumbled following criticism, especially from one of the parties of the United Patriots Coalition, VMRO. On December 28, the party, led by the Minister of Defence, Krasimir Karakachanov, claimed that, through the convention, “international lobbies are pushing Bulgaria to legalize a ‘third gender’ and introduce school programs for studying homosexuality and transvestitism and creating opportunities for enforcing same-sex marriages”. The Bulgarian Socialist Party, BSP and the Orthodox Church, which had previously backed the convention, then changed their tune and turned against it. VMRO and the BSP welcomed the decision of the court as a victory against “gender ideology”. Human rights advocates, however, are dissatisfied. The Bulgarian Helsinki Committee, BHC, a prominent rights watchdog, called it “the worst human rights decision in the court’s history, and by a large measure”.

Sadly, no national legislative reforms have been registered in the past three years. However, there are certain strategies and priority areas which include: increasing the participation of women on the labour market and providing equal level of economic independence, decreasing the differences by gender in salary and income, promoting equality between women and men in the decision-making processes, combating gender-based violence and providing protection and support for victims, changing the existing gender stereotypes in different spheres of society. At this moment, Bulgaria also lacks national strategies and plans to support the LGBT community and laws in this sphere.

Discrimination and violence based on gender cannot be measured on a local level for the territory of the Republic of Bulgaria. All we can say here is that we speculate violence against women to be higher in the rural areas due to the lack of education, security and minimized law enforcement. In the territory of Burgas, the NGO "Demetra" is working on the matter. The organization has a crisis centre for children and victims of violence and trafficking, which was instituted 10 years prior with capacity for 8 people. The centre receives help from the Burgas municipality and the national budget contributes to its activities. This centre is geared towards the recovery of mental traumas and ensuring social and legal protection.

## 7. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

Migrants are more prone to discrimination and violence due to the fact that they do not speak the native language and do not know the local culture and traditions. Often, they lack the support of family and friends. Hate speech and hate crimes continue, mainly targeting **ethnic minorities**, Turks, Roma, asylum seeker citizens and migrants. These groups are also highly vulnerable to violence. These people are also discriminated **online** where they are represented as fully different from other people and not as equals. Unfortunately, this is how children and some adults build their positions towards people from third countries. In recent years, there have been several aggressive public campaigns in Bulgaria. Migrants and refugees were, and continue to be, attacked by **nationalist movements** and the subject of political clashes. The total number of applicants for international protection in 2019 for Bulgaria is 2152. In recent years, the number of migrants and refugees arriving in Bulgaria has decreased, but cases of excessive **use of force and robberies** on behalf of border guards continue. Illegal border crossing remains a criminalized act, leading to the detention of migrants and refugees, including unaccompanied children. Human rights organizations document numerous cases of abuse of refugees and asylum seekers as also the existence of abnormal conditions in detention facilities.

In Bulgaria there is a law which is in favour of migrants. It is the asylum and refugee law. This law determines the terms and conditions for granting protection to foreigners on the territory of the Republic of Bulgaria, as well as their rights and obligations. The protection that the Republic of Bulgaria provided to foreigners includes asylum, international protection, and temporary protection. The Republic of Bulgaria grants international protection and temporary protection under this law. International protection is granted under the **Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, 1967**, ratified by a law of international human rights instruments and of that law, and includes refugee status and humanitarian status. Temporary protection is provided in the event of a mass influx of foreigners who are forced to leave their country of origin due to armed conflict, civil war, foreign aggression, human rights violations or large-scale violence in the territory of the country or in a particular area of said country and who cannot for those reasons return there.

The most recent legislative measures on this topic are the ones from July 2018 when the government adopted the **Ordinance on the Integration of Refugees**, but also it failed to provide an effective mechanism for integration. According to UNHCR, the UN refugee agency, the ordinance failed to cope with the permanent problem of non-working municipalities or propose measures to create favourable conditions for integration in local communities. The ordinance also failed in its attempt to overcome the gaps in refugee access to social housing, to family benefits for children and to language training, all of which limits use of social and economic benefits. Unfortunately, there are no relevant local policies which we can discuss.

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# THE EXPERIENCE OF PRAIA (CAPE VERDE)

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## 9. INTRODUCTORY OVERVIEW

Cabo Verde is an archipelagic country, located on the West African Coast, approximately 500km from Senegal, formed by ten islands, which are divided into two groups, Barlavento (Santo Antão, São Vicente, Santa Luzia, São Nicolau, Sal and Boa Vista) and Sotavento (Maio, Santiago, Fogo and Brava). The Republic of Cabo Verde is a Democratic State based on the principles of popular sovereignty, the pluralism of democratic political organization and respect for fundamental rights and freedoms. The Republic of Cabo Verde recognizes and respects the organization of political power, the unitary nature of the State, pluralist democracy, the separation and interdependence of powers, the separation between religions and the State, the independence of the Judiciary body, and it recognizes the existence and autonomy of local powers and the democratic decentralization of Public Administration.

Gender equality is a universal principle of law and a global commitment recognized in the main international instruments on human rights. The **Constitution of Cabo Verde's Republic** in its first article, recognizes the equality of all citizens before the law, without distinction of social origin or economic situation, race, sex, religion, political or ideological convictions and social condition, and ensures full exercise of fundamental freedoms by all citizens. In Cabo Verde, discrimination is criminalized, directly or indirectly, as are cases of sexual harassment, racial discrimination, offense against the physical or moral integrity of people, in accordance with the Civil Code (article 68), the **Penal Code (articles 152 and 270) and the Universal Declaration of Human Rights** to which Cape Verde ascribes. The Republic's Constitution, the **Family Code/ Civil Code on family law**, an integral part of the **Civil Code**, the **Labour Code and the Criminal Code** also firmly stress respect towards men and women rights, and contain provisions that inhibit practices and behaviours that undermine discrimination. This has transversally led to concrete action within the Cape Verdean society, from data production to awareness campaigns, constituting one of the fundamental pillars of Cabo Verde's development (9<sup>th</sup> Legislature Government Program, 2016-2021).

Concerning gender equality in Cabo Verde, the legal framework points that national laws, alone or based on international and regional agreement, shall remove any obstacles to full equality of opportunity between men and women in social, cultural and economic life and promote equal access to all. In this sense, authorities are encouraged to develop positive actions on a local level. On the other hand, on a national level, the legal framework and its definitions about migration policies against discrimination are centralized at the former National Directorate of Immigration, recently replaced by the High Authority for Immigration, which is part of the Ministry of Family and Social Inclusion. However, local governments have the competence to promote policies for the social integration of migrants and can be responsible for proposing and coordinating migration policies, such as in the case of the Praia Municipality, capital of Cabo Verde, which is part of the National Immigration Council and has a municipal plan for the integration of immigrants.

## 10. DISCRIMINATION AND VIOLENCE BASED ON GENDER

Cabo Verde ranks 52<sup>nd</sup> among 153 countries, according to the Global Gender Inequality Index (2020). However, with the exception of education, which achieves relatively good results (104), the remaining variables need deep work and more effective interventions, namely in terms of economic participation and opportunities (15), health and survival (80) and political empowerment (89) (World Economic Forum, 2020). These results show, on one hand, some progress, particularly in relation to investments in human capital; on the other hand, they point to the persisting challenges within women empowerment in all spheres of society, mainly in the labour market and participation in decision-making.

Regarding gender-based violence, the National Statistics Institute (2019) data shows that about 15.7% of women suffered acts of physical violence. In 2005 the data showed that 19.6% of women said they had suffered physical, emotional or sexual violence; the data registered an increase to 20.4%, in 2018. The situation is more critical in terms of emotional violence, which also increased to 15.4% of women who suffered some emotional violence, in 2018, against 14% in 2005. Overall, national data calls attention to intimate partner violence, which occurs specifically between couples; 15.2% cases are married women who suffered physical violence. 89% of victims of

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GBV are female. Victims aged 22 to 30 years old represent 34.7% of the total and 31 to 45 year olds represent 31.0% of the total (INE, 2017). According to a study by the Cape Verdean Institute for Gender Equality and Equity (ICIEG, Portuguese acronym), in partnership with the United Nations Development Program (UNDP), the number of GBV cases in Cabo Verde has decreased by about 52.6% from 2016 to 2019 (ICIEG/UNDP, 2019). It appears that, according to the data from the State Prosecutor, complaints of GBV have decreased to less than 24%, that is, a decrease of around 154 cases and, equally, the National Police data indicated a decrease of 34.8%. This decrease is largely due to the awareness and information campaigns, which are necessary preconditions for any change. Therefore, information dissemination, training and awareness campaigns on gender equality issues are available and, finally, in 2019, GBV became a priority prevention crime, based on Law No. 52/IX/2019, which approves the amendment to the criminal policy enforcement regime, now classifying GBV as a priority prevention crime. This means there is equality in the treatment of judicial proceedings and recognition of the emergency for the eradication of GBV within Cape Verdean society.

Although there has been a decrease in violence, it is important to note that the prosecutor's offices receive, on average, 2,500 GBV complaints per year. In 2018 year alone, Cabo Verde recorded eight cases of femicide, which involved women who were leaving their partners. However, in 2019, due to awareness campaigns and a strong partnership with the National Police, there were significant gains in the fight against GBV and femicide, having registered a decrease of 90% (only one case). Lastly, it is important to mention an ongoing study which is being conducted by ICIEG whose objective is to understand the phenomenon, identify the aggressor profile and indicate the institutional responses to the phenomenon. Finally, the most sensitive challenge concerns gender-based stereotypes. These are social stereotypes which, unfortunately, confirm the fact that Cabo Verde remains a country with a strong patriarchal and sexist tradition, and a very disparate relationship between men and women. Overall, the perception of discrimination is relatively higher for the LGBTQI community. Therefore, there are still some challenges related to reporting sexual harassment cases and, consequently, the data production to understand it better. Similarly, a lengthy judicial process may lead to negative measures.

#### *RECENT LEGISLATIVE INTERVENTIONS*

Among the most recent main positive actions, it is worth mentioning: the **II National Action Plan for Human Rights and Citizenship 2017-2022**, which provides for the creation of an observatory for the monitoring and rapid identification of human trafficking situations; the Elaboration of the **V Strategic Plan for Gender Equality**, the adoption of the first Inter ministerial Committee for gender approach, by **Resolution No. 103/2018**, which aims to monitor the effectiveness of the mainstreaming of the gender approach in public policies; the Parity **Law approval No. 68/IX/2019**, which requires parity in political representation, to be at least 40% of each sex, in the lists of candidates for political power bodies, such as National Assembly, City Council, Municipal Assembly and others political structures; the creation of the Victim Support Fund; **Resolution No. 143/2017**, which approves the National Care Plan, 2017-2019, with the objective of creating the institutional, technical and financial conditions to implement a care network for the most vulnerable people and transversal policies to promote gender equity. To this end, a training for an assistance plan and professionalization program on assistance areas was implemented as were assistance services for dependent people, budgets for municipal centres and day-care services for dependent people assistance.

#### *RECENT LOCAL POLICIES*

The Praia Municipality, as Cabo Verde's Capital, has been actively involved in programs and policies on gender issues. In addition, it has hosted major reflection meetings for gender policies, both nationally and internationally. The **2016-2020 Municipal Governance Program**, Gender Equality and Equity, constitute a fundamental pillar of priority intervention for the development of a solidary and, increasingly, educationally evolved City. In this sense, the city has developed a set of gender policies, among which the following stand out: the **Gender and Empowerment Program** implementation, which aims to create opportunities for training, production and income for young people and women who belong to single parents families and vulnerable families; the disclosure of the **Gender Alert Program**, which aims to inform communities about the importance and scope of the GBV Law; the implementation of **training actions for educators**, which has enabled the construction of positive paradigms in the field of gender relations in pre-school education; combating all forms of discrimination based on gender and homophobia, through the "**Recognize & Change Praia**" project; and the elaboration, still in progress, of the **Municipal Plan for Gender Equality and Equity**.

## 11. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

Although there have been no cases of physical violence motivated by migration, such as xenophobia and social segregation due to racial or ethnic issues, in Cabo Verde, discrimination persists, particularly towards African citizens in the way they are treated at Cape Verdean borders, that is, the way they are seen crossing Cape Verdean borders, leads them to be discriminated based on their skin colour and, in general, excludes them from the ideal profile for the migratory political project provided by the Cabo Verde State/Government. In this sense, complaints have been increasingly frequent, and include diplomatic interventions on behalf of the immigrants' countries of origin. As a result, they are faced with a fundamental issue that places them in a vulnerable situation in terms of social integration: lack of legal paperwork, which explains the absence of a residence contract or a precariousness work situation. This leads to immigrants being discriminated against, exploited, or completely lacking social protection.

### *RECENT LEGISLATIVE INTERVENTIONS*

In recent years, Cabo Verde has developed a series of positive actions and legislative interventions which promote immigrants' social integration. Among the main aspects, we highlight the implementation of the **II Action Plan for Immigration and Social Inclusion of Immigrants (2018-2020)**; the elaboration of the National Plan to combat the trafficking of persons 2018-2021 by Resolution 40/2018; the **project to promote the social integration of immigrants** (PISI, Portuguese acronym), which, by strengthening the capacity of organized civil society (NGOs, associations), seeks to promote civic participation and integration of immigrants in Cape Verdean communities and society; **the Multiculturalism project** (Promul, Portuguese acronym), which aims to prepare, systematize and disseminate information, studies, and awareness-raising activities on immigration and the integration of immigrants. And finally, the **project to protect immigrants in at risk situations**. As for the most recent legislative intervention, **Decree-Law No. 46/2019** stands out, as it creates and regulates the Support for Voluntary Return, establishing the procedures of support and social assistance to foreign citizens who wish, voluntarily, to return to their countries of origin.

### *RECENT LOCAL POLICIES*

The majority of immigrants reside on the island of Santiago. This accounts for 56.8% of immigrants; 43.5% of these live in the city of Praia. For this reason, the Praia City Council, in partnership with the General Immigration Office, drew up a **Municipal Plan for the Integration of immigrants from Praia City through Resolution No. 16/2019**. Services provided include **training for immigration associations which are pioneering in the field of gender; migration parties; information sharing sessions** for immigrants on access to basic services, that is education, health, social security, regularization and convention; the **financing of 29 projects to associations and NGOs** from immigrant communities in Cabo Verde, with approximately 1,000 direct beneficiaries in the field of literacy, small business management, crafts, language courses and professional training; the **creation of Immigration Service Offices**, and the implementation of the **Project to Strengthen immigration management and social integration of immigrants at the Municipal level**.

## 12. CONCLUDING REMARKS

Cabo Verde, although it has a set of legal mechanisms to combat the gender discrimination phenomenon, in practical terms it seems insufficient, when it comes to prioritizing the actions that effectively promote gender equality. Generally speaking, actions are limited to GBV problems and focus more on violence against women. Even though the official data shows a drop in terms of statistics, said data must be put into perspective due to fact that many cases of violence are not reported, especially those that happen in the family environment. Additionally, Cabo Verde tends to be overly concerned in projecting the objectives of an imported gender agenda with a global focus and predefined goals, inserting timidly crucial endogenous factors in the design of its own gender agenda. Furthermore, there is a lack of political will to comply with the law's prerogatives in promoting gender equity, which consequently aggravates the circumstances due to the absence of mechanisms to ensure its compliance. It is believed that the way gender issues are perceived in Cabo Verde is relatively out of step with the local reality due to the fact that (local) social and cultural dimensions are not taken into account. Public policies and positive actions in favour of equality are, in most cases, *reactive* rather than *preventive*. This also influences the passive way in which crimes based on gender are dealt with by police and judicial bodies, motivating other, perhaps worse, forms of violence. There are cases of women and girls who are victims of violence committed by their intimate partner, and who, after filing a report, are faced with persecution and even death. Lastly, there's the colonial



heritage that formed a society based on sexual and racial violence and the structural machismo that has persisted until today.

As for the migration phenomenon, Cabo Verde has a remarkable legislative framework, at national and international level, for immigrants, refugees and asylum seekers looking for admission and integration. Although Cape Verdean law criminalizes racial discrimination, said discrimination persists, particularly on the migrant African community, with cases of racism at the borders, despite such racism being denied. It is necessary to highlight that, in recent years, the actions of the Cape Verdean State/Government in favour of the immigration phenomenon appear to be more of a result of pressure exerted by the international community due to specific cooperation programs, migration protocols and border management. As a matter of fact, thanks to its geostrategic location, Cabo Verde is considered to be a European “buffer zone” which connects the three continents - America, Africa and Europe – and it is also a gateway to the African continent. This is why migration is perceived as a political project provided by the State, where there is a selection of a desired profile type in the international mobility/migration context to cross Cape Verdean borders. According to the National Statistics Institute (2018), the country has approximately 14,000 immigrants; however, data on the number of immigrants illegally living in the country is lacking, making it difficult to know the exact number of immigrants living in Cabo Verde. The most critical situation is the pressure of rural exodus, which has had direct consequences on the depopulation of some areas, for example, Santo Antão island, which experienced a loss of local income and family breakdown, and which has resulted in the exacerbated concentration of resources in cities which are considered the main country development poles, such as Praia City (Santiago island), Mindelo (São Vicente island) Santa Maria (Sal island) and Sal Rei (Boa Vista island). These cities are faced with urban delinquency and criminality of different natures, precarious housing conditions, poor sanitation conditions and a failed urban environment. Therefore, we believe that education is a determining factor for an increasingly equitable gender society, which is aware of cultural diversity in the migration context. It is essential to create institutions and monitoring mechanisms to supervise compliance and evaluate the implementation of public policies and legal apparatus; however, said education must also feature a preventive character and offer the possibility of applying enforcement measures in cases of non-compliance, to either the discrimination on gender or on migration. Likewise, it would be advisable to create an Alert and Rapid Response System as a preventive measure and awareness teams to disseminate information to communities; lastly, legal mechanisms that assign responsibilities in the attempt to omit crimes based on gender and racial discrimination should also be created. As for the internal mobility/migration phenomenon, it is believed that the transfer of economic and human resources that stimulate local development, incentive for investments in agriculture and livestock areas and in other sectors according to local aspirations and the regionalization process are determining factors when it comes to reducing the pressures of rural exodus.

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# THE EXPERIENCE OF DUNKIRK (FRANCE)

*Besmira Gurguri\**

## 14. INTRODUCTORY OVERVIEW

France is a unitary republic and "its organization is decentralized". This is stated in the **Constitution of the Fifth Republic dated October 4, 1958**, which is the fundamental legal text governing the current regime. However, this **decentralized** organization is characterized by a territorial division into three levels: the region, the department and the commune, which benefit from freedom of administration and financial autonomy (a budget). This organization does not encroach on the legislative power, which remains the exclusive prerogative of the parliament. As a matter of fact, the parliament, composed of two assemblies – the National Assembly and the Senate – votes all laws, controls government action and evaluates public policies. The local authorities, for their part, are limited to a regulatory power conferred to them by parliament (decrees, orders, etc.).

This separation of roles in legislative and regulatory matters reflects the separation of the three constituent powers of the organization of France: legislative power, executive power and judiciary power. It should be noted that, in the context of monitoring compliance with the law and punishing offenders, which is the exclusive responsibility of the judiciary power, the latter can enrich the interpretation of legal texts by means of what is known as jurisprudence.

The principle of **equality** of citizens is laid down in the 1958 Constitution, which incorporates the principles of the Declaration of the Rights of Man and of the Citizen of 1789 and the Preamble to the 1946 Constitution. Since 2008, French legislation incorporates international and European criteria to define the main forms of discrimination:

- **"Direct"** discrimination is "the situation in which a person is treated less favourably than another in a comparable situation and on the basis of their origin, sex, family situation, pregnancy, physical appearance, particular vulnerability resulting from their economic situation, apparent or known to the perpetrator, their surname, place of residence or bank account, state of health, loss of autonomy, handicap, genetic characteristics, morals, sexual orientation, gender identity, age, political opinions, union activities, ability to express himself in a language other than French, membership or non-membership, real or supposed, of a particular ethnic group, nation, alleged race or religion;
- **"Indirect"** discrimination such as "a provision, criterion or practice which is seemingly neutral but which is likely to place individuals at a particular disadvantage compared with other individuals on any of the grounds mentioned in the first paragraph, unless that provision, criterion or practice is objectively justified by a legitimate aim".

With regards to the concept of "violence", French law defines it as all **criminal offences** or aggravating circumstances constituting an expectation of the integrity of individuals (Articles 222-7 et seq. of the Criminal Code). Under civil law, violence is any act, whether deliberate or not, which causes physical or moral disorder to the victim, with harmful consequences for his or her person or property. French law makes no distinction in its definition between gender-based violence, violence linked to a person's cultural origins and other forms of violence. Aggravating circumstances are taken into account in criminal law when the gender identity or origins of the victim of an offence are taken into account. These circumstances are distinct from, and should not be confused with, the legal, moral and material element of the offence.

## 15. DISCRIMINATION AND VIOLENCE BASED ON GENDER

The question of the equality of women and men is no longer one of principle but of effectiveness. This is even more so since, despite the progressive laws adopted, inequalities exist and are reflected in gaps between the two sexes in all areas of life (education, work, politics, etc.).

Various laws have enabled women to access rights that were prohibited or reserved exclusively for men, including the right to vote (1944), the right to work and open a bank account without their husband's permission (1965), the right to abortion (1975), the law on equal pay for women and men (2006). However, the Act of 4 August 2014

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is particularly important because of its multidimensional nature, taking into account both equal treatment and the fight against gender-based violence.

### *RECENT FRENCH LEGISLATIVE REFORMS: THE "GREAT NATIONAL CAUSE"*

It is important to note that gender equality is one of the key issues for the current government and has been declared a "**Great National Cause**" of the five-year term. Since October 2017, many legislative measures have been taken and have strengthened the legal tools in the fight against discrimination against women:

- Equality between women and men - the great cause of the 5-year mandate;
- Law No.2018-771 of 5 September 2018 "for the **freedom to choose one's professional future**", to promote real equality in the professional world;
- The **Grenelle** of 25 November 2019 against violence against women. Some fifty measures have been established around three main axes: prevention, protection, care and punishment to better protect;
- The 5<sup>th</sup> **Plan** to mobilize and combat all forms of violence against women (2017-2019);
- The 1<sup>st</sup> **Inter-ministerial plan** for professional equality between men and women (2016- 2020);

### *THE EMERGENCE OF THE QUESTION OF "INTERSEX"*

Intersex persons are individuals whose physical characteristics (hormones, genitalia) do not correspond to what is classically attributed to the female or male gender, because they were born with an atypical sexual anatomy. According to the United Nations, intersex people represent 0.05% to 1.7% of the world's population. They are victims of social taboos and surgical interventions at birth or during childhood, with the aim of "normalizing" them and assigning them a gender.

In France, the law is far from recognizing the third gender. At present, it knows and accepts only two genders: male and female, and the child must be declared to the civil registry office within 5 days after birth. French law does not allow the indication of a sex other than male or female to appear in civil status records.

### *LOCAL GENDER POLICIES*

At the level of the City of Dunkirk, the issue of discrimination and gender-based violence is taken into account in the framework of municipal policies in order to contribute to the respect of this equality by engaging in the prevention and fight against all forms of discrimination. The fight against sexist discrimination is thus included in the anti-discrimination plan implemented since 2017, in which the Recognize & Change project has been included.

The City is also committed to promoting gender equality through the implementation of the Act dated August 4, 2014 on true equality between women and men. This law requires local authorities, particularly municipalities with more than 20,000 inhabitants, to draw up and present a **Report on the situation regarding equality between women and men to the City Council every year**. Since 2018, the City of Dunkirk has been complying with this legislative obligation. The report presents an assessment of the policies carried out by the municipality on its territory in favour of this equality. It includes guidelines and a program of actions to be carried out in the medium and long term to correct the inequalities observed. In addition, the city provides financial support to local associations working in this field.

To conclude this section, we can see that in recent years many institutional measures and plans have been put in place to promote equality between women and men in all areas. Moreover, the development of the **#MeToo** movement has had a significant impact on increasing the condemnation of all forms of violence against women and has strengthened solidarity and legislative developments.

However, gender equality is still fragile, and many inequalities persist in France. A woman dies every three days as a result of being beaten by her spouse or ex-spouse; every year, 225,000 women are victims of violence carried out by their partners; 84,000 face an attempted rape or are victims of rape; and eight out of ten women are afraid to go out alone in the evening.

In addition, since March 17, the **Covid-19** pandemic has played a significant role in the increase in domestic violence and it appears that home is far from being the safest place for many women. In these difficult times, the

issue of domestic violence has become a priority for the government, as victims have fewer means of alerting or seeking help, being confined and under constant surveillance by their abuser. Several measures have been put in place to protect victims and put an end to dangerous cohabitations.

## 16. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

Since there is no legal definition of the term "migration" and its interpretation may vary from country to country, it should be pointed out that, in this part of the report, we will use the International Organization for Migration's definition of the term "migrant". A "migrant" is any person who, leaving his or her place of habitual residence, crosses or has crossed an international border or moves or has moved within a State, irrespective of: (1) the legal status of the person; (2) whether the movement is voluntary or involuntary; (3) the causes of the movement; or (4) the duration of the stay.

Currently, immigration figures in France are relatively stable. Each year, the number of entries into the territory varies between 200,000 and 250,000 persons per year and the number of naturalizations varies between 180,000 and 200,000 per year.

### *RECENT FRENCH LEGISLATIVE REFORMS*

The law of September 10, 2018 is for controlled immigration, effective asylum, and successful integration. According to the government, the aim of this law is to simplify procedures and take care of certain types of immigrants. However, this law also contains measures to reduce immigration, weaken the fundamental rights and guarantees of migrants and increase institutional abuses.

On November 6, 2019, the **Government** presented the 20 measures that constitute the main lines of its migration policy. They are the conclusions of a debate on the issue of migration that took place in Parliament in October 2019.

### *THE MIGRATION POLICIES OF THE CITY OF DUNKIRK*

In France, so-called "migration" policies fall within the competence of the State. However, because it is the cities that receive the concerned populations, municipal policies cannot ignore them. This is why several cities initiate or support actions to welcome and assist immigrant populations.

The City of Dunkirk integrates this approach into its municipal policies. Thus in 2017, this issue was addressed and integrated into the anti-discrimination plan adopted by the City Council. Financial support has been provided to associations that support migrant groups in their integration and protection efforts. Lastly, specific actions are carried out in conjunction with the associations, such as the contribution to the **right to hygiene for refugees** in the Grande-Synthe camp. For example, operations to provide access to showers are carried out for the benefit of this population group.

To conclude this last part, more and more international associations and agencies are condemning all violations against migrants and are committed to protecting the human rights of immigrants and refugees. Furthermore, they emphasize respect for rights and have urged the French government to adopt legislation and practices in line with the UN General Assembly's Declaration of Human Rights Defenders.

Although various measures have been taken to address these phenomena of violations against immigrants, and while free information is widely available, professionals know very little about these rights. As a result, the rights of immigrants, asylum seekers or refugees may be violated or not respected.

As far as immigration legislation and policies are concerned, there is still a great deal of fluctuation between tightening and opening. Overall, French law, similarly to the law of other European countries, has been tightened in recent years. The issue of illegal immigrants remains unresolved and is at the centre of France's **restrictive** migration policies.

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# THE EXPERIENCE OF ERMOUPOLIS (GREECE)

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## 18. INTRODUCTORY OVERVIEW

According to the administrative division of Greece from September 1, 2019, the country is divided into 7 **decentralized administrations**, 13 regions, 332 municipalities (among them the Municipality of Ermoupolis Syros) and 4783 Communities. Within the Greek territory, the Constitution prevails in comparison with other legal acts, while in the legal order of Greece, the law, the presidential decree and the administrative acts follow. At the same time, being a member of the European institutions, Greece must, among other things, be in line with the regulatory framework for the prevention directives of European Institutions. The role of the regional administrative structures within the Greek legal order lies on the one hand in the transfer of decisions and policies taken at the central level, to the local level and, on the other hand, in their adaptation to local conditions and particularities. In addition, feedback is provided to the decision centre and based on that, it is possible for policies designed and implemented at regional and local level to be encouraged and assisted by national governments and supranational organizations.

The principle of equality in the legal order of Greece is included in the **Constitution**. According to article 4 par. 1 "Greeks are equal before the law" and par. 2 "Greeks have equal rights and obligations", while at the same time Article 116, par. 2 of the Constitution emphasizes that "it is not discrimination on grounds of gender to take positive measures to promote equality between men and women. The state takes care of removing the inequalities that exist in practice, especially to the detriment of women". Furthermore, according to Article 5, paragraph 2 of the Constitution "All those who are in the Greek Territory enjoy the absolute protection of their life, honour and freedom, without distinction of nationality, race, language and religious or political beliefs. Exceptions are allowed in cases provided for by international law. It is forbidden to extradite a foreigner who is being persecuted for her/his action in favour of freedom". Also, according to Article 25, paragraph 2, the recognition and protection of the fundamental and inalienable human rights by the State aims at the realization of social progress in freedom and justice.

## 19. DISCRIMINATION AND VIOLENCE BASED ON GENDER

In Greece qualitative and quantitative data on the phenomenon of discrimination and gender-based violence continue to raise concerns about its effectiveness in enforcing the law and, consequently, in highlighting shortcomings in legislative care. The **Global Gender Gap Reports** data of the World Economic Forum, in the case of Greece shows significant differences between men and women in a number of indicators (Labour force participation, Estimated earned income, Legislators, Senior officials and managers, Women in parliament, Women in ministerial positions). Corresponding quality data through the **LGBTQI communities** highlights the phenomena of bullying in the field of education, avoiding the approach of health services (lack of trust and fear of exposure), abuse and humiliation, psychiatrisation of gender identity, abusive speech by a section of the media, and so on.

In terms of levels of gender-based **violence**, from 2012 to 2017, almost a 50% increase was recorded. Regarding the reported crimes of sexual violence, regardless of gender, a corresponding growth order is recorded, with the exception of the period 2016-2017, in which there was decrease. Moreover, the Violence Against Women prevention **24h SOS Helpline** 15900 and the network of structures of the General Secretariat for Gender Equality between 19/11/2016 and 19/11/2017 have received an increased number of documented calls and e-mails. For the year 2018, 3,325 women applied to the SOS Helpline. According to the latest data April 2020 was the month with the highest recorded incidents. This is a worrying increase in calls recorded for incidents of domestic violence in the same month. In the period we live in, where the restriction of individual rights is lost in the face of defending the public interest of public health under the threat of a further spread of the pandemic of COVID-19, there are serious concerns both about the increase in reported incidents of violence and the level of the rate of non-reported violence.

### *RECENT LEGISLATIVE INTERVENTIONS*

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Under the influence of the research effort and collective demands, an improvement of the institutional framework at the level of political initiative and legislation is recorded. Law 4356/2015 (Government Gazette A' 181/24-12-2015), in addition to securing the possibility of establishing a **cohabitation** agreement between two adults, regardless of their gender, has set up the National Council against Racism and Intolerance, assigning it: i. the design of policies to prevent and combat racism and intolerance to ensure the protection of individuals and groups targeted because of race, colour, nationality or ethnic origin, genealogical background, social origin, religious or other identity, disability, sexual orientation or gender, ii. overseeing the implementation of the legislation and iii. promoting and coordinating the action of the bodies involved. Then came Law 4443/2016 (Government Gazette A'232/9.12.2016), which introduced definitions in the forms of distinction, while Law 4491/2017 (Government Gazette A' 152/13.10.2017) established the **right to gender identity**. Law 4531/2018 (Government Gazette 62/05.04.2018) included among others "**Ratification** of the Convention of the Council of Europe, Convention on preventing and combating violence against women and domestic violence" (Istanbul, 11.V.2011). The content of the convention was added to the Greek legislation, mainly amending the legislation on domestic violence (see Government Gazette 232/A/24-10-2006) and a series of articles of the **penal code** (323A - Trafficking in human beings, 315B - Invitation, etc.). The recent Law 4604/2019 (Government Gazette A' 50/26.03.2019) constitutes an independent institutional framework for the purpose of eliminating discrimination against women, consolidating gender equality and combating gender-based violence. The main legislative interventions are: a) the concerns of increasing **women's participation in political and parliamentary office**, b) the establishment of **Equality Plans** (integrated and complementary interventions) and c) the positioning of the gender dimension in the design, implementation and evaluation of **public policies** in the areas of health, education, media, public budgets, the drafting of administrative documents, etc.

### *RECENT LOCAL POLICIES*

The legislation to combat discrimination and the promotion of gender equality provides for the establishment of a **Regional Committee for Gender Equality** within each region, and for the establishment of a **Municipal Equality Committee** at the local level. According to Article 5 of Law 4604, the main responsibilities of the above committees are "*the design, organization, coordination and implementation of programs to promote gender equality, in accordance with the policies of the GSGE and the National Action Plan for Gender Equality, and initiatives to promote gender equality within their administrative boundaries, as well as the implementation of the European Gender Equality Charter tool in Local Societies, by implementing the commitments made in it to promote the principle of gender equality*". In addition, in this way, "*the cooperation of the regional services with GSGE is ensured, in order to facilitate at the regional level the development of actions and programs related to GSGE policies as well as the directions of the National Action Plan for the Equality of Gender, as they are formed each time*". Therefore, in the formulation of the National Action Plan, the individual local and regional data is taken into account. Non-state entities are mainly involved in the level of **prevention**, while in some cases they provide data through reports that can be taken into account in drafting national legislation/local policies.

In the **South Aegean Region**, the strategies for prevention and response to the phenomenon were included within the "Regional Strategy for Social Inclusion, Fight against Poverty and all forms of Discrimination in the South Aegean region", within the framework of NSRF (National Strategic Reference Framework 2014-2020), providing for "actions for the benefit of women and to combat violence" (Supporting the operation of Women's Counselling Centres and supporting the operation of hostels hosting women victims). Within the Regional Operational Program for the South Aegean 2014-2020 the below actors are joined and funded: a) The Syros **Counselling Centre** with implementing body with implementing body the **Research Centre** for Equality Issues), b) The Rhodes Counseling Centre with implementing body the Municipality of Rhodes, c) The Advisory Centre of Kos with the implementation body the Municipality of Kos and d) The Women's Hostel of the Victims of Violence with the Municipality of Rhodes as the implementing body.

From 2013 until now the Women's Advisory Centre of Syros with implementation agency The Research Centre for Gender Equality (KETHI) contributes through holistic support for women victims of all forms of violence and their children, while informing and raising the awareness of local communities about domestic violence, as well as strengthening the role of public and local authorities.

## 20. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

The **Network** for Recording Incidents of Racist Violence recorded an increase in incidents of racist violence for the year 2018, especially against refugees and immigrants, while in a corresponding report for 2019 it found an increasing trend in incidents of daily racist violence. Specifically, for 2018, 117 cases of racist violence were recorded, of which 74 concerned the targeting of immigrants-refugees due to ethnic origin, religion and colour and 5 more cases against LGBTQI refugees and asylum seekers. For 2019, a total of 100 incidents of racist violence



were recorded, of which 51 were related to the targeting of three immigrants, refugees or asylum seekers, due to ethnic origin, religion and/or colour.

### *RECENT LEGISLATIVE INTERVENTIONS*

The provisions of the **joint European Union-Turkey statement** in March 2016, promoting the treatment of illegal immigration to Europe and the reduction of group deportations, changed the landscape of the immigration and refugee issue in Greece. The following Law 4375/2016 (Government Gazette 51/A/3-4-2016) provided for the organization of new structures for the management of the refugee and migration crisis (Reception and Identification Services and Asylum Services). At the same time, a network of ministerial decisions, mainly in the areas of health and education, was based on the application of the principle of equal treatment, regardless of race, ethnic origin, religion or other beliefs. In 2019, Law 4636 (Government Gazette 169/A/1-11-2019) proceeded to harmonize national legislation with the directives of the European Union (2011/95/EU, 2013/33/EU, 2013/32/EU). Numerous organizations for the protection and defence of human rights (see Working Group on Arbitrary Detention (WGAD) of the Human Rights Council of the United Nations, National Commission on Human Rights etc.) made reports or announcements on the content of this text, pointing out the tightening of the institutional framework through the deprivation of liberty, the possibility of establishing closed Structures for Temporary Reception of third-country nationals or stateless citizens, declassification of social groups from a position of vulnerability (this happened in the case of people with post-traumatic stress disorder, especially survivors and relatives of victims of shipwrecks) and [on the condition of mass arrivals of third-country nationals or stateless persons] assigning the possibility of interviewing applicants for international protection and Greek Police personnel. In addition, in accordance with the provisions of Law 4636, a joint ministerial decision (Government Gazette B '4907/31.12.2019) proceeded to the definition of the countries of origin that are characterized as safe, producing an institutional distinction between them and the countries that are unsafe.

### *RECENT LOCAL POLICIES*

In the South Aegean Region, the strategies for prevention and response to the phenomenon were included within the “Regional Strategy for Social Inclusion, Fight against Poverty and all forms of Discrimination in the South Aegean region”, within the framework of NSRF (National Strategic Reference Framework 2014-2020), providing for “**Refugee Reception Actions - Social Integration of Immigrants**” (Coverage of services to improve employment and social **integration** through the provision of **counselling** services, **legal support** and **intercultural** mediation). In addition, several organizations are active in the field of dealing with discrimination (see Prevention Centre “THISEAS” of Cyclades, Antiracist Observatory operates University of the Aegean, Centre for Research and Development of the Holy Metropolis of Syros, Community Centre of the Municipality of Syros-Ermoupolis and Vardakeios School of Ermoupolis).

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# THE EXPERIENCE OF TURIN (ITALY)

Francesca Finelli\*

## 22. INTRODUCTORY OVERVIEW

Italy has a decentralized legal system and is composed of 20 Regions (including Piedmont), 14 Metropolitan Cities (including Turin) and 7,903 Municipalities. Our constitutional system recognizes multiple forms of **local governance** and it is founded on the principle of **subsidiarity**. This means that our Constitution establishes both exclusive (centralized) competencies of the State, concurrent competencies, and exclusive (decentralized) competencies of the Regions. Metropolitan Cities and Municipalities, on the other hand, lack legislative autonomy. These territorial units manage administrative functions and have competence for local affairs only.

Equality is one of the founding values of our constitutional system. **Art. 3 of the Italian Constitution** affirms that “*All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.*” Art. 3 also enshrines substantial individual guarantees. Indeed, it also recognizes that “*it is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country*”. Therefore, Italian authorities are committed to achieving both formal and substantive equality. Concerning gender equality, the Italian Constitution expressively declares that *regional* laws shall remove any obstacles to the full equality of men and women in social, cultural and economic life and promote equal access to political careers. It follows that Regional authorities are asked to take positive actions at the local level. With regard to ethnic discrimination in relation to migration flows, the competence to define migration policies is centralized at the national level. Regions cannot regulate immigration and asylum in an autonomous way. Nevertheless, they are competent for the social integration of migrants and are responsible for the coordination of several assistance measures such as accommodation, healthcare, education, training and language courses.

Besides these constitutional provisions, it is essential to remember that Italy is bound by diverse supranational obligations which aim at combating discrimination and violence, while promoting equality. In fact, our domestic legal order must comply with several **international and European commitments**. At the European level, Italy is bound by EU law (mainly EU Directives and Regulations) issued by EU bodies and interpreted by the Court of Justice of the European Union (CJEU). Moreover, Italy is a contracting party of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and it is bound by the judicial activity of the European Court of Human Rights in Strasbourg. Furthermore, at the international level, Italy has ratified several UN Conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the 1951 Convention relating to the Status of Refugees, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Concerning gender violence, Italy is also committed to implementing the Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as Istanbul Convention) which was ratified in 2013. Thus, Italian authorities are not alone in setting standards of human rights protection, but they are guided by several supranational bodies and legal sources.

## 23. DISCRIMINATION AND VIOLENCE BASED ON GENDER

Gender discrimination and violence against women are **persistent and widespread** phenomena in our country. According to the 2020 Global Gender Index, Italy ranks 76<sup>th</sup> (out of 153 countries). Italian scores are extremely low and gender inequalities are particularly pronounced in the domains of (economic and political) power. In the same way, according to the 2019 EU Gender Equality Index, Italy ranks 14<sup>th</sup>. Its score is lower than the EU's average and the lowest of all EU Member States in the domain of work.

Widespread discrimination and violence also concern the **LGBT** community. Our legal system is still blinded to homophobic discrimination and violence. These conducts remain legally invisible and non-prosecuted in Italy. Nevertheless, a **new legislative proposal** is currently under discussion in the Italian Parliament and legislative reforms are expected.

Focusing on violence against women, the **Italian National Statistics Institute (ISTAT)** registers that almost 6.8 million women suffer some form of physical or sexual violence in their lifetime, representing 31.5% of women in our country. In the workplace, 1.4 million women suffer physical harassment or sexual blackmail, representing 8.9% of female workers. Concerning femicides, in 2018, 133 women were murdered in Italy. And finally, the most alarming data concern gender-based stereotypes. These stereotypes confirm that, regrettably,

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Italy remains a country with a very marked patriarchal tradition, where men's desire to dominate women is legitimized by a hierarchical and asymmetrical conception of the relationship between men and women. Still a high percentage of the Italian population believes that women who are victims of violence "were asking for it" or provoked it with their behaviour by not conforming to traditional female roles. The data are alarming. It proves that gender violence and its social acceptance are worryingly widespread in this country.

#### *RECENT LEGISLATIVE INTERVENTIONS*

the latest legislative intervention addressing gender violence in Italy was approved in July 2019 and is **Law No. 69/2019**, also known as "**the Red Code**". This intervention has introduced several amendments to the Italian Criminal Code and the Criminal Procedural Code. The ultimate objective of the Red Code is to speed up criminal proceedings, ensuring a privileged and accelerated procedure for victims of domestic and gender-based violence (in line with the judgement *Talpis v. Italy* issued by the Strasbourg Court in 2017, whereby the ECtHR found that the Italian authorities failed to take prompt action in a case of domestic violence). The Red Code also introduced 4 new offences in the Italian criminal system: (i) a new crime concerning the violation of restraining orders and the prohibition to approach places usually frequented by the victim of violence; (ii) the crime of forced marriage; (iii) the crime of "revenge porn", defined as illicit dissemination of sexually explicit images or videos; and (iv) the crime of "deformation of one person's appearance by permanent facial injury". Furthermore, the Red Code has strengthened the existing criminal sanctions for stalking, sexual violence and domestic violence and increased the applicable sanctions for aggravated circumstances. Thus, Law No. 69/2019 provides a comprehensive response to gender violence, by introducing not only faster proceedings and new criminal offences but also harsher punishments for the already existing crimes. The Red Code represents a strong legislative intervention in line with the requirements of the Istanbul Convention.

In 2017, the Italian Parliament has also established the **Parliamentary Commission of Inquiry** dedicated to the phenomenon of femicide and gender-based violence. The Commission is responsible for conducting national investigations and inquiries, with the view of better understanding the real dimensions of gender violence in Italy. In addition, the Commission is empowered to investigate possible inconsistencies and shortcomings of the legislation in force, with the purpose of proposing new legislative and administrative solutions.

The monitoring body **GREVIO** (the Group of Experts on Action against Violence against Women and Domestic Violence) praises the Italian efforts to tackle gender violence. However, it also urges further interventions. In particular, it calls on Italian authorities to adopt policies and measures *equally* addressing prevention, protection, and punishment of violence, in order to ensure a comprehensive and integrated approach. Criminal law reforms are not enough. Social and cultural justifications of violence against women cannot be fully combated by means of (harsher) criminal punishments. The legislator needs to further promote education, awareness raising, the training of professionals and, more generally, preventive measures aiming at combating sexist social and cultural patterns of behaviour that are based on the idea of inferiority of women. Our legislator is requested to challenge the widespread patriarchal attitudes and stereotypes which contribute to the acceptance of violence and tend to blame women for it. The main concern is that policy makers in Italy have largely privileged policies aimed at criminalizing acts of violence. In this way, they tend to consider violence against women restrictively as an issue of criminal (and procedural) law, failing to fully recognize the structural dimension of the phenomenon.

#### *RECENT LOCAL POLICIES*

At the regional level, Piedmont is strongly committed to tackle gender discrimination and violence. According to recent legislative interventions, **Regional Law No. 5/2016** prohibits all forms of discrimination at the regional level (including on the grounds of gender) and **Regional Law No. 4/2016** recognizes that any form of violence against women constitutes a human rights violation, infringes women's personal dignity, individual freedom and security, their physical and mental health and integrity, and limits their right to full citizenship. Accordingly, the Piedmont region is asked to proactively engage in several initiatives to combat and prevent discrimination and violence against women. The Regional Council has adopted a **Three-Year Regional Plan of Interventions against Gender Violence (2017-2019)** and has recently achieved the following goals: (i) the consolidation of a regional network of anti-violence centres and shelters; (ii) the creation of specific vocational training programs for operators of anti-violence services; (iii) the introduction of specific measures to monitor gender violence and support its victims within the healthcare sector (*i.e.* a new "Pink Code" in the hospital *triage*); (iv) specific assistance measures in the socio-occupational (re)integration of women victims of violence; (v) a strong and diffuse communication strategy (*inter alia* by introducing a new regional application for mobile devices "Erica"); and, lastly, (vi) specific rehabilitation programs dedicated to perpetrators of gender-based violence (which aim at limiting recidivism and preventing future violence).

Furthermore, it is important to note that the City of Turin is strongly committed to tackling gender violence. Since 2000, the City has established the **Coordination Against Violence Against Women** (in Italian as *“Coordinamento Contro la Violenza sulle Donne”*). The participants in the Coordination are either public and private entities which are directly or indirectly involved in combating gender violence, in the field of healthcare, social, psychological, legal assistance, cultural integration, education and research. Participants make available their own professional skills, financial resources and monitoring mechanisms. They represent not only an integrated system of protection for victims of gender violence, but also a fundamental monitoring tool in the city of Turin. Moreover, in 2018, the city Council approved an important **Action Plan** labelled **“Turin free from gender-based violence”**. This Plan aims to foster inter-institutional dialogue between all those actors operating in the field of prevention, protection and prosecution of male violence against women. Essentially, the Plan is intended to strengthen institutional coordination, not only by introducing new (coordinating) local bodies, but also by enhancing the role of the (already existing) CCVD, and promoting specific training courses for public administration officials. This coordinated approach has already achieved important (and innovative) local interventions. Giving a concrete example, in December 2019, the City of Turin has introduced the “fictitious residence” for women victims of violence who want to keep their residence data secret. In this way, those women are empowered to reside at a “symbolic” address, which will allow them to no longer be persecuted by violent men.

## 24. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

In the last few years, migration has emerged as a sensitive political issue and societal challenge in Italy, particularly in matters such as integration, security and border management. Italian citizens have engaged in an intensifying discussion about the arrival of migrants in the country. This mainly happened as a direct consequence of the migration crisis of 2015 and the unprecedented increase in the numbers of refugees and migrants entering Europe. Moreover, due to its geographical position in the Mediterranean Sea, Italy has witnessed the concrete effects of the migration crisis, particularly along the coastline (which has been directly involved in the management of the Central Mediterranean route). The mass arrivals of migrants in Italy has generated strong xenophobic fears and anti-immigrant sentiments, characterized by the growing intolerance towards individuals who are perceived as “others” or “aliens”.

### *RECENT LEGISLATIVE INTERVENTIONS*

The latest legislative interventions refused to perceive the double dimension of the current crisis, namely the migration dimension and the humanitarian one. The Italian legislator was mainly focused on a one-dimensional issue, *i.e.* the unsustainable numbers of arrivals of unauthorized migrants in Italy. In this way, the narrow perception of the migration crisis has boosted claims of “invasion” and extremist anti-immigrant positions.

The adoption of two **“Security Decrees”** marked a significant legislative change in the field of migration law. Both Decrees were strongly demanded by our former Ministry of Domestic Affairs (*Ministero dell’ Interno*), Matteo Salvini, who founded his political commitment on “taking care of Italians’ *security*”. His political intentions were clear, affirming a strong link between migration and security. Accordingly, the Security Decrees were intended to stop the admission of migrants on the Italian territory, reducing the criteria for legal stays and imposing the idea that the huge arrivals of migrants only jeopardized internal security and stability. In this way, the Security Decrees have radically reformed the Italian migration system. Essentially, they have restricted previous guarantees, reducing legal protection for asylum seekers entering Italy. Firstly, **Decree Law n. 113/2018** abolished the so-called ‘humanitarian protection’. The humanitarian protection was traditionally granted to asylum seekers in a *wide* variety of situations and represented the most common form of protection granted until 2017. Today, it is replaced by ‘special permits’, namely (new) limited forms of residence permits that can be granted in restricted ‘*special cases*’ only. Secondly, **Decree Law n. 53/2019** introduced additional restrictions. This second intervention was mainly aimed at limiting rescue operations at sea (in line with the “closed-ports-policy” campaigned by our former Ministry), introducing harsh sanctions for NGO ships that disembark migrants in Italy without prior consent. Essentially, with the introduction of the Security Decrees, we have witnessed, firstly, the strong restriction of asylum seekers’ guarantees and, secondly, the “criminalization” of rescue operations. However, the **constitutional legitimacy** of these recent reforms is far from uncontroversial (and the Italian Constitutional Court ruled, in July 2020, on the partial unconstitutionality of the first Security Decree). In fact, the Security Decrees clash with several constitutional and supranational guarantees, *inter alia* the constitutional right to asylum (Art. 10), EU (binding) provisions concerning international protection, the Dublin system, international customary law and the principle of *non-refoulement*. Choosing to restrict the criteria for legally entering and stay in the Italian territory is not the solution for a better management of migration flows. Indeed, “*We can’t deter people fleeing for their lives. They will come. The choice we have is how well we manage their arrival, and how humanely.*”

## RECENT LOCAL POLICIES

In 2019, non-nationals residing in the Piedmont region represent 9.8% of the population (the majority of which are Romanian nationals, followed by Moroccan and Albanian nationals) while refugees and beneficiaries of the international protection are 19.500, representing 0.4% of the regional population (mainly Nigerian, Senegalese and Pakistani nationals). In the hosting society, migrants, non-national and, generally speaking, foreigners risk being vulnerable victims of social exclusion and discriminations. Their inclusion may encounter obstacles deriving from cultural/linguistic/religious differences. In order to prevent and contrast social tension and exclusion, the Piedmont Region has actively engaged in several integration policies. In 2016, Piedmont was the first Italian Region to introduce *ad hoc* legislation concerning equal opportunities and non-discrimination (Regional Law n. 5/2016). Following this legislative intervention, the Regional Council adopted a **Three-year Plan Against Discrimination** (2018-2020) and established a new **Regional Network Against Discriminations** as well as a regional **Solidarity Fund** for the judicial protection of victims of discrimination. Moreover, regional interventions have supported education, information and several raising awareness initiatives.

Besides these regional initiatives, the City of Turin has promoted diverse positive actions and integration policies, combating discrimination and ensuring equal opportunities for all. In 2018, it adopted new "**Guidelines for Interculture and Participation**", addressing the difficult challenge of ensuring equal and full participation of all in the local decision-making process. The ultimate objective was to create a strong sense of community in the city, promoting inclusion and participation of all in the definition of local policies. More recently, in June 2020, the Municipality of Turin, firstly, adopted a new **Action Plan against Racist Hate Crimes** and, secondly, launched a new public consultation, according to which citizens are invited to present written proposals aimed at co-drafting the (new) **Collaboration Agreement for an Anti-racist Turin**. In this way, the City of Turin has affirmed its commitment to fight racism and hateful intolerance, while also consolidating its open and participatory approach in the definition of local public policies.

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# THE EXPERIENCE OF ALTO ALENTEJO (PORTUGAL)

Cláudia Múrias\*

## 26. INTRODUCTORY OVERVIEW

Portugal is committed to respecting and promoting human rights for all, both at national and international levels. The Assembly of the Republic has the competence of legislating and the Parliament's Committee on Constitutional Affairs, Rights, Freedoms and Guarantees oversees human rights violations and drafts, and submits bills and petitions for parliamentary approval. Several Governments had committed themselves to defending and strengthening the Welfare State, promoting the effective social inclusion of citizens and the development of local, regional and national initiatives recognizing the benefits of diversity and the construction of an intercultural society guided by the constitutional principle of equality and non-discrimination provided for in Article 13 of the Constitution of the Portuguese Republic (CRP).

Portugal is a unitary state and respects the principles of **subsidiarity**, the **autonomy of local authorities** and the democratic **decentralization** of public administration in its organization and functioning. According to the CRP, local authorities are territorial legal persons; they elect representative organs and – owning regulatory power – they seek to pursue the interests of the populations they represent. In order to administer common interests, municipalities may form associations and federations called Inter Municipal Communities (CIM), to which the law grants specific responsibilities and competences towards local affairs, namely to promote citizens' well-being, quality of life, and real gender equality.

Portugal ratified the **international human rights instruments** and the Optional Protocols that constitute what has come to be known as the International Bill of Human Rights, serving as touchstones for interpreting the human rights provisions of the UN Charter, as well as International Conventions, such as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and United Nations Security Council Resolution No. 1325 (2000) on "Women, peace and security". Regarding the Community of Portuguese Speaking Countries (CPLP), the CPLP Action Plan for Gender Equality and Women's Empowerment consequently announced a set of measures aimed at combating harmful traditional practices, namely female genital mutilation and cutting (FGM/C).

At the **European level**, Portugal is bound by European Union (EU) laws (mainly EU Directives and Regulations) issued by EU bodies and interpreted by the Court of Justice of the European Union. As a Member State of the Council of Europe (CoE), Portugal ratified The European Convention on Human Rights and has to comply with the final decision from the European Court of Human Rights. Portugal ratified CoE agreements and conventions on Refugees, Migrant Workers, National Minorities, and The Convention on the Fight against Trafficking in Human Beings. Portugal was among the first group of countries to ratify the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), under which States signatories have the obligation to prevent violence against women, protect its victims and prosecute perpetrators.

## 27. DISCRIMINATION AND VIOLENCE BASED ON GENDER

According to Social Institutions and the **Gender Index** 2019, elaborated by the Organization for Economic Cooperation and Development (OECD), Portugal ranks the fifth with more equal social laws and norms (11.2%), but this is not directly reflected in terms of practices and attitudes, which, nevertheless, have worse results. For example, women and men have the same rights to free movement, inside and outside the country (0%), but in the practical dimension, considering the safety of women walking alone at night, Portugal still has the highest proportion among OECD countries of women who say they feel insecure in their free movements at night (74%). It is in the **family** that the worst results arise (21.8%), largely because of the imbalance in the distribution of domestic work - women spend three times more hours per day than men in these activities. In this field, Portugal is one of the OECD countries where women dedicate more hours per day to household chores, although, on average, women work 38 hours per week, and men work 41 hours. According to the Gender Equality Index, family responsibilities are reported as a barrier to engagement in education and training for 41% of women compared to 22% of men. Most informal carers of older persons and/or persons with disabilities in Portugal are women (60%) and Portugal has the highest unmet needs for professional home care across the EU (86%). In 2016, 23% of women

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and 32% of men aged 20-49 (potential parents) were ineligible to apply for parental leave, and unemployment/inactivity was the main reason for the ineligibility of 84% of women and 52% of men. Portugal's gender pay gap has been increasing in recent years: from 8.5% in 2007 to 17.5% in 2017. Women constitute the majority of the working poor (54%) and the gender pension gap in Portugal is 31%. Roma girls and women have lower education levels and higher unemployment rates. Only one third of women occupy managerial positions in business companies (33%); the percentage of women ministers increased from 14% to 35% between 2005 and 2018; and women represent 36% of all parliamentarians, but only 10% of all mayors are women. Gender-based **violence** continues to be a major trend. Portugal lacks specific legislation addressing violence against women. According to the **Annual Internal Security Report (RASI)**, in 2018 there were 22,423 reports of domestic violence occurrences and police registered 421 reports of rape at the national level, whereas in CIM of Alto Alentejo (CIMAA), there were 285 reports of domestic violence occurrences and 6 reports of rape. According to the Disability and Human Rights Observatory (ODDH), one in every two women with disabilities is a victim of gender-based violence, including sexual abuse. A European study estimated that as many as 1,300 girls in Portugal may have been subjected to FGM/C in 2011, and some NGOs report that FGM/C was practiced on young girls in poor African communities, particularly by Bissau-Guinean immigrants. Two out of three victims of homicide in Portugal are women, and according to preliminary data from media reports, within the first 10 months of 2019, there were 28 female deaths related to domestic violence. Moreover, 85% of domestic violence complaints are dismissed without any charges, less than 7% result in convictions and the majority of the sentences are suspended. In fact, only 10% of convicted domestic abusers ever see the inside of a jail cell. Within the last 15 years, over a thousand children became orphans due to domestic violence (yet children are not considered to be victims). There is a lack of coordination between Family Courts and Criminal Courts, which leads to contradictory decisions (including visitation rights granted to offending fathers whose children are in shelters with their mothers under protection).

#### *RECENT LEGISLATIVE INTERVENTIONS*

Since October 2017, numerous legislative measures have been put in place and have strengthened the legal framework to promote equality and fight against gender-based discrimination and violence. **Law No. 62/2017**, of August 1, established the regime of balanced representation between women and men in the management and supervisory bodies of public sector entities and listed companies, establishing the minimum thresholds 33% for persons of each sex assigned to each administrative and supervisory body, in the state business sector and in companies listed on the stock exchange; **Law No. 60/2018, of August 21**, approved several measures to promote equal pay for women and men for equal work or work of equal value, making the first amendment to Law No. 10/2001, of May 21, which institutes an Annual Report on Progress of Equality between Men and Women at Work, Employment and Training, to Law No. 105/2009, of September 14, which regulates and amends the Labor Code, and to Decree-Law No. 76/2012, of March 26, which approves the structure of the Commission for Equality in Work and Employment, extending the competencies to issue a Technical Proposal on Remuneration Discrimination. **Law No. 26/2019, of March 28**, established that the Annual Report on Progress should include information on the evolution of balanced representation between women and men in positions of management and public administration bodies and the **Organic Law No. 1/2019**, of March 29, established the second amendment to the law of parity in the organs of political power, demanding 40% representation of the underrepresented sex.

On family issues, the de-facto unions were protected by **Law No. 71/2018, of December 31**, which deals, among other things, with the requisites for recognition, evidence, and equivalence to marriage in labour, tax and pensions law, permanence in the household in the event of death or a breakdown of the union, adoption and the requisites of a formal dissolution whenever any of the members intend to receive any benefits derived from the union; **Law No. 90/2019, of September 4**, reinforced protection in parenting, extending the rights of parental responsibility and derivatives of adoption to couples of parents of the same sex, changing the Labor Code (Law No. 7/2009, of 12 February) and Decree-Law No. 89/2009, of April 9, regulated protection in parenting, in the context of the eventuality of maternity, paternity and adoption, of workers who exercise public functions integrated in the convergent social protection regime, and Decree-Law 91/2009, of April 9, established the legal regime of social protection in parenting within the scope of the social security system and in the solidarity subsystem. **Law No. 100/2019, of September 6**, approved the Statute of Informal Caregiver, changing the Code of Contributory Regimes of the Social Security System and the Law No. 13/2003, of May 21.

A new program cycle was launched by the **Resolution of the Council of Ministers No. 61/2018**, on May 21, approving the **National Strategy for Equality and Non-Discrimination 2018-2030 - "Portugal + Equal"**, supported by three Action Plans defining strategic objectives and specific provisions on non-discrimination on grounds of sex and equality between women and men (PAIMH), prevention and combating all forms of violence against women, gender-based violence and domestic violence (PAVMVD), and combating discrimination on the grounds of sexual orientation, gender identity and expression, and sex characteristics (PAOIEC); and also by

**Resolution of the Council of Ministers No. 80/2018**, of June 19, which approved the IV Action Plan for the Prevention and Combat of Trafficking in Humans Beings 2018-2021, and by **Resolution of the Council of Ministers No. 33/2019**, of February 15, which approved 3rd National Action Plan on the Implementation of the UN Security Council Resolution 1325 (2019–2022).

**Decree No. 8/2019, of March 6**, declared a one-day national mourning for victims of domestic violence, and several resolutions from the Parliament recommended the improvement of the prevention and fight against domestic violence. **Resolution of the Council of Ministers No. 139/2019, of August 19**, approved the development of an integrated action in the field of primary and secondary prevention to violence against women and domestic violence (VMVD), to be promoted by the governmental areas of Citizenship and Equality, Internal Administration, Justice, Education, Labor, Solidarity and Social Security, and Health. At the **Council of Ministers, on April 23, 2020**, following the recommendations of the Group of Experts to Combat Violence against Women and Domestic Violence of the Council of Europe (GREVIO), several amendments were adopted in the legal framework.

### *RELEVANT LOCAL POLICIES*

The European Charter for the Equality of Women and Men in Local Life has been the inspiration of the Municipal and Inter Municipal Plans for Equality. CIMAA begun its strategy towards Equality with the launch of both **the Intermunicipal Plan for Equality of Alto Alentejo East** and **the Intermunicipal Plan for Equality of Alto Alentejo West**, ensuring the coordination of the first one, in cooperation with the Portuguese Red Cross Delegation of Portalegre and its Support Centre for Victims of Domestic Violence.

According to the Resolution of the Council of Ministers No. 39/2010, of May 25, the Local Councillors for Equality are responsible for monitoring and promoting the implementation of measures provided for in the local strategies for promoting equality and for preventing and combating domestic violence and other forms of discrimination. CIMAA's municipalities have appointed seven councillors so far: Alter do Chão, Avis, Gavião, Monforte, Ponte de Sor, Portalegre and Sousel. Last June, CIMAA applied for a call to prepare an Intermunicipal Plan for Equality (2021-2024) in accordance with the new protocols of the National Strategy for Equality and Non-Discrimination 2018-2030 "Portugal + Equal".

On February 5, 2019, a protocol between the Commission for Citizenship and Gender Equality (CIG) and the National Association of Portuguese Municipalities (ANMP) was signed, and aimed to establish institutional cooperation between parties within the scope of the autonomy and empowerment process for victims of domestic violence, finding solutions that can respond to victims' housing needs when they leave the emergency shelter and return to life in the community (the National Support Network for Victims of Domestic Violence). Five municipalities from CIMAA have signed these protocols: Arronches, Campo Maior, Castelo de Vide, Monforte and Sousel.

The Strategy to Combat Domestic and Gender-based Violence (2018-2021) aims for the territorialization of responses in the area of violence, emphasizing the actions of awareness raising towards the community, training professionals and proposed legislation to improve legal assistance to victims. According to both **Protocols for a Strategy to Combat Domestic and Gender-based Violence of Alto Alentejo East and West**, a group of signatory stakeholders constituted a Network to promote the necessary conditions for the support and protection of the victims, providing financial, technical and logistical support, looking for the profitability of the resources existing throughout the territory.

## 28. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

The government considers all other EU countries to be safe countries of origin or transit. It returned asylum seekers to their country of entry in the EU for adjudication of their applications. Portugal agreed to accept 4,754 refugees through the EU's relocation program. In 2018, the government fulfilled its commitment and received refugees under the EU's relocation plan for refugees who entered the EU through Greece and Turkey and offered Portuguese citizenship to refugees residing on Portuguese territory. According to NGOs and media reports, authorities kept some asylum seekers who submitted their applications for international protection at border points in detention. If asylum seekers appealed a negative decision, they could remain in detention for up to 60 days, without other alternatives. The government also provided temporary protection to individuals who may not qualify as refugees and provided subsidiary protection to, approximately, 136 persons in 2017, according to the NGO Portuguese Refugee Council (CPR). The reception centre for refugees in Lisbon remains overcrowded.

Migrants who fall outside the specific legal category of "refugee" may find themselves in vulnerable situations. NGOs report discrimination in areas such as education, housing and employment. Intolerance, crimes and hate speech are of concern in Portugal; what is particularly worrying is the persistence of cases of police violence against migrants (Brazilian, Ukrainian, Romanian and Moldovan) and national minorities (particularly

Roma and Afro descendants, but also Muslims, lesbians, gays, bisexuals and transgenders). The European Commission against Racism and Intolerance (ECRI) CoE monitoring body alerts that **far right and neo-Nazi groups** spread hate speech on the Internet and threaten migrants and the organizations working to uphold their rights, and that sanctions are not a deterrent. According to its Annual Report, the Commission for Equality and Against Racial Discrimination (CICDR) received 436 complaints of discrimination in 2019, an increase of 26%. With regard to the content of the complaints, 44% were based on nationality (mainly Brazilian, Ukrainian, Romanian and Moldovan); 35% of the complaints submitted refer to discrimination based on ethnic-racial Afro-descendant (African or black origin); and 17% were based on Roma ethnic origin.

Portugal is a source, transit, and destination country for men, women and children, subjected to **forced labour and sex trafficking**. Trafficking victims are primarily from Africa and Eastern Europe, and, to a lesser extent, Latin America and Asia. While most forced labour victims are men, an increase in the number of female forced labour victims was documented in 2015, and children are also subjected to forced labour. According to the Portuguese **Observatory on Trafficking in Human Beings**, foreign labour trafficking victims were exploited in agriculture, construction, and domestic service, while Portuguese victims were exploited in restaurants, agriculture, and domestic service, primarily in Portugal and Spain. Government efforts to prevent and eliminate forced labour included a countrywide awareness campaign and training security forces to identify, flag, and direct victims to assistance services. According to NGOs and media, convictions remain low, and convicted offenders frequently avoid imprisonment, undercutting enforcement efforts and victim protections. In 2017, courts only convicted and sentenced 11 traffickers for forced labour.

Foreign women and children, mostly from Africa and Eastern Europe, and low-income Portuguese women and children are subjected to sex trafficking within the country. Portuguese victims have also been subjected to sex trafficking in other countries, mostly in Europe. Portuguese authorities have reported that traffickers bring women and children, many from African countries, to Portugal to claim asylum before bringing victims to other European countries to be exploited in trafficking.

#### *RECENT LEGISLATIVE INTERVENTIONS*

Since October 2017, numerous legislative measures have been put in place and have strengthened the legal tools in the promotion of equality and in the fight against migration discrimination.

In the **Resolution of the Council of Ministers No. 80/2018, of June 19**, the Government recognizes that the scourge of trafficking human beings takes on increasingly diverse, complex and sophisticated forms, which implies the need for a well-defined and coherent strategic orientation, through a coordinated and effective security policy, responding to the main internal and external risks and threats, and promoting integrated protection of victims. The 4<sup>th</sup> National Plan against the Trafficking in Human Beings (2018–2021) aims to reinforce knowledge on the subject of trafficking human beings, to ensure that victims have better access to their rights, as well as to qualify intervention, and to promote the fight against organized crime networks, namely by dismantling the business model and dismantling the trafficking chain. In addition, **Law No. 26/2018, of July 5**, amends the Law for the Protection of Children and Youth in Danger, approved in annex to Law No. 147/99, of September 1, and the regime of entry, stay, exit and removal of foreigners from the national territory, approved by Law No. 23/2007, of July 4, for an effective regularization of the legal status of children and young people of foreign nationality admitted to State institutions or equivalents.

In August 2019, Portugal became one of the first countries to approve, by **Resolution of the Council of Ministers no. 141/2019**, on August 20, the National Implementation Plan of the Global Compact for Migration. The Global Compact for Safe, Orderly and Regular Migration is the first inter-governmentally negotiated agreement, prepared under the auspices of the United Nations, covering all dimensions of international migration in a holistic and comprehensive manner.

To eliminate discrimination against national minorities, **Resolution of the Council of Ministers No. 154/2018, of November 8**, established the National Roma Communities Integration Strategy (ENICC). The ENICC intends to improve the well-being and integration of Roma people, encourage mutual understanding and positive interaction, and deconstruct stereotypes, providing the necessary framework for dialogue between civil servants, the Roma people and civil society organizations working for and with these communities. In order to increase responses for young people without jobs or training, called NEET, the ENICC extended the Escolhas Program, a social inclusion program funded by the High Commissioner for Migration (ACM), up to 30-year-olds.

Also, **Law No. 83/2019, of September 3**, known as the Housing Basis Law, established the bases of the right to housing and the fundamental tasks of the State in effectively guaranteeing that right to all citizens, under the terms of the Constitution, “consecrating that everyone has the right to housing, for themselves and their family, regardless of ancestry or ethnic origin, sex, language, territory of origin, nationality, religion, belief, political or ideological convictions, education, economic situation, gender, orientation sexual, age, disability or health condition”.

## RELEVANT LOCAL POLICIES

On 21 June 2018, the ACM launched the **Local Plans for the Integration of Roma Communities** project (PLICC), funded by the European Union Program on Rights, Equality and Citizenship (2014-2020), aimed at municipalities and local communities to promote local intervention and democratic participation by Roma communities and to create partnerships to design and implement strategies for bringing Roma communities closer to the majority society. The project resulted in a Guide for the Design of Local Plans for the Integration of Roma Communities aimed at reinforcing the relevance of the integration of Roma people in the political and public agenda of the various territorial units (Parishes, Municipalities, Intermunicipal Communities, Districts and Regions), highlighting what was indispensable to develop cooperative and proximity work. 14 counties were involved in the creation of the 12 PLICC. The Intermunicipal Community of Alentejo Central developed two Intermunicipal Plans, one representing the municipalities of Borba and Estremoz, and the other Moura and Mourão.

In this context, the central role of municipalities and other local public services, civil society entities and people representing Roma communities stands out in the knowledge of the social situation and the conditions of existence of the Portuguese Roma population, as well as in the definition of a strategic intervention plan. In addition, it is important to notice that the group of schools and training centres of Portalegre and Campo Maior are already implementing two **Escolhas Projects** (E6G) toward the integration of Roma communities with the view of promoting their democratic participation.

CIMAA could promote the foundation of Roma NGOs, which may represent the Roma community and may interact with local professionals and local people to make a critical reflection on the main problems and needs felt in the localities and to outline adjusted practices and solutions to integrate Roma people in Public Life. This collective construction should involve and hold everyone accountable.

The same should be done with foreigners who study and live in CIMAA territory (mostly Brazilian and afro descendants).

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# THE EXPERIENCE OF BUCHAREST AND BAIA MARE (ROMANIA)

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## 30. INTRODUCTORY OVERVIEW

Romania is a South-Eastern European country, located between the Black Sea, Bulgaria, Ukraine, Moldova, Hungary and Serbia. With approx. 20 million resident inhabitants (19.414.458 people on January 1st, 2019, according to the National Statistics Institute data), Romania joined NATO in 2004 and the European Union in 2007. There are 42 counties, 103 municipalities, 2861 communes and 12957 villages (Ciuchea et al., 2015, p. 5). According to Eurostat data, 9.500.450 are men, and 9.914.008 are women; of the total population, 121.099 are from foreign countries and stateless.

There are three institutions / organizations from two of Romanian cities partnering with the Recognize&Change project: **Direcția Generală de Asistență Socială a Municipiului București** (The General Directorate of Social Welfare – Bucharest Municipality), **CARITAS Bucharest** and **Serviciul Public Asistență Socială Baia Mare**.

**Bucharest** is the capital and the largest city of Romania, with approximately 2 million inhabitants officially (1.883.425 people according to the 2011 national census and 1.829.897 people in 2019, January 1st, according to the National Statistics Institute), but with at least one (or even two) additional million transiting for work or educational reasons. It is the main administrative and political centre.

**Baia Mare** is the capital city of Maramureș county, located in the North-western part of Romania, at approximately 600 km from Bucharest, near the borders with both Hungary (70 km) and Ukraine (50 km). According to the 2011 national census, Baia Mare had a total population of 123.738 people. Among them, 58.800 were male (46.27%) and 64.938 female. The largest minorities were Hungarians - 12.750 people, representing 12.25% of the population, and 2.76% Roma – 3.107 people. In 2020, the whole county of Maramureș totalled 460.689 people, while 144.925 of them were living in Baia Mare (INSS, 2020).

Violence and discrimination have been on Romania's public agenda for decades. The **Convention on the Elimination of All Forms of Discrimination against Women** was ratified by the Romanian Parliament, on January 7, 1982. After the fall of the communism, in December 1989, they have constantly been in the nation's attention. Also, must be noted that only 13 European states included "nationality as an explicitly protected ground in anti-discrimination legislation", and Romania is one of them (ENAR, 2016, p. 38).

The Romanian **Constitution** states that the country belong to all of its citizens, disregarding their race, nationality, ethnic origin, language, religion, gender, opinion, political options, wealth or social origin; furthermore, it states that the "citizens are equals in front of the law and the public authorities, without any privileges or discrimination".

## 31. DISCRIMINATION AND VIOLENCE BASED ON GENDER

A view on the **Global Gender Gap Index** shows that, in spite of the fact that the country's scores are lower than the EU average, Romania is following the ascendant trend and there is visible progress in almost every single domain. However, the issue of gender-based violence (and particularly violence against women) remains significant.

The Romanian **Constitution** guarantees the equality of opportunities between men and women; therefore, both could take any position or dignity in public, civil or military areas, have the same right to work, and can choose any profession they would like. It also literally stipulates equal pay for the same job, for men and women (art. 41 paragraph (4)), being entitled to benefit from social protection. The social protection measures refer to the health and security of the employees, the work regime of women and youth, having a minimum wage per country etc.

Most of the legal codes (**The Labour Code, Criminal Code, Family Code**) have rules and regulations which specifically forbid discrimination and impose equal treatment to all residents, disregarding their gender, age, religion, race, ethnicity, political option, etc. There are also dedicated laws for each and every area of interest in the current analysis.

There are specific non-discrimination laws, containing most of the aspects from the international recommendations, including the ones which refer to hiring women, to equal pay for everyone in similar conditions, to domestic violence or to sensitive aspects like permitting abortion to preserve a woman's physical health.

The legislation regarding **domestic violence** has been constantly amended and improved (especially the dedicated normative act - Law no. 217/2003 for preventing and combating domestic violence), covering all aspects or types of violence, from physical to cyber or bullying. Also, new measures have been introduced to ensure

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immediate protection of the victims – the temporary protection order, issued by police officers - and separating them from their aggressors; finally, the law introduced the notion of 'gender violence', according to the definition that can be found in **Istanbul Convention**, also ratified by the Romanian Parliament.

It must also be emphasized that there is a dedicated normative act addressing the issue of discrimination, which is also the subject of constant improvement, namely Ordinance no. 137/31.08.2000, regarding prevention and sanctioning all types of discrimination, where discrimination is being defined as "any difference, exclusion, restriction or preference based on race, nationality, ethnicity (...), gender, sexual orientation (...) and any other criteria which has as purpose or effect of restraining or eliminating the recognition, use or exercise, in equal conditions, of the human rights and fundamental freedoms or rights recognized by the law, in public, economic, social or cultural areas or in any other areas of the public life". The elimination of all types of discrimination is in three major areas: prevention, mediation and sanctioning discriminatory behaviour.

These measures, laws and initiatives led to the international organization Human Rights Watch mentioning Romania as one of the countries that have made "exemplary **progress** in combating rights abuses based on sexual orientation or gender identity" (Human Rights Watch, 2006). It is obvious that Romania, as a country, is far from being considered ideal when it comes to the management of domestic violence or discrimination based on gender, but there is an entire legal system, starting with the Constitution, which grants rights and liberties in relation to these. Following the national legal frame, local actions and public policies can be empowered with strategies like the one adopted in 2015, respectively **The National Strategy regarding Social Inclusion and Reducing the Poverty** for the Period 2015-2020. It can be said that these policies opened the way to the local actions, because local administrations such as Bucharest and Baia Mare started to adopt their own strategies for social inclusion and reducing poverty.

As it can be seen from the extended report, the Romanian legislative system is the subject of constant change and transformation. Violence and discrimination based on gender has been and will continue to be of great attention to the authorities, in order to comply with the international legal frame and, especially, to comply with the international conventions signed and ratified by our country, keeping the right to adapt them to our legal system and making sure that human rights and dignities are being respected and protected.

## 32. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

Romania has to be considered a country affected rather by **emigration** than immigration, being one of the countries with the largest emigrant populations in the region. Romanian emigrants face discrimination based on their origin or perception of origin; they are paid lower salaries and become victims of human trafficking. Roma migrant communities in particular continue to be targeted by hate speech, violence and discrimination. This is true also in Romania, the country with the **largest Roma population** among EU member states" (Crişan, A., 2017, p. 2).

In 2019, Romania hosted 137.619 foreign people, most of them (84.228) coming from non-EU countries, and 53.331 from EU and SEE countries (IGI, 2020). Of the 33.634 people who requested a work permit, most of them were from Vietnam – 6282 (18.7%), Nepal - 4324 (12.9%) and India – 4100 (12.2%). In 2019, IGI found 820 illegal aliens on Romanian territory, and 938 foreign people were escorted to the borders (IGI, 2020). Of the 379 foreign citizens taken into public custody, most of them were from Vietnam – 92 (24.3%) Irak – 57 (15.0%) and Sri Lanka – 34 (9.0%) (IGI, 2020).

Even though Romania may not be considered a destination country for most of the potential immigrants, it is a **transit country** on their way to other countries in Western and Northern Europe. This fact may have contributed to a lower number of immigrants and, possibly, to a rather tolerant attitude towards them. Of course, this does not imply the lack of incidents such as, for example, problems they face with employers, mainly in the domestic work sector, who pay lower salaries or exploit their foreign employees.

The **Constitution** grants the right to keep, develop and express one's own identity; foreign citizens and stateless persons who are residents in Romania are granted general protection,; also, the asylum seeker's request will be processed according to the treaties and international conventions signed and ratified by our country. National minorities, as well as foreign citizens and stateless persons, have the right to address the court in their language and/or with the help of an interpreter; in the case of foreign and stateless persons, the right to have an interpreter is provided free of charge. Actually, Romania has one of the **fastest administrative procedures for processing asylum requests** - only 30 days - and, to date, Romania is the only member state with no complaints filed at the European Court of Justice regarding the way it applies the Dublin Procedure (IGI, 2020).

Most of the legal codes (**Labour Code, Criminal Code, and Family Code**) have specific rules and regulations which specifically forbid discrimination and impose equal treatment to all the residents, irrespective of their age, religion, race, ethnicity, and so on. The Penal Code punishes people who expose migrants to inhumane or degrading treatments with 3-10 years in prison and the restraint of certain rights and liberties; it criminalizes sex trafficking and labour trafficking, prescribing penalties of 3-10 years'imprisonment.

In 2001, Romania passed Law no. 678/2001 to prevent and combat **human trafficking**; since 2006, Law no. 122/04.05.2006 regarding **asylum** in Romania has been in force. Other normative acts have been adopted to set up the legal frame on the matter: Governmental Ordinance no. 44/29.01.2004 regarding the social **integration** of foreign citizens with international protection or residence right in Romania, and of citizens from EU and SEE member states; Governmental Decision no. 1295/2004 which approves the National action plan for the preventing and combating **child trafficking**; Governmental Decision no. 1769/2004 which approves the National action plan for the elimination of the exploitation of **children labour**; Governmental Emergency Ordinance no.102/14.07.2005 regarding the free circulation on Romanian territory of citizens from EU, SEE and Swiss Confederation; Governmental Ordinance no. 25/26.08.2014 regarding labour integration, the detachment of foreign citizens in Romania, and the modification and completion of certain normative documents regarding the presence of foreign citizens in Romania. Also, it is worth mentioning the **National Strategy for Immigration** and the **Action Plan** for implementing the National Strategy for Immigration, both approved by Governmental Decision no. 780/2015; in 2019 a proposal to update the strategy for the period 2019-2022 was submitted.

To conclude, the legal frame is also comprehensive and covers most relevant aspects; it is also the subject of constant change and transformation, in order to be **harmonized** with the European legal frame and with the international conventions and treaties signed, ratified and/or applicable to our country as well, aiming to ensure the protection and granting human rights and dignities for migrants.

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# THE EXPERIENCE OF HUELVA AND JAEN (SPAIN)

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## 34. INTRODUCTORY OVERVIEW

The legal instrument governing the Spanish system is the 1978 **Constitution**, which serves as a basis for the distribution of powers, the organization of the national territory and the allocation of responsibilities. Article 1 of said Constitution defines Spain as a social and democratic state governed by the rule of law, which takes the political form of a **parliamentary monarchy**. Powers are separated into three levels: legislative, executive and judicial.

**Andalusia is an autonomous community** in Southern Spain that accounts for about 2% of the European Union territory. Its geostrategic value is determined by its condition as a Southern border of Europe, a few kilometres away from Northern Africa. It acts as a bridge between Europe and the Maghreb countries and is in a strategic position between the Atlantic Ocean and the Mediterranean Sea, a crossing between roads and civilizations.

In matters of discrimination and violence against women, Andalusia has exclusive powers to promote gender equality in the social, work, economic and political spheres by virtue of its autonomous statute. Regarding violence against women, there are shared competences between the State and Andalusia. As for immigration, the other topic of this report, this falls within the exclusive competence of the State, but Andalusia is competent in matters of social integration of migrants in accordance with Art. 62 of its autonomous statute.

## 35. DISCRIMINATION AND VIOLENCE BASED ON GENDER

As established in the Treaty of the **European Union**, the Charter of Fundamental Rights of the European Union and the Spanish Constitution (Art. 9.2), gender equality and antidiscrimination policies are the essential building blocks to change prevailing cultural patterns, attitudes and values. They help to eliminate stereotypes and promoting social development, freedom, equality and the exercise of women's fundamental rights, all with a view to eliminating any form of violence against women. The only means at our disposal to put an end to violence against women is the development of equality and antidiscrimination policies, which constitute the basis for the implementation of specific measures oriented towards achieving the same goal. **The Istanbul Convention**, which Spain has committed to, is one of the guidelines in the creation of regulations on violence against women.

### *SPANISH LEGISLATION ON GENDER VIOLENCE*

Following the murder of Ana Orantes, gender violence became a public issue. Women's organizations across Spain became involved in the fight against the scourge of male violence. Thus, their initiatives and demands were reflected in the changes that we saw in the following years. The current legislation in force in Spain on matters of gender equality and violence against women include:

- **Organic Law 1/2004**, of 28 December, on integral protection measures against gender violence.
- **Organic Law 3/2007**, of 22 March, on effective gender equality.
- **Organic Law 2/2010**, of 3 March, on sexual and reproductive health and voluntary termination of pregnancy.

In **Andalusia**, two laws complementing the above legislation were adopted: Law 13/2007, of 26 November, on integral prevention and protection measures against gender violence in Andalusia; and Law 12/2007, of 26 November, on the promotion of gender equality in Andalusia.

The following innovations have been introduced in the last three years: the situation of gender violence can be **accredited by social and specialized services**, not just by the public prosecutor's office or a court decision (Royal Decree-Law 9/2018). Royal Decree Law 6/2019 modifies the elaboration of equality plans in **companies** as well as the establishment of a body which monitors these plans; this same Royal Decree Law modifies the statute

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\* *Argelio Gallego Sánchez, Irene Sancho Gustos and Karen Bibiana Suárez Foronda, Young Educators in collaboration with the Diputación de Huelva.*

of workers for the **equalization of parental leaves** for children born of both parents. Lastly, Law 3/2019 was drafted to improve the situation of **orphans** who are victims of gender violence.

In October 2019, **GREVIO's** visit to Spain will take place. On the occasion of this visit, the actions carried out by the Spanish State will be analysed and the publication of a report will be announced. This report will include the analysis of the group of experts, as well as recommendations to continue working on this. A preview of the report is that this international body defines Spain as a country that has made an enormous effort to fight against this type of violence that "is very present in public policies as well as in the role of social agents".

However, the members have advanced the need to undertake changes on the level of prevention and education, to improve communication between the different administrations in order to favour a greater co-responsibility among them and to emphasize the group of rural women (a positive measure that is being carried out by the council). In the field of justice, GREVIO highlights the exemplary support given to women, although it draws attention to the time the aggressor spends in detention as well as scarce judicial measures to avoid contact between the aggressors and the victims' children.

#### *DATA ON THE MAGNITUDE OF THE ISSUE*

The data provided here goes back to 2003, which is the date when the number of female victims of this worldwide pandemic began to be registered. So far, during 2020 there have been 25 female victims and the overall total from 2003 to 2020 amounts to 1058. As a result of the measures adopted and of increasing public awareness, a downward trend is noticeable.

Concerning the 131 female victims registered since 2018, only 31 of them had lodged any kind of claim against their aggressors.

In an **intersectional** analysis of this data, out of the total number of victims in 2018, 19 were foreign women against 32 who were Spanish women. This pattern is repeated in the years 2019 and 2020, with 22 foreign women against 33 Spanish women and 8 foreign women against 17 Spanish women, respectively. The age of the victims ranges from 21 to 50 years.

Regarding **positive measures adopted locally**, both provinces resort to similar methods to achieve the goals of equality and elimination of violence against women generally contained in the **Equality Plans**, drafted for a definite period. These **local measures** include trainings, preparation of inclusive material, use of inclusive language, regulation of women's image, promotion of feminist groups, improvement of communication with the latter, public aids for social entities fighting for equality, training of men in equality issues, creation and promotion of movements on rural women, support and advice to municipalities in measures oriented towards eliminating gender violence, among others.

### 36. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

The International **Convention for the Elimination of All Forms of Racial Discrimination** held by United Nations in 1963 defines racial discrimination as: "Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". To facilitate the comprehension of the following paragraphs, the terms *migrant*, *refugee* and *stateless person* will be used in accordance with the meaning given to them by international organizations such as the United Nations and the **Convention on the Status of Stateless Persons**. Spain has experienced evident, sweeping changes concerning migration throughout the last decades, especially during the last ten years. Its geographic location is essential to any study of the migration phenomenon since only a 14-kilometer stretch of sea separates the **Iberian Peninsula** from Africa.

#### *SPANISH LEGISLATION ON IMMIGRATION*

Immigration issues, which fall within the **exclusive competence of the Spanish state**, are regulated in the following laws:

- The rights of foreigners are regulated in Art. 13.1 of the Spanish **Constitution**, which grants immigrants the public freedoms enshrined in the Constitution for Spanish citizens "in the terms established by the Treaties and the Law". Article 13.3 provides that: "**Extradition** shall only be allowed in compliance with a treaty or with the Law, taking into account the principle of reciprocity".
- Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration.
- Concerning asylum-seekers, the legislative instrument regulating this issue is Law 12/2009, of 30 October, on the right to asylum and subsidiary protection.

With regard to the innovations that have taken place in recent years, more so than a legislative change, the innovations that have taken place respond to guidelines for action imposed by the competent administrative body, in this case, the **Secretariat of Immigration**. Specifically, and as a way of responding to the needs of this group during the current pandemic, the instructions that have been issued on immigration are intended to facilitate the maintenance of residence permits, work permits and the authorization to work for minors.

Finally, for a few years now, a program called "**Holidays in Peace**" has been running in Spain with the **Saharawi** people. To this end, the relevant Ministry issued a resolution (the last in 2019) authorizing the temporary residence of minors and the stay of legal guardians of Saharawi origin, in Spain.

#### DATA ON THE MAGNITUDE OF THE ISSUE

With regard to the gender distribution of immigrants in Spain, there are more women than men. The immigrant population amounts to 6,104,203, accounting for 12.96% of the Spanish population, of which 3,190,456 are women (52.26% of the total number of immigrant persons). The nationality of the immigrant persons arriving in Spain has changed over the years; the largest proportion of them is currently of South American origin, significantly ahead of the second largest continent of origin, which is Africa. These are followed by Central America. Andalusia has a high inflow of migrants, being the fourth autonomous community with the largest inflow of migrants after Catalonia, Madrid and the region of Valencia.

Concerning the **positive measures** adopted, the provincial council of **Huelva** implements a series of integral best practices, which are defined as those measures developing interventions on the entirety of groups residing in a given municipality and aimed towards integration while safeguarding the culture of the immigrant persons.

Thus, according to the Andalusia Federation of Municipalities and Provinces in its report "Tratamiento Integral de la Inmigración en Andalucía" ("**Integral Treatment of Immigration in Andalusia**"), two municipalities in the province of Huelva are a reference for best practices:

CARTAYA	LEPE
<b>Association for support to seasonal workers</b>	Interactive Courses of the Town Hall. Improvement of the Spanish language and of the integration of migrant children
<b>Services and resources located at the Office for Seasonal Workers</b>	Classes of approach to the Internet and new information technologies

Table 1. Positive actions carried out in the Cartaya and Lepe municipalities, province of Huelva Source: Compiled by authors based on the Guide of resources for local corporations.

Concerning the positive measures adopted by the provincial council of **Jaen**, in 2008 the Equality and Welfare Department of the council implemented a Program for the Integration and Social Promotion of immigrant persons with the aim of streamlining the criteria allowing the immigrant persons to enjoy their integration rights as well as to promote quality services for the reception and complete integration of these persons in the host society.

In addition to the above, a series of **Helpdesks for Seasonal Workers** were created to meet the needs of all citizens that come to the province of Jaen looking for work during the period in which olives are harvested. Noteworthy is also the establishment of **Lodges** for Seasonal Workers, which include measures connected with the lodging and basic needs of these workers. In this same area, the provincial council manages the **Care Centres for Children** of Seasonal Workers (including kindergartens, lodges and day-care centres).

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## THE COMPARATIVE ANALYSIS

## 38. INTRODUCTION

This final comparative analysis is a complex output. Several legislative interventions and local policies are going to be presented with the view of evaluating how local communities and decision-makers have faced intolerance and discrimination in their territories (focusing on the changes which occurred over the past 3 years). The ultimate objective is to share best practices and inspire future positive actions against discrimination and violence. In other words, this comparative analysis intends to present different proposals for the improvement of (local) public policies and the promotion of social inclusion and citizen participation.

The comparative reading concerns 15 partners from 9 countries around the world, which means 15 (public and private) entities located in 9 different territories characterized by diverse legal systems, forms of government, historical backgrounds, traditions, languages and cultures. **Brazil, Bulgaria, Cape Verde, France, Greece, Italy, Portugal, Romania** and **Spain** represent the 9 countries involved. The Municipality of Fortaleza (Brazil), Caritas Ruse (Bulgaria), Delphi Association (Bulgaria), the Municipality of Praia (Cape Verde), the City of Dunkirk (France), Vardakeios School of Ermoupolis (Greece), the City of Collegno and the City of Turin (Italy), ISCOS Piedmont (Italy), the Inter Municipal Community of Alto Alentejo (Portugal), Caritas Bucharest (Romania), the Municipality of Baia Mare and Bucharest (Romania), the Provinces of Huelva and Jaén (Spain) are the official partners involved in the Recognize and Change (R&C) project,<sup>11</sup> thus creating a peculiar *fil rouge* across Europe, Africa and South America.

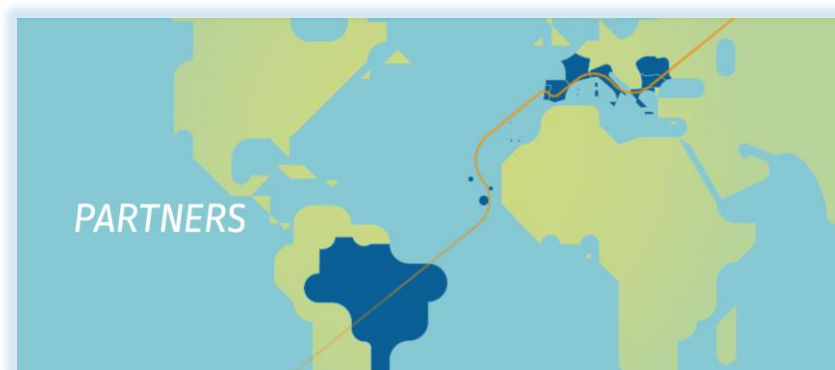


Figure 1. R&C partners on the map

This analysis concerns the above-mentioned territorial partners. It does not compare 9 sovereign countries, as it is intended to compare *local* policies and interventions tackling discrimination and violence in *specific territories*. Nevertheless, in order to compare *local* positive actions, it is essential to present the national contexts where these territorial entities are located. Firstly, the 9 countries involved in the R&C project have different territorial and demographic characteristics. At the extremes, there is **Brazil**, which represents the largest territory of this project, with a total area of 8.5 million square kilometres, and a population of 211 million. At the opposite end, there is **Cape Verde**, an archipelagic country (of 4,030 sq. km), which is the smallest country involved.

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11 See <https://recognizeandchange.eu/partners>.

STATE			REGION			CITY		
	Surface (sq. Km)	Population		Surface	Population		Surface	Population
<b>BRAZIL</b>	8,515,770	211 million	<b>State of Ceará</b>	148,894	9 million	<b>Fortaleza</b>	313.8	2.6 million
<b>BULGARIA</b>	111,000	7 million	n/a	n/a	n/a	<b>Burgas</b>	253	202,434
						<b>Ruse</b>	127	142,902
<b>CAPE VERDE</b>	4,030	549,935	n/a	n/a	n/a	<b>Praia</b>	102	159,050
<b>FRANCE</b>	549,087	67 million	<b>Hauts-de-France Region</b>	31,813	6 million	<b>Dunkirk</b>	43.8	88,667
<b>GREECE</b>	131,960	10.7 million	<b>South Aegean Region</b>	5,286	309,015	<b>Ermoupolis (Syros)</b>	11.2	13,737
<b>ITALY</b>	301,340	60.3 million	<b>Piedmont Region</b>	25,387	4.3 million	<b>Turin</b>	130	870,952
						<b>Collegno</b>	18.1	49,615
<b>PORTUGAL</b>	92,226	10.2 million	<b>Alto Alentejo Region</b>	6,080	105,479	<b>Portalegre</b>	448	22,359
<b>ROMANIA</b>	238,400	19.3 million	n/a	n/a	n/a	<b>Baia Mare</b>	233.5	123,738
						<b>Bucharest</b>	228	1.8 million
<b>SPAIN</b>	505,935	47 million	<b>Andalusia Region</b>	87,268	8.4 million	<b>Huelva (Province)</b>	10,128	519,932
						<b>Jaén (Province)</b>	13,484	638,099
<b>TOTAL</b>							<b>25,520</b>	<b>7.2 million</b>

Table 2. Territories and populations involved in the R&C project

Secondly, the 9 countries involved represent different forms of government, including a presidential republic (*i.e.* **Brazil**), a parliamentary monarchy (*i.e.* **Spain**), semi-presidential republics (*i.e.* **France**, **Portugal**, **Cape Verde** and **Romania**) and parliamentary republics (*i.e.* **Italy**, **Greece** and **Bulgaria**). Moreover, these countries are characterised by strong and weak forms of decentralization. It follows that their legislative acts and local policies depend on different forms of coordination between the federal, regional and local level. **Brazil** is a federal state, characterised by a strong local decentralisation; the Republic of **Cape Verde** recognises only the *administrative* autonomy of local bodies; similarly, the **European states** involved in the project are either regional or centralised states which recognise local autonomies. Their territorial bodies (*inter alia* Regions, Departments, Provinces, Districts, Metropolitan Cities and Municipalities) have autonomous (decentralised) regulatory powers for the organisation and implementation of their functions. Moreover, **Italian** and **Spanish** regional bodies also have (exclusive) *legislative* power with regard to any matters not expressly attributed to the State or to the concurrent legislation.<sup>12</sup>

Thirdly and importantly, it is worth noticing that these 9 countries are bound by different *supranational* obligations, which protect human rights, combat discrimination and promote equality. At the international level, these countries are all bound by customary law (such as international human rights and the principle of *non-refoulment*). In addition, they are committed to respecting the international treaties which they have ratified (mainly UN Conventions), *inter alia* the International Convention on the Elimination of All Forms of Racial Discrimination, the 1951 Convention relating to the Status of Refugees, and the Convention on the Elimination of

<sup>12</sup> See Art. 149 Spanish Constitution and Art. 117 Italian Constitution. See also <https://portal.cor.europa.eu/divisionpowers/Pages/default.aspx>.



All Forms of Discrimination against Women. Besides these international commitments, all the countries involved in the project are bound by *regional* legal sources. **Brazil** is part of the Inter-American human rights system;<sup>13</sup> **Cape Verde** is bound by the African human rights system;<sup>14</sup> Brazil, Cape Verde and Portugal are also members of the Community of Portuguese Speaking Countries (CPLP);<sup>15</sup> European States (*i.e.* **Bulgaria, France Greece, Italy, Portugal, Romania and Spain**) are bound by two main sets of regional norms: firstly, they are all contracting parties of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and they fall within the jurisdiction of the European Court of Human Rights; secondly, they are member states of the European Union, consequently, they are committed to respecting EU law (*i.e.* EU treaties, EU Charter of Fundamental Rights, EU Regulations, Decisions and Directives) as interpreted by the Court of Justice of the European Union (CJEU) based in Luxembourg. It follows that their legislative reforms, public policies and positive actions are strongly influenced by European bodies, as they are committed to uphold both European human rights and EU values.

In conclusion, it is essential to keep in mind that the 15 partners involved correspond to 9 different constitutional systems, which are influenced by different supranational legal sources. The protection of equality and non-discrimination is guaranteed by different sets of norms, both international and regional, as well as by Constitutional provisions. This means that the protection of equality is 'disaggregated', namely it is shared by different institutions and enshrined in different - overlapping - legal sources. Within this multi-layered system, where different legal sources coexist, equality represents a core value. Yet intolerance and inequalities are still (regrettably) a *reality* in every society involved. Therefore, the effective implementation of equal rights and equal opportunities for all is far from achieved.



Figure 2. The multi-level protection of equality

13 For more details concerning (regional) obligations and legal sources in the inter-American system see [http://www.oas.org/en/iachr/mandate/basic\\_documents.asp](http://www.oas.org/en/iachr/mandate/basic_documents.asp).

14 For more details see <https://www.corteidh.or.cr/tablas/31712.pdf>.

15 See <https://www.cplp.org>.

	<b>FORMAL equality (non-discrimination clause)<sup>16</sup></b>	<b>SUBSTANTIVE equality<sup>17</sup></b>
<b>BRAZIL</b>	Brazilian Constitution, Art. 5	Brazilian Constitution, Art. 3 <i>"The fundamental objectives of the Federative Republic of Brazil are: IV – to promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination."</i>
<b>BULGARIA</b>	Bulgarian Constitution, Art. 6	
<b>CAPE VERDE</b>	Cape Verdean Constitution, Art. 1(2)	Cape Verdean Constitution, Art. 1(4) <i>"The Republic of Cape Verde shall gradually create the conditions indispensable for the removal of all the obstacles that impede the full development of the human person and limit the equality of its citizens, as well as their effective participation in the political, economic, social and cultural organization of the State and in the Cape Verdean society."</i>  Art. 85(2) <i>"The State shall also have the duty to undertake the elimination of the conditions which are conducive to discrimination against women and to ensure the protection of their rights"</i>
<b>FRANCE</b>	French Constitution, Art. 1	French Constitution, Art. 1
<b>GREECE</b>	Greek Constitution, Art. 4(1) and (2)	Greek Constitution, Art. 116(2) <i>"Adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing, in particular to the detriment of women."</i>
<b>ITALY</b>	Italian Constitution, Art. 3(1)	Italian Constitution, Art. 3(2) <i>"It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country."</i>  Art. 117 <i>"Regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women."</i>
<b>PORTUGAL</b>	Portuguese Constitution, Art. 13	Portuguese Constitution, Art. 9 letter (d) and (h) <i>"The fundamental tasks of the state are: d) To promote the people's well-being and quality of life and real equality [...]<sup>18</sup> h) To promote equality between men and women."</i>
<b>ROMANIA</b>	Romanian Constitution, Art. 4(2) and 16(1)	Romanian Constitution, Art. 16(3) (Equal opportunities for men and women)
<b>SPAIN</b>	Spanish Constitution, Art. 1(1) and 14	Spanish Constitution, Art 9(2) <i>"It is incumbent upon the public authorities to promote conditions which ensure that the freedom and equality of individuals and of the groups to which they belong may be real and effective, to remove the obstacles which prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life."</i>  Art. 35 (Equal professional opportunities)

Table 3. Formal and substantive equality in the 9 constitutional systems involved

<sup>16</sup> Formal (*de jure*) equality advocates for the prohibition of discrimination. It is usually framed as follows: "All persons are equal before the law, without any discrimination whatsoever."

<sup>17</sup> Substantive (*de facto*) equality recognises that positive actions must take place in order to fully eliminate discrimination, marginalisation and unequal opportunities. This principle is result-oriented, based on the insight that formal equality may not be enough, and it is also referred to as "equality of results" or "equality of outcome".

<sup>18</sup> See the recent Law No. 83/2019, of 3<sup>rd</sup> September 2019, Housing Basis Law, which establishes the State commitment to guarantee the right to housing for all, without discrimination.

### 39. DISCRIMINATION AND VIOLENCE BASED ON GENDER

Gender discrimination and violence against women and girls are *widespread* phenomena. Globally, they represent *systematic, persistent, and pervasive* human rights violations. Firstly, gender-based barriers prevent women and girls from exercising their fundamental rights and freedoms, from accessing education, healthcare, services, from achieving economic and political empowerment and, more generally, from enjoying equal opportunities. These barriers create the so-called gender “gaps”. Secondly, gender inequalities increase the risks of experiencing gender violence. In other words, gender stereotypes, inequalities and discrimination are strongly linked to violence.

The international community recognises that the achievement of (*de facto*) gender equality and the full empowerment of women and girls are unsolved and open challenges. According to the **World Economic Forum**, in 2020, there is still a 31.4% average gender gap that remains to be closed globally (considering four key dimensions, namely Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment).<sup>19</sup> The largest gender disparity is the Political Empowerment gap. In fact, in terms of global parliamentary representation, women have secured just 25% of available positions, a figure that slips to 21% at a ministerial level. Furthermore, in the past 50 years, 85 (out of 153) States have had no female head of state. The second-largest gap is on Economic Participation and Opportunity. Globally, women’s participation in the labour market is low (on average, only 55% of adult women are in the labour market, versus 78% of men) and financial disparities persist. Conversely, the global progress towards equal Educational Attainment and Health is more advanced.

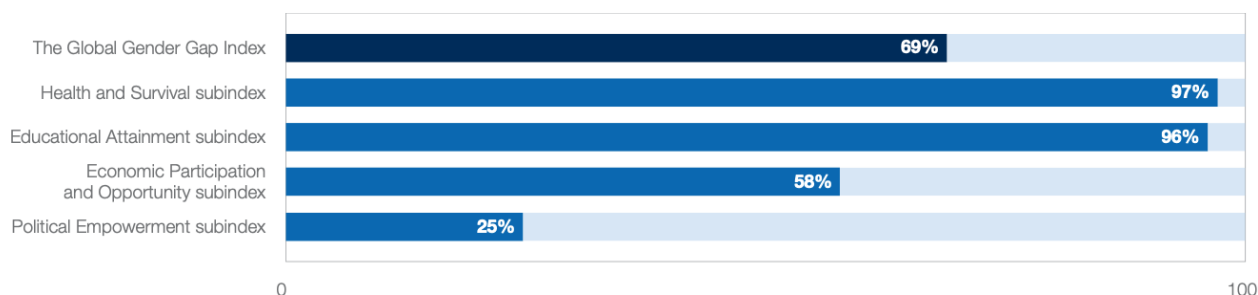


Figure 3. Gender gaps in 2020

Focusing on gender violence against women, the United Nations (UN) defines it as a *pandemic* affecting all countries.<sup>20</sup> More precisely, **UN Women** declares that “*violence against women and girls is a human rights violation of pandemic proportions that takes place in public and private spaces.*” Such violence manifests itself in physical, sexual and psychological forms. It negatively affects women’s general well-being and prevents women from fully participating in society. Presenting some fast facts regarding gender violence against women, it is estimated that 35% of women worldwide have experienced either physical and/or sexual violence (not including sexual harassment) at some point in their lives.<sup>21</sup> More than half of women killed worldwide were killed by intimate partners or other family members.<sup>22</sup> Approximately 15 million adolescent girls (aged 15 to 19) worldwide have experienced forced sex at some point in their life.<sup>23</sup> It is reported that 72% of all trafficking victims worldwide are women and girls – and 4 out of 5 of them are trafficked for sexual exploitation.<sup>24</sup> Globally, around 21% of young women got married before their 18<sup>th</sup> birthday.<sup>25</sup> Thus, the impact of gender violence ranges from immediate to long-term physical, sexual and mental health consequences for women and girls, including death. Violence against women represents the cruellest form of gender discrimination which is rooted in social (patriarchal) structures rather than individual and random acts.<sup>26</sup> Accordingly, the **UN 2030 Agenda for Sustainable Development** has

19 Global Gender Gap Report 2020, available at [http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf).

20 <https://www.un.org/en/sections/issues-depth/gender-equality/>.

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23 UNICEF, A Familiar Face: Violence in the lives of children and adolescents, (2017).

24 UNODC, Global Report on Trafficking in Persons (2018).

25 UNICEF, Child marriage around the world, Infographic (latest data as of March 2020), at <https://www.unicef.org/stories/child-marriage-around-world>.

26 See <https://www.endvawnow.org/en/articles/295-defining-violence-against-women-and-girls.html>

explicitly included 'Gender Equality' in its 17 Goals,<sup>27</sup> targeting not only the need to end discrimination against women, but also the urgency to eliminate all forms of violence against women and girls in the public and private spheres (see Goal 5).<sup>28</sup>

Each *regional* legal system involved in the R&C project is committed to combating violence against women and promote gender equality. In the inter-American system, the **Convention of Belém do Pará** is devoted to the prevention, punishment and eradication of violence against women.<sup>29</sup> It strongly affirms that every woman has the right to be free from gender violence, which includes the right to be free from all forms of discrimination and the right to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.<sup>30</sup> The African human rights system is bound by the so-called **Maputo Protocol** which complements the African Charter on Human and Peoples' Rights (Banjul Charter). This Protocol requires African States to take positive actions in order to effectively tackle gender inequalities between women and men. It explicitly protects several women's rights and freedoms, *inter alia* the right to dignity, to integrity and security, the right to access to justice and equal protection of the law, the right to participate in political and decision-making processes. Moreover, the Protocol includes the specific provisions on gender violence against women (Art. 4). Portugal, Brazil and Cape Verde are also members of the **Community of Portuguese Speaking Countries** (CPLP). In 2010, the II Meeting of Ministers Responsible for Gender Equality of the CPLP approved the so-called **Lisbon Resolution**, which acknowledged that all forms of violence against women are a serious violation of human rights and fundamental freedoms of women, and an obstacle to the achievement of gender equality and the empowerment of women. Following the Lisbon Resolution, the CPLP also announced Strategic Plans of Intervention with the view of combating gender discrimination and violence in the Community. Lastly, the European human right system is greatly devoted to gender equality. On the one hand, the **European Union** is considered a global leader in combating (gender) discrimination. Gender equality represents a key principle of EU law.<sup>31</sup> Accordingly, EU law strongly prohibits four types of discrimination: (i) *direct* discrimination (defined as the situation where one person is treated less favourably than another is, has been or would be treated in a comparable situation), (ii) *indirect* discrimination (defined as the situation where an apparently neutral provision, criterion or practice would put certain persons at a particular disadvantage), (iii) *harassment* and *sexual harassment* (defined as unwanted conduct occurring with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment), and (iv) *instruction to discriminate*.<sup>32</sup> Concerning discrimination in matters of employment and occupation, EU law also prohibits any less favourable treatment of a woman related to pregnancy or maternity leave.<sup>33</sup> In the field of criminal law, the EU has no legislative competence. It follows that it cannot harmonise criminal law provisions concerning violence against women. Nevertheless, Directive 2012/29/EU, also called Victims' Rights Directive, includes many provisions directly or indirectly referring to victims of gender-based violence. On the other hand, gender equality also represents one of the top priorities of the **Council of Europe** (CoE), which is fully committed to removing barriers impeding the full empowerment of women and their substantive equality in the society. The Council of Europe plays a major role in the protection and promotion of gender equality, shaping its development in Europe. It has produced solid legal standards and policy guidelines.<sup>34</sup> The European Court in Strasbourg (ECtHR) also contributes to the advancement of gender equality. Several rulings have stressed the interconnection between violence against women and violation of the right to life (Art. 2 ECHR), prohibition of inhuman or degrading treatment (Art. 3 ECHR) and prohibition of discrimination (Art. 14 ECHR).<sup>35</sup> Moreover, in 2011, the Council of Europe adopted the landmark **Convention on Preventing and Combating Violence against Women and**

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27 See <https://sustainabledevelopment.un.org/sdg5> and <https://www.unwomen.org/en/digital-library/multimedia/2017/7/infographic-spotlight-on-sdg-5>.

28 See Goal 5, "Achieve gender equality and empower all women and girls", at <https://sustainabledevelopment.un.org/sdg5>.

29 The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the Convention of Belém do Pará (where it was adopted in 1994).

30 Art. 6 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the Convention of Belém do Pará.

31 See Art. 21 of the EU Charter of Fundamental Rights and Art. 157 TFEU. In addition, since the 1970s, the EU has adopted 13 Directives regarding gender equality. See MEMO/07/426 at [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_07\\_426](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_07_426).

32 Art. 2 Directive 2006/54/EC, as well as Directive 2000/78/EC and Directive 2004/113/EC.

33 See Directive 92/85/EEC.

34 For an overview on the Council of Europe Standards and the Recommendations adopted by the Committee of Ministers addressing gender equality issues see <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058feef>.

35 See *Opuz v. Turkey* (application no. 33401/02), *A. v. Croatia* (application no. 55164/08), *Eremia and Others v. the Republic of Moldova* (application no. 3564/11), *Rumor v. Italy* (application no. 72964/10), *M.G. v. Turkey* (application no. 646/10), *Halime Kılıç v. Turkey* (application no. 63034/11), *Bălșan v. Romania* (application no. 49645/09).

**Domestic Violence** (also known as **Istanbul Convention**), which represents the most far-reaching international treaty to tackle violence against women in all its forms.

*THE ROLE OF THE ISTANBUL CONVENTION IN EUROPE*

The Istanbul Convention is the most-advanced legal document concerning gender violence against women. With its eighty-one articles, the Convention is impressive. It aims at zero tolerance for violence against women and provides strong guidelines for European States. The Istanbul Convention essentially builds on four (equally important) components (the “4Ps”), namely Prevention, Protection, Prosecution and integrated Policies.<sup>36</sup>

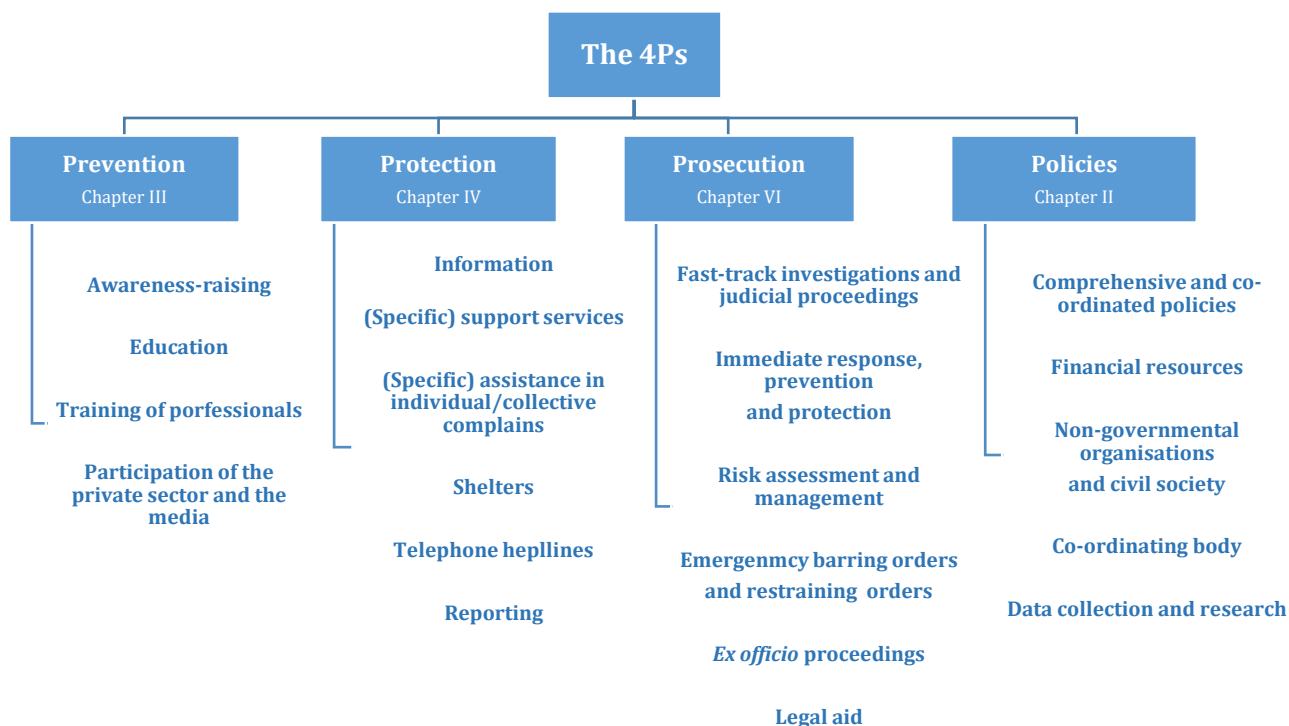


Figure 4. The 4 pillars of the Istanbul Convention

36 See the Explanatory Report (CETS 210) to the Council of European Convention on preventing and combating violence against women and domestic violence, para. 63, at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>. See also <https://rm.coe.int/coe-istanbulconvention-infographic-r02-v07/16809ea7fb>.

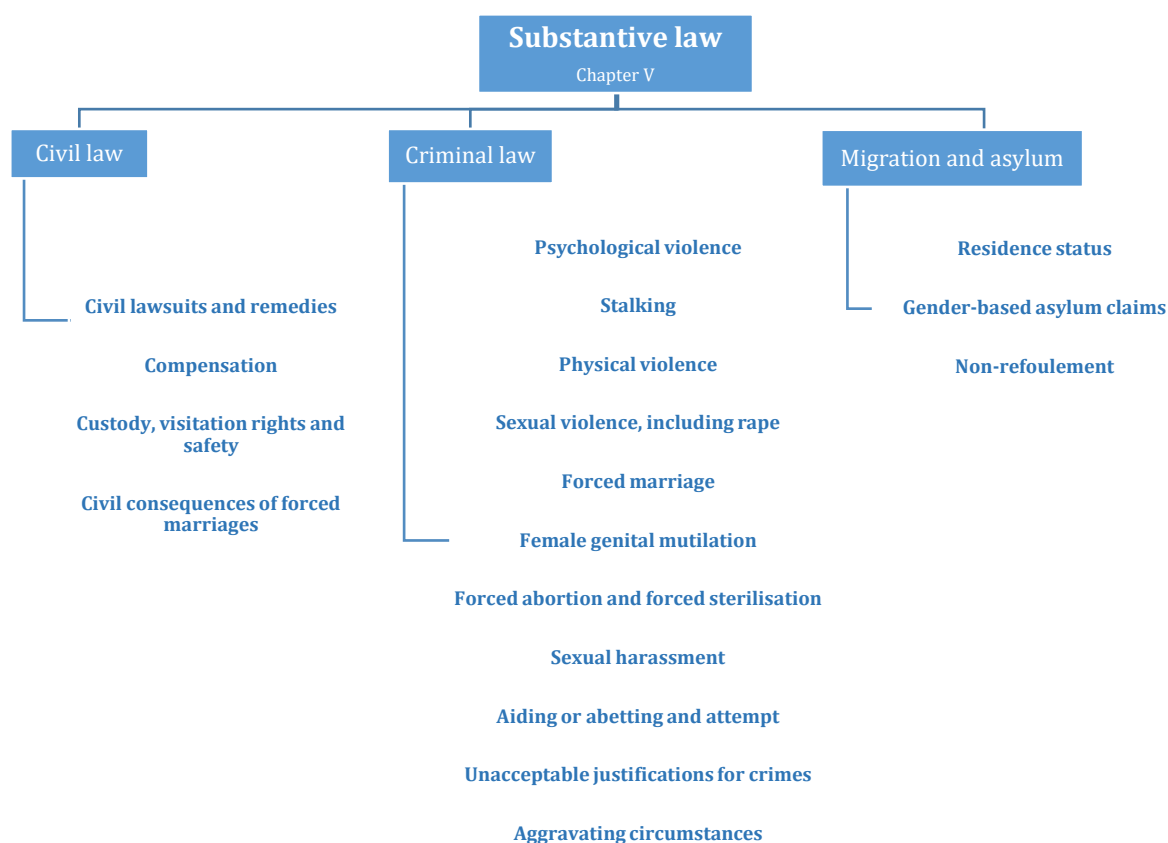


Figure 5. Substantive law in the Istanbul Convention

By ratifying the Istanbul Convention, States are bound by several commitments. They are not only committed to prohibiting, punishing and remedying violence in individual cases, but should also prevent violence through *systemic* measures. Their governments are obliged to change their laws, abolish practices which discriminate women, introduce gender-sensitive measures and allocate resources to effectively prevent violence against women. Accordingly, if a State wants to tackle violence against women in an effective way, imposing criminal punishments and civil remedies is necessary *but* not sufficient. Positive (preventive) actions are also demanded. Preventive measures, which aim at precluding violence from occurring in the first place (*ex ante*),<sup>37</sup> shall go hand in hand with prosecution and criminal (protective) instruments. Thus, it is undoubted that the Istanbul Convention is the most advanced (European) legal instrument to tackle violence against women. It also sets up a monitoring mechanism to assess the level of implementation by its State Parties. In this framework, the role of the **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)** is particularly relevant as it is competent in terms of drawing up and publishing reports, evaluating the legislative interventions and other measures taken by the Contracting Parties, initiating special inquiry procedures and adopting recommendations on themes and concepts of the Convention.<sup>38</sup>

Due to the extensive commitment required, several European States have not ratified the Istanbul Convention.<sup>39</sup> Today, only 34 European countries have ratified it.<sup>40</sup> In **Bulgaria**, the Constitutional Court even ruled that the Convention does not conform with the Bulgarian Constitution - making its ratification almost impossible.<sup>41</sup> According to the Court's ruling, the term "gender", as used in the Convention, is misleading and introduces a concept that is incompatible with the Bulgarian constitutional system. The Court declares that the

37 L. Grans, 'The Istanbul Convention and the Positive Obligation to Prevent Violence', Vol. 18 Human Rights Law Review, (2018), p. 133–155.

38 See the official website <https://www.coe.int/en/web/istanbul-convention/grevio>.

39 Chart of signatures and ratifications, status as of August 2020, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

40 See <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

41 Decision No 13 of 27.07.2018 on constitutional case No 3/2018. available (in Bulgarian) at <http://constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>. See also

<https://balkaninsight.com/2018/07/27/bulgaria-s-constitutional-court-says-istanbul-convention-not-in-line-with-basic-law-07-27-2018/>.

acceptance of the “gender ideology” would blur the binary understanding of “sex”, which is intended as two rigidly fixed options – male or female – determined at birth.<sup>42</sup> In addition, the Court affirmed that, if the Bulgarian legal order loses the ability to distinguish between a woman and a man, combating violence against women would be an unenforceable commitment.<sup>43</sup> This ruling has been defined as “the worst human rights decision in the court’s history”. The Court’s reasoning reflects a misconception of the Istanbul Convention which, in Art. 3, makes a distinction between ‘sex’ and ‘gender’ just for the sake of clarity. It defines gender as “socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men” and it aims at raising awareness on how these roles are often defined by outdated (patriarchal) stereotypes that can make violence against women, intimidation and fear more “acceptable”.

The Bulgarian Constitutional Court failed to understand the ultimate goal of the Convention and, consequently, to urgently prioritise national interventions facing gender-based violence. Accordingly, it is not surprising that Bulgaria still struggles to ensure an adequate and comprehensive criminal law protection against all types of violence against women. In addition, Bulgaria encounters difficulties in addressing sexism, misogyny, and gender-based stereotypes.

While the Bulgarian Constitutional Court strongly opposed the ratification of the Istanbul Convention, other European states have been developing advanced gender policies (in accordance with ECtHR’s rulings and GREVIO recommendations). In **France**, there has been a true national mobilisation in the fight against violence towards women, which, since 2010, has been designated as a “*great national cause*” by the French Government.<sup>44</sup> Several legislative interventions have gradually addressed the various forms of violence against women, strengthening the legal framework for preventing and punishing gender violence. Legislative efforts have been accompanied by a succession of five consecutive mobilisation Plans to combat violence against women. Furthermore, several measures have been implemented to promote *de facto* gender equality. These measures include the first inter-ministerial Plan for professional equality between men and women, which aims to mobilise all ministries around gender-sensitive measures and policies.<sup>45</sup> In the same way, **Spain** has a consolidated tradition in combating violence against women and in setting high legal standards with respect of gender equality. Anticipating the entry into force of the Istanbul Convention, in 2004, Spain adopted the Organic Law 1/2004 on Integrated Protection Measures against Gender Violence, which has been defined as “one of the most advanced laws on intimate partner violence against women in Europe”.<sup>46</sup> In the last few years, several national strategies have been adopted to combat gender violence (*e.g.* the National Strategy for the Eradication of Violence against Women 2013-2016, the State Pact against Gender-based Violence 2018-2022, the second National Action Plan on Women, Peace and Security 2017-2023, the Comprehensive Plan to Fight against Trafficking in Women and Girls for the Purpose of Sexual Exploitation 2015-2018).<sup>47</sup> In addition, concerning gender equality, Spain is one of the most-progressive countries in the world in closing gender gaps. According to the Global Gender Gap Index, Spain ranks 8<sup>th</sup> in 2020 and, in contrast with the global trend, Political Empowerment is the area where the most substantial improvements have been achieved. Spain represents the world’s most female-centric government, with 65% of female ministers. It is one of the only 10 governments in the world with a share of 50% or more.<sup>48</sup> The EU Gender Equality Index confirms that Spain is progressing towards gender equality at a faster pace than other EU Member States.<sup>49</sup> **Portugal**, which is the first EU country to have ratified the Istanbul Convention (in February 2013), has demonstrated a significant commitment to tackling gender violence and discrimination. It is important to highlight that the ratification of the Istanbul Convention was unanimously agreed upon at the Portuguese Parliament and it involved all political parties since the beginning. Portugal has been at the forefront of European Countries that call for the full implementation of the Convention. Moreover, in the last few years, continuous efforts have been undertaken to implement the National Strategy for Equality and Non-Discrimination

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42 Bulgarian Helsinki Committee, Human Rights in Bulgaria in 2018, Chapter 14, Women’s Rights, (2019), available at <https://www.bghelsinki.org/web/files/reports/127/files/BHC-Human-Rights-in-Bulgaria-in-2018-en-issn-2367-6930.pdf>.

43 R. Vassileva, Bulgaria’s Constitutional Troubles with the Istanbul Convention, *Verfassungsblog*, (August 2018), available at <https://verfassungsblog.de/bulgarias-constitutional-troubles-with-the-istanbul-convention/>.

44 See (in French) [http://archives.gouvernement.fr/fillon\\_version2/premier-ministre/la-lutte-contre-les-violences-faites-aux-femmes-grande-cause-nationale-2010.html](http://archives.gouvernement.fr/fillon_version2/premier-ministre/la-lutte-contre-les-violences-faites-aux-femmes-grande-cause-nationale-2010.html).

45 See (in French) <https://www.egalite-femmes-hommes.gouv.fr/dossiers/egalite-professionnelle/le-1er-plan-interministeriel-en-faveur-de-legalite-professionnelle/>.

46 The Law received an honourable mention in 2014 in the Future Policy Award (given by the World Future Council) as one of the best pieces of legislation on violence against women. See [https://www.worldfuturecouncil.org/wp-content/uploads/2016/01/WFC\\_2014\\_Future\\_Policy\\_Award\\_En.pdf](https://www.worldfuturecouncil.org/wp-content/uploads/2016/01/WFC_2014_Future_Policy_Award_En.pdf).

47 See [https://violenciagenero.igualdad.gob.es/planActuacion/estrategiaNacional/docs/Estrategia\\_Nacional\\_Ingles.pdf](https://violenciagenero.igualdad.gob.es/planActuacion/estrategiaNacional/docs/Estrategia_Nacional_Ingles.pdf), [http://www.exteriores.gob.es/Portal/en/PoliticaExteriorCooperacion/DerechosHumanos/Documents/2017\\_II%20PLAN%20NACIONAL%20Version%20web%20ENG.PDF](http://www.exteriores.gob.es/Portal/en/PoliticaExteriorCooperacion/DerechosHumanos/Documents/2017_II%20PLAN%20NACIONAL%20Version%20web%20ENG.PDF), [http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/planIntegral/DOC/Plan\\_Integral\\_Trata\\_2\\_015-2018\\_ENG\\_DEF.pdf](http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/planIntegral/DOC/Plan_Integral_Trata_2_015-2018_ENG_DEF.pdf).

48 Global Gender Gap Report 2020, p. 25, available at [http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf)

49 Index score for Spain for 2019 at <https://eige.europa.eu/gender-equality-index/2019/ES>.

(2018-2030), also called “Portugal + Equal”,<sup>50</sup> and several action plans to prevent and combat violence against women. Accordingly, Portugal has been developing comprehensive long-term national strategies to promote (*de facto*) gender equality.<sup>51</sup> At a later date, **Greece, Italy** and **Romania** ratified the Istanbul Convention, in 2018, 2014 and 2016 respectively. As a result, today, 6 European countries involved in the R&C project are committed to the full implementation of the Convention, introducing specific legislations and policies to comply with it (as binding - supranational - legal source). **Bulgaria** represents the only exception in the project.

### RECENT LEGISLATIVE INTERVENTIONS

In the last few years, we have witnessed increasing attention towards gender issues and violence against women, and a growing commitment in national agendas. Recent legislative interventions in the 9 countries involved in the R&C project have focused on the following areas.

Firstly, several countries involved in the R&C project have adopted substantive and procedural *criminal* law reforms in order to tackle violence against women more effectively. In 2018, **Brazil** amended its Code of Criminal Procedure and established that crimes concerning domestic violence against women, children, teenagers, the elderly and disabled people must be given priority in criminal tribunals.<sup>52</sup> Likewise, **Romania** introduced criminal law reforms addressing the length of the criminal proceeding. In order to promptly protect women victims of domestic violence, Romania has empowered police officers to issue temporary protection orders. More precisely, if police officers notice a situation of imminent risk deriving from an act of domestic violence, they can now ensure immediate protection for the victims, separating them from the aggressors.<sup>53</sup> In July 2019, **Italy** adopted the “Red Code”,<sup>54</sup> with the aim to speed up criminal proceedings, ensuring a privileged and accelerated procedure for victims of domestic and gender-based violence (in line with the judgement *Talpis v. Italy* issued by the Strasbourg Court in 2017, where the ECtHR found that the Italian authorities failed to take prompt action in a case of domestic violence). The term “Red Code” derives from the medical field, where, in case of hospital emergency, the red code identifies urgent patients who need to be treated with absolute priority. In the same way, the criminal “red code” has introduced an absolute presumption of urgency for criminal proceedings concerning gender violence. Besides criminal procedural reforms, these countries have introduced new criminal offences in their legal orders and, consequently, have amended their Criminal Codes. In 2018, **Brazil** introduced the crime of “unauthorized registration of sexual intimacy”.<sup>55</sup> In **Italy**, the Red Code criminalised so-called “revenge porn”, which is now classified in the Criminal Code as a new criminal offence regarding the dissemination of sexually explicit images or videos of a person without that person's consent. Similarly, the need to protect women from cyber violence has recently emerged in **Romania**. In July 2020, cyber violence was introduced as a new criminal offence. This crime has been recognised as a specific form of domestic violence, defined as “online harassment, online hate-speech based on gender, online stalking, threats, non-consensual publication of intimate information and content, illegal access to private communications and data and any other type of abusive use of IT&C, aiming at embarrassing, shaming, humiliating, scaring, threatening the victim”.<sup>56</sup> **Greece** introduced several reforms after the ratification of the Istanbul Convention in 2018.<sup>57</sup> More precisely, it amended domestic provisions concerning domestic violence and human trafficking. In **France**, the latest criminal reforms were elaborated during the national Grenelle,<sup>58</sup> launched by the Government from September to November 2019, on domestic violence. This three-month Forum represented the first national consultation concerning gender violence, a key moment of openness and dialogue between French authorities, specialised associations and a large number of stakeholders. In this way, the national Forum increased both the political and the societal awareness of the phenomenon of gender violence. Concluded on the International Day against Violence against Women (25 November 2019), the

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50 “Portugal Mais Igual”, see details at <https://www.cig.gov.pt/documentacao-de-referencia/doc/portugal-mais-igual/>.

51 See UNCE, Beijing+25 National Reports, National-level reviews – Portugal, (May 2019), available at [https://www.unece.org/fileadmin/DAM/Gender/Beijing\\_20/Portugal.pdf](https://www.unece.org/fileadmin/DAM/Gender/Beijing_20/Portugal.pdf).

52 Law No. 13,721 of 2<sup>nd</sup> October 2018, [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/L13721.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13721.htm).

53 Order No. 146/2578/2018 regarding the management of domestic violence cases by police. Available (in Romanian) at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/209455>. See also Romanian Government First Report on the Implementation of the Istanbul Convention (received by GREVIO in February 2020) at <https://rm.coe.int/state-report-on-romania/16809b9faf>.

54 Law No. 69/2019, “Modifiche al codice penale, al codice di procedura penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere”, available (in Italian) at [https://www.gazzettaufficiale.it/atto/stampa/serie\\_generale/originario](https://www.gazzettaufficiale.it/atto/stampa/serie_generale/originario).

55 Law No. 13,772 of 19<sup>th</sup> December 2018, [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/L13772.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13772.htm).

56 Law No. 106/2020 following the ECtHR judgement in the case *Buturugă v. Romania* (application no. 56867/15). See <https://balkaninsight.com/2020/07/07/romania-recognises-cyber-harassment-as-form-of-domestic-violence/>.

57 See Law 4531/2018 on the Ratification of the Istanbul Convention.

58 See (in French) <https://www.egalite-femmes-hommes.gouv.fr/un-grenelle-des-violences-conjugales-pour-lutter-contre-les-feminicides/>.



French Grenelle announced new specific measures intended to protect victims of domestic violence, their children and to tackle the high number of feminicides in the country.<sup>59</sup> In **Spain**, a pioneering reform has been recently introduced with the view of strengthening access for victims of gender violence to social security benefits. Indeed, a situation of gender violence can now be documented by a written report written by social specialised services - including public shelters - without a court order or prosecutor's report.<sup>60</sup>

Secondly, some of the countries involved in the R&C project have introduced *new institutional bodies* which are intended to monitor the phenomenon of gender violence as well as to ensure the implementation of effective gender policies. In March 2019, **Portugal** established the Multidisciplinary Technical Commission for the Improvement of the Prevention and Combat of Domestic Violence. Similarly, **Greece** institutionalised the Pan-Hellenic gender-based violence Network (including the General Secretariat for Family Policy and Gender Equality (GSFPGE), the municipalities, counselling centres, shelters, and the 24/7 SOS helpline). In January 2017, **Italy** established a Parliamentary Commission of Inquiry dedicated to the phenomenon of feminicide, and more generally of gender-based violence. The Italian Commission is not only responsible for conducting national inquiries, but it is also empowered to investigate possible inconsistencies and shortcomings of the legislation in force, with the purpose of presenting new legislative proposals and administrative solutions. In October 2018, **Cape Verde** set out the Inter-Ministerial Commission for Gender Mainstreaming, which is empowered to present public policy proposals and reporting annually on the state of incorporation of the gender perspective.<sup>61</sup>

Thirdly and importantly, most of the countries involved have developed *gender mainstreaming strategies*. The implementation of these strategies requires the systematic integration of gender perspectives in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated.<sup>62</sup> **Greece** has adopted remarkable reforms in this direction. For the first time, Greece has included the notion of gender mainstreaming and gender budgeting into a legislative text.<sup>63</sup> It has also established specific provisions concerning gender equality in the education sector and the mass media/advertisement business (to eliminate stereotypes) as well as in the fields of health and social solidarity (*e.g.* special attention to the status and the needs of vulnerable groups of women). It has set up the use of gender-neutral language in official documents. Moreover, it has adopted specific provisions concerning gender equality at the workplace (*e.g.* encouraging public and private enterprises to implement "Equality Plans", by introducing awards for their engagement in favour of equal treatment and equal opportunities for their male and female employees.). **France** has introduced measures promoting the economic empowerment of women. In 2018, it established new guarantees dedicated to "women's freedom to choose their professional future".<sup>64</sup> More precisely, France introduced a new Index of professional equality between women and men for all national companies with more than 50 employees. These companies are now required to annually publish their gender Index relating to gender pay gap, equal opportunities, internal promotions, etc. Companies that do not publish their Index, or do not implement (equal) gender plans for their employees, are exposed to financial penalties. Furthermore, new vocational training has been carried out for labour inspectors in order to prevent situations of violence. **Spain** has also established binding equality plans for companies with more than 50 employees.<sup>65</sup> In addition, Spain has introduced new transparent measures to control the gender pay gap. **Portugal** has promoted balanced representation of women and men in decision-making - both in the economic and the political sector. It has defined a minimum 33% threshold of women and men in boards of public and listed companies, a minimum 40% threshold for civil servants in public administrations, public higher education institutions, and public foundations and associations, and a minimum 40% threshold for electoral lists (for both national and European parliaments, and for territorial bodies).<sup>66</sup> In the same way, **Greece** has adopted a

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59 See Law No. 2019-1480 of December 28, 2019 aiming to tackling domestic violence (in French) at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039684243&dateTexte=&categorieLien=id>.

60 Royal Decree 9/2018 on emergency measures for the development of the State Pact on Gender-Based Violence (Real Decreto 9/2018), Press release available (in Spanish) at <https://www.boe.es/boe/dias/2018/08/04/pdfs/BOE-A-2018-11135.pdf>.

61 Resolution No. 103/2018. See also OHCHR, Committee on the Elimination of Discrimination against Women reviews the situation of women in Cabo Verde, (July 2019), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24824&LangID=E>.

62 UN Economic and Social Council (ECOSOC), Resolution 1997/2, Agreed Conclusions of 18 July 1997, available at <https://www.refworld.org/docid/4652c9fc2.html>.

63 Law No. 4604/2019 on substantive equality entered into force on 26 March 2019 (initiated by the General Secretariat for Family Policy and Gender Equality).

64 Law No. 2018-771 of 5<sup>th</sup> September 2018, "pour la liberté de choisir son avenir professionnel", (in French) at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037367660&categorieLien=id>.

65 See Royal Decree-Law 6/2019, of 1 March 2019 on urgent measures to guarantee equal treatment and opportunities for women and men in employment and occupation.

66 See Law No. 62/2017 (<https://dre.pt/home/-/dre/107791612/details/maximized>), Law No. 1/2019 (<https://dre.pt/web/guest/pesquisa/>-

40% quota system in favour of women for the lists of candidates in both parliamentary and local elections. In **Brazil**, according to the Constitutional reform in 2017, political parties must be composed of a minimum of 30% of women candidates.<sup>67</sup> Lastly, **Cape Verde** has also introduced the “Parity law”,<sup>68</sup> which sets out the principle of parity between men and women in political representation (both in national electoral processes and local ones).

### RECENT (LOCAL) POLICIES

Gender equality is protected by a multi-level system of legal sources, *inter alia* by supranational obligations, constitutional rights and non-discrimination legislation; nevertheless, the effective implementation of gender mainstreaming policies is often in the hands of territorial entities. Similarly, even if gender-based violence is addressed by international, regional and domestic laws, only territorial bodies can truly prevent such violence and protect its victims. For these reasons, each constitutional system involved in the R&C project empowers local competent authorities to adopt *positive actions*, in order to effectively tackle gender violence and achieve *de facto* equality between men and women.

Most of the countries involved in the project adopt *regional* Plans of Interventions against gender discrimination and violence, establishing specific measures to be implemented at the local level. Moreover, French municipalities (including the **City of Dunkirk**) go a step further. They are also committed to implementing *municipal* Plans of interventions in order to achieve “true” gender equality (*pour l'égalité réelle entre les femmes et les hommes*).<sup>69</sup> As a matter of fact, since 2014, the French legislator has established that every municipality with more than 20,000 inhabitants is bound to submit an annual report on the territorial situation regarding gender equality, covering the policies pursued in the community and the guidelines for future-needed interventions to be carried out in the medium and long term to correct the inequalities observed. These local reports represent an important monitoring tool but they also guarantee constant local engagement in gender policies.

Brazil, Cape Verde, Greece, Italy and Portugal have promoted the *territorialisation* of responses against violence towards women. In Brazil, both the State Government of **Ceará** and the **Municipality of Fortaleza** offer specific services to women who are victims of gender violence, *inter alia* shelters for victims and their children, psychosocial support, professional training courses with the aim of promoting the economic autonomy and empowerment of women. Furthermore, since 2019, the *Reference and Care Centre for Women in Situations of Violence Francisca Clotilde (CRM Francisca Clotilde)* has been located inside the *Brazilian Women's House (Casa da Mulher Brasileira)* which also houses other important institutions: the Police Station for the Defence of Women (which offers in-person assistance 24/7),<sup>70</sup> the Court of Domestic and Family Violence against Women, the Public Ministry and the Public Defender's Office. In Greece, the **South Aegean Region** and the island of **Syros** have proactively engaged in the “Regional Strategy for Social Inclusion, Fight against Poverty and all forms of Discrimination (2014-2020)”. In this framework, Syros has supported the operation of counselling centres and shelters for victims of gender violence, as well as research centres on gender studies. In Italy, the **Piedmont** Region has consolidated the regional network of anti-violence centres and shelters. In addition, it has established specific vocational training programmes for operators of anti-violence services and specific measures to monitor gender violence and support its victims within the healthcare sector (*i.e.* a new “Pink Code” in the hospital triage).<sup>71</sup> Since 2000, the **City of Turin** has constantly supported the Coordination Against Violence Against Women,<sup>72</sup> a territorial body which combines diverse professional actors. The participants are either public or private entities, directly or indirectly involved in combating gender violence, such as in the field of health care, social-welfare, psychological and legal assistance, cultural integration, education, and research. They make available their own professional skills, financial resources, and monitoring mechanisms. The Coordination represents a comprehensive system of protection for victims of gender violence, as well as a fundamental monitoring tool in the city of Turin. Since 2018, the City has strengthened the inter-institutional dialogue between all those actors operating in the field of prevention, protection and prosecution of male violence against women, fostering the local coordination against

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[/search/121712770/details/normal?q=Lei+Org%C3%A2nica+n.%C2%BA%2019%2F2019](#)) and Law No. 26/2019 (<https://dre.pt/home/-/dre/121665677/details/maximized>).

67 Presidency of the Brazilian Republic, Constitutional Amendment No. 97 of October 4<sup>th</sup>, 2017, [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Emendas/Emc/emc97.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc97.htm).

68 Parity Law No. 68/IX/2019.

69 Law No. 2018-873 of 4<sup>th</sup> August 2018, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029330832&categorieLien=id>.

70 See <https://www.ceara.gov.br/2020/09/08/casa-da-mulher-brasileira-retoma-atendimentos-presenciais/>.

71 See <https://www.regione.piemonte.it/web/temi/diritti-politiche-sociali/diritti/antiviolenza/codice-rosa>.

72 In Italian as “Coordinamento Contro la Violenza sulle Donne” (CCVD), [http://www.comune.torino.it/politichedigenere/po/po\\_reti/po\\_cccvd/](http://www.comune.torino.it/politichedigenere/po/po_reti/po_cccvd/).

gender violence.<sup>73</sup> Likewise, in the last few years, the **Inter Municipal Community of Alto Alentejo (CIMAA)** has promoted a strong institutional coordination between local bodies supporting and protecting victims of gender violence.<sup>74</sup> This territorial network is committed to provide financial support, medical, psychological and legal assistance to women victims of violence and their children. It ultimately aims to assist victims in exiting violence and achieving their socio-occupational (re)integration and empowerment. The **City of Turin** and the **Inter Municipal Community of Alto Alentejo (CIMAA)** represent important good practices. Their territorial networks and coordination mechanisms between several professional entities do not only represent a holistic system of protection for women victims of gender violence, but they also cooperate in the monitoring activity of the phenomenon at the local level, which is an extremely complex task since it is usually a “submerged” phenomenon, widely under-reported.<sup>75</sup> Consequently, following the above-analysed local models, it is essential to involve as many monitoring entities as possible and to consider all the available sources of information.

In Brazil, the **Municipality of Fortaleza** has implemented several positive actions in the field of education and raising awareness, focusing on youth. These local interventions have been supervised by the Special Coordination of Public Policies for Youth (CEPPJ) and its CUCAs (Urban Centres of Culture, Art, Science and Sports). These actions aim to sensitise young people on gender issues, diversity and tolerance, by means of workshops, sports, vocational training, public events and campaigns. Moreover, the Municipality of Fortaleza has promoted innovative positive actions, *inter alia* raising awareness initiatives on Afro-Brazilian culture, public campaigns on black women rights (facing intersectional discrimination), and preventive actions regarding the LGBT community (such as introducing a Municipal Day for Visibility of Transvestite and Transsexual people). In the same way, Cape Verde and the **City of Praia** have implemented several education initiatives, workshops and vocational training as well as campaigns defending sexual diversity and LGBT rights and freedoms.

In Andalusia, the **Provinces of Huelva and Jaén** are strongly committed to equality. In **Huelva**, recent local policies have focused on the creation of the so-called “Space of equality” (in Spanish as “*Espacio de igualdad*”) where men and women enjoy equal rights and social participation.<sup>76</sup> The ultimate goal of this local initiative is to raise awareness on gender issues by means of different techniques, such as public debates, concerts, workshops, exhibitions, conferences, etc. Similarly, the **Province of Jaén** has introduced the Film Festival against Gender Violence, promoting not only audio-visual creativity and production on this phenomenon, but also paying special attention to gender violence prevention and social awareness.<sup>77</sup> In addition, both Spanish Provinces have introduced specific training courses on gender equality. In **Huelva**, the “School of Equality” provides local politicians with the knowledge required for the implementation and development of public policies on gender equality and its inclusion in local agendas.<sup>78</sup> In 2019, the Provincial Council of Huelva also introduced the ‘Guide for an equal use of language and image’, with the view of tackling sexist language in local public administrations.<sup>79</sup> In **Jaén**, the “School of feminism and empowerment” is open to anyone who is interested in attending trainings on gender issues, with the view of tackling patriarchal stereotypes and machismo.<sup>80</sup>

Lastly, the **Province of Huelva** and the **Metropolitan City of Turin** have developed peculiar positive actions dedicated to *men*. More specifically, **Huelva** has introduced the ‘*Men who dream of equality*’ project, which aims to promote the involvement of men in the achievement of equality, focusing on their co-responsibility in housework.<sup>81</sup> **Turin** has supported (experimental) initiatives dedicated to perpetrators of gender-based violence aiming at limiting recidivism and preventing future violence against women. While aimed at limiting recidivism and preventing further violence, these programmes are also intended to teach perpetrators of gender violence to adopt non-violent behaviour in interpersonal relationships (in line with Art. 16 of the Istanbul Convention).<sup>82</sup>

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73 In 2018, the city Council approved an important Action Plan labelled “Turin free from gender-based violence”, “Piano d’azione contro la violenza di genere”. See [http://www.comune.torino.it/ucstampa/2018/article\\_868.shtml](http://www.comune.torino.it/ucstampa/2018/article_868.shtml).

74 Protocol for a Strategy to Combat Domestic and Gender Violence Alto Alentejo Est and West (2018-2021), see <http://comarca-portalegre.ministeriopublico.pt/protocolos-nacionais>.

75 L. Sabbadini, Audizione davanti alla Commissione parlamentare d’inchiesta sul femminicidio, nonché su ogni forma di violenza di genere, (2017), available at <https://www.senato.it/service/PDF/PDFServer/DF/338920.pdf>.

76 See <http://www.diphuelva.es/igualdad/contenidos/ESPACIO-DE-IGUALDAD/>.

77 Diputación Provincial de Jaén, “Festival de Cortometrajes contra la Violencia de Género”, <https://www.dipujaen.es/microsites/igualdad/festival-de-cortometrajes-contra-la-violencia-de-genero/>.

78 Diputación Provincial de Huelva, “Escuela de Igualdad”, <http://www.diphuelva.es/igualdad/contenidos/ESCUELA-DE-IGUALDAD-00001/>.

79 For more details see <http://www.diphuelva.es/igualdad/contenidos/Uso-igualitario-del-lenguaje-y-de-la-imagen/>.

80 See <https://www.dipujaen.es/microsites/igualdad/escuela-feminismo-empoderamiento/>.

81 See (in Spanish), <http://www.diphuelva.es/igualdad/contenidos/HOMBRES-QUE-SUENAN-CON-IGUALDAD/>.

82 Art. 20 Regional Law No. 4/2016, (in Italian) at <http://arianna.consiglioregionale.piemonte.it/iterlegcoordweb/dettaggioLegge.do?urnLegge=urn:nir:regione.piemonte:legge:2016:5@2019-3-1>. See also <http://www.cittametropolitana.torino.it/speciali/2018/maltrattanti/>.

## GENDER VIOLENCE AND THE LGBT COMMUNITY

Several partners have observed that gender violence and discrimination strongly affect the LGBT community. **Brazil, Cape Verde, France, Greece, Italy, and Portugal** have reported that LGBT people are frequently victims of hate crimes and hate speech. They represent a particularly vulnerable group in those societies, a community which “is living in fear”,<sup>83</sup> subject to widespread discrimination and violence. In many countries these forms of discrimination and violence remain (regrettably) invisible and, therefore, non-prosecuted. Hence, the LGBT community risks not only being targeted by hateful discrimination and violence, but also being left without effective legal remedies, protection and compensation. In **Bulgaria**, anti-LGBT hate crimes remain unrecognised and, if recorded, they are usually treated by the police as acts of hooliganism.<sup>84</sup> In **Italy**, LGBT people are protected by neither criminal nor civil provisions.<sup>85</sup> The Italian legal system is still blind to homophobia. Yet, this legal *vacuum* contrasts with the reality. According to national surveys,<sup>86</sup> more than 50% of the LGBT community in Italy has been subject to discrimination – at school and university, in the workplace, in access to work, housing, healthcare and public services. A new legislative proposal is currently under discussion in the Italian Parliament.<sup>87</sup> The proposal aims to include sex, gender, sexual orientation, and gender identity within the current legal framework on hate crimes and hate speech, amending the Criminal Code. If approved, it will be an extension of an existing criminal law framework which punishes “propaganda and incitement to crime on the grounds of racial, ethnic and religious discrimination”. In the same way, legislative reforms are expected in **Brazil**, where homophobia is still not criminalised. In June 2019, the Brazilian Supreme Court addressed the current lack of legal remedies protecting the LGBT community. It ruled that homophobia and transphobia should be framed within the racism criminal law, until the federal congress approves legislation specifically dealing with LGBT discrimination.<sup>88</sup> Undoubtedly, the Court’s decision puts strong pressure on the Brazilian Parliament. At the same time, the ruling represents a severe blow to the conservative and homo-transphobic President Jair Bolsonaro.

**Greece and Portugal** are the only countries involved in the R&C project which have recently introduced the right to gender identity. More precisely, the Greek legal order has recently recognised that “*gender identity means the internal and personal way in which a person experiences his or her own gender, regardless of the gender that was registered at birth, based on his or her biological characteristics*”.<sup>89</sup> In this way, the law has removed the need for transgender people in Greece to undergo sterilisation to have their gender legally recognised – an oppressive practice that violates individuals’ bodily integrity. Similarly, Portugal has introduced the right to “*self-determination*” of gender identity and gender expression and the protection of sexual characteristics.<sup>90</sup> Moreover, Portugal has amended its Criminal Code as to appropriately punish hate crimes on the grounds of sexual orientation and gender identity.<sup>91</sup> In the last few years, **France** has also witnessed the emergence of the question of “intersex”. The legal recognition of a neutral (third) gender has been discussed before French courts. Nevertheless, in May 2017, the *Cour de Cassation* found that French Law does not allow the recognition of a neutral gender.<sup>92</sup> Such recognition (by the judiciary body) would have profound repercussions on the French legal system and would bypass numerous legislative changes. Thus, to this day, the French legal system recognises the binary classification of gender – male and female.

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83 A. Giuffridi, ‘We’re living in fear’: LGBT people in Italy pin hopes on new law, 26 July 2020, available at <https://www.theguardian.com/world/2020/jul/26/italy-lgbt-new-law-debate>.

84 P. Godzisz and G. Viggiani (eds.), *Running through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBTI Hate Crimes*, Lambda Warsaw Association, (2018), available at <https://iris.unibs.it/retrieve/handle/11379/509062/88384/2018%20Running%20through%20hurdles.pdf>.

85 *Italian legislation only protects LGBT people when discriminated at the workplace, for reasons related to sexual orientation: see Legislative Decree no. 216 of 9 July 2003, implementing Directive 2000/78/EC for equal treatment in matters of employment and working conditions* (<https://www.camera.it/parlam/leggi/deleghe/03216dl.htm>).

86 Data referred to 2011, see details (in Italian) here <https://www.istat.it/it/archivio/62168>.

87 See draft proposals (in Italian) at <https://www.camera.it/leg18/126?tab=1&leg=18&idDocumento=569&sede=&tipo=>.

88 See the judgement (ADO 26 / DF) in Portuguese at <http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADO26votoMAM.pdf>.

89 See Law 4491/2017 (Government Gazette A '152/13-10-2017). See also <https://www.ilga-europe.org/resources/news/latest-news/greece-gender-recognition-law-oct2017>.

90 See Law No. 38/2018, <https://dre.pt/pesquisa/-/search/115933863/details/maximized>.

91 See Law No. 94/2017. See also Resolution of the Council of Ministers No. 61/2018, of 21 May and the National Strategy for Equality and Non-Discrimination 2018-2030 “Portugal + Equal”.

92 French Court of Cassation, N° 16-17189 (4<sup>th</sup> May 2017), available at <https://www.legifrance.gouv.fr/juri/id/JURITEXT000034653561/>.

## 40. DISCRIMINATION AND VIOLENCE BASED ON MIGRATION

### *THE DIFFICULT DEFINITION OF 'MIGRANT'*

First of all, it is essential to analyse the concept of 'migrant'. It is worth noting that, at the international level, no universally-accepted definition exists. The **United Nations Department of Economic and Social Affairs (UN DESA)** defines a 'migrant' as a person who moves away from his or her place of usual residence, temporally or permanently, for a variety of reasons.<sup>93</sup> However, it is controversial whether the term 'migrant' can be all-embracing, an umbrella concept, referring to every person who moves. The fundamental disagreement concerns whether or not 'migrant' is an inclusive label that also includes refugees.<sup>94</sup> On the one hand, the *inclusivist* view holds that migrants are people who have moved regardless of their legal status and their motivations (consequently, including refugees).<sup>95</sup> On the other hand, the *residualist* view sees migrants as people who have moved from their usual place of residence for every reason *other than* fleeing war or persecution.<sup>96</sup> Following the latter point of view, a migrant is someone who *chooses* to move and, *unlike* refugees, a migrant does not fear persecution or serious harm in his or her home country of origin. According to the **UN High Commissioner for Refugees (UNHCR)**, blurring the terms 'refugees' and 'migrants' takes attention away from the specific legal protection that only refugees require. Thus, in order to protect the peculiar status of refugees, the UNCHR is the primary supporter of the residualist viewpoint.

Despite such different views, it is undoubted that the reasons to move are diverse. For instance, the movement of a person or a group of persons may be motivated by economic opportunities. These individuals are often called 'economic migrants' and defined as someone who leaves his or her country of origin in order to find a better life.<sup>97</sup> This is a clear example of 'voluntary migration' according to which people leave their home because of the so-called 'pull factors' (such as better career opportunities, education or family reunion). On the contrary, when migration is the result of 'push factors' (*inter alia* persecution, war, violations of human rights and abuses), it may be defined as forced migration. The cruellest and harshest *push* factors lead individuals to seek international protection. People seeking this protection are not fleeing poverty (they are not seeking better opportunities), *they are fleeing danger*.<sup>98</sup> This generally happens when a society ceases to provide security for its people and, consequently, it falls into disorder. In many cases, individuals are fleeing in terror from abuses perpetrated by their own State. In other instances, they are escaping from oppression that the State is powerless to prevent because it has lost control of territory or otherwise ceased to function in an effective way.<sup>99</sup>

Individuals who seek international protection are called 'asylum seekers'. More precisely, an asylum seeker is someone whose claim for international protection has not yet been finally decided on by the country in which he or she has submitted an asylum petition.<sup>100</sup> The concept of 'asylum' refers to a process, and it differs from the concept of 'refugee status'. Indeed, not every asylum seeker will ultimately be recognised as a 'refugee', but every recognised refugee is initially an asylum seeker. 'Refugees' are a specific category of individuals crossing international borders. According to the **1951 Convention Relating to the Status of Refugees**, a 'refugee' is defined as any person who "*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear,*

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93 See the United Nations Department of Economic and Social Affairs (UN DESA), Recommendations on Statistics of International Migration, 1998, p. 9.

94 J. Carling, What is the meaning of migrant? Available at [www.meaningofmigrants.org](http://www.meaningofmigrants.org) (lastly accessed in July 2020).

95 For example, the International Organisation for Migration (IOM) favours the inclusive approach (see <https://www.iom.int/who-is-a-migrant>)

96 The primary proponent of the residualist view of migrants is the UN Refugee Agency (UNHCR). See <https://meaningofmigrants.files.wordpress.com/2016/09/definitions-compared.png> for a visual explanation and the UN High Commissioner for Refugees (UNHCR), 'Refugees' and 'Migrants' - Frequently Asked Questions (FAQs), 31 August 2018, available at: <https://www.refworld.org/docid/56e81c0d4.html>.

97 <https://www.amnesty.org.au/refugee-and-an-asylum-seeker-difference/>.

98 A. Betts and P. Collier, *Refuge: Rethinking Refugee Policy in a Changing World*, (Oxford University Press, 2017), p. 16.

99 UNHCR, *The State of The World's Refugees 1993*, Introduction: The Challenge of Protection, see <https://www.unhcr.org/publications/sowr/4a4c6da96/state-worlds-refugees-1993-challenge-protection.html#:~:text=The%20State%20of%20The%20World's%20Refugees%201993%3A%20The%20Challenge%20of%20Protection,-By%20United%20Nations&text=It%20is%20also%20an%20eloquent,to%20their%20homes%20once%20again.>

100 *International Organization for Migration (IOM), Glossary on Migration, 2019*, available at [https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf).

is unwilling to return to it'.<sup>101</sup> International law provides the universal definition of refugee, and it also sets forth core principles for the protection of these individuals.<sup>102</sup> The *non-refoulement* principle (meaning no forced returns) is the most relevant obligation. Today, it is considered a norm of customary law,<sup>103</sup> meaning that it has absolute nature and represents a clear limit to the discretion of sovereign States in regulating migration. It asserts that a refugee should not be returned to a country where he or she would face serious threats to their life or freedom. Accordingly, this principle prohibits the State to extradite, deport, expel, or otherwise return (*refouler*) a refugee. It also implies that asylum seekers cannot be rejected, cannot be prevented from requesting protection (*ex ante*). In fact, every asylum seeker could potentially be recognised as refugee. Thus, the *non-refoulement* principle not only covers recognised refugees, but also asylum seekers awaiting status determination.<sup>104</sup> Non-admission, rejections at the frontiers, pushbacks of boats are violations of the *non-refoulement* principle.

On the one hand, it is undoubted that the management of migration flows and the adequate protection of refugees are intertwined goals. The UNHCR itself recognises that its general interest in the field of migration stems from the fact that there is a link between forced displacement and migratory movements.<sup>105</sup> In 2016, the UN General Assembly explicitly recognised the strong link between migrants and refugees, and adopted the **New York Declaration for Refugees and Migrant**.<sup>106</sup> Despite recognising the difference between legal standards protecting those individuals, the Declaration affirms the urgent need for a *comprehensive* approach to human mobility. It declares that, even if the management of refugees and migrants is governed by different sets of rules, they both have the same human rights and fundamental freedoms. In other words, although many people on the move fall outside the refugee status, they are nonetheless in need of (the same) human rights protection. In addition, both refugees and migrants may face common challenges and have similar vulnerabilities.<sup>107</sup> Vulnerable migrants include women at risk, children, especially unaccompanied migrant children or children separated from their families, members of ethnic and religious minorities, victims of violence, older persons, persons with disabilities, persons who are discriminated against on any basis, indigenous peoples, victims of human trafficking and victims of exploitation and abuses in the context of the smuggling of migrants.<sup>108</sup> These individuals are at higher risk of suffering harm during their migration process. Their vulnerability to human rights violations is the result of multiple and intersecting forms of discrimination, inequality and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights.<sup>109</sup> It is important to highlight that these vulnerable migrants may fall outside the specific legal category of 'refugees'. Nonetheless, they need special protection (mainly because of personal characteristics such as their age, gender identity, disability, or health status, or because they have been victims of abuse). Therefore, even when migrants do not qualify as refugees, they may be subjected to other kinds of protection.<sup>110</sup> As a result, in the framework of international migration, there is not a clear-cut distinction between migrants in need of protection and migrants who are not entitled to it. This confusion is particularly true in the context of 'large movements'.<sup>111</sup> Large migratory movements are also called 'mixed' migratory flows, and, in

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101 The 1951 Convention Relating to the Status of Refugees, Art. 1.

102 See the 1951 Refugee Convention, Art. 3 (non-discrimination), Art. 31 (non-penalisation) and Art. 33 (non-refoulement).

103 UN High Commissioner for Refugees (UNHCR), The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, (1994), <https://www.refworld.org/docid/437b6db64.html>.

104 European Union Agency for Fundamental Rights, 'Scope of the principle of non-refoulement in contemporary border management: evolving areas of law', (2016), p. 14, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-scope-non-refoulement-0\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-scope-non-refoulement-0_en.pdf).

105 UNHCR, Memorandum of Understanding between the United Nations High Commissioner for Refugees and the International Organization for Migration, 15 May 1997, Para. 10, available at <https://www.unhcr.org/4aa7a3ed9.pdf>.

106 UN General Assembly, New York Declaration for Refugees and Migrants : Resolution adopted by the General Assembly, 3 October 2016, A/RES/71/1, available at <https://www.refworld.org/docid/57ceb74a4.html>.

107 Within the migration context, 'vulnerability' represents the limited capacity to avoid, resist, cope with, or recover from harm, and 'migrants in vulnerable situations' are those individual who are unable to effectively enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care. See IOM, Glossary on Migration, (2019), available at [https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf).

108 Human Rights Council Resolution 35/17, Protection of the human rights of migrants: the global compact for safe, orderly and regular migration, p. 3, available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_HRC\\_RES\\_35\\_17.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_HRC_RES_35_17.pdf).

109 Report of the United Nations High Commissioner for Human Rights, UN Document A/HRC/37/34, Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, Report of the United Nations High Commissioner for Human Rights, (2018), p. 5, <https://undocs.org/A/HRC/37/34>.

110 See, for example, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention relating to the Status of Stateless Persons; and the Convention on the Rights of Persons with Disabilities.

111 New York Declaration for Refugees and Migrants, Para. 6.

these flows, the refugee dimension varies. In some cases (for example, the surge in arrivals in Europe by boat in the Eastern Mediterranean in 2015), the vast majority are refugees. In others, the composition is more mixed.<sup>112</sup> Yet, the risks to which refugees and migrants are exposed are often the same. For these reasons, according to the New York Declaration, the international community has to guarantee a comprehensive migration policy support, assistance and protection consistent with international law obligations (both human rights law and refugee protection standards). Unsafe and disorderly movements of migrants must be avoided - or at least combated.<sup>113</sup> Essentially, the international community shall be committed to "making migration work for all".<sup>114</sup> Indeed, according to the UN Secretary-General António Guterres, "*Without seeking to create new legal categories or to expand on the unique forms of international protection provided in the refugee framework, we must design an adequate response to the needs of migrants in large movements*".<sup>115</sup>

On the other hand, despite the common dangers to which many people on the move are exposed, no one should ever blur the line between refugees and migrants. As a matter of fact, only refugees move (or better, flee) because of conflicts or persecutions, or, more generally, a failure of protection in their own countries. Therefore, only certain individuals need specific protection because of the situations they left behind. Treating them as "simple" migrants risks obscuring their distinct status and rights in international law.<sup>116</sup> In fact, refugees are a specifically defined and protected group under international law, because of the situation in their country of origin, making it impossible for them to go home (*i.e.* feared persecution, conflict, violence, or other circumstances have seriously disturbed public order).<sup>117</sup> They are so recognised precisely because it is too dangerous for them to return home, and therefore they need protection elsewhere. According to the UNHCR, the predicament of refugees is a common concern of humankind.<sup>118</sup> Therefore, minimising the reasons why refugees move risks to undermine their legal status and, consequently, their need for protection.

#### RECENT LEGISLATIVE INTERVENTIONS

In the last few years, migration has emerged as a critical political and societal challenge, particularly in matters such as integration, security and border management.<sup>119</sup> Globally, we are witnessing growing intolerance towards those individuals who are perceived as "others" or "aliens". The values of inclusiveness, tolerance and non-discrimination have been significantly undermined. They have been challenged by new strong fears that, essentially, perceive the "other" as a threat for the hosting society. These concerns have triggered the growing consensus of nationalist, far-right parties and anti-immigrant sentiments.

Several countries have engaged in an intensifying discussion about the "unsustainable arrivals" of migrants in their territories. **Brazil** has been facing the massive influx of asylum seekers from Venezuela across its northern border (particularly in the State of Roraima). The **European Union** has been extremely exposed to the waves of migrants and refugees. The unprecedented number of arrivals peaked in 2015, when first-time applications for international protection almost reached 1.3 million.<sup>120</sup> The impact of the migration crisis was particularly severe in **Greece, Italy** and **Spain**, as their coastlines were directly involved in the management of the Mediterranean migration routes and the Western African one.<sup>121</sup> More precisely, **Greece** has been engaged in the Eastern Mediterranean route, which has seen the biggest migratory wave.<sup>122</sup> In 2015, the Greek asylum system almost collapsed. Then, the joint EU-Turkey statement (signed on 18 March 2016) represented a turning point in

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112 F. Grandi, 'Refugee and Migration', in J. Knolle and J. Poskett (eds.), *Migration*, (Cambridge University Press, 2020), p. 79-95.

113 See UNGA Resolution 73/195, Global Compact for Safe, Orderly and Regular Migration, (2019), available at [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/195](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195).

114 Report of the Secretary-General, UN Document A/72/643, Making migration work for all, (2017), available at [https://refugeesmigrants.un.org/sites/default/files/sg\\_report\\_en.pdf](https://refugeesmigrants.un.org/sites/default/files/sg_report_en.pdf).

115 Ibid, para. 50.

116 F. Grandi, 'Refugee and Migration', supra cit.

117 UN High Commissioner for Refugees (UNHCR), 'Refugees' and 'Migrants' - Frequently Asked Questions (FAQs), 31 August 2018, available at: <https://www.refworld.org/docid/56e81c0d4.html>.

118 Report of the UN High Commissioner for Refugees (UNHCR), UN Document A/73/12 (Part II), Global compact on refugees, available at [https://www.unhcr.org/gcr/GCR\\_English.pdf](https://www.unhcr.org/gcr/GCR_English.pdf).

119 International Organization for Migration (IOM), *World Migration Report 2018*, Chapter 2, p. 13, available at [https://publications.iom.int/system/files/pdf/wmr\\_2018\\_en.pdf](https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf).

120 According to Eurostat, see [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_asyappctza&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en).

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See <http://data2.unhcr.org/en/situations/mediterranean?page=1&view=grid&Type%255B%255D=3&Search=%2523monthly%2523>.

122 According to Frontex, 885,000 migrants used it to reach the EU in 2015 - 17 times the number in in 2014.

the management of the migration crisis in Greece.<sup>123</sup> However, its legitimacy is strongly debated.<sup>124</sup> **Italy** faced the unprecedented arrival of migrants from the Central Mediterranean route. The mass arrivals of asylum seekers from the Mediterranean Sea has triggered strong xenophobic positions and claims of “invasion”.<sup>125</sup> Accordingly, the Italian legislator has introduced two “Security Decrees”,<sup>126</sup> which are founded on the idea that *immigration* and *insecurity* are strongly intertwined phenomena. The Security Decrees were intended to stop the large admission of migrants in the Italian territory, reducing the criteria for *humanitarian* residence permit, “criminalising” sea rescue operations, and imposing the idea that the masses of migrants from the Mediterranean can only jeopardise internal security and stability. However, reading the migratory phenomenon (only) in terms of security concerns is far from uncontroversial.<sup>127</sup> In fact, the Italian Constitutional Court has recently ruled on the partial unconstitutionality of the first Security Decree.<sup>128</sup> Similarly, in **France**, there have been many contradictions in migration policies. In the last few years, the main concern of the French legislator has been taking control of immigration flows. In 2018, the “Controlled immigration Act” was adopted with the view of simplifying and speeding up the reception procedure.<sup>129</sup> At the same time, this Act contains several measures which tend to reduce immigration, weaken fundamental rights and individual guarantees. Thus, **Greece, Italy** and **France** have recently implemented controversial migration policies, which risk being in conflict not only with their constitutional principles,<sup>130</sup> but also with international customary law (which prohibits the collective expulsion of aliens and states the principle of *non-refoulement*).

**Bulgaria** and **Portugal** registered that migrants and ethnic minorities are highly vulnerable to intolerance, aggressive public campaigns, and nationalist far-right movements. Both countries have also reported widespread hate speech on the Internet and online threats against migrants. In many cases, the steps taken to combat hate speech online are inadequate and the sanctions are not a deterrent.<sup>131</sup> In addition, **Portugal** has reported the persistence of cases of police violence against migrants (Brazilian, Ukrainian, Romanian and Moldovan) and minorities (in particular Roma and Afro-descendants, but also Muslims, lesbians, gays, bisexuals and transgenders).

#### *RECENT (LOCAL) POLICIES*

The definition of migration policies is usually centralised at the national level. National governments normally have exclusive decision-making power over the regulation of migration flows and the admission of foreigners within domestic borders. Territorial authorities, Regions and Municipalities cannot regulate immigration and asylum in an autonomous way. Nevertheless, these territorial entities are competent for the social integration of migrants and are responsible for the coordination of several assistance measures such as accommodation, healthcare, education and training. It follows that integration policies and positive actions (against exclusion and discrimination of migrants) are usually in the hands of local authorities. Those territorial entities, with the support of civil society organisations, are directly involved in the design and implementation of specific measures ensuring to the socio-economic inclusion of migrants in the hosting society. It is important to notice that integration process deals with several human rights and fundamental freedoms, *inter alia* social dignity, non-discrimination, full development of each human person, effective participation in the political, economic, and social organisation of

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123 Council of the European Union, ‘EU-Turkey statement, 18 March 2016’, Press Release 144/16, 18.03.2016, at <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

124 See M. Duha , ‘The EU Migration Crisis and the Human Rights Implications of the Externalisation of Border Control’, in C. Strohal & S. Kieber (authors) & W. Benedek, P. Czech, L. Heschl, K. Lukas, & M. Nowak (eds.), *European Yearbook on Human Rights*, 2018, p. 135-166. See also L. Haferlach and D. Kurban, *Lessons Learnt from the EU-Turkey Refugee Agreement in Guiding EU Migration Partnerships with Origin and Transit Countries*, Global Policy, 2017, available at <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12432>.

125 H. de Haas, ‘The Myth of Invasion’, (2015), available at <http://heindehaas.blogspot.com/2015/05/the-myth-of-invasion.html>.

126 Decree Law n. 113/2018, first “Security Decree” also known as “Salvini Decree” and Decree Law n. 53/2019, second “Security Decree” also known as “Security Decree bis”.

127 C. Corsi, ‘Evaluating the ‘Salvini Decree’: Doubts of Constitutional Legitimacy’, EUI (2019), at [https://cadmus.eui.eu/bitstream/handle/1814/61784/PB\\_2019\\_06\\_MPC.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/61784/PB_2019_06_MPC.pdf?sequence=1&isAllowed=y) and S. Carta, ‘Beyond closed ports: the new Italian Decree-Law on Immigration and Security’, (2018), available at <https://eumigrationlawblog.eu/beyond-closed-ports-the-new-italian-decree-law-on-immigration-and-security/>.

128 Italian Constitutional Court, Judgement 186/2020, 9<sup>th</sup> July 2020, ECLI:IT:COST:2020:186, [https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param\\_ecli=ECLI:IT:COST:2020:186](https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2020:186).

129 Loi No. 2018-778 of 10<sup>th</sup> October 2018 pour une immigration ma tris e, un droit d’asile effectif et une int gration r ussie.

130 See Art. 10(3) of the Italian Constitution (“A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law.”).

131 See European Commission against Racism and Intolerance (ECRI) Report on Portugal, (2018), p. 9.



the country.<sup>132</sup> These fundamental values are enshrined both in international law instruments (in particular in the **International Convention on the Elimination of All Forms of Racial Discrimination**),<sup>133</sup> domestic laws and constitutional provisions. Accordingly, most of the partners involved in the R&C project have been involved in the implementation of national, regional, and local interventions aimed at combating migration-based discrimination and ethnic segregation.

The **City of Fortaleza** (Brazil), **Praia** (Cape Verde), **Dunkirk** (France), **Turin** (Italy), **Huelva** and **Jaén** (Spain) have adopted *municipal* plans of interventions against migration-based and ethnic discrimination. More precisely, they have introduced positive actions with the view of promoting the social inclusion of migrants at the municipal level. The **City of Fortaleza** has financed a local strategy to welcome migrants and refugees by offering them a public residence, named *Centro-Dia*, where minimum life conditions are guaranteed for all (*inter alia* habitation, food and security, as well as legal assistance). The **City of Dunkirk** has financed specific actions in order to guarantee the right to hygiene for refugees in the Grande-Synthe humanitarian camp. The **South Aegean Region** (Greece), including the island of **Syros**, has developed worth-mentioning positive actions concerning the social inclusion of immigrants and refugees.<sup>134</sup> Local interventions have mainly focused on the social integration and economic empowerment of immigrants, through the provision of counselling services, legal support and intercultural mediation. In addition, several organisations and research centres have been actively monitoring the phenomenon of racial discrimination (*inter alia* the Prevention Centre “THISEAS” of Cyclades, the Antiracist Observatory of University of the Aegean, the Centre for Research and Development of the Holy Metropolis of Syros, Community Centre of the Municipality of Syros-Ermoupolis and Vardakeios School of Ermoupolis). Likewise, the **Piedmont Region** (Italy) has activated a strong Regional Network Against Discrimination,<sup>135</sup> a Solidarity Fund for the judicial protection of victims of discrimination,<sup>136</sup> several raising awareness initiatives and training activities for ‘anti-discrimination officers’.<sup>137</sup> In Andalusia (Spain), the **Provinces of Huelva** and **Jaén** have adopted specific local measures for the social integration of migrants. Recent interventions have mainly focused on education initiatives and training, more precisely on Spanish language courses and IT&C classes. Moreover, due to the seasonal olive harvest, the Province of Jaen has created a series of Helpdesks for seasonal workers, as well as accommodation services and care centres for children of seasonal workers. Similarly, the **City of Praia** has financed several information initiatives for migrants who need access to basic services (*inter alia* education, healthcare, social security and regularisation) as well as language courses and professional trainings.

The City of **Turin** has developed advanced intercultural policies and it represents an outstanding model.<sup>138</sup> In 2018, it established new “Guidelines for Interculture and Participation”,<sup>139</sup> with the view of promoting full and equal engagement of all in the adoption of local policies. More recently, in June 2020, the City of Turin launched a public consultation, according to which citizens are invited to present written proposals aimed at co-drafting the (new) Collaboration Agreement for an Anti-racist Turin.<sup>140</sup> In this way, the City of Turin has affirmed its commitment to fighting racism and hateful intolerance, while also consolidating its open and participatory approach in the definition of local public policies.

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132 Certain partners (such as the City of Turin) favour the concept of ‘interculture participation’ rather than ‘integration’, where the former has a specific focus on intercultural engagement, an inclusive and participatory approach in the management of different cultures, communities, and people, promoting their understanding and interaction in the public sphere.

133 See Art. 5, 6 and 7 International Convention on the Elimination of All Forms of Racial Discrimination adopted by the UN General Assembly in 1965.

134 In the framework of the regional Strategy for Social Inclusion, Fight against Poverty and all forms of Discrimination, within the NSRF (National Strategic Reference Framework 2014-2020).

135 See <http://www.piemontecontrolediscriminazioni.it/rete-regionale>.

136 In Italian as “Fondo per il patrocinio legale delle vittime di discriminazioni”, [http://www.regione.piemonte.it/governo/bollettino/abbonati/2017/07/attach/re201704\\_polsoc.pdf](http://www.regione.piemonte.it/governo/bollettino/abbonati/2017/07/attach/re201704_polsoc.pdf).

137 In the framework of the Three-year Regional Plan Against Discrimination (2018-2020), [https://www.regione.piemonte.it/web/sites/default/files/media/documenti/2019-01/piano\\_triennale\\_2018-2020\\_0.pdf](https://www.regione.piemonte.it/web/sites/default/files/media/documenti/2019-01/piano_triennale_2018-2020_0.pdf).

See also <https://www.regione.piemonte.it/web/temi/diritti-politiche-sociali/diritti/antidiscriminazioni/rete-regionale-contro-discriminazioni>.

138 See <https://www.coe.int/en/web/interculturalcities/torino>.

139 In Italian as “Linee guida per il Coordinamento alle Politiche per l’Interculturalità e alla Partecipazione”, [http://www.integrazionemigranti.gov.it/Attualita/Notizie/Documents/La%20politica%20interculturale%20della%20Città%20di%20Torino\\_latest.pdf](http://www.integrazionemigranti.gov.it/Attualita/Notizie/Documents/La%20politica%20interculturale%20della%20Città%20di%20Torino_latest.pdf).

140 In Italian as “Patto di Collaborazione per una Torino Antirazzista”, <http://www.comune.torino.it/benicomuni/bm~doc/avviso-per-la-presentazione-di-proposte-di-collaborazione.pdf>. See also [http://www.comune.torino.it/ucstampa/comunicati/article\\_152.shtml](http://www.comune.torino.it/ucstampa/comunicati/article_152.shtml).

## 41. CONCLUSIONS

This research confirms that inequalities and violence persist in every society, in every culture, in every country and territory, from a small island (as Syros) to a huge metropolis (as Fortaleza). Since intolerance and disparities exist everywhere, each national legislator and local entity shall feel the urgent need to tackle these issues with the view of achieving *de facto* equality for all. Both state and local decision-makers shall commit themselves to promoting equality by all means, *inter alia* through legislative reforms, implementation of social policies, national strategies, positive actions as well as local plans of interventions.

Concerning gender inequalities, it is important to recall that gender-based violence is the most dehumanising form of gender oppression. For this reason, national and local competent authorities shall adopt policies and measures *equally* addressing prevention, protection, and punishment of violence, in order to ensure a comprehensive and integrated approach against gender violence (as suggested – in Europe – by the Istanbul Convention and its 4-pillar structure). In the framework of the R&C project, several legislators have largely privileged national reforms aimed at criminalising acts of violence against women and tackling the inadequacies of criminal (procedural) law provisions. In this way, they have failed to fully recognise the structural dimension of the phenomenon. Indeed, criminal reforms are not enough to tackle the social and cultural reasons of violence against women. The widespread patriarchal attitudes and stereotypes should be addressed by *systematic* interventions, including education initiatives, awareness raising, training of professionals and, more generally, preventive measures aiming at combating sexist social and cultural patterns of behaviour that are based on the idea of inferiority of women. In order to achieve this goal, regional and urban actors play an essential role. While not having competences on criminal law matters, they are the true protagonists of the effective implementation of equality legislation and social policies. For this reason, territorial actors should guarantee a holistic system of prevention and protection for victims of gender violence, as well as cooperate in the monitoring activity of the phenomenon at the local level.

Gender-based violence has been frequently considered not only as a widespread phenomenon affecting women, but also the LGBT community. Indeed, most partners involved in the R&C project reported that LGBT people are frequently victims of intolerance, hate crimes and hate speech. Regrettably, in many countries these forms of discrimination and violence remain invisible and non-prosecuted. Accordingly, this research intends to highlight that discrimination and violence concerning the LGBT community should deserve more attention both at national and local levels.

Migration-based discrimination and violence represent a more complex phenomenon. Firstly, no universally accepted definition of ‘migrant’ exists. Secondly, migration policies are usually influenced by territorial needs. Similarly, integration (or “intercultural”) policies are affected by local sensitivities. For instance, some territories are traditionally considered as *transit* zones due to their geostrategic location (such as Cape Verde which connects America, Europe and Africa), and, consequently, have a consolidated tradition in dealing with migration. Other countries have been exposed to the “unsustainable” arrival of asylum seekers and migrants only in the last few years. Moreover, certain territories are characterised by emigration rather than immigration (such as Romania which is one of the European countries with the largest emigrant population). Despite these territorial differences, claims of nationalism and anti-immigrant (xenophobic) sentiments represent a common trend. Indeed, recent interventions have mainly given priority to the necessity to (re)gain control on national territories and, accordingly, to implement pushbacks at borders and other obstacles for migrants. In this way, national legislators have failed to appropriately reconcile the need to face migration issues while understanding their humanitarian dimension. Accordingly, they have not only undermined the status of asylum seeker and refugees, but also contravened the *non-refoulement* principle as well as international human rights law and domestic constitutional principles. Furthermore, they have negatively affected the implementation of anti-discrimination rules and inclusive policies at the national level. On the contrary, local bodies played an essential role in designing local positive actions and social inclusion strategies.