

SPAIN

CENTER FOR ECONOMIC AND SOCIAL RIGHTS

TWENTY FIVE YEARS FIGHTING FOR SOCIAL JUSTICE THROUGH HUMAN RIGHTS AT

25 

FACTSHEET No. 17

INTRODUCTION

In light of Spain's appearance before the UN Committee on Economic, Social and Cultural Rights (CESCR) at its 63rd session in March 2018, this factsheet examines the enjoyment of economic and social rights in the country. This factsheet focuses particularly on analyzing the impact of austerity measures on the right to an adequate standard of living, the right to health, sexual and reproductive health and rights (SRHR) and the right to work, between 2012 and 2017. It is not intended to provide an exhaustive analysis of all policies related to economic, social and cultural rights (ESCR) in Spain; rather, it presents data on specific topics of concern included in the pre-sessional working group's List of Issues.

Despite signals of recovery following the economic crisis, the analysis in this factsheet concludes that austerity measures adopted by the State do not comply with human rights standards. To be in compliance with human rights standards, these measures must: be fully justified, temporary, strictly necessary and proportionate; take into account all possible alternatives, including tax measures, to support social transfers to mitigate inequalities and to ensure that the rights of disadvantaged groups are not disproportionately affected; and protect the minimum core content of ESCR (CESCR, 2012b).

However, several of the policies adopted by the State in the context of austerity, and even in economic recovery, in addition to being openly discriminatory, have had a devastating and disproportionate impact on the most vulnerable populations—including women, migrants, young people and children. On several occasions the government has invoked the principle of budgetary stability—included in Article 135 of the Constitution in 2011—adopting retrogressive measures or restricting the powers of the autonomous communities (subnational territorial entities) to protect ESCR (Utrilla, 2018). Several measures were adopted through Royal Decree Laws, bypassing the ordinary legislative procedure under the guise of “extraordinary and urgent need” (Majado, 2016). Crucially, the central government has challenged before the Constitutional Court autonomous legislation aimed at progressively guaranteeing rights at risk or violated by national regulations in areas such as the right to health or the right to housing.

Following its review in 2012, Spain received several recommendations aimed at protecting the economic and social rights of those most affected by the crisis. However, its response to the crisis has continued to focus on retrogressive austerity measures, including deep cuts to the budgets of key social sectors, which have jeopardized the well-being of the most marginalized. Continuing to cut resources necessary

for the fulfillment of economic and social rights, rather than meaningfully pursuing viable alternatives, is inconsistent with Spain's obligations under article 2(1) of the International Covenant on Economic, Social and Cultural Rights. There are feasible alternatives, such as strengthening progressive taxation and tackling tax abuse and corruption, that could offset the need for austerity, while also boosting tax morale and helping to regain the public's trust by strengthening transparency, accountability and participation.

One of the main concerns highlighted by the Committee in 2012 was the precarious situation of many migrants, who had limited protection of their rights. Not only have disparities in rights enjoyment between migrants and nationals increased since then, the government has taken steps that weaken the protection of migrants' rights. Royal Decree Law 16/2012 effectively deprives undocumented adult migrants access to publicly funded health services. The Constitutional Tribunal dismissed a challenge to this Royal Decree Law in 2016. In 2017, it nullified local legislation providing such services, barring autonomous communities from overriding the discriminatory standard set by the national government.

The Committee also expressed concerns about the persistence of geographic and gender inequalities, despite the efforts to combat them. Since then, disparities in the regional distribution of resources for the fulfillment of essential minimum obligations in areas such as health or education have increased. In areas related to SRHR, as well as policies for preventing and tackling gender-based violence, resources have decreased, so significant barriers to the equal enjoyment of those rights among autonomous communities persist.

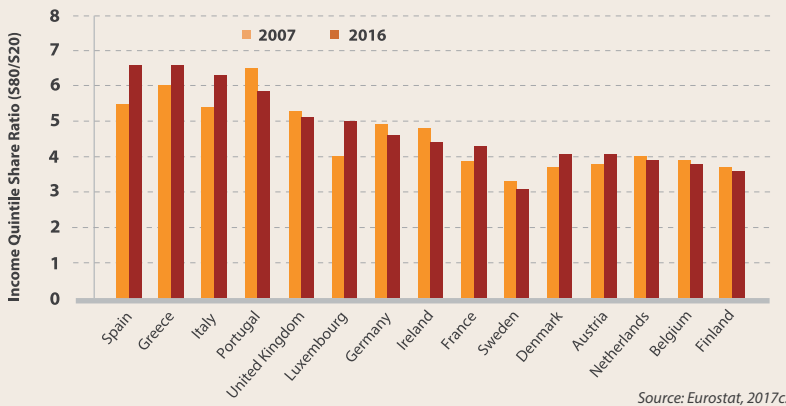
A third concern was labor rights, which continue to be undermined by ineffective austerity policies that have hindered sustainable economic recovery and prevented the population from reaching the levels of rights enjoyment prevailing before the crisis. Spain's unemployment rate remains the second highest in Europe. Almost half of young people are unemployed in 2015, which means that a whole generation has to emigrate or live in precarious situations. Women continue to earn less than men and they are largely concentrated in precarious part-time work.

The review by the Committee is an important opportunity to scrutinize the retrogressive nature of the austerity measures Spain has adopted, which discriminate against marginalized populations such as undocumented migrants, as well as to offer guidance on incorporating a human rights framework in its economic recovery strategies. It is also an opportunity to strengthen Spain's commitments to SRHR, in the light of the recently adopted General Comment No. 22 on the right to sexual and reproductive health.

VISUALIZING
RIGHTS

FIGURE 1

Ratio of total income share of the top quintile to that of the lowest quintile, EU 15 countries (2007-2016)

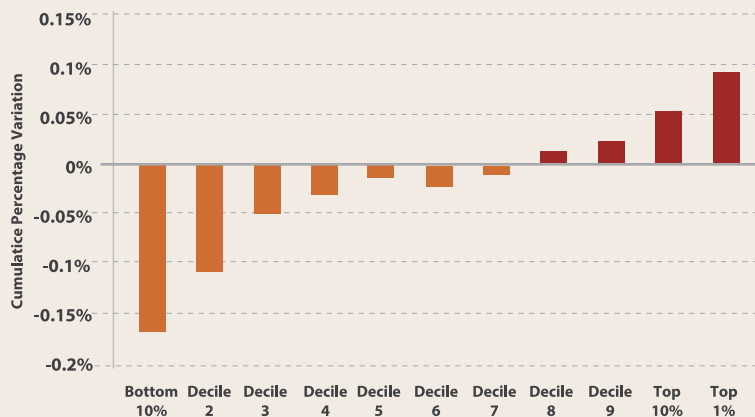


Spain has become one of the most unequal countries in Europe.

The income gap between rich and poor in Spain is the largest in the Euro Zone; it has grown 20% since 2007—wider and faster than all the other poor performers in this category (OECD, 2017). Spain is the European country with the highest increase in inequality in the last decade (Oxfam Intermón, 2018). In 2016, the richest 10% owned 57% of total wealth (WID, 2017). Since the economic crisis started in 2008, both privately owned wealth and publicly owned wealth have decreased as percentage of GDP, but the latter has decreased faster and is about to reach negative levels; public debts are almost equal to public assets (WID.world, 2017: 14). Even the International Monetary Fund (IMF), which continues supporting austerity policies in the country (IMF, 2017: 2), recognizes that Spain’s fiscal consolidation policies had the greatest negative impact on economic inequality among a group of 27 countries (IMF, 2014: 45).

FIGURE 2

Cumulative percentage variation in share of national income in Spain by deciles and top 1% (2007-2016)

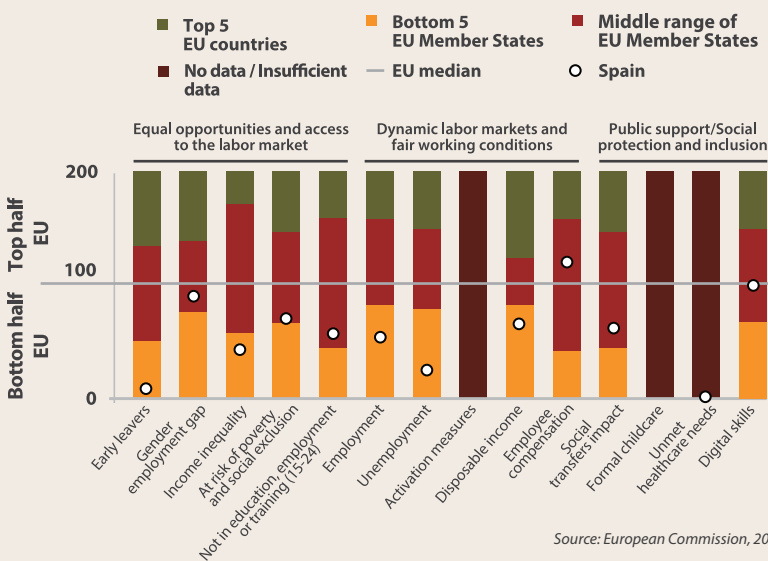


Despite economic recovery, growth is benefitting only the richest, while impoverishing low- and middle-income households—precisely those least able to bear the burden.

While the richest tenth of the population increased its share of national income by 5%, the poorest tenth have lost 16%. Since 2013, 29 out of every 100 euros have gone to the top 10%, whereas only 8 out of 100 have benefitted the bottom 10% (Oxfam Intermón, 2018). Increasing inequality has also weakened the middle class. In 2016, 38.7% of the population were not able to assume unexpected expenses; 13% could not spend a minimal amount of money on themselves; 10.2% faced overburden on housing spending (more than 40% of their disposable income); 10.1% could not maintain heating for their home; 40.3% of the population could not afford a week of vacation outside their place of residence; 17% could not meet with family or friends for dinner due to economic constraints (Eurostat, 2018).

FIGURE 3

Spain’s score on social rights indicators according to the European Pillar of Social Rights Scoreboard, (2016).



Spain is lagging behind on its economic and social rights commitments.

In November 2017, EU institutions launched the European Pillar of Social Rights, a framework to build a more inclusive and fairer European Union. Spain is lagging behind the European average in 11 out of 14 areas on the Social Scoreboard, a tool to monitor progress. Spain is among the bottom 5 EU member States in 6 out of 14 areas, including income inequality, early school leavers, unemployment, and unmet healthcare needs. Without significant changes to Spain’s current austerity path, which prevents meaningful social and economic investments, Spain will not meet its own normative and political commitments.

Over a quarter of the population—and more than half of non-EU citizens—is now at risk of poverty and social exclusion.

The modest economic recovery after 2013 has not translated into a significant decrease in poverty rates. Despite the fact that in 2016 Spain achieved the highest GDP levels since the crisis exploded in 2007, almost 13 million people— 28% of the population—were at risk for poverty and social exclusion by year's end, some 2 million more than in 2007 (Eurostat, 2017). Young people, in particular face increasing poverty rates. In addition, non-EU migrants remain the most vulnerable group; 6 in every 10 were at risk of poverty in 2016.

Child poverty has risen sharply in Spain and is among the highest in Europe.

Spain has experienced one of the largest increases in child poverty in the EU since the onset of the crisis. A third of children living in Spain are at risk of poverty and social exclusion. UNICEF estimates that Spain has lost almost a decade of progress in combating child poverty (UNICEF, 2014). Latest estimates indicate that 2.3 million, or a quarter of children, are at risk for malnutrition (UNICEF, 2013). In 2015, 50% of children with foreign parents were at risk for poverty, the highest rate in all of the EU. This is more than twice the rate for children whose parents are nationals (23.8%) and far above the EU average (33.2%).

Unmet demand for social housing continues to be inordinately high in Spain.

According to the latest official estimates, Spain had about 23,000 homeless (INE, 2012) in 2012 and more than 300,000 applicants to social housing in 2013 (Defensor del Pueblo, 2013). Yet more than 3.4 million homes were empty (INE, 2013), and 10,179 of those were low-income housing units immediately available for inhabitation (Defensor del Pueblo, 2013). Some autonomous communities have tried to play a more active role in enacting regulations that impose penalties for empty housing, but have faced fierce opposition from the national government, which has challenged such provisions in the Constitutional Court (Pareja-Eastway y Sánchez-Martínez, 2017). In addition, housing affordability has worsened considerably over the last decade: the rate of housing overburden (population whose housing costs exceeded 40% of their disposable income) doubled among the total population from about 5% to 10.3% between 2005 and 2016 (Eurostat, 2017j). The increase is even higher among those at risk for poverty. In the period between 2014 and 2016, 197,360 foreclosures took place in Spain. Loss of housing also affects those living in rented housing. In 2017, there were 22,330 (36.8%) evictions as a result of foreclosure proceedings, and 35,666 (58.7%) as a consequence of the Urban Leases Law (29/1994).

FIGURE 4

Percentage of the population at risk for poverty and social exclusion in Spain and the European Union (2009-2016)

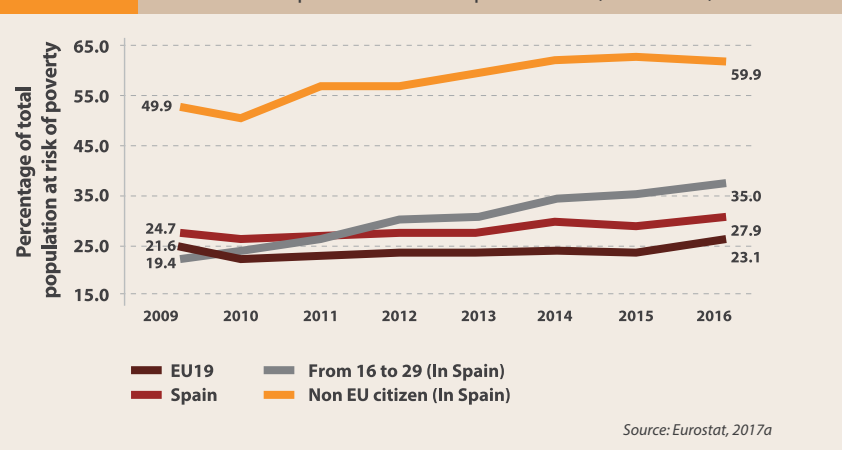


FIGURE 5

Percentage of children at risk of poverty, by country of parents' birth for selected EU countries (2015)

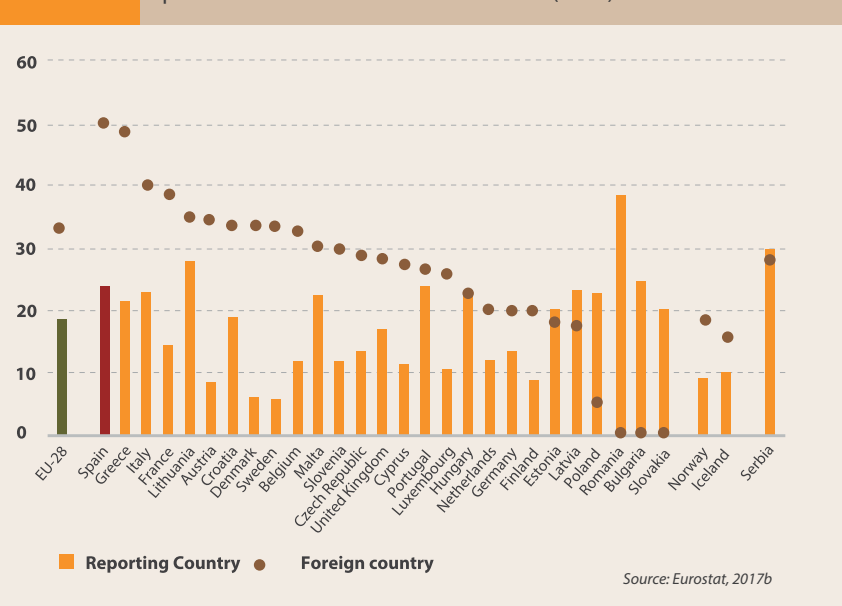


FIGURE 6

Percentage of people in the lowest quintile with overburden on housing spending (higher than 40% of disposable income) (2007-2016)

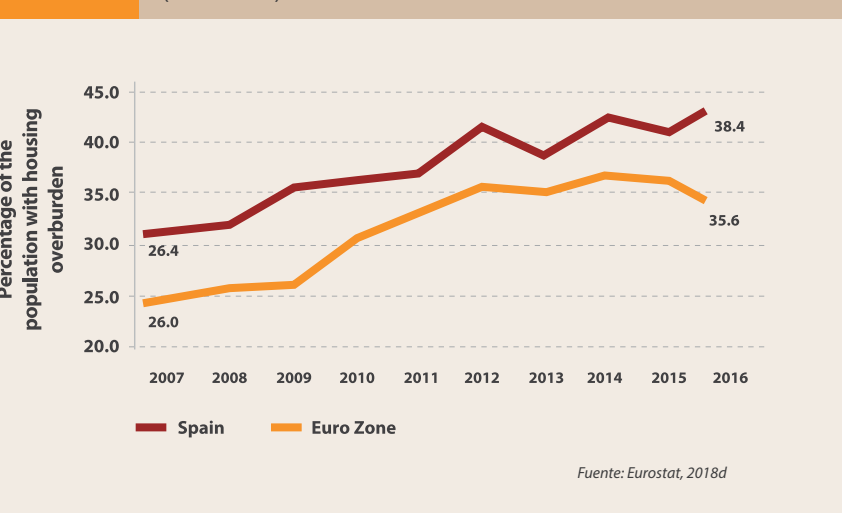
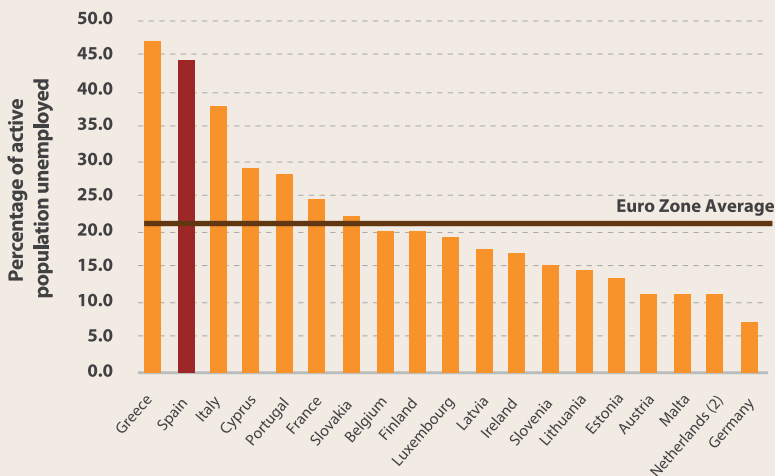


FIGURE 7 Youth unemployment in EU-18 countries (2016)

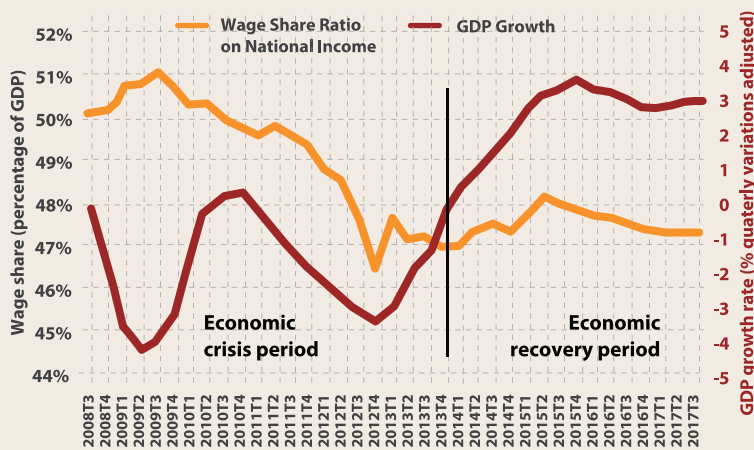


Source: Eurostat, 2017f.

Unemployment remains widespread, especially among youth. In 2017, Spain still had the second highest unemployment rate in the EU at 16%.

At the end of 2017, 3.8 million people were unemployed and all the members of more than 1.2 million households remained unemployed (INE, 2018). Six out of ten people in the EU who became unemployed in the last decade reside in Spain. The unemployment rate for 18-26-year-olds reached an explosive 44% in 2016 (Eurostat, 2017f). Higher unemployment has led to eroded skills and lower wealth accumulation, leaving young people much worse off after the crisis (Martinez-Toledano, 2017). In 2016, 14.6% of the youth population had neither employment, education nor training, a figure higher than the Euro Zone average of 11.6% (Eurostat, 2017g). This figure rises to 77% in the case of Roma youth, compared to an EU average of 63% (El Periódico, 2017).

FIGURE 8 Economic growth vs. wage share by trimester (2008-2017)

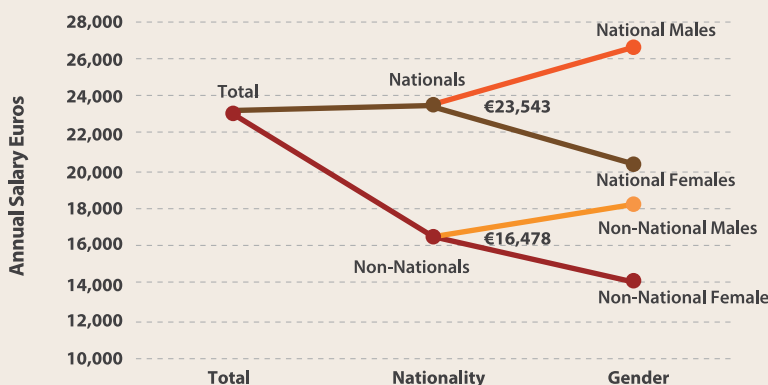


Source: Instituto Nacional de Estadística, 2018b.

Economic recovery is neither creating decent jobs nor progressively realizing labor rights.

Since 2009, the share of wages in national income has fallen by 4 points of GDP (INE, 2018b). Since 2012, productivity per working hour has grown ten times faster than the median wage (Oxfam Intermón, 2018). However, workers struggle to escape poverty through the labor market: the number of workers at risk of poverty increased from 10.8% in 2010 to 13.1% in 2016 (Eurostat, 2017h). In 2015, more than 47% of the population live in households with earnings less than €1,000 per month (GESTHA, 2017). Seven in every ten people under 25 are in temporary employment, a record in the last 20 years (Oxfam Intermón, 2018: 21). Almost a third (31.5%) of foreign workers are at risk of poverty or social exclusion in Spain, the highest rate in the EU (Eurostat, 2017i).

FIGURE 9 Average annual salary in Spain disaggregated by gender and nationality (2016)



Source: Instituto Nacional de Estadística, 2017.

There are significant disparities in earnings between men and women, and between nationals and non-nationals.

Wage disparities between income brackets have widened. Between 2008 and 2016, the average salary of the top 0.3% income earners increased 15.1%, while the bottom 10% fell 15% (Oxfam Intermón, 2018: 21). Gender wage disparities are also significant. Women are concentrated in precarious part-time work, making up 73.4% of part-time workers and only 40.5% of permanent contract workers (INE, 2017b). On average, non-national women earned just 53% of the salary of male nationals, in 2015. Labor reforms that make it easier for employers to change working hours and make deep cuts to essential services and subsidies to professional caregivers (CESR et al., 2012) make it more likely that women who are not the primary breadwinners will forego paid employment to care for family unpaid.

Two in every five immigrants have been effectively denied access to health care.

Under the questionable argument for rationalizing health spending, the Royal Decree Law 16/2012 stripped immigrants with an irregular status— estimated at some 748,000 people (La Marea, 2013) —of their previously guaranteed right to public health care, with only limited exceptions, such as for children and pregnant women. The consequences of the RDL 16/2012 on the right to health have been catastrophic. Between January 2014 and August 2017, REDER documented more than 3,784 cases of people who were unable to access healthcare services, despite having the right to receive such services (under RDL 16/2012 or autonomous communities regulations) (REDER, 2017). Research has shown that RDL 16/2012 has led to a decrease in primary health coverage for the general population (Jiménez-Rubio & Vall Castelló, 2017) as well as an increase in undocumented migrants’ mortality rate (Juanmartí, López & Vall Castelló, 2017). Not only did the Constitutional Court uphold RDL 16/2012 (SCC, 2016), it also nullified ad hoc regulations adopted by autonomous communities to protect undocumented migrants, following a challenge by the national government (SCC, 2017a, 2017b, 2018). These judicial decisions created legal insecurity around undocumented migrants’ right to health.

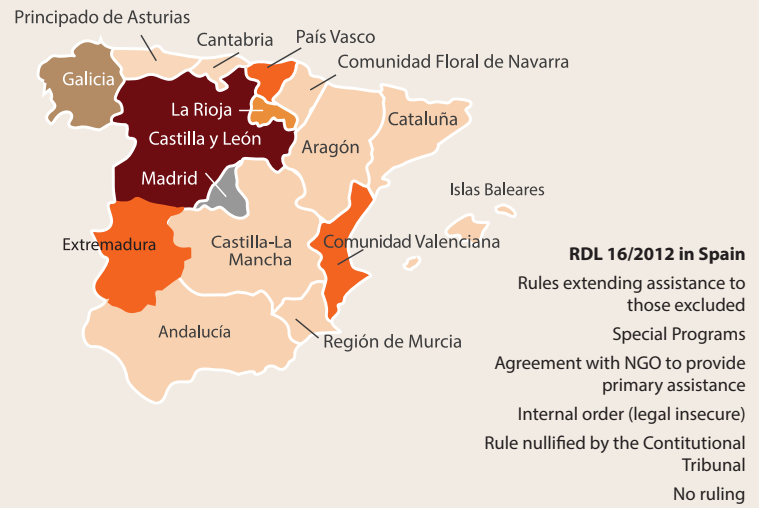
Spain’s public health spending is far below OECD average.

Spain’s per capita public health spending was about to reach the OECD average in 2008; in 2016, it was only at 79%. Spain has one of the lowest rates of public spending on health among EU-15 countries (6.3% of GDP in 2016). Public per capita investment in health has remained below regional trends, representing only 74% of the average in the Euro Zone (OECD, 2017). Between 2011 and 2015, private health expenditure grew at an average of 2.8% per year, while public expenditure fell by -0.8% per year (Ministerio de Sanidad, 2017). Per capita investment in health varies markedly among the autonomous communities and there is a correlation between poor health outcomes and low per capita investment in health, causing further health outcome inequalities.

Health budget cuts particularly jeopardize programs to prevent gender violence and fulfill sexual and reproductive health and rights.

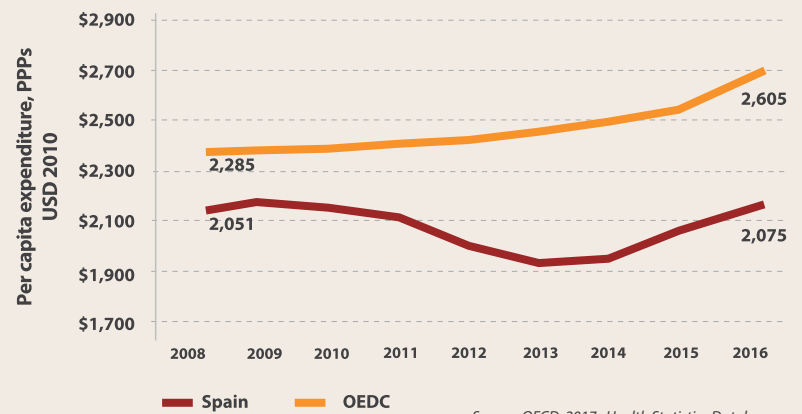
Programs to fight gender violence and promote gender equality were reduced by 21.6% and 18% from 2009 to 2016, respectively. There are also significant geographic inequities in areas such as access to contraception, particularly emergency oral contraception; voluntary termination of pregnancy; and training of health personnel. Besides Catalonia and Andalusia, which have specific training plans, there is no continuous training in contraception offered by health administrations. Several barriers to accessing these services persist, particularly for low-income women and undocumented migrants: less than 12% of Voluntary Interruptions of Pregnancy (abortions) were conducted in public health facilities in 2015. Further, financial resources designated for the national HIV prevention plan fell by 90% in 2012 and have not reached previous levels yet.

FIGURE 10 Legal status of programs to secure undocumented migrants’ health care by autonomous community (2018)



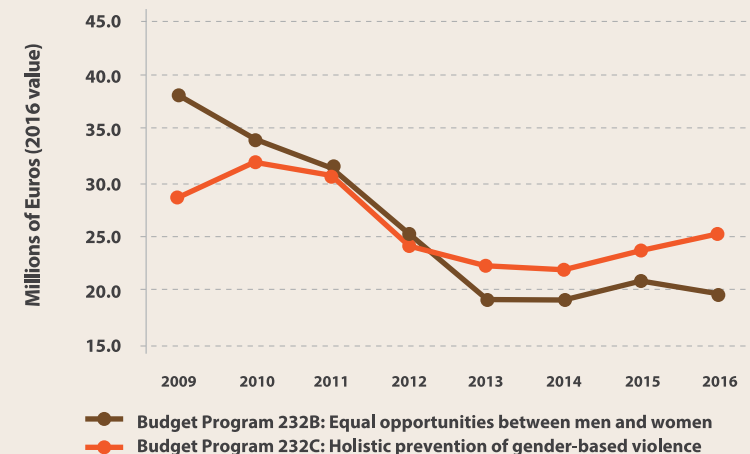
Source: Reder, 2017 and Spanish Constitutional Court Decisions.

FIGURE 11 Per capita government expenditure on health in US Dollars (2010 value) in Spain and OECD average (2008-2016)



Source: OECD, 2017. Health Statistics Database.

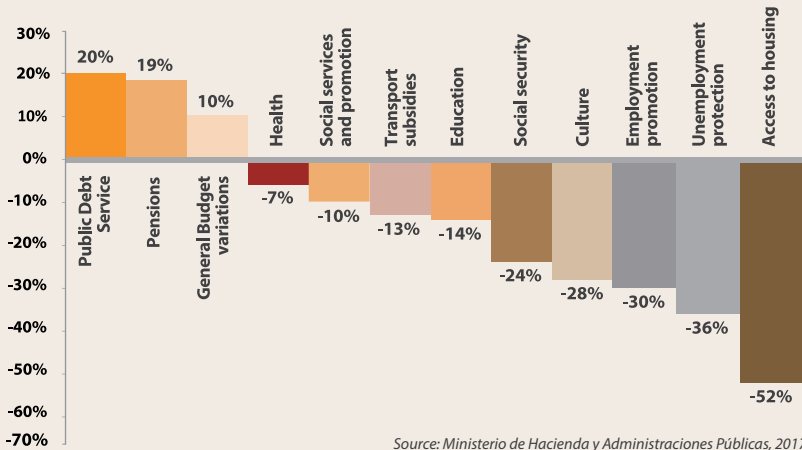
FIGURE 12 Budget cuts to programs to combat gender-based violence and promote gender quality in Spain (2009-2016)



Source: Ministerio de Hacienda y Administraciones Públicas, 2017 Using 2016 figures at real 2016 values and World Bank GDP Deflators, 2017.

FIGURE 13

National budget cuts to social protections and other sectors in Spain (Percent real change from 2011-2016)



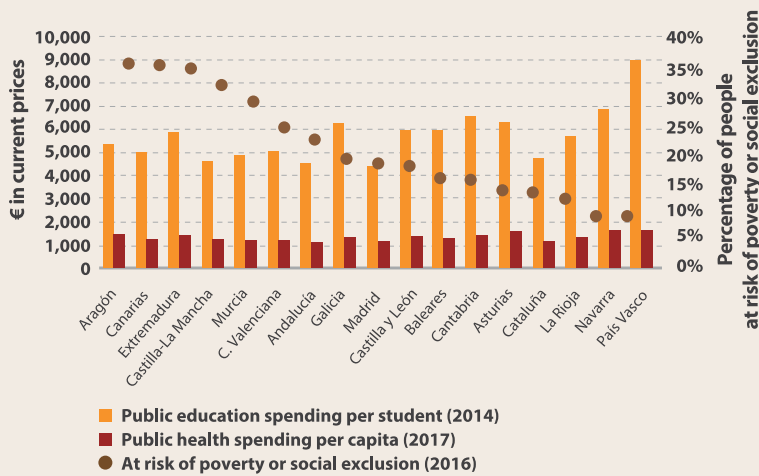
Source: Ministerio de Hacienda y Administraciones Públicas, 2017. Using 2016 figures at real 2016 values and World Bank GDP Deflators, 2017.

There have been drastic cuts to social spending over the past five years, particularly to social protection allocations supporting the most vulnerable.

Budget allocations to low-income housing, unemployment protection and employment promotion have seen the most sizable reductions. The federal budget for social security benefits for immigrants has been cut by 56% between 2011 and 2015. Social protection allocations to the elderly, people with disabilities and dependents have all seen historic declines—with drops of 43%, 40%, and 17%, respectively, between 2011 and 2016. In sectors that were severely affected by the economic crisis, such as housing, public expenditure fell from 1.3% to 0.5% of GDP from 2009 to 2016, a level below the EU28 average (Eurostat, 2018b). There was also a substantial reduction in housing benefits between 2009 and 2015 from €46.19 per person to €22.25 (in 2010 prices). Meanwhile, the EU15 average in 2014 was nearly eight times higher at €181.81 per person (Eurostat, 2018c).

FIGURE 14

Public spending on health and education vs headcount poverty ratio by autonomous communities (2007-2013)



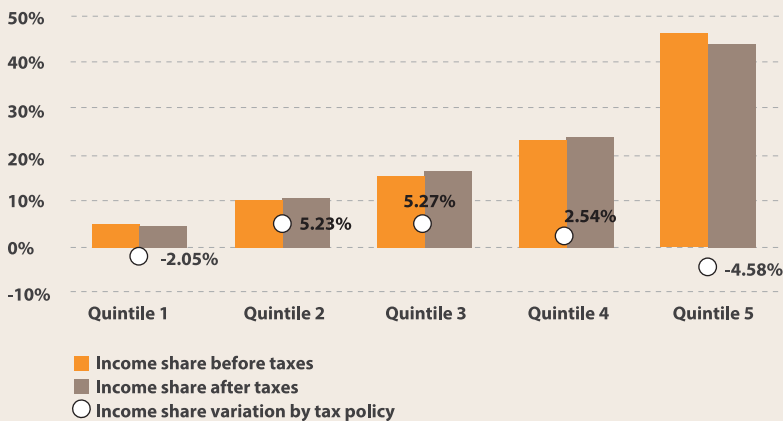
Source: Ministerio de Educación (2017: 57), Instituto Nacional de Estadística (2017) and FADSP (2018).

Social spending is far below European standards and does not contribute to reduce socioeconomic and geographic inequalities.

Spain's social spending per capita is only 63% of the Euro Zone average; it fell by 6% between 2009-2014, while similar spending in the Euro Zone increased by 2.5% (Eurostat, 2017e). There are huge territorial disparities in social outcome indicators, but all autonomous communities are below OECD regions' average in areas such as employment and quality of education (OECD, 2016). Decreased public spending exacerbates these disparities: the poorer the autonomous community, the lower the level of social spending in key areas such as health or education, leading to further disparities in rights enjoyment.

FIGURE 15

Variation of income shares due to tax policy by quintile with Q1=lowest income (2015)



Source: López Laborda et al, 2017: 20.

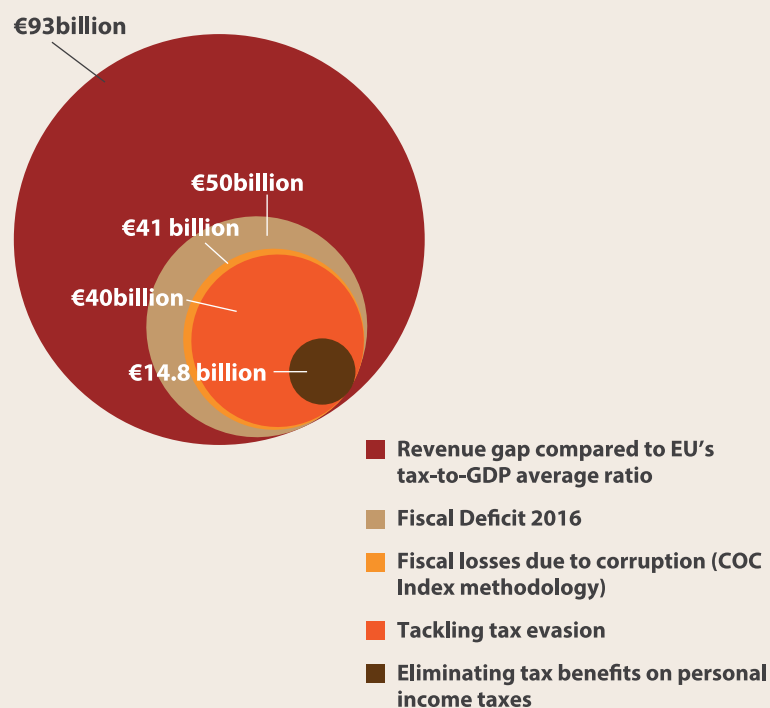
Current tax policy is not correcting inequalities and is making poor people worse off.

Taxes on personal and corporate income contribute to a percentage of public revenue in Spain that is lower (21%) than the OECD average (24%). In contrast, more regressive social security contributions and indirect taxes make up 64% of total revenue, higher than the OECD average of 58%. While the poorest 20% of households paid 16% of their gross income on VAT in 2015, the richest 20% paid 4.2% (Lopez-Laborda et al., 2017). As a result, the income share of the poorest 20% drops by 2.05% as a consequence of tax policy. Women make up 70% of the bottom 10% wage earners, compared to 40% in the top 10% of wage earners (Oxfam Intermón, 2018: 25), meaning these biases disproportionately discriminate against poor women.

Austerity is unreasonable and unnecessary.

Rather than introducing tax amnesties—as the government did fifteen days before approving the RDL 16/2012—Spain could implement several measures to offset the need for austerity. GESTHA estimates that only 8.4% of estimated tax fraud was detected by the tax authority between 2012-2015 (GESTHA, 2018). According to Spain's National Union of Tax Inspectors, Spain could implement a medium term plan to recoup up to €40 billion in revenue lost to tax evasion (GESTHA, 2017b). Fiscal losses due to tax exemptions on personal income taxes were 1.4% of GDP in 2016 (López-Laborda et al., 2017). It is also estimated that tax avoidance, via the biggest 15 tax havens, accounts for losses around €1.5 billion in Spain—58% of the estimated pension reserve fund deficit in 2017 and nearly equivalent to the budget for international development assistance (Oxfam Intermón, 2017: 25-26). According to a study conducted by the European Parliament in 2016, corruption leads to annual losses of between 0.08% and 9.58% of the GDP, depending on the methodology used, higher than the European average in most cases (European Parliament, 2016). Hence, considering the public revenue to GDP ratio in Spain in 2016, corruption meant fiscal losses between 0.03% and 3.6% of GDP. Tax revenue in Spain remains below pre-crisis levels and far below the Euro Zone average, indicating that more efforts could be made to generate resources through progressive and non-discriminatory taxation. If Spain were to increase its tax-to-GDP ratio to the average EU levels through progressive taxation reforms, it would raise €93 billion in additional tax revenue, exceeding almost twice its fiscal deficit in 2016 (Muñoz, 2017).

FIGURE 16 Alternatives to expand fiscal space vs. budget cuts in Spain (2016)



Source: GESTHA (2017b, 2018), European Parliament, (2016: 42), Muñoz (2017).

RECOMMENDATIONS

- Economic policies, including measures to reduce the public deficit, should not lead to retrogressions or discrimination in the enjoyment of human rights. The State should conduct human rights impact assessments before and after adopting plans and strategies aimed at fiscal austerity and economic recovery, in order to ensure that disadvantaged groups are not discriminated against by those policies. The State should consider all possible alternatives at its disposal to provide the maximum of available and potential resources for the realization of ESC rights, including through its fiscal policy.
- The State should adopt measures to make sure ESC rights are legally enforceable; ensure access to justice and legal assistance for all equally; and ensure that policies and plans that impact ESC rights are designed, implemented and evaluated so they incorporate human rights obligations, including the principles of participation, transparency and accountability. The State should ratify the Revised European Social Charter (1996) and its collective complaints procedure.
- The State should prioritize an economic recovery based on the promotion of decent work, stop retrogression in the right to work and propose a national strategy to fight unemployment, job precarity, and temporary and informal employment. The State should adopt well-funded programs to close gaps in the enjoyment of rights at work between nationals/non-nationals and different age and gender groups, including the provision of free public education from zero to three years, strategies for the reconciliation of work and family life, and the incorporation of a gender-based approach to enforcement of labor standards.
- The State should eradicate the systematic discrimination experienced by the immigrant population in their enjoyment of ESC rights—particularly the right to health—including immigrants with irregular status, refugees and asylum seekers. The State should repeal the Royal Decree Law 16/2012 and take steps to restore universal access to the public health system without discrimination of any kind.
- The State should adopt an integrated framework across autonomous communities regarding sexual and reproductive health and rights, coherent with human rights principles and standards, and ensure equitable access to information education, adequate services for sexual and reproductive health and contraception. The State should improve efforts for the prevention of and access to treatment for HIV/AIDS and to prevent gender-based violence and sexual trafficking, eliminating territorial inequalities and prioritizing vulnerable groups.

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About This Factsheet Series

This series is intended to contribute to the ongoing work of UN and other intergovernmental human rights mechanisms to monitor governments' compliance with their economic, social and cultural rights obligations. It is also intended to contribute to strengthening the monitoring and advocacy capabilities of national and international civil society organizations. Drawing on the latest available socioeconomic data, the country factsheets display, analyze and interpret selected quantitative indicators in light of key dimensions of governments' economic and social rights obligations. The factsheets are not meant to give a comprehensive picture, nor provide conclusive evidence, of a country's compliance with these obligations. Rather, they flag some possible concerns which arise when statistics are analyzed and visualized graphically in light of international human rights standards.

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The Center for Economic and Social Rights (CESR) was established in 1993 with the mission to work for the recognition and enforcement of economic, social and cultural rights as a powerful tool for promoting social justice and human dignity. CESR exposes violations of economic, social and cultural rights through an interdisciplinary combination of legal and socioeconomic analysis. CESR advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards.

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