

Consensus proposal to introduce a question on ethnic origin in statistics, studies and surveys in Spain.

1. Objective

Obtaining disaggregated data for the formulation of public policies aimed at eliminating racial discrimination, assessing structural racism and facilitating the inclusion of the population and ethnic groups that suffer most assiduously as victims of racial discrimination, and having more information on the gaps in implementation (or inadequate implementation) of the civil, political, economic, social and cultural rights of these groups. Spain has statistical data based on national origin, the importance of which is and has been very relevant in recent years, taking into account the importance of migratory flows, but this information is not sufficient to combat racial discrimination.

2. International Commitments

The UN Committee on the Elimination of Racial Discrimination (CERD) places great importance on the need for disaggregated data in the fight against structural racism.¹ The importance of disaggregated data in the fight against racism and racial discrimination was one of the main areas of focus of the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in **Durban (South Africa)**, as reflected in paragraphs 92-98 of the Declaration and Programme of Action².

¹Concluding observations of the CERD Committee on the eighteenth to twentieth periodic reports of Spain of April 2011. https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/ESP/CO/18-20&Lang=es

²Declaration and Programme of Action of the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban (South Africa): https://www.ohchr.org/Documents/Publications/DurbanDecProgAction_sp.pdf

Thus, in paragraph 92, it urges States to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels, and to take all other related measures necessary to regularly assess the situation of individuals and groups who are victims of racism, racial discrimination, xenophobia and related intolerance, noting that all such information shall be collected, as appropriate, with the **explicit consent of the victims, taking into account the way they define themselves, as well as data protection provisions and privacy guarantees; and that such information shall not be misused.**

As proposed by the **Office of the United Nations High Commissioner for Human Rights (OHCHR)** in its Human Rights-Based Approach to Data³, a preliminary set of principles, recommendations and best practices for a Human Rights-Based Approach to Data (HRBAD) was formulated with the following concepts: **participation, data disaggregation, self-identification, transparency, privacy and accountability.**

In the **European Union**, the **2020-2025 Anti-racism action plan**⁴ notes that accurate and comparable information is essential for formulating public policy, and requires data disaggregated by "racial" or ethnic origin, to capture both the subjective experiences of discrimination and victimisation and the structural aspects of racism and discrimination, citing the Durban conference and plan of action and its support for the need for disaggregated population statistics, to be collected with the **explicit consent of respondents, based on self-identification** and consistent with human rights standards that protect privacy. The plan notes that further progress is needed with respect for constitutional standards, data protection rules, and the EU Charter of Fundamental Rights, looking at both the subjective experiences of discrimination and the structural aspects of racism and discrimination.

In turn, the European Commission, in the High Level Group on Non-Discrimination, Equality and Diversity and the Equality Data Sub-Group, has produced with the

³ https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData_SP.pdf

⁴ <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52020DC0565&from=ES>

collaboration of the European Fundamental Rights Agency (FRA), a guidance note on the collection and use of equality data based on racial or ethnic origin (also translated into Spanish),⁵ which states that "In order to make informed policy decisions to combat discrimination and promote equal treatment, legislators and policy makers need data on people's social position and experiences of racism and racial or ethnic discrimination, and that in the use of statistical (analytical) categories for any data collection or for the purposes of data disaggregation, the overriding human rights-based principle of **doing no harm** must always apply. "Do no harm" means, according to this document, that no data collection activity should create or reinforce existing discrimination, bias or stereotypes and that the data collected should be used to the benefit of the groups they describe and society as a whole.

It also notes that "equality data are essential to assess the situation of ethnic minorities and thus to effectively address racism and structural inequalities", and that "The aim should be for Member States to move towards the collection of data disaggregated on the basis of racial or ethnic origin, capturing both subjective experiences of discrimination and victimisation and structural aspects of racism and discrimination. The data should be comprehensive, reliable, regular and timely; be integrated into national and EU surveys; and be both representative and comparable".

It is also recommended to list the available data sources, which the **Directorate General for Equal Treatment and Ethnic-Racial Diversity (hereinafter DGITYDER)** has done in collaboration with the **State Council of the Roma People** and the **Council for the Elimination of Racial or Ethnic Discrimination (CEDRE)**, and to carry out community consultations with representatives of the population and ethnic groups that suffer most from racial discrimination, in order to:

a) identify the most appropriate categories for disaggregation or questions relating to self-identification to be asked in a survey, etc., and

⁵ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/equality-data-collection_en#documents

b) to reach a consensus on the underlying definitions.

Other recommendations are:

- the question(s) on ethnic or racial identifications should be phrased in such a way that the respondent can see all possible answer options before making his/her decision.
- providing personal information about one's own ethnicity should be optional for potential respondents, and this should be clearly communicated to them in the instructions preceding the question on how they self-identify in racial or ethnic terms.
- data should be collected with the consent of the respondent, the opt-out clause should be an option. Participation should be on a voluntary basis.

According to the 2006 Eurobarometer on Discrimination in the European Union⁶, the results to the question on people's willingness to give personal data, under certain conditions, to combat discrimination, with respect for anonymity, to better understand and prevent discrimination; 75% of citizens surveyed were in favour of giving information on their ethnic origin, 74% on their religion or belief, 65% on their sexual orientation, and 71% on their health status.

3. Data Protection

The guidance note on the collection and use of equality data based on racial or ethnic origin, referred to above, also recommends that any collection and processing of equality data should be carried out in full respect of the principles and safeguards of the **General Data Protection Regulation EU 2016/79**⁷, specifically recommending that:

⁶ Fieldwork 2006. (page 28). https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_263_en.pdf

⁷ <https://www.boe.es/doue/2016/119/L00001-00088.pdf>

- the data should not be published or made accessible to the public in a way that allows the data subjects to be identified, either directly or indirectly.
- it allows the collection and processing of special categories of personal data under certain conditions, in particular for statistical or research purposes [article 9, section 2, letters a), g (and j)].
- data controllers and processors in EU Member States should seek the advice of their national data protection authorities and additional guidance from the European Data Protection Board (EDPC) and the European Data Protection Supervisor (EDPS) on the safeguards to be applied when collecting and processing special categories of personal data, in particular for scientific research purposes [article 9, section 2, letter j) of the GDPR]. At 23 FRA (2021).
- Safeguards: Under article 9 of the GDPR, special categories of personal data include "personal data revealing racial or ethnic origin, ...".
- Article 9, section 2 of the GDPR provides that the general prohibition on processing special categories of personal data (Article 9, section 1) does not apply in a number of cases, including: where the data subject gave his or her explicit consent to the processing of such personal data for one or more of the specified purposes;...; where the processing is necessary for archiving purposes in the public interest, in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 128, on the basis of Union or Member State law, provided that the processing is proportionate to the aim pursued, substantially respects the right to data protection and provides for appropriate and specific measures to protect the interests and fundamental rights of the data subject.
- All this is given nuance by Organic Law 3/2018 on Data Protection, which complements the Regulation, in Article 9, which states that "for the purposes of article 9.2.a) of Regulation (EU) 2016/679, in order to avoid discriminatory situations, the consent of the data subject alone shall not be sufficient to lift the prohibition on the processing of data whose main purpose is to identify their ideology, trade union membership, ... or racial or ethnic origin. The provisions of

the preceding paragraph shall not prevent the processing of such data under the other cases referred to in article 9, section 2 of Regulation (EU) 2016/679, where applicable.

- the processing of data always has to respond to a legitimization, as stated in article 6 of the GDPR, and in this case it is the specific interest of avoiding situations of discrimination, which would include the exercise of a legal obligation, such as a public interest mission or the exercise of a public power.
- the Regulation would not apply to anonymised data or data that are rendered anonymous⁸. Therefore, data collectors should take appropriate measures to ensure that the data are anonymised. And if, once the data is collected, it is anonymised, the first part of the data protection regulation would apply and the anonymisation should be carried out with robust procedures that prevent it from being reversible through a risk analysis that guarantees the anonymisation process.

4. Situation in neighbouring countries

In some EU countries such as **Ireland**, since 1993, the Pavee Point Traveller and Roma Centre has been collecting disaggregated information on the ethnic origin of Roma and Travellers in line with European data protection regulations and with a human rights approach, based on the principles of self-identification, transparency, privacy, consultation with representative organisations...

They have worked with the Central Statistical Office to improve the way in which this type of data was collected in the different censuses by getting Travellers to self-identify

⁸ Therefore, data protection principles should not apply to anonymised information, i.e. information which does not relate to an identified or identifiable natural person, nor to data rendered anonymous in such a way that the data subject is not, or no longer is, identifiable. Accordingly, this Regulation does not affect the processing of such anonymous information, including for statistical or research purposes (recital 26 GDPR).

in greater numbers in the different censuses of 2006, 2011 and 2016, where the following question was asked: ⁹

What is your ethnic or cultural background? Choose ONE from A to D and mark it.

- A. White 1. Irish 2. Irish Traveller 3. White of any other origin.
- B. Black or Black Irish 4. African 5. Black of any other origin.
- C. Asian or Irish Asian 6. Chinese 7. Any other Asian origin.
- D. Other, including mixed origins 8. Others, write your description.

In **Portugal**, in 2021 the national statistical office conducted a pilot survey on living conditions, origins and trajectories of the resident population, the main objective of which was to test a questionnaire containing modules specifically focused on experiences related to discrimination, as well as a question to measure respondents' self-identification in terms of ethnic origin. In addition, the pilot survey tests the sample design to ensure that the diversity of the resident population, such as specific ethnic minority groups, is captured. The final questionnaire, which was addressed to the entire population, also included several extensive modules on living conditions, such as health, housing, access to goods and services, income, family and fertility, and ICT use.

Asking the person how he/she self-identified, taking into account history, origin, sense of relevance and background among the following options:

- 1. Asian
- 2. White
- 3. Roma
- 4. Black
- 5. Mixed origin. Which one?
- 6. I don't identify with any of these groups. Why?
- 7. I prefer not to answer
- 8. I don't know

In the **UK**, on the other hand, respondents are asked to select, from a list of categories, the ethnic group to which they feel they belong. There are two determining factors: their

⁹If We Are Not Counted, We Do Not Count: A Bottom-up Approach to Ethnic Equality Monitoring in Ireland Ronnie Fay and Lynsey Kavanagh, Pavee Point Traveller and Roma Centre. Dimensions of Antigypsyism in Europe. ENAR Anti-Racism in Focus 3. (Pages 231- 245). Edited by Ismael Cortés and Markus End.

choice of how they define their ethnicity and the prior list of options presented to them.¹⁰

Their freedom is not full and is limited by the options presented.

What is your ethnic group?

Choose an option that best describes your ethnic group.

White

1. English/Welsh/Scottish/Norwegian/British.
2. Irish
3. Roma/,Irish Traveller
4. Anyone else with a white background, please describe.

Mixed/Multi-ethnic

5. Black and white Caribbean
6. Black and white African
7. White and Asian
8. Anyone else with a mixed background or multiple ethnic groups, please describe.

Asian/British Asian

9. Indian
10. Pakistani
11. Bangladeshi
12. Chinese
13. Anyone else with an Asian background, please describe.

Black African/Caribbean/British

14. African
15. Caribbean
16. Anyone else with a black/African/Caribbean background, please describe.

Other ethnic groups

17. Arab
18. Any other ethnic group, please describe.

National statistical offices in Latin America have worked on the inclusion of the ethnic approach mostly in population censuses.¹¹

Argentina 2001, 2010 and 2022:¹² if any person in this household is indigenous or of indigenous (native or aboriginal) descent? Are you or anyone in this household of African descent or do you have ancestors of African descent or African origin (father, mother, grandparents, great-grandparents)? Indicate which people: -----"

Bolivia 2001 and 2012: As a Bolivian, do you belong to any indigenous, native peasant or Afro-Bolivian nation or people? Which one?

¹⁰ <https://www.ons.gov.uk/methodology/classificationsandstandards/measuringequality/ethnicgroupnationalidentityandreligion>

¹¹ Fabiana Del Popolo and Susana Schkolnik. United Nations Economic Commission for Latin America and the Caribbean.

¹² *National Population, Households and Housing Census 2022*. Available at: <https://www.argentina.gob.ar/noticias/reconocernos-desde-la-cultura-en-el-censo-2022>

Brazil 2000, 2010 and 2022:¹³ "Is your colour or race... 1. White 2. Black 3. Brown 4. Yellow 5. Indigenous?"

Colombia 2005 and 2018:¹⁴ "In accordance with your culture, people or physical features, ... is or is recognised as: 1. Indigenous Which indigenous people do you belong to? 2. Rom 3. Raizal of the Archipelago of San Andres and Providencia 4. Palenquero from San Basilio 5. Black, mulatto, Afro-Colombian or Afro-descendant 6. None of the above"

Venezuela 2011:¹⁵ two questions: "Do you belong to any indigenous people or ethnic group? Which one?" "According to your physical features, family ancestry, culture and traditions you are considered: 1. Black 2. Afro-descendant 3. Brown 4. White 5. Other Which one?" If yes, please specify the people.

Mexico 2010 and 2020:¹⁶ (two questions) [Afro-descendant self-description] "Because of your ancestors and according to your customs and traditions, do you consider yourself Black Afro-Mexican or Afro-descendant? YES/NO" [indigenous self-description] "According to your culture, is (NAME) considered to be indigenous? YES/NO"

According to the World Bank report *Afro-descendants in Latin America: Towards a framework of inclusion*¹⁷, one of the first signs of change in the situation of Afro-descendants in Latin America was the increasing inclusion of ethno-racial variables in national statistics, which had not been reported in most countries since the first half of the 20th century.

5. Express consent

In Spain, article 11 of Law 12/1989 of 9 May 1989 on the Public Statistical Function¹⁸, states that when statistical services request data, **they must provide interested parties with sufficient information on the nature, characteristics and purpose of the statistics**, warning them whether or not cooperation is compulsory, the protection

¹³ https://ftp.ibge.gov.br/Censos/Censo_Demografico_2022/Previa_da_Populacao/Nota_Metodologica_Previa_Populacao_Municipios_CD2022.pdf

¹⁴ *Black, Afro-Colombian, Raizal and Palenquero population, results of the National Population and Housing Census 2018*. Available in: <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/grupos-etnicos/informacion-tecnica>

¹⁵ *XIV Population and Housing Census 2011*. National Institute of Statistics of Venezuela. Available in: <http://www.ine.gov.ve/documentos/Demografia/CensodePoblacionyVivienda/pdf/ResultadosBasicos.pdf>

¹⁶ Population and Housing Census 2020 INEGI Available at https://www.inegi.org.mx/contenidos/programas/ccpv/2020/doc/Censo2020_cuest_ampliado.pdf

¹⁷ World Bank Report *Afro-descendants in Latin America: Towards a framework of inclusion* <http://www.bancomundial.org/es/news/press-release/2018/08/29/eliminating-afro-descendant-exclusion-in-latin-america-is-vital-for-development>

¹⁸ <https://www.boe.es/buscar/doc.php?id=BOE-A-1989-10767>

afforded to them by statistical confidentiality, and the penalties they may incur for failing to cooperate or for providing false, inaccurate or incomplete data, or for providing data after the deadline, the second section of the article specifies that **"In any case, they shall be strictly voluntary and, consequently, data that may reveal ethnic origin,** political opinions, religious or ideological convictions and, in general, any circumstances that may affect personal or family privacy may only be collected with the express consent of the interested parties." **Article 13 states that personal data obtained by the statistical services both directly from respondents and from administrative sources shall be protected and covered by statistical confidentiality.** Personal data are understood to be those referring to natural or legal persons that either allow for the immediate identification of the data subjects, or lead by their structure, content or degree of disaggregation to their indirect identification. Statistical confidentiality obliges the statistical services not to disseminate personal data under any circumstances, regardless of their origin.

6. The identification criteria.

The UN has insisted on the need to use **the criterion of self-recognition**. It has also reiterated the importance of the active participation of ethnic groups in the process. With regard to self-identification questions, the terms used are important ("Do you belong?", "Do you consider yourself?", "Are you?", "Do you descend?"), the name given to the people (community, group, culture, ethnicity, race¹⁹) and the coverage of the question or the age from which it is asked (0, 3, 5 or 14 years) (Schkolnik and Del Popolo, 2005; Del Popolo, 2008).

¹⁹ Since all human beings belong to the same race, ECRI rejects theories based on the existence of different "races". However, in its General Policy Recommendation No. 7, ECRI uses this term to ensure that legislation equally protects persons who are normally and mistakenly considered as belonging to "another race".

7. Three years of debate

In Spain, a debate on this issue began in 2020 at the initiative of the **DGITYDER**, a debate that has been considered a promising practice by the FRA,²⁰ which began its journey by meeting with the National Statistics Institute (hereinafter INE), the Data Protection Agency (hereinafter APD) and the FRA, stakeholders that have accompanied it in this process of meetings and advice in the CEDRE (Council for the Elimination of Racial or Ethnic Discrimination) and in the State Council of the Roma People. Collegiate bodies in which various meetings have been held over the last two years.

In turn, DGITYDER has organised three round table discussions with national and international speakers at the 2021, 2022 and 2023 Anti-Racist Weeks²¹ and has met with more than 50 civil society organisations, including organisations of Afro-descendant black, Roma, African, Asian, Arab, and Amazigh people, to hear their views on this issue and on how the people they defend/represent want to be called, and has taken their opinions into account. This issue was also addressed in the drafting of the National Strategy for Roma Equality, Inclusion and Participation 2021-2030²².

In turn, in 2021, the DGITYDER commissioned a study entitled "Approach to the African and Afro-descendant population in Spain. Identity and access to rights²³", focusing on how African and Afro-descendant people living in Spain exercise and enjoy their civil, political, social, cultural and economic rights. The study is based on two online surveys targeting the relevant population and civil society organisations, with questions on experiences of discrimination and police profiling. This study posed an open-ended question that allowed for self-identification of people of African descent living in Spain.

²⁰ [Debate on the appropriateness of introducing a question on ethnic origin in studies, surveys or reports | European Union Agency for Fundamental Rights \(europa.eu\)](#)

²¹ <https://www.youtube.com/watch?v=VqNhIOBg270&list=PLMXzkNaN1GD0VWneO3I70tFt2sXWTF2i&index=7>

²² https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/Estrategia_nacional_21_30/estrategia_aprobada_com.pdf

²³ https://www.igualdad.gob.es/ministerio/dgigualdadtrato/Documents/Aproximación_a_la_población_africana_y_afrodescendiente_resumen_ejecutivo.pdf

8. Concrete proposal

In Spain, there are no plans to carry out this operation on the census in any case. Population censuses are no longer carried out because the information is collected through the census, which is why if one wanted to make a selection by ethnic origin, this section should be included in the registration form or asked directly at the time of registration, a situation that does not make sense administratively.

The proposal is to do so in a survey under the criteria of self-identification, no harm, anonymity and willfulness. Specifically, the INE will carry it out in the 2026 ECEPOV²⁴, (Survey of Essential Population and Housing Characteristics), carried out for the first time in 2021 and in which half a million people (1% of the population) participated. **INE has been involved in the deliberations leading to this proposal and also considers that this would be the most appropriate way forward.**

The ECEPOV is designed with the main objective of providing detailed information on people, housing and buildings and would allow cross-referencing information on access to housing and its characteristics, nationality, place of birth, level of studies, knowledge of languages, employment situation, contact with new technologies and health. It will ask about ethnicity across society as a whole, in order to get an overview of the population and the population and ethnic groups that suffer most from racial discrimination. A closed list of answers and an open category (others) would be established, **which would include the option of not answering (consent of the respondent)** and the option of answering several, which could be similar to this²⁵:

²⁴https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177092&menu=ultiDatos&cidp=1254735572981

²⁵ As with any complex question in a household survey, it must undergo qualitative testing prior to its inclusion in an actual survey, which may result in minor modifications to its literal formulation.

Depending on your family history, ancestry, background, sense of belonging and culture, you are considered a person who is (*several answers allowed*):

1. Black/Afro/Afro-descendant/Afro Spanish/African black
2. Gypsy/Romani/Roma
3. Arabic
4. Amazigh/North African non-Arab
5. White Latin American
6. Native American, Indo-American/Indigenous/Abya Yala Native
7. East or Southeast Asian
8. South Central Asian
9. West Asia/Turkey
10. White/Mediterranean
11. Mixed/mestiza/multi-ancestry. Which ones?
12. Other Which one? Please specify which, if this option is selected.
13. I don't know.
14. I prefer not to answer this question
15. I don't understand this question