

Report presented by the coalition formed by AIETI, Red de Mujeres Latinoamericanas y del Caribe, and Fundación ASPACIA

Committee of the Parties

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

Implementation of the Istanbul Convention by Spain

Spain, 2024

RED Red de Mujeres
LATINAS Latinoamericanas
y del Caribe



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1. Introduction

In the context of the evaluation of the Istanbul Convention to Spain by the Committee of the Parties, [AIETI](#) (Asociación de Investigación y Especialización sobre Temas Iberoamericanos), [Red de Mujeres Latinoamericanas y del Caribe](#) y [Fundación para la Convivencia ASPACIA](#), jointly submit this report as a coalition, with particular attention to the situation of migrant women in Spain.

AIETI is a non-governmental development organization dedicated to promoting citizen engagement and committed to human rights at the global and local levels. Over the last 40 years, AIETI has worked to create social transformations globally and locally, in order to promote sustainable human development with social justice, with a human rights and feminist approach, building societal and institutional capacity and potentialities in each context.

Red de Mujeres Latinoamericanas y del Caribe is an organization by and for migrant women who seek to have a voice to express what their bodies endure in the first person and cease to be an object of study to claim their place as political actors. With 10 years of experience, Red brings together 13 associations and groups of migrant women, individual women, and Latin American feminists in Spain. “For us, Red means our path to empowerment and leverage in the fight for our rights, equality, and opportunities in Spain.”

Fundación para la Convivencia ASPACIA is a non-governmental organization dedicated to preventing and eradicating all forms of gender violence against women, particularly sexual violence, with a feminist perspective and a gender, human rights, and intersectional approach, to help ensure the rights of women to equality and to live free of all forms of discrimination.

Recent investigations by AIETI and Red de Mujeres Latinoamericanas y del Caribe include “Tirar del Hilo: Historias de mujeres migradas supervivientes de violencia machista en el laberinto institucional” (2021) and “Tirar del Hilo II. Historias de vida: Devida diligencia y protección de las mujeres migradas frente a la violencia machista” (2022), and AIETI’s report,

“La protección de la infancia migrante frente a la violencia en España” (2024).¹ Recent investigations by Fundación para la Convivencia ASPACIA include “Violadas y discriminadas. Protección, atención y justicia de las mujeres migrantes supervivientes de violencia sexual en España” (2022); “Juzgadas y discriminadas. La (no) respuesta judicial en casos de violencia sexual contra las mujeres migrantes en España” (2023); and “Jóvenes, migrantes y discriminadas,” on access to protective services, assistance, and justice for young migrant survivors of sexual violence in Spain, with a gender, human rights, and intersectional approach (2023).²

Also, in coalition, AIETI, Red de Mujeres Latinoamericanas y del Caribe and ASPACIA, we have submitted shadow reports to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), focusing on gender-based violence against migrant women in Spain.

Considering the questions posed to the Spanish authorities and their report, we will address issues related to fundamental rights, equality and non-discrimination (Article 4); non-governmental organisations and civil society (Article 9); data collection and research (Article 11), and custody, visitation rights and safety (Article 31).

2. Fundamental rights, equality and non-discrimination (Article 4)

Although some measures have been taken by the Spanish State, they are not adequate, effective, or sufficient to ensure that the provisions of the Istanbul Convention are applied without discrimination, including intersectional discrimination, in the case of migrant women facing violence in Spain, as evidenced by the following figures:

¹ These investigations may be found at the following link (in Spanish): <https://tirardelhilo.info/> and <https://aieti.es/estudios-e-investigaciones/estudio-la-proteccion-de-la-infancia-migrante-frente-a-la-violencia-en-espana/>

² See: https://drive.google.com/file/d/15qUYUu9WiUn_4jaY75mfyMgiQXJVQJf5/view and <https://drive.google.com/file/d/1cK87afRhV18QBscn74I9tnnX4fzWkyTC/view>

- Even though migrant women are proportionally more likely to report the violence they suffer, they are overrepresented in cases of femicide. In 2023, 42% of women murdered for gender-related reasons were foreigners. The percentage has been increasing. In its Baseline Evaluation Report to Spain (2020), GREVIO noted:

“First and foremost, GREVIO notes with concern that migrant women make up nearly 33% of all women murdered by their partners or ex-partners since 2003, although they only constitute less than 10% of the population. This is of even greater concern in view of the fact that foreign women more readily than Spanish women turn to the police and courts for protection, as the data show. This raises questions as to whether possible institutional bias against immigrant women victims exist, and whether some of those who were killed by their partner could have been saved had the institutional response been more swift and adequate. Research found that migrant women victims of intimate partner violence, in spite of their significant capacity for resilience, faced greater barriers to exercising their rights than Spanish women, as well as greater barriers to employment, housing, education of children, social resources and economic benefits.” (Paragraph 20).

- Thus, GREVIO already noted with concern in 2020 that the murders of foreign women represented 33% (between 2003 and 2019). Considering, moreover, that until 2022, it was 34%.
- Migrant women denounce more proportionally but have lower percentages of activation of police protection (telematic monitoring programs), as well as a higher percentage of those who are exempted from testifying as witnesses and receive less official financial aid.
- According to the General Council of the Judiciary, the number of court cases initiated before the Courts for Violence against Women in 2021, based on reports of gender-based violence, has reached a total of 162,848. Of these, 66.9% involved Spanish women, and 33.1% involved foreign women.

- As of December 31, 2021, there were 69,469 open gender-based violence cases, according to the Ministry of the Interior's VioGen system. Of these, 69% involved women born in Spain, and 31% involved women born in other countries. The rate of active cases registered among women born in Spain is around 2 points and that of women born in another country is 8 points.
- Of the total number of women murdered during the period from 2006 to 2019 (1,035 in total), 26% had filed a complaint. Among these, 127 were born in Spain and 90 abroad. The percentage of murdered Spanish women who filed a complaint among all murdered Spanish women is 17.6% and the percentage of murdered migrant women who had filed a complaint is 24.2% of all migrant women. Thus, 7% more migrant women than Spanish women murdered by gender-based violence had previously filed a complaint, even though some of them were in an irregular administrative situation and lacked knowledge of Spanish laws. This could be an indicator of the lack of protection they received from the public authorities.
- Migrant women present lower percentages of activation of police protection when risk is perceived, specifically, 6 percentage points less. This difference in protection has been maintained since 2013.
- 2003-2019: Of the total number of subsidized contracts (*contratos bonificados*) for victims, 18.3% corresponded to women born outside Spain.
- 2006-2019: Recipients of Active Income for specific insertion for victims of gender-based violence, 23.8%.
- 2019: Financial aid provided for in Article 27 of LO 1/2004, only 11.8%.
- Of the crimes against sexual freedom registered in 2019, 10,155 corresponded to victimizations of Spanish women (75.9%) and 3,226 of women of other nationalities (24.1%). A lower registration of sexual violence among migrant women, compared to

reports of gender-based violence, may indicate a lack of confidence on the part of migrant women that the judicial system will effectively prosecute sexual crimes.

Regarding intersectionality, even when this word is mentioned in some laws and strategies³, as can be seen in the report presented by the Spanish authorities, laws and strategies continue to be designed and implemented based on a single ground of distinction or a single form of discrimination, excluding women who face intersectional forms of discrimination, such as migrant victims of violence against women. This was already detected by CEDAW in its last Concluding Observations to Spain (2023):

“The Committee notes with satisfaction that the State party has adopted a progressive framework of laws and policies to achieve substantive equality between women and men, placing the Convention at its core. The Committee notes the training and awareness-raising activities for the judiciary and women concerning the Convention and the Optional Protocol. It also notes with satisfaction references made to the principle of intersectionality as a central component in the implementation of the Convention. **However, it is concerned about the limited effectiveness and need for impact assessments of these laws, notably in the areas of access to abortion services, guarantees for refugee and migrant women and access to justice. Lastly, it is concerned about the lack of effective application of the principle of intersectionality to ensure gender equality for women who are victims of intersectional discrimination.**

[...]

The Committee welcomes the series of laws on the rights of women, such as Organic Law No. 10/2022 on the comprehensive guarantee of sexual freedom, which is a comprehensive regulatory framework for the comprehensive protection of women against all forms of violence. It also notes the State party’s intention to establish an observatory of equality. **It notes with concern, however, that the implementation of these gender equality-based laws lacks an intersectional approach to adequately address the situation of Roma women, refugee and migrant women and other women affected by intersectional discrimination.** It is further concerned about climate refugees in the State party, the majority of whom are women and

³ In some, for example, the First Strategic Plan for the Prevention of Sexual Violence 2023-2027 does not mention intersectionality.

children, and about the disproportionate impact of the climate crisis on women and girls, which requires specific and urgent measures” (Paragraphs 9 and 19, emphasis added).

The Spanish State refers in its report to the State Observatory against Gender Violence and its member organizations. In this regard, we believe that this Observatory still lacks a more diverse representation that includes different organizations that work for the right to a life free of violence of migrant women, which carry out grassroots work and in the communities. The diversity of women migrant organisations possesses valuable experiences and insights that could enrich the Observatory's work.

With respect to access to services and protection without intersectional discrimination, migrant women victims of violence with irregular immigration status have no access to recovery, because their immigration status impacts all aspects of their lives, including access to employment; access to mental, sexual, and reproductive healthcare; access to housing; and even the opportunity to have a bank account. Regarding public healthcare specifically, access varies from one autonomous community to the next, with some autonomous communities requiring a residence authorization in order to access care.

In the area of sexual violence, the Organic Law 10/2022, of September 6, on the Comprehensive Guarantee of Sexual Freedom (LOGILS) recognizes the right to comprehensive and accessible assistance and calls for the creation of comprehensive and specialized services that migrant women victims of sexual violence can use regardless of immigration status. The specialized facilities established under LOGILS are meant to address all forms of sexual violence except human trafficking, for which specific facilities are contemplated. However, these facilities do not have adequate resources or proper training to offer assistance with an intersectional approach that can meet the needs and particularities of migrant women and address all the forms of sexual violence included in LOGILS. The main deficiencies observed include a shortage of professionals to perform the community outreach work needed to detect and prevent sexual violence. There is also a shortage of professionals in specific fields, such as community advocates and specialized intercultural mediators, to help appropriately address the needs of migrant women.

In the case of migrant women in an irregular administrative situation who are victims of gender-based violence by their partner or ex-partner, according to Article 31bis of Organic Law 4/2000, of January 11, on the Rights and Freedoms of Foreigners in Spain and their Social Integration (Aliens Act) in order to apply for a residence and work authorization, they must have obtained a protection order, or, lacking this, they must have a report from the prosecutor showing the existence of indicia of gender violence, and the criminal case must end in a conviction or a court ruling that shows that the woman has been a victim of gender violence.⁴ As such, if a protection order is requested unsuccessfully, or the case does not end in conviction (as is all too often the case, due to a lack of ongoing, mandatory training on gender and intersectional perspective, or lack of sufficient evidence to overcome the presumption of innocence, which is very common in gender violence cases), victims may be expelled from Spain.⁵

Regarding requirements for establishing status as a victim of gender violence by a partner or former partner, some changes have been made, including allowing this status to be proved by means other than court actions like a conviction, protection order, court ruling granting interim measures to the victim, or report from the prosecutor showing the existence of indicia of gender violence. Victim status may now be proved via a report from social services, specialized services, shelter services for victims of gender violence provided by a government agency, or any other agency authorized under local regulations governing access to rights and remedies.

However, it is impossible for victims of gender violence with irregular immigration status to use proof of their status as victims of gender violence by a partner or former partner in order

⁴ Even in these cases, as noted in the Asociación PROGESTIÓN investigation “Violencias machistas y mujeres migrantes: obstáculos para su regularización” (2002), “...in practice, several issues arise that pose de facto barriers to women’s effective access to their rights under Article 31 bis, and therefore to comprehensive protection and reparation for the violence, contrary to international standards” (p. 44). See: <https://progestion.org/wp-content/uploads/2022/12/informe-final.pdf>

⁵ On this point, GREVIO’s Baseline Evaluation Report on Spain (2020) noted that “While GREVIO welcomes the fact that Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration offers irregular migrant women the opportunity to request a protection order, their low rate of issue – especially in Madrid and Barcelona – significantly raises the stakes. Where protection orders are denied, a deportation order will follow” (paragraph 267). It went on to urge Spanish authorities to “review the evidential thresholds for the granting of temporary residence authorizations for all categories of migrant women in Spain (EU citizens, citizens of the European Economic Area, third-country citizens and irregular migrant women) with a view to removing those that are excessively high, such as the requirement of a criminal conviction of the abuser” (paragraph 283.a).

to apply for residence and work authorization, which means that immigration status prevails over the human rights of survivors of gender violence, given that immigration status affects all aspects of life, as noted above (including employment; healthcare, depending on the autonomous community; access to housing; and access to a bank account), which in turn makes it difficult to break the cycle of violence, since without legal residence status, no reparation or comprehensive protection is available. In addition, when women seek court recognition as victims, they face barriers related to excessive red tape, lack of access to government services, and slow response times of government agencies.

Spanish laws on gender violence against women have been focused on violence committed by a partner or former partner, disregarding sexual violence committed outside this context, such as violence at the hands of a stranger or a man with whom the victim does not have, or has not had, a relationship. This has led to a lack of protection for many women, particularly migrant women with irregular immigration status. Many migrant women who have reported incidents of sexual violence not committed by a partner or former partner have been subjected to removal proceedings, sent to an immigration detention center, and removed from Spain, never having received protection or assistance as victims of sexual violence. Their immigration status took priority over their human rights. (We use the past tense here because the cases we are referring to took place before the new law described below, though this does not mean that similar situations are not still happening today.⁶) These cases were marked by the presence of the gender stereotype that migrant women are liars or manipulators who use allegations of sexual violence as a way to remain in Spain.

As noted above, LOGILS was approved. There was an expectation on the part of civil society that this new law would protect and ensure the rights of migrant women victims of sexual

⁶ See the case of Olga, documented by Fundación ASPACIA in “Violadas y expulsadas. Entre el miedo y la desprotección. Mujeres migrantes en situación irregular frente a la violencia sexual en España” (2013) and “Violadas y discriminadas. Protección, atención y justicia de las mujeres migrantes supervivientes de violencia sexual en España” (2022). The gang rape she suffered was never investigated, but she was charged with “simulation of a crime.” The authorities said she made up the rape in order to get legal immigration status, even when it became clear that this was impossible. She was taken into custody in a CIE but was not expelled because she had an expired passport and received accompaniment from civil society. See: <https://violadasyexpulsadas.org/> and https://drive.google.com/file/d/15qUYUu9WiUn_4jaY75mfyMgjQXJVQJf5/view

violence with irregular immigration status by allowing status as a victim to be established by specialized services for purposes of obtaining a residence and work authorization.

However, immigration enforcement was once again prioritized over women's human rights, with some Spanish authorities believing that "if violence is allowed to be proven for purposes of residence by other means than a police report or conviction, this will create a 'sieve' of migrant women entering Spain."⁷ We again see the gender stereotype that migrant women with irregular immigration status are liars or manipulators who use something as serious as sexual violence to try to remain in Spain or get a residence authorization. This sets up a system that is racist and discriminatory against migrant women.⁸

On the issue of guaranteeing the rights of victims with irregular immigration status, Article 36 of LOGILS reads as follows:

"Victims of sexual violence with irregular immigration status, **in accordance with aliens law**, will enjoy the same rights granted under this organic law as other victims. Furthermore, they will be entitled to residence and employment under the authorizations for exceptional circumstances provided in Organic Law 4/2000, of January 11, on the Rights and Freedoms of Foreigners in Spain and their Social Integration under circumstances not regulated under this law that will be addressed by regulation" (emphasis added).⁹

With this legal framework, the rights of victims of sexual violence are subordinated to immigration law. Without a complaint and conviction, migrant women in an irregular administrative situation who are victims of sexual violence are unprotected, the crime goes unpunished, in violation of their human rights, including the right to reparations. They may even be at risk of criminal prosecution for false reporting or false statements if they are too afraid to certify the police report.

⁷ ASPACIA (2022). "Violadas y discriminadas...", *Op. Cit.*

⁸ *Idem.*

⁹ Organic Law 10/2022, of September 6, on the Comprehensive Guarantee of Sexual Freedom. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2022-14630&p=20220907&tn=1#a3-8>

It is inexplicable that proof of victim status outside the court system, like a report from a specialized service, can be valid for some purposes, but not for obtaining residence. It is our opinion that this amended section of LOGILS, read in conjunction with the Aliens Act, constitutes intersectional discrimination against migrant women victims of sexual violence with irregular immigration status in law, because it creates differential treatment based on the intersection between sex/gender and immigration status that is neither objective nor reasonable. It constitutes a distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by migrant women with irregular immigration status of their human rights, particularly the right to live free of gender violence, viewed in light of this right's interdependence and interconnection with other human rights.

The message is that migrant women with irregular immigration status¹⁰ who report having suffered sexual violence and can show a report proving it are neither equal nor credible. The focus is on immigration policy and enforcement over women's human rights, including the rights to equality and non-discrimination.

Even when a woman establishes status as a victim, her opportunities for recovery are restricted. Social and government services are conditioned on this status, so she must continue to use the "victim" label to justify her applications for services. For example, status as a victim must be maintained in order to keep receiving certain forms of financial assistance, and an original conviction or protection order does not suffice.

Regarding training, the Spanish State refers in its report to the report it recently submitted to GREVIO. This information shows that in Spain there is no training in gender perspective, intersectionality, harmful gender stereotypes and the Istanbul Convention and GREVIO recommendations that is mandatory, continuous, permanent and evaluable (as shown in the Spanish State's own report), nor is there any participation of migrant women survivors and

¹⁰ Spain enjoys international prestige for its laws; however, migrant women still lack protection, due to the Spanish State's failure to provide protection, security, prevention, and access to justice for migrant women, regardless of immigration status. We have observed violations of a range of rights, including the right to live free of violence, the right to justice and comprehensive protection, the right to physical and mental health, the right to information, the right to reparations, and the rights of children victims of gender and structural violence to assistance.

experts in these trainings. In the case of training on the intersectional perspective, it is completely absent; none of the training content indicated in Annex III of the report addresses intersectionality.

Similarly, despite the fact that the Spanish State states in its report that campaigns and other awareness-raising and prevention actions have been carried out, including training actions for professionals and citizens in general, from an intersectional approach, at the state level, although racialized women appear in some campaigns¹¹, none of them show how there are women affected by multiple inequalities based on various grounds of distinction; the risks, impacts or needs faced by women victims of violence affected by intersectional discrimination, or question existing gender stereotypes about migrant women who report violence against women that result in lack of protection.

3. Non-governmental organisations and civil society (Article 9)

Regarding the adoption of measures that contribute to recognizing, encouraging and further supporting the work of organizations that fight to eliminate violence against women covered by the Istanbul Convention, including funding and cooperation, support is still needed for migrant women's organizations, who carry out their work out of commitment, in precarious conditions and without sufficient financial and human resources. Many migrant women victims of violence against women in its different forms prefer to go to these organizations where they are usually attended by other migrant women and feel safer than in institutional spaces. Likewise, the lack of diversity of women in the different institutions and resources to which victims of violence against women turn to has been detected, as well as the absence of real, effective and homogeneous participation of migrant women's organizations in prevention measures, as well as in the design, implementation and evaluation of laws and public policies related to violence against women.

¹¹ Images of racialized women are exploited here to distract from the Spanish State's failure to recognize their rights, provide assistance, and fulfill its obligations to them, creating a false narrative to distract from the lack of comprehensive assistance for migrant women and their children in law, policy, and protocol.

Furthermore, on this point, the State refers to the Doctoral Thesis Award on Violence against Women by the Government Delegation against Gender Violence (Ministry of Equality). However, this award lacks an intersectional perspective, as it excludes from participation those who are not Spanish or European, unlike other similar awards that do not restrict migrants from applying.

4. Data collection and research (Article 11)

The Government Delegation against Gender Violence carries out the Macro-survey on Violence against Women, the most important survey on this subject (although it still leaves out some forms of violence against women). In its report, the State also refers to it and points out that it provides information on women who "live" in Spain (p. 26). However, the Macro-survey speaks of "resident women", not knowing if by resident it means legal residence. This implies that migrant women's situation of vulnerability to violence against women is not being taken into account, since the official data in this Macro-survey does not reflect migrant women in an irregular administrative situation, thus making this reality invisible.

With respect to research, of all the studies carried out by the Government Delegation for Gender Violence since 2009, none has addressed migrant women and the gender violence's faced by them from an intersectional approach. There has been only one study on smuggling and human trafficking of women in Spain, two on female genital mutilation, and one on women victims of trafficking for purposes of sexual exploitation. But there is not even one, in 15 years, that addresses the right to a life free of violences of migrant women and that applies a gender and intersectional approach.¹²

5. Custody, visitation rights and safety (Article 31)

According to the most recent official data, between January 1, 2013 and February 29, 2024, there have been 52 confirmed cases of children killed by gender-based violence; there are 438 orphans under the age of 18 who are victims of gender-based violence from 2013 to

¹² See: <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/estudios/investigaciones/home.htm>

February 29, 2024; from January 1 to February 29, 2024, there have been 6 orphans under 18 years of age due to gender-based violence, and during the month of February 2024, six children have been orphaned by gender-based violence.¹³

And according to what we have learned through the media, only so far in 2024, seven children have been killed by their parents, three of whom later committed suicide, one of them also killing the mother and another trying to do so¹⁴. In one of these cases, which took place in Almería, a man allegedly killed his two daughters (aged two and four) and then committed suicide. There was a restraining order and the girls' mother is a 23-year-old Romanian woman¹⁵. This information shows that despite the changes noted by the Spanish authorities in their report, Article 31 of the Istanbul Convention is not being adequately and effectively implemented in practice, with specific obstacles existing in the case of migrant women facing violence, such as intersectional discrimination.

6. Recommendations for Spain

Based on the information presented, we make the following recommendations:

- That adequate and effective measures be taken to ensure that the provisions of the Istanbul Convention are applied without intersectional discrimination, taking urgent measures to eradicate feminicides and violence against women in the various forms that migrant women are facing in Spain.
- That adequate measures be taken to effectively apply intersectionality, with the participation of migrant women's organizations in the design, implementation and evaluation of laws and public policies on equality and combating violence against women.

¹³ See: https://violenciagenero.igualdad.gob.es/violenciaEnCifras/boletines/boletinMensual/2024/docs/Principales_datos_febrero_2024.pdf.

¹⁴ See: <https://elpais.com/sociedad/2024-04-11/siete-ninos-asesinados-por-sus-padres-en-los-peores-cuatro-meses-de-violencia-machista-sobre-menores.html#>

¹⁵ See: <https://www.20minutos.es/noticia/5228223/0/un-hombre-mata-presuntamente-sus-hijas-dos-cuatro-anos-edad-almeria-despues-se-quita-vida/>

- That adequate and effective measures be taken to guarantee the right to equality and non-discrimination of migrant women in an irregular administrative situation who face violence against women, prioritizing their human rights and placing them at the center, and not their migratory situation. This requires the modification of current legislation to ensure that victims of violence against women can obtain a residence and work permit from the moment of their accreditation as victims, without the need for a prior complaint.
- That adequate and effective measures be taken to recognize, encourage and support the work of migrant women's organizations, including funding and generating cooperation.
- That adequate and effective measures be taken to ensure that the Macro-survey on Violence against Women considers, with certainty, the situation of migrant women in an irregular administrative situation and other forms of violence against women, from an intersectional approach.
- That adequate and effective measures be taken so that the Government Delegation for Gender Violence carries out its first research/study focused on violences against migrant women from an intersectional perspective, with the participation and experience of migrant women's organizations.
- That adequate measures be taken to effectively implement Article 31 of the Istanbul Convention, from an intersectional perspective, so that no other woman, boy or girl, is killed.