

Shadow Report presented by AIETI, Red de Mujeres Latinoamericanas y del Caribe, and Fundación ASPACIA

Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

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RED Red de Mujeres
LATINAS Latinoamericanas
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CONTENTS

1. Introduction	p. 3
2. Article 7 – Comprehensive and co-ordinated policies	p. 4
3. Article 11 – Data collection and research	p. 9
4. Article 12 – General obligations	p. 10
5. Article 15 – Training of professionals	p. 13
6. Article 20 – General support services and Article 22 – Specialist support services	p. 13
7. Article 49 – General obligations and Article 50 – Immediate response, prevention and protection	p. 15
8. Recommendations to Spain	p. 21

1. Introduction

In the context of the evaluation of the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in Spain, [AIETI](#) (Asociación de Investigación y Especialización sobre Temas Iberoamericanos), [Red de Mujeres Latinoamericanas y del Caribe](#), and [Fundación para la Convivencia ASPACIA](#), jointly submit this shadow report on gender-based violence faced by migrant women in Spain at risk of suffering intersectional discrimination.

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), recognized as a social project against gender violence by Spain’s Government Office against Gender-based Violence in 2021, and “Tirar del Hilo II. Historias de vida: Debida diligencia y protección de las mujeres migradas frente a la violencia machista” (2022).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 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

As the first round of thematic evaluation is focused on building trust by providing support, protection, and justice, we will discuss Articles 7, 11, 12, 15, 20, 22, 49, and 50 of the Istanbul Convention.

2. Article 7 – Comprehensive and co-ordinated policies

With the recent passage of Organic Law 10/2022, of September 6, on the Comprehensive Guarantee of Sexual Freedom (LOGILS), which went into effect on October 7, 2022, there is undeniable progress in laws for the prevention and elimination of violence against women. However, the fact that the approach to recognizing sexual violence was the passage of a new law, rather than updating Organic Law 1/2004, of December 28, on Comprehensive Protective Measures against Gender Violence to include all forms of violence against women has created a disjointed and fragmented

¹ These investigations may be found at the following link (in Spanish): <https://tirardelhilo.info/>

² See: https://drive.google.com/file/d/15qUYUu9WiUn_4jaY75mfyMgjQXJVQJf5/view and <https://drive.google.com/file/d/1cK87afRhV18QBscn74I9tnnX4fzWkyTC/view>

regulatory landscape that poses challenges for implementation of the new law and coordinated policies at the national and local levels. This affects all women, but especially migrant women.

While some progress has been made, it has not reached migrant women with or without regular immigration status who suffer violence, because their human rights and empowerment are not prioritized in policy, and the fact that their immigration status impacts their access to protection, workers' rights, social services and benefits, justice, and reparations is not being taken into account.³ The Spanish State is, however, well aware that migrant women are overrepresented in statistics on violence, as GREVIO pointed out in its first evaluation of Spain in 2020.⁴ We offer some selected examples below:

- The total number of women murdered in acts of gender violence between 2003 and January 2023 was 1,090, of whom 719 (66%) were born in Spain and 371 (34%)

³ For more information on the lack of access to justice for migrant women victims of sexual violence in Spain, see the investigation by Fundación para la Convivencia ASPACIA “Violadas y discriminadas. Protección, atención y justicia de las mujeres migrantes supervivientes de violencia sexual en España” (2022), https://issuu.com/asociacionaspacia/docs/informe_vyd_aspacia2022

⁴ GREVIO's Baseline Evaluation Report on Spain (2020) indicated, “However, a number of barriers exist for women seeking help from the authorities for intimate partner violence, and particularly so for help in relation to forms of violence that are not covered by Organic Law 1/2004, in particular sexual violence. 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. Moreover, the fact that many migrant women are unaware of the recent change in legislation that allows recognition as a victim of intimate partner violence without the granting of a protection order or an official document issued by the prosecutor's office (see Chapter VI) means that illegal migrant women who fear being disbelieved or who are unable to sufficiently prove the violence will not seek help from the authorities. Their risk of facing deportation after being denied a protection order is simply too high. Barriers to service provision for migrant women victims of intimate partner violence have also been identified in research. These include the lack of sufficient human and financial resources to ensure adequate services adapted to the specific and often very complex situation of migrant women, practical access to these resources – especially in rural areas – and their effectiveness, as many professionals are not trained in service provision to migrant women and co-ordination with more specialist services may be lacking” (paragraph 20).

were born in other countries. The rate of femicides among migrant women hovers between 10 and 11 per million, far above the approximately 2 per million for Spanish women.

- 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 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, 2019, there were 61,355 open gender violence cases, according to the Ministry of the Interior's VioGen system. Of these, 70.3% involved women born in Spain, and 29.6% involved women born in other countries. The rate of active cases for women born in Spain is 2.3, compared to 8.4 for women born in other countries.
- Of all crimes against sexual freedom recorded for 2019, 10,155 (75.9%) involved Spanish women, compared with 3,226 for women of other nationalities (24.1%). These lower figures of cases of sexual violence against migrant women in comparison with reports made of gender violence (around 33%) may be an indicator of migrant women's lack of confidence that the judicial system will effectively prosecute sex crimes. Among women born in other countries, the largest group comes from countries in the Americas.
- Of the total number of women murdered between 2006 and 2019 (1,035), 26% had made police reports. Of these, 127 were born in Spain, and 90 outside of Spain. Of all Spanish women murdered, 17.6% had made police reports, compared with 24.2% for migrant women. Compared with murdered Spanish women, 7% more migrant women had made reports prior to being murdered in acts of gender violence, despite the fact that many of them had irregular immigration status and were unfamiliar with Spanish laws. This may be an indicator of state agencies' failure to protect migrant women.

- 6% fewer migrant women receive police protection when risk is identified. This difference in protective measures has been consistent since 2013.

In the report submitted by Spain, in its response regarding Article 7, paragraphs 1 and 2, we can see that, other than actions related to the war in Ukraine, no measures have been taken for migrant women, and there is no strategy at the national level for this purpose. Spain does not have a comprehensive national plan for prevention, protection, and assistance for migrant women and their children that is effective, makes good use of resources, and protects and ensures their physical and psychological integrity and that of their children. It also lacks specific protocols for a clear path to recovery⁵ with an intersectional perspective. In addition, the report mentions measures that migrant women victims of gender violence or sexual violence with irregular immigration status have not been able to benefit from, such as access to Spain's guaranteed minimum income benefit.

In addition, while the word “intersectional” appears in certain laws or strategies, it means little if these same laws and strategies are still drafted and implemented based on a single basis for distinction, or a single form of discrimination, because this leaves out women who face intersectional forms of discrimination. This is at the root of the problem faced by migrant women, whether they have regular or irregular immigration status: the impunity born of their invisibility as subjects of rights, resulting, in turn, from the structural violence of political decision-makers and legal professionals like judges, prosecutors, and public defense attorneys. This invisibility, besides depriving them of real, comprehensive protection for their lives and those of their children, subjects migrant women to revictimization because of colonial prejudices, notions, and practices that consider them inferior, ignorant people who seek to remain in the country, live on government aid, take away their abusers' homes, and take away custody and

⁵ For personal recovery and reconstruction through comprehensive programs, including psychological support, personal empowerment, employment, financial autonomy, housing, referral to resources, education on human rights, and participation and integration into Spanish society, so that they will not be stigmatized as “victims of sexist violence” and marginalized from employment, housing, etc.

parental rights over the children. In practice, this means that the risk of intersectional discrimination faced by migrant women victims of violence is being ignored. The Committee on the Elimination of Discrimination against Women commented on this in its latest Concluding observations on Spain (2023):

“[...] 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” (paragraph 9).

Turning to the campaigns cited by the Spanish State in its report as having an intersectional approach (p. 22), while some feature images of racialized women,⁶ none of them address how some women are affected by multiple forms of inequality based on different bases for distinction; discuss the risks, impacts, or needs of women victims of violence affected by intersectional discrimination; or examine existing gender stereotypes regarding migrant women who report gender violence that lead to a failure to provide assistance, protection, and justice. The only campaign that makes mention of racism is one that does not address violence against women: the 021 hotline for the Aid and Orientation Service for Victims of Racial or Ethnic Discrimination.

Of the studies described as having an intersectional approach (p. 22), none are related to migrant women. In fact, of all the studies carried out by the Government Delegation against Gender Violence since 2009, none have addressed migrant women and the gender violence faced by them. In this 15-year period, there has been only one study on human trafficking of women in Spain, two on female genital mutilation, and

⁶ 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.

one on women victims of trafficking for purposes of sexual exploitation, but none that address migrant women’s right to live free of violence and that apply a gender and intersectional perspective.⁷

3. Article 11 – Data collection and research

In its report, the Spanish State mentions the “Macro-survey on violence against women,” which fails to address some forms of violence against women. The Macro-survey also refers to “women residents,” an ambiguous term that may or may not mean legal residence. As this legal ambiguity leads to inconsistent interpretation, migrant women are afraid to report acts of violence, seek social and healthcare services, or go to court. This lack of certainty on such a key point is itself an indicator of the priority that the Spanish State assigns to the right to live free of violence and discrimination of migrant women with irregular immigration status. It suggests that the vulnerability of migrant women with irregular immigration status to gender violence is not being taken into account, since it is not reflected in the official data of the Macro-survey, rendering their realities invisible.

As noted above, none of the studies carried out by the Government Delegation against Gender Violence address migrant women, the gender violence they face, and institutional responses. Further, there are no measures in place to track cases of violence against women from police report to conviction, including all stages of law enforcement and judicial proceedings. Similarly, while statistical records of victims of gender-based murder at the hands of their partners or former partners include a box for “birth country,” for other cases of femicide, there is only a “nationality” box, which makes it impossible to know the country of origin of the victim and detect forms of intersectional discrimination that may have been factors in the act of violence and barriers to access to resources and protective measures.

⁷ See: <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/estudios/investigaciones/home.htm>

4. Article 12 – General obligations

No measures are being taken to address harmful gender stereotypes about migrant women victims of violence or the increased risk of gender violence faced by women and girls at risk of intersectional discrimination.⁸ In Spain, there are specific gender stereotypes about migrant and racialized women that come into play and lead to violations of their human rights and dignity when they experience gender violence and go to the authorities, including hyper-sexualization and sexualization; the idea that they are “sex bombs,” “hot,” or “exotic”; and notions that they are “looking for something,” “kind, affectionate women who make good caregivers,” or “informing to get papers.” These gender stereotypes are often at the root of intersectional discrimination, and they can be both cause and consequence of gender violence.⁹

In their Communication ESP 5/2019, on sexual violence and the Spanish courts, the UN Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls had this to say:

“[...] it concerns us that these [rulings] reflect an interpretation by judicial officers of domestic law on sex crimes that is discriminatory and based on gender prejudices and stereotypes. We would add that the lack of a gender perspective by the judiciary in cases of violence against women may be reflected in proceedings in which less weight is given to the testimony or arguments of women as parties or witnesses; the adoption by judges of rigid conceptions or norms about what they consider appropriate behavior or response by a woman victim or survivor of a sex crime; and use or establishment of gender stereotypes that lead to an erroneous interpretation or improper application of the law. It further concerns us that gender stereotypes and prejudices, along with a lack of gender perspective and intersectional analysis of discrimination against women, are

⁸ This leaves migrant women completely unprotected by government institutions, and, therefore, at increased risk of dying from murder, deprived of support systems, and without adequate information on how to get help. In many cases, women flee with their children, due to the fear and anguish resulting from the disregard, rejection, and abandonment by the institutions charged with protecting them and seeing to their safety.

⁹ As documented in ASPACIA (2022). “Violadas y discriminadas...,” *Op. Cit.*

depriving women and girls who are victims of sex crimes of access to justice and to an effective remedy.”¹⁰

We echo the Special Rapporteur and the UN Working Group and consider sexual violence to be the ultimate expression of misogyny by men and the system against women’s bodies, which does not always seek to destroy the productive and reproductive body, but to destroy the life and the personal and collective hopes that women have built on bonds of solidarity, care, and affection. This destruction of the moral person is an exercise in structural power and a tool for control, punishment, and repression by a patriarchal system, designed to remind women of their position of subordination and men’s position of domination. This is consolidated, articulated, and carried out through the practices of capitalism, racism, and classism, a system complicit in the objectification of migrant women’s bodies and the violation of their rights and dignity when they report acts of violence. Judges, prosecutors, and other actors lack training with an intersectional approach, as noted in section 2. For migrant women, all this is manifested in, and exacerbated by, an Aliens Act that criminalizes migrations and generates discrimination, violence, and human rights violations, depriving women and their children of access to justice and protection. The State’s responsibility to protect the integrity of victims with due diligence remains unfulfilled.

Similarly, migrant women who suffer sexual violence in Spain, particularly those with irregular immigration status,¹¹ are not accessing the justice system for several reasons, particularly their immigration status, but also gender stereotypes; intersectional discrimination; lack of translation and interpreting services; lack of intercultural mediation to help describe contexts of violence; lack of quality, appropriately specialized legal aid; and financial dependence, exacerbated by a lack of social services

¹⁰ Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls (2019). ESP 5/2019. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24662>

¹¹ If they make a report, they run the risk of losing child custody or being given a removal order in the event of an acquittal. This structural violence manifests in barriers to access to justice, nonexistence of rights, lack of protection, lack of access to residence authorization, and violations of the right to inform the authorities in security. These are obstacles to access to protective, health, legal, and social systems.

and assistance.¹² In addition, Spain does not currently have a protocol developed by high court judges for hearing cases with a gender and intersectional perspective that addresses the importance of identifying harmful gender stereotypes and their consequences for purposes of determining reparations. This is why structural violence must be called by its name. As Judge Glòria Poyatos puts it, “Institutional violence is one of the most perverse forms of aggression, because the perpetrator acts under the legitimate aegis of the rule of law.” It is this same judicial-colonial system which casts suspicion on women victims who decide to report acts of violence. They are treated as second-class citizens, the evidence is never sufficient, and allegations are dismissed for lack of credibility. And women bear the psychological and emotional burden of these inhumane practices alone, without support networks, without housing, without employment. Above all, they are not granted the protective measures that might offer them some minimal assurance of integrity for themselves and their children as they navigate a complex judicial process in a context in which the woman’s word is valued less than that of her assailant.

Many migrant women who report acts of gender violence suffer double revictimization, recurrence of violence, and exacerbation of existing trauma when they contact the Spanish authorities. They are questioned when they make a report, subjected to victim-blaming, and suspected of informing in order to secure a path to legalization. They must endure hostile examinations and cross-examinations at trial and are expected to meet impossible standards of proof. For migrant women with irregular immigration status, their status becomes a determining factor. We have seen cases of women who, faced with this lack of protection and basic necessities and the State’s failure to respond, have turned to medication, suffered more gender violence or new forms of it, suffered serious mental health impacts, or even attempted suicide, an act that we read as a femicide-suicide caused by institutional gender violence against migrant women.¹³

¹² As documented in the ASPACIA investigation “Juzgadas y discriminadas. La (no) respuesta judicial en casos de violencia sexual contra las mujeres migrantes en España” (2023). See: <https://drive.google.com/file/d/1cK87afRhV18QBscn74I9tnnX4fzWkyTC/view>

¹³ ASPACIA (2022). “Violadas y discriminadas...,” *Op. Cit.*

Finally, when migrant women are victims of femicide in Spain, their children and families often have nowhere to turn due to the absence of specialized protocols, lack of coordination of government services, and slow pace of government agencies, which does not meet the needs of the families of victims of femicide.¹⁴

5. Article 15 – Training of professionals

Spain has no mandatory, ongoing, regular, and assessable training on gender perspective, intersectionality, harmful gender stereotypes, the Istanbul Convention, and the recommendations of GREVIO (as noted in the Spanish State’s report), and migrant women survivors and experts are not involved in the training that does exist. Training on an intersectional perspective is nonexistent, as none of the trainings shown in Appendix III to the State’s report address intersectionality, neither migration (p. 144 et seq.).

On this point, in its investigation “Juzgadas y discriminadas. La (no) respuesta judicial en casos de violencia sexual contra las mujeres migrantes en España” (2023), ASPACIA found that none of the analyzed court decisions on sex crimes against migrant women mentioned or cited the Istanbul Convention.

6. Article 20 – General support services and Article 22 – Specialist support services

Turning now to general and specialized recovery support services for victims, 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

¹⁴ See, for instance, the case of Liliana, a striking example of femicide and institutional abandonment of the families of migrant women murdered in Spain because they are women, as described in “Tirar del Hilo II. Historias de vida: Debida diligencia y protección de las mujeres migradas frente a la violencia machista” (2022), AIETI and Red de Mujeres Latinoamericanas y del Caribe: <https://tirardelhilo.info/>

specifically, access varies from one autonomous community to the next, with some autonomous communities requiring a residence authorization in order to access care.

The new LOGILS law 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.

Similarly, migrant women with irregular immigration status, including those who have been victims of sexual violence, also face obstacles to access to abortion services within the time limits in effect in Spain. Many women have to try once place after another, and some end up paying out of pocket. Further, because abortion continues to be regulated under the Criminal Code, some migrant women have been fined because they were unable to have a voluntary termination of pregnancy performed within the time limits due to barriers they faced with state agencies.¹⁵ Dangers to women's sexual and reproductive rights are further exacerbated by recent instructions approved on July 31, 2023, by the General Directorate of Legal Security and Public

¹⁵ Abortion is still punishable under the Criminal Code by a fine for women who abort in circumstances not falling under the exceptions (Article 145.2). See, for instance, the following rulings: SAP Vizcaya 90102/2021, of April 12, 2021, denying appeal and upholding the conviction of a woman who had a Foreigner Identity Number for a charge of abortion and sentencing her to 15 months of fine, and SJP No. 5 209/2017, of July 3, 2017, convicting a Moroccan woman for a charge of abortion and sentencing her to 6 months of fine at a daily rate of 5 € (for a total of 900 €), subsidiary personal liability of one day of custodial sentence for every two daily quotas not paid, and court costs.

Faith of the Ministry of Justice, amending the 2021 Law on Civil Registry to create a new “stillbirth declaration” register, granting pseudo-legal recognition to stillborn and allowing parents to name them, creating an appearance of status as a subject of rights and legal personhood. In a context in which migrant women’s access to termination of pregnancy was already restricted, instruments like this one may further exacerbate existing barriers. This is a serious threat to the sexual and reproductive rights of migrant women.

We also observed that most migrant women were unaware of the 016 hotline. And we found a lack of training on gender and intersectional perspective for hotline personnel, as well as deficient information and disinformation provided to migrant women, a problem that has been observed in services provided by crime victim assistance offices too. Further, there are no specialized services addressing female genital mutilation or forced marriages. It falls to civil society organizations and community groups to provide assistance in these cases.

7. Article 49 – General obligations and Article 50 – Immediate response, prevention and protection

For migrant women with irregular immigration status who are victims of gender violence committed by a partner or former partner, under Article 31 bis 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.¹⁶

¹⁶ 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>

The means that protection for migrant women victims of gender violence is conditioned on their reporting the violence and the case ending in conviction. 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.¹⁷

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 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

¹⁷ 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).

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 (CIE), 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.¹⁸) 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 recently passed into law. 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 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.

¹⁸ 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

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.”¹⁹ 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.²⁰

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).²¹

With this law, the rights of victims of sexual violence are subordinated to immigration law. Meanwhile, the modification to Article 31 bis of the Aliens Act by LOGILS reads as follows:

“Article 31 bis. Temporary residence and work authorization for foreign women victims of gender violence or sexual violence.

¹⁹ ASPACIA (2022). “Violadas y discriminadas...,” *Op. Cit.*

²⁰ *Idem.*

²¹ 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>

1. Foreign women, regardless of immigration status, are entitled to the rights granted by Organic Law 1/2004, of December 28, on Comprehensive Protective Measures against Gender Violence, if they are victims of gender violence, as well as the rights granted by the Organic Law on the Comprehensive Guarantee of Sexual Freedom, if they are victims of sexual violence; and, in either case, they are entitled to protection and safety measures under applicable law.

2. If a foreign woman's irregular immigration status comes to light when a case of gender violence or sexual violence is reported, an administrative sanction proceeding will not be initiated for violation of Article 53.1.a), and any administrative sanction proceeding initiated prior to the report will be suspended, as will any expulsion or removal orders that have been issued.

3. A foreign woman in the situation described in the previous section may apply for a residence and work authorization for exceptional circumstances once a protection order is issued in her favor, or, if none is issued, by presenting a report from the prosecutor showing the existence of indicia of gender or sexual violence. The authorization will not be resolved until the criminal proceeding is completed. At the time of submittal of the application, or any other time during the criminal proceeding, the foreign woman may, on her own or through a representative, apply for a residence authorization for exceptional circumstances for her minor children or disabled children who are objectively unable to provide for their own needs, or for a residence and work authorization for her children aged 16 or older who are in Spain at the time of the report.

Notwithstanding the above, the authority empowered to grant an authorization for exceptional circumstances will grant a provisional residence and work authorization to the foreign woman, and provisional residence authorizations to any minor or disabled children, or residence and work authorizations to any children aged 16 or older, as provided in the previous paragraph, if they are in Spain at the time of the report. Any provisional authorizations granted will expire when final approval or denial of authorizations for exceptional circumstances is made.

4. When the criminal proceeding ends in a conviction or a court decision showing that the woman has been a victim of gender violence or sexual violence, including dismissal because the defendant's whereabouts are unknown or dismissal without prejudice because the defendant has been deported, the woman will be notified that the requested authorizations are granted. If an application has not been made, she will be notified of the possibility of granting authorizations and given a time limit to apply.

If the completed criminal proceeding does not show a situation of gender violence or sexual violence, an administrative sanction proceeding will be initiated for violation of Article 53.1.a), or will go forward if it was previously suspended.”²²

Migrant women with irregular immigration status who are victims of sexual violence and cannot show a police report or a conviction of their attacker have no access to protection and 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.

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.

²² Organic Law 4/2000, of January 11, on the Rights and Freedoms of Foreigners in Spain. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>

The message is that migrant women with irregular immigration status²³ 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.

8. Recommendations to Spain

Based on the above, and in light of the fact that trust is not being built among migrant women victims of violence in Spain through support, protection, and justice, we make the following recommendations to the Spanish State:

- Update current laws on violence against women to align with the Istanbul Convention in order to ensure a comprehensive, specialized, adequate, and coordinated response that takes into account the specific needs of migrant women, and to provide prevention, protection, and prosecution of violence against migrant women, in equality and without discrimination, throughout Spain.
- Take specific measures to ensure that advancements made on violence against women in Spain also reach migrant women who suffer violence, in equality and without discrimination, including all forms of violence committed against them, in

²³ 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.

accordance with the Istanbul Convention, and placing their rights and empowerment at the center of policies.

- Take specific measures to respond to all forms of violence against women suffered by migrant women in Spain, who are overrepresented in national statistics on violence.
- Design and carry out, in collaboration with migrant women survivors of violence and migrant women experts, a national strategy to eradicate violence against migrant women and improve comprehensive, specialized, coordinated institutional responses, with a gender, human rights, and intersectional approach, and with sufficient staffing and resources for implementation at the national and all levels.
- Establish spaces for interinstitutional coordination and ongoing participation by migrant women in the drafting, assessment, monitoring, and evaluation of laws, public policies, and national and autonomous community plans for prevention and elimination of violence against women in Spain.
- Take measures to ensure that laws and strategies on violence against women are created and implemented with an intersectional perspective, setting aside the tendency to consider a single basis for distinction or form of discrimination and effectively applying the principles of intersectionality to ensure protection, access to support services, and access to justice, in equality and without discrimination, for migrant women.
- Perform an assessment of campaigns against violence against women in Spain, with the assistance of migrant and racialized women experts, to determine the ways in which migrant and racialized women are being represented and analyze whether the campaigns are representative, whether they avoid symbolic violence, and whether all women are included. It is our hope that this will allow measures to be taken and social impacts to be positive and free of racial prejudice and discrimination.

- Carry out campaigns for eradication of gender violence against migrant women, with a gender and intersectional perspective, including active participation by survivors and migrant women experts in order to achieve the desired social impact on society as a whole and migrant women in particular.
- Carry out a campaign to identify and eliminate gender stereotypes about migrant and racialized women and the perception in Spanish society of the different forms of violence they face in Spain, from an intersectional perspective, involving migrant and racialized women in its design.
- Develop a specific survey on gender violence and structural violence against migrant women, with special attention to women with irregular immigration status.
- Provide comprehensive protection to migrant women, regardless of immigration status, and without implicit threat of deportation.
- Carry out studies and investigations focused on migrant women and women with irregular immigration status and gender violence in its multiple forms and manifestations.
- Carry out an investigation to identify how intersectional discrimination affects migrant women victims of violence when they seek comprehensive specialized care, protection, and access to general and specialized assistance.
- Amend the Aliens Act so that the issuance of a provisional residence and work authorization for exceptional circumstances is not conditioned on a protection order, a report from the prosecutor, a conviction, or a court finding showing that the woman has been a victim of sexual or gender violence by a current or former partner, allowing authorization to be made based on a report from social services, specialized services, shelter services for victims of sexual or gender violence

provided by a government agency, or any other agency authorized under local regulations governing access to rights and remedies.

- Revise and amend regulations of autonomous communities that establish requirements for access to certain social services and assistance so that it will no longer be necessary to repeatedly prove status as a victim of gender violence once a protection order, report from the prosecutor, or conviction is issued, and to improve coordination among governments.
- Provide mandatory, ongoing, assessable training on gender perspective, intersectional perspective, due diligence requirements, comprehensive reparations, elimination of gender stereotypes, children as subjects of rights, and the interdependence and interconnection of women's rights for the personnel of all institutions charged with protecting and ensuring their rights (police, judges, prosecutors, attorneys, healthcare personnel, and other public servants and officers). Training should also address the Istanbul Convention and the recommendations of GREVIO, with special attention to the situation of migrant women, racialized women, and women with irregular immigration status, taking them into account as subjects of rights, and including them the design, creation, and presentation of trainings.
- Ensure that the 016 hotline is staffed with professionals with specialized training on all forms of gender violence, incorporating a gender and intersectional perspective in assistance protocols in order to provide appropriate and accessible information, in understandable language, to migrant women callers.
- Ensure that the personnel of crime victim assistance offices have adequate specialized training on violence against women and gender and intersectional perspective so that they may appropriately inform and assist migrant women who come to their offices, regardless of immigration status.

- Ensure existence of, and access to, specialized services to prevent and respond to female genital mutilation and forced marriages.
- Develop a state-level protocol to establish procedures and coordination for cases of femicide of migrant women that takes into account their children and families, as well as their immigration status and the need for comprehensive reparations. It should include measures for repatriation of the remains of migrant women victims of femicide in cases where the victim expressed this wish when she was alive or the family requests it.
- Ensure that the children of femicide victims, whether minors or adults, as well as their caregivers after the femicide, have access to legalization if they have irregular immigration status and receive specific assistance to ensure their protection in the country.
- Ensure that all migrant women are aware of, have access to, and can exercise their sexual and reproductive rights, including the right to voluntary termination of pregnancy, at public healthcare facilities, at no cost, in equality, and without discrimination.
- Eliminate the crime of abortion with the consent of the pregnant woman from the Criminal Code (Article 145.2) so it will not continue to impact migrant women disproportionately.
- Develop a framework state protocol for trying cases of violence against women with a gender and intersectional perspective.
- Create a permanent assessment, monitoring, and evaluation system and mechanism, with a gender, human rights, and intersectional approach, for existing laws, policies, and plans, at the national and autonomous community levels, for preventing and

eliminating violence against women, in collaboration with specialized organizations and migrant women.

- Create an assessment, monitoring, evaluation, and sanctioning system and mechanism for discriminatory judicial practices contrary to the Istanbul Convention in order to ensure a response from the judiciary to such cases.
- Carry out an investigation into institutional violence against migrant women victims of gender violence, taking into account its impact on their mental health and on femicide-suicide.
- Recognize and raise awareness of organizations of migrant experts and professionals that can assist migrant women victims and survivors of sexist and structural violence with an intersectional approach.
- Provide support and the necessary financial resources for organizations of migrant professionals to carry out intervention and awareness-raising actions and individual assistance plans throughout the recovery process for migrant women victims and survivors of sexist and structural violence. Involving migrant women experts and professionals is the only way to build a framework of trust, support, empathy, and continuity with an intersectional approach, offering kindness, closeness, and therapeutic alliance, without stereotyped moral judgments. These are among the many factors that can support the integrity and dignity of migrant women.
- Take measures for the appropriate and effective implementation of Organic Law 10/2022, of September 6, on the Comprehensive Guarantee of Sexual Freedom.
- Provide more resources, risk assessment tools, shelters, reparations, restitution, and individual accompaniment.

- Implement programs on sexual education, equality, and prevention and awareness of sexist violence with an intersectional approach in schools.
- Ensure that campaigns for prevention and awareness of sexual violence apply the principle of intersectionality and include cultural, racial, class, sexual orientation, and religious diversity, among other identity factors.