

Women's Link Worldwide's response to the United Nations Special Rapporteur on extreme poverty and human rights' call for submissions on Spain in advance of country visit (27 January – 7 February 2020)

28 October 2019

1. Women's Link Worldwide welcomes the opportunity to contribute with written input on the situation in Spain with regard to poverty and human rights in advance of the Special Rapporteur's visit to Spain.

2. Women's Link is an international human rights organization that uses the power of the law to promote social change that advances the rights of women and girls, especially those facing multiple forms of discrimination¹. We bring a gender perspective and an intersectional analysis to human rights law, and we go beyond the courtroom and use our work in litigation and other legal processes to strengthen the human rights infrastructure, create public debate, and contribute to social movements that can transform society and guarantee women and girls' rights. Areas that fall within our scope of work are, amongst other, the defence of sexual and reproductive rights, and the defence of the rights of migrant women.

3. With this submissions, Women's Link Worldwide wants to call the SR's attention to two areas of concern for the organization where systematic human rights violations related to poverty might be happening with a gender component: the situation of temporary female migrant workers in the agricultural sector in Huelva (Andalusia), and the limited access of migrant women to the right to health, including sexual and reproductive health.

I. Labour exploitation and human rights violations of temporary female migrant workers in the agricultural sector in Huelva (Andalucía)

4. In Spain, while the principle of equality on the grounds on gender and other social conditions or circumstances is considered one of the highest values of its legal order² and the rights of migrant women to access protection and support are guaranteed by laws³, the State fails to consider the lived experiences of migrant women and to apply an intersectional analysis, which means that, in practice, migrant women face significant barriers when attempting to report gender-based abuse.

5. This failure of the State is particularly evident in relation to the female migrant workers, many of whom suffer labour exploitation and abuse during their employment harvesting soft fruits in the Huelva region of Spain. For two decades, Moroccan women have travelled to Spain every year to undertake seasonal work in the harvesting of berries and soft fruits in farms in the region

¹ More information at www.womenslinkworldwide.org

² The Spanish Constitution of 1978, Art 1.1. See also Arts. 9.2 and 14, available at <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

³See, for example, (in Spanish): <http://www.violenciagenero.igualdad.mpr.gob.es/informacionUtil/extranjeras/derechos/home.htm>

of Huelva under bilateral agreements between Spain and Morocco⁴. The women who are employed under these agreements often come from rural regions of Morocco where work is scarce. Upon arrival at Spanish shores, however, many of these women find themselves in a very different situation to the one that was promised to them before travelling⁵. These women are often deceived as to the terms of their employment: the promised 6.5 working hours per day come to up to 10 hours per day; the probation period of 15 days is doubled to one month; the fixed-term duration of their contracts changes from three months to a discretionary termination of employment; the promised salary of 39-40 EUR per day decreases significantly with even occasional lapses of payment. They are also often deceived as to the terms and conditions of their accommodation, which currently does not fulfil the right to an adequate standard of living (enshrined in Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights⁶): they are made to live in inhuman conditions in temporary accommodations close to the fields, isolated from the rest of the community and the services they need, with limited access to running water. These accommodations are often dirty and infested with insects⁷. Moreover, many women face situations of violence, with numerous reports of migrant women being harassed, raped, blackmailed, physically and sexually assaulted or verbally insulted⁸.

6. While the agreements between Spain and Morocco do not indicate specific selection criteria, in practice, women are specifically sought (as they are stereotypically considered to be more suitable for the harvesting of fragile soft fruits), and particularly women with children (to ensure they return to their families in their home country) who come from rural areas and from poor socio-economic backgrounds (and so are less likely to have received an extensive education, know how to read and write and be able to communicate in a language other than Arabic). The situation of vulnerability that these specific selection criteria create on these women constitute intersectional discrimination which has already caught the attention of other UN Special Rapporteurs, such as the Special Rapporteur on the right to food⁹.

7. During their employment, the companies involved in the berries industry take advantage of these women's vulnerability and, knowing that they face acute economic needs, they impose abusive conditions of labour. Women face penalties if they fail to achieve the high production targets set by companies (which combined with the over-recruitment can cause them to lose their jobs); they do not have fixed working hours but a daily changing schedule, and they are forced to complete unpaid overtime. These conditions are discriminatory, as workers of other nationalities are not subject to the same terms¹⁰. Although the particulars of each case vary, in general, these

⁴ The first agreement on hiring on the country of origin ("*contratación en origen*") between Morocco and Spain was signed in 2001. Available (in Spanish) at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2001-17764

⁵ European Parliament's Committee on Women's Rights and Gender Equality "The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU: The Need for a Human Rights and Gender based approach." pp. 29-31: [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604966/IPOL_STU\(2018\)604966_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604966/IPOL_STU(2018)604966_EN.pdf)

⁶ The International Covenant on Economic, Social and Cultural Rights was ratified by Spain on 27 April 1977.

⁷ For more information, see (available in Spanish): https://www.lasexta.com/programas/salvados/mejores-momentos/duchas-sucias-y-entre-insectos-estas-las-pesimas-___condiciones-en-las-que-se-ven-obligadas-a-vivir-las-temporeras-extranjeras- video_201903105c85799c0cf2f61c938082ed.html.

⁸ For more information, see: <https://correctiv.org/en/blog/2018/04/30/rape-in-the-fields>

⁹ UN. General Assembly (16 July 2018). *Interim report of the Special Rapporteur on the right to food on the right to food of agricultural workers*, A/73/164, para. 57: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/93/PDF/N1822493.pdf?OpenElement>.

¹⁰ FIDH investigation "Importing Workers, Exporting Strawberries- Working Conditions on Strawberry Farms in the Huelva Province (Spain), pp. 23- 28: https://www.fidh.org/JMG/pdf/report_strawberries_eng.pdf

migrant women are left by both the State and the companies in a situation where there is no escape and where they find themselves forced to work on the farm under whatever conditions are imposed.

8. In addition to enduring exploitative working conditions, these women also often face situations of gender-based violence. Their position of vulnerability, their lack of knowledge of the local language and their total dependence on the company for continued employment and shelter allows managers to exercise their power through sexual harassment, demands for sexual favours, sexual abuse and even forced prostitution¹¹. While reports of situations of such abuse are widespread, this issue has remained invisible and silenced for years due to the economic dependence of the region of Huelva on the revenue generated from strawberry production, which discourages people and media from uncovering these episodes¹². In addition, female migrants who suffer gender-based violence fear losing their job and their chance to be eligible for returning to work in Spain in subsequent seasons if they report the abuses they suffer.

9. Women's Link Worldwide is currently representing four Moroccan women who were hired to work as seasonal strawberry pickers in Huelva in 2018. They suffered labour exploitation and were sexually harassed by their field manager. We have reported the sexual harassment and filed complaints before the employment courts and the labour inspector relating to the exploitative working conditions they were forced to endure. Regarding the sexual harassment, criminal proceedings are ongoing before a Court in Moguer. Shockingly though, the Court held that the conditions described in the women's witness statements, such as non-payment of wages, 10 hour working days and verbal and physical abuse, 'could not constitute labour exploitation.' The court even questioned whether a situation of labour exploitation could exist where the women's employment was facilitated by a governmental bilateral visa agreement. On the other hand, the labour trial has been recently postponed until October 2020 due to procedural formalities.

10. The cases of the four women that we are representing are not isolated cases but rather make part of a wider situation where abuses towards female migrant workers employed in the agricultural sector are systematic. Recruitment and employment systems such as the ones used in the berries industry capitalise on the vulnerability of the chosen women to ensure the maximum economic benefit in the shortest period of time, regardless of the impacts on the women's human rights. Furthermore, the fact that these women are contractually obliged to return to their country at the end of their employment and that their future employment opportunities depend mostly on the employers making nominative offers, ensures that those who suffer abuse or abusive working conditions during their employment do not take steps to report it to the police.

11. In conclusion, seasonal migrant women in Spain are systematically exposed to unequal treatment and human rights abuses, in which vulnerability is key: the system of circular migration

¹¹ Available (in German) at: <https://correctiv.org/aktuelles/ungerechte-arbeit/2018/05/18/spanien-debattiert-nach-correctiv-recherche-ueber-missbrauch-von-ernehelferinnen> and at https://www.buzzfeed.com/de/pascalemueller/spanien-ermittelt-nach-buzzfeed-recherchen-gegen-erdbeerfarm?utm_term=.asm7dkXAb#.ohZK2L7kn ; in Spanish, at https://www.lasexta.com/programas/salvados/mejores-momentos/cuando-tu-jefe-te-acosa-hasta-en-la-ducha-la-dura-%20experiencia-de-las-temporeras-extranjeras-para-demostrar-los-abusos-que-sufren-%20video_201903105c8579c60cf29ace1583868a.html

¹² Available at: <https://www.theguardian.com/global-development/2019/apr/14/rape-abuse-claims-spains-strawberry-industry>

ensure the maximum financial gain for the companies, which capitalize on the multiple forms of discrimination faced by these women that place them in a position of vulnerability, which is then exacerbated by the system. The State is not only failing to remedy these human rights violations but is also creating the conditions for them to happen. Both companies and the State have a responsibility in this situation and must take measures to modify circular migration agreements so that they ensure that the human rights of female seasonal workers are respected and protected.

II. Limited access of migrant women to their right to health, including their sexual and reproductive health

12. Although the Spanish Constitution recognizes the right to health without discrimination¹³ and despite Spain being under an international obligation to guarantee this right¹⁴, migrant women, including victims of human trafficking (THB), face obstacles to exercise their right to health, including sexual and reproductive health. Concretely, they find a number of barriers to terminate their pregnancies despite this being a right recognized for all women under Spanish law¹⁵.

13. In April 2012, the Government approved the Royal Decree-Law 16/2012¹⁶, which had the effect of denying access to health care to foreigners without authorization to reside in the country except for those in “special situations” (defined as an emergency situation resulting from a serious illness or an accident; healthcare for pregnant women, both prenatal and postnatal; and healthcare for children —up to 18 years old¹⁷). Both national¹⁸ as well as international¹⁹ institutions criticized this limitation of the right to health and, in July 2018 the Royal Decree-Law 7/2018²⁰ was introduced, which amended the 2012 Royal-Decree Law. However, this new Royal Decree-Law does not totally reverse the situation and does not fully guarantee undocumented migrant women’s access to health. The regulations approved by the government to implement

¹³ The Spanish Constitution of 1978, Arts. 43 and 14. Available at: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

¹⁴ Amongst others, Art. 12 of the International Covenant on Economic, Social and Cultural Rights ratified by Spain on 1977.

¹⁵ Organic Law 2/2010 of 3 March. Available (in Spanish) at: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-3514>

¹⁶ Royal Legislative Decree 16/2012 of 20 April on urgent measures to guarantee a sustainable national health system and improve the quality and security of care. Available (in Spanish) at: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5403>

¹⁷ Royal Decree-Law 16/2012, Art. 3ter.

¹⁸ Several autonomous communities, in disagreement with the limitation implied in the Royal Decree-Law 16/2012 continued to implement the right to health as universal and unlimited. However, those laws were declared unconstitutional by the Spanish State, which -instead- held the Royal Decree-Law constitutional. See Judgement of the Constitutional Court 139/2016, of 21 July. Available (in Spanish) at: <https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/2506>.

¹⁹ See for example Amnesty International (Spain). *Submission to the United Nations Committee on Economic, Social and Cultural Rights*, March 2018, pp. 16-17: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ESP/INT_CESCR_CSS_ESP_30353_E.pdf, pointing out in particular, and amongst other issues, Spain’s lack of a prior human rights impact assessment, failure to fulfil the CESCR obligation to make full use of their maximum available resources, and an aggravation of the situation for already vulnerable groups (e.g. victims of human trafficking and sexual and reproductive rights), as well as urgently recommending to reverse the situation as it was prior to Royal Decree-Law 16/2012. Also, UN. Committee on Economic, Social and Cultural Rights. *Concluding observations on the sixth periodic report of Spain*, E/C.12/ESP/CO/6, para. 42 y 44.

²⁰ Royal Decree-Law 7/2018 of 27 July on the universal access to the National Health System. Available (in Spanish) at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-10752.

this Decree-Law, particularly the Resolution of 20 July 2019²¹, do not guarantee access to public healthcare services to all migrant women in as much as it requires them to produce proof that they have lived in Spain for three months before accessing these services. This requirement, which is not included in the law nor the international instruments on the right to health ratified by Spain, excludes migrant women who have not been in Spain for three months and those who are not able to prove it. Moreover, exceptions are not contemplated for pregnant women, children or emergency situations.

14. Some migrant women in a situation of vulnerability, such as undocumented migrants, victims of human trafficking or other forms of gender-based violence face serious difficulties in producing proof that they have lived in Spain. In application of this requirement, these women are prevented from accessing public healthcare services when they desire to terminate their pregnancies. The creation of obstacles in the access to public healthcare services, including abortion for migrant women, especially for victims of human trafficking, is a form of discrimination and of gender-based violence. The lack of access to sexual and reproductive services by migrant women in Spain has been highlighted as a matter of concern by both the CEDAW Committee²² and the CESR Committee²³.

15. Regarding the situation of migrant women who are victims of trafficking, although the National Plan Against Trafficking of Women and Girls for Sexual Exploitation²⁴ mentions training campaigns on identification of victims of THB among healthcare providers and despite the enactment of Royal Decree-Law 7/2018 supposedly granting access to undocumented migrants to the public healthcare system, Women's Link Worldwide has come across a significant number of cases where migrant women victims of human trafficking or in situations of vulnerability have experienced barriers to exercise their right to a legal and free abortion. In these cases, the administrative staff refused to provide assistance to these women because they did not provide documents attesting to their registration as residents in Spain. This responds to a lack of implementation measures of the Royal Decree-Law 7/2018, a lack of training on identification of women victims of THB and an arbitrary interpretation of the legislation leading to discrimination.

16. Women's Link Worldwide gives herewith consent for the publication of these submissions on the website of the Special Rapporteur.

²¹Available (in Spanish) at: https://statics-correofarmaceutico.uecdn.es/cms/sites/11/2019/07/documento_recomendaciones.pdf

²² UN. Committee on the Elimination of Discrimination against Women. *Concluding observations on the combined seventh and eighth periodic reports of Spain*, CEDAW/C/ESP/CO/7-8, par. 30 y 31.

²³ UN. Committee on Economic, Social and Cultural Rights. *Concluding observations on the sixth periodic report of Spain*, E/C.12/ESP/CO/6, para. 42 y 44.

²⁴Available (in Spanish) at: www.violenciagenero.igualdad.mpr.gob.es/planActuacion/planContraExplotacionSexual/docs/Plan_Integral_Trata_1_8_Septiembre2015_2018.pdf