

Response to call for submissions on good practices and initiatives of gender-responsive migration legislation, policies, and practices.

1. Women's Link Worldwide welcomes the opportunity to contribute to the study being undertaken by the Special Rapporteur on good practices or initiatives of gender-responsible migration legislation, policies and practices.

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 discrimination.¹ 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.

3. In the following submissions, Women's Link seeks to address the key issues regarding women migrants which we have identified through our strategic litigation work and investigations across two of our focus regions (Europe and Latin America).

I. MIGRANT WOMEN IN THE AGRICULTURAL SECTOR: LABOUR EXPLOITATION AND HUMAN RIGHTS VIOLATIONS

4. In Spain, the principle of equality is considered one of the highest values of its legal order.² In recent years, the Spanish Government has placed significant importance on developing gender-sensitive laws and initiatives which ensure that this fundamental principle of equality is reinforced.³ This emphasis by the Spanish State on gender-sensitivity, while positive, has in fact been triggered by the need to address concerningly high levels of discrimination and violence which women and girls continue to face;⁴ violence which disproportionately affects women from poor socio-economic backgrounds and migrant women.

¹ More information at www.womenslinkworldwide.org

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

³ For example, the approval of two regulations has played a pivotal role in enshrining the State's efforts to ensure gender equality in law: the Organic Law 1/2004 of 28 December (Available in Spanish at <https://www.boe.es/eli/es/lo/2004/12/28/1/dof/spa/pdf>) and the Organic Law 3/2007 of 22nd March (Available in Spanish at <https://www.boe.es/buscar/pdf/2007/BOE-A-2007-6115-consolidado.pdf>) The State has further sought to implement initiatives, in particular the 2017 State Pact against Gender Based Violence, which aims to ensure the eradication of violence against women.

⁴ For example, in 2016 there were 28,281 officially registered female victims of gender-related violence in Spain, a 2.4% rise from the previous year, according to Spain's National Statistics Institute (INE). Report available in Spanish at http://www.ine.es/prensa/evdvg_2016.pdf

5. While the rights of migrant women to access protection and support are guaranteed by law,⁵ in practice, this is dependent on their willingness to bring charges against their abuser. For migrants in an irregular administrative situation, this process may culminate with their expulsion from the country. It is therefore evident that the failure of the State to consider the lived experiences of migrant women and apply an intersectional analysis means that, in practice, migrant women face significant barriers when attempting to report gender-based abuse.

6. The failure of the State to consider the realities faced by migrant women 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. Each year, under bilateral agreements between Spain and Morocco, Moroccan women travel to Spain to undertake seasonal work in the harvesting of berries and soft fruits in farms in the region of Huelva, in Andalusia. The women who are often employed under these agreements generally come from rural regions of Morocco where work is scarce. Upon their arrival on Spanish shores, however, many of the migrant women find themselves in a very different situation than that which they were promised.⁶ Not only are women often deceived as to the terms of their employment and accommodation,⁷ many face situations of violence, with numerous reports of migrant women being harassed, raped, blackmailed, physically and sexually assaulted or verbally insulted.⁸

7. While the agreements between Spain and Morocco do not specify 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 countries) who come from rural areas (and so are less likely to have received an extensive education). During their employment, the fact that these women are in a position of vulnerability and are in acute economic need is exploited by companies to impose abusive conditions of labour. They face penalties if they fail to achieve the high production targets set by companies and they are forced to complete unpaid overtime; conditions which are discriminatory, as workers of other nationalities are not subject to the same terms.⁹

⁵ See, for example, <http://www.violenciagenero.igualdad.mpr.gob.es/informacionUtil/extranjeras/derechos/home.htm>

⁶ 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." Pages 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)

⁷ The women are forced to live in inhuman conditions in temporary accommodation close to the fields. Many do not have access to running water and the huts are often dirty and infested with insects. For more information, see 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 (*only in Spanish*)

⁸ <https://correctiv.org/en/blog/2018/04/30/rape-in-the-fields>

⁹ FIDH investigation "Importing Workers, Exporting Strawberries- Working Conditions on Strawberry Farms in the Huelva Province (Spain), Pages 23- 28; https://www.fidh.org/IMG/pdf/report_strawberries_eng.pdf

8. During their employment, in addition to enduring exploitative working conditions, the women also often face situations of gender-based violence. The women's position of vulnerability, their lack of knowledge of the local language and their total dependence on the company for continued employment and shelter allows overseers to exercise their power through sexual harassment, demands for sexual favours, sexual abuse and even forced prostitution.¹⁰ While reports of situations of such abuse are widespread, this issue has remained invisible for years due to the economic dependence of the region of Huelva on the revenue generated from strawberry production.¹¹ In addition, female migrants who suffer gender-based violence fear losing their position and their chance to return to work in Spain in subsequent seasons if they report the abuse they suffer.

9. This issue is not an isolated one, but instead is emblematic of the systematic abuse suffered by female migrant workers employed in the agricultural sector. Systems of recruitment and employment such as this capitalise on the vulnerability and total dependence of migrant women to ensure the maximum economic benefit in the shortest period of time, regardless of the impact this has on the women's human rights. Further, the fact that the women are contractually obliged to return to their country of origin at the end of their employment and that future employment opportunities are contingent on the women co-operating with the contract ensures that those who suffer abuse during their employment do not take steps to report this to the police.

10. In relation to female migrant workers, it is vital that States put measures and policies in place to ensure that corporations are compliant with human rights norms both within their company and within their supply chains. States must apply a gender-sensitive, intersectional approach to the development of these policies

II. HUMAN RIGHTS VIOLATIONS OF VENEZUELAN MIGRANT WOMEN IN COLOMBIA: DISCRIMINATION AND LACK OF PROTECTION CONTINUES

11. The Inter-American Commission on Human Rights (IACHR) issued public advisories on the current forced migration of Venezuelans, that there are multiples obstacles faced by this group,

¹⁰ Available in German: <https://correctiv.org/recherchen/arbeit/artikel/2018/05/18/spanien-debattiert-nach-correctiv-recherche-uber-missbrauch-von-ernte-helferinnen/>; https://www.buzzfeed.com/de/pascalemueller/spanien-ermittelt-nach-buzzfeed-recherchen-gegen-erdbeerfarm?utm_term=.asm7dkXAb#.ohZK2L7kn ; in Spanish https://www.lasexta.com/programas/salvados/mejores-momentos/cuando-tu-jefe-te-acosa-hasta-en-la-ducha-la-dura-experiencia-de-las-temporeras-extranjeras-para-demostrar-los-abusos-que-sufren-video_201903105c8579c60cf29ace1583868a.html

¹¹ <https://www.theguardian.com/global-development/2019/apr/14/rape-abuse-claims-spains-strawberry-industry>

in particular for those that suffer discrimination, sexual and gender-based violence as well as obstacles to access to health services, among others¹². In this context, Women's Link has been working to visibilize the specific reasons women are forcibly leaving Venezuela; the necessities and vulnerabilities they face in their country of origin; and the importance of countries in the region, like Colombia, to implement a human rights perspective in the formation of a regional response to the current humanitarian crisis.¹³

12. In Venezuela the public health system is virtually non-existent for women and girls resulting in severe restrictions in accessing sexual and reproductive care services. This is combined with situations of poverty, extreme poverty, and malnutrition—problems that disproportionately impact women.¹⁴ In addition, the current humanitarian crisis and the serious deterioration of the quality of life among the Venezuela population, is also a risk factor to be captured into human trafficking networks and other forms of exploitation.¹⁵

13. We have called on Colombia, as the recipient of the largest number of Venezuelan migrants, to also take into account the disproportionate impact that the current complex humanitarian crisis in Venezuela has on the human rights situation of women and girls, as this becomes a crucial factor of risk that accompanies them throughout the migration process.¹⁶ The CEDAW Committee has already called on the Colombia to fulfill its obligation of reinforced protection for Venezuelan women acknowledging that they continue to face violence and exploitation within the current migration crisis.¹⁷

¹² IACHR. Resolution 2/18. Forced migration of Venezuelans. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf>

¹³ Women's Link was part of the elaboration of the civil society action plan of the Venezuelan human mobility group launched at the end of 2018, that identifies a series of cross-cutting actions and requests to the States to face the migration crisis with a focus on human rights and gender perspective. Available in Spanish at: www.movhuve.org/wp-content/uploads/2018/11/PLAN-DE-ACCI%C3%93N-DE-SOCIEDAD-CIVIL-SOBRE-PERSONAS-PROVENIENTES-DE-VENEZUELA-QUE-REQUIEREN-PROTECCI%C3%93N-NACIONAL-E-INTERNACIONAL.pdf

¹⁴ Informe Mujeres al límite. El peso de la emergencia humanitaria: vulneración de derechos humanos de las mujeres en Venezuela. 2017. Available at: <http://revistasic.gumilla.org/wp-content/uploads/2017/11/Mujeres-al-limite.pdf> (*only in Spanish*)

¹⁵ Gestión eficiente de la movilidad humana de mujeres y niñas venezolanas con enfoque diferencial de derecho y de género. Manual desarrollado por el Centro de Justicia y Paz (CEPAZ) en alianza con AVESA, FREYA, Mujeres en Línea y UNIANDES Acción Popular. Available at: <https://cepez.org.ve/wp-content/uploads/2019/03/Manual-Final-1.pdf> (*only in Spanish*)

¹⁶ Informe sombra sobre el noveno informe de Colombia ante el Comité para la Eliminación de la Discriminación contra la Mujer. Presentado por Women's Link en alianza con las organizaciones venezolanas CEPAZ, FREYA, Mujeres en Línea y AVESA, de la Red Equivalencias en Acción. Febrero 2019. Available at: <https://www.womenslinkworldwide.org/files/3079/informe-sombra-sobre-el-noveno-informe-de-colombia-ante-la-cedaw.pdf> (*only in Spanish*)

¹⁷ Comité para la Eliminación de la Discriminación contra la Mujer. Observaciones finales sobre el noveno informe periódico de Colombia. CEDAW/C/COL/CO/9 (*only in Spanish*)

14. Through documentation and follow up of the cases Women's Link has litigated in Colombia, we know that Colombia is not fulfilling this obligation. We have specifically identified that Colombia has not implemented an adequate response from a human rights and gender-based perspective to address the situation of Venezuelan women and girls in at least two areas: i) the right to access sexual and reproductive health services, and ii) the right to be identified as victims of violence and/or trafficking thereby having access to domestic protection mechanisms.

15. For example, Women's Link has undertaken legal actions in favour of a Venezuelan girl (M.A.C.) who was diagnosed with toxoplasmosis while residing in Venezuela. She was never able to access medicines to treat her illness, due to the complex humanitarian crisis in the country. She later became pregnant unintentionally in a consensual relationship in the absence of any available family planning or contraceptive method. Due to the precariousness of medical care in Venezuela, as well as the impossibility of accessing food, M.A.C. and her family decided to migrate to the municipality of Arauca in Colombia, seeking to improve their situation and for M.A.C. to have access to the medical care she needed. However, once in Colombia, M.A.C. did not have access to prenatal care services because the staff of the local Hospital in Arauca denied her services because of her nationality. The hospital refused to provide medical services despite the fact that the toxoplasmosis infection along with her age, made her pregnancy one of high risk.

16. Women's Link also documented the case of a Venezuelan girl whose father, of Colombian nationality, took her to Arauca (Colombia) to exploit her sexually. The case illustrates the serious difficulties in the process of identifying trafficking victims and the consequences this failure have in Colombia. Regarding the identification of victims of trafficking, Women's Link has found Colombian authorities' failure to understand how trafficking networks function leads to regular confusion of trafficking with other related crimes such as sexual exploitation or migrant trafficking, and near impossibility of authorities to accurately identify victims of trafficking and provide the protections and services to which they are entitled.¹⁸

17. In the aforementioned case, Colombian authorities specifically the Colombian Family Welfare Institute (ICBF) and the Omdusperson Office, did not analyse what was a clear situation of trafficking for this victim. As a result, the authorities failed to identify and assist her adequately. Instead they activated a repatriation process without any risk assesment, that resuled in the victim being taken back to Venezuela, in a further violation of her rights. Women's Link requested precautionary measures before the Inter-American Commission on Human Rights due to the imminent situation of risk of the victim, and given the failure of the Colombian State to act with

¹⁸ Women's Link Worldwide. *Víctimas de trata en América Latina: Entre la desprotección y la indiferencia*. 2017. Págs. 30,32. Available at: <https://bit.ly/2xv3B0P> (only in Spanish).

due diligence, to guarantee protection for the victim, and to fully investigate the context in which this situation was being denounced. The victim eventually returned to Colombia and as a result of the IACHR request for information to the State, she was placed in custody of the ICBF. Nonetheless, this failure to identify her as a possible victim of sexual violence and trafficking, meant that in two separate occasions, the girl was with her abuser because of intervention by Colombian authorities. Thus, the facts of this case demonstrate how a lack of understanding of the issue of human trafficking leads state agents to fail in their duty to identify victims of trafficking to the extreme detriment of those women and girls.