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★ VIOLADAS Y EXPULSADAS ★

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EXECUTIVE SUMMARY

RAPED AND DEPORTED

FEMALE VICTIMS OF SEXUAL VIOLENCE WITH AN IRREGULAR MIGRANT STATUS

FUNDACIÓN



"I live here, I've got no papers, no healthcare, no bank account, nothing. Just my city census document, no health insurance, no job...I work but they don't pay me, you know, no rights, nothing. I don't know how to describe it...I'm like a wild animal."

Russian female victim of sexual violence living in Spain with an irregular migrant status since 2006

Sexual violence is a grave violation of human rights, and one of the most prevalent types of violence against women, which stems from gender-based discrimination.

Despite the fact that each and every state is fundamentally obligated to effectively protect human rights for all without discrimination, not all women are protected by the same institutional safeguards (real, legal, and administrative) in situations of violence. As a group, migrant women who are undocumented face situations of greater risk in terms of sexual violence. After suffering from this type of abuse, they must deal with added obstacles when they decide to ask for help, protection, justice and compensation.

In the last decade, Spain has made significant legislative and political progress in addressing violence against women. The Spanish government has actively fought against gender-based violence committed by intimate partners and ex-partners through the passing of a specific law, and against the trafficking of women for the purposes of sexual exploitation through various legal reforms and a specific action plan. Despite a few shortcomings, a number of provisions were introduced into the Spanish Law on Immigration which are applicable to both cases. Representing a veritable paradigm shift, these amendments now force immigration officials to see these women as being victims and survivors of serious human rights violations and not as undocumented immigrants to be punished.

Yet these advances still have a long way to go in terms of the fight against sexual violence. Beyond the legislation and public policies developed by some Spanish autonomous communities to help these victims, the absence of a national framework that will support policy-making in the face of sexual violence has created a vacuum in terms of prevention, integrated care, protection, justice and compensation from a gender-based perspective. As a result, and although it is considered one of the most common types of gender-based violence, sexual violence has become one of the most invisible and ignored forms of violence today.

Through its report entitled "Raped and Deported: female victims of sexual violence with an irregular migrant status," the Fundación para la Convivencia Aspacia hopes to expose the painful situation of these women - undocumented migrants who are also victims of sexual violence. We hope to contribute to the effective protection of all victims of sexual violence, regardless of their legal status, and urge the Spanish government to make the fight against sexual violence a priority within a gender-based framework.



GENERAL OBSTACLES FACING VICTIMS OF SEXUAL VIOLENCE WITH AN IRREGULAR MIGRANT STATUS

The Fundación para la Convivencia Aspacia has discovered a number of general obstacles faced by female victims of sexual violence with an irregular migrant status when they try to gain access to protection and compensation.

- *A need for nation-wide public policy on sexual violence.* Unlike the trafficking of women or gender-based violence committed by an intimate partner or ex-partner, the issue of sexual violence against women has not motivated any integrated action in legislative terms. Although the criminal sanctions for sexual violence committed against minors has been reinforced thanks to an amendment of the Criminal Code and which came into effect in 2010, there is still no action plan at the national level which makes use of an explicit gender-based perspective which is equipped with the resources needed to combat sexual violence.

The absence of a national action plan has led to significant vacuums in this matter: there is no data on the prevalence and magnitude of sexual violence; no attempt has been made to develop campaigns to prevent sexual violence; not all autonomous communities have centres specialised in victims of sexual assault; there is also a glaring lack of legal assistance specifically geared towards sexual assault victims; along with other gaps.

- *Shortcomings in the protection of human rights for migrant women.* Despite the ratification of the Spanish Strategic Plan for Citizenship and Integration (2007-2010), the results fall short of initial expectations. Discrimination is still a reality facing migrant women, a fact acknowledged by the aforementioned Strategic Plan for Citizenship and Integration, or II PEI (2011-2014), which states that the objectives reached in terms of discrimination against women are some of the lowest of the Strategy. Despite all of this, the II PEI does not establish any lines of action that will address the precariousness and the exploitation that is inordinately directed towards women, which our study has identified in sectors such as domestic services.
- *Discrimination factors which undermine protection of female migrants with an irregular status vis-à-vis sexual assault.* All states are obligated to respect and protect human rights for all the persons within their jurisdictions, without discrimination. Yet the study has detected discriminatory cultural and structural elements which undermine the protection of women who are victims of sexual violence.
- Their irregular status is linked to sectors of casual work and economic precariousness which become risk factors for sexual violence. This study found that sexual harassment was especially prevalent in sectors such as domestic services.



- The existence of three key regulatory norms: Spanish immigration law, the recent healthcare reform which bars immigrants from gaining access to healthcare, and Spanish legislation on victims of sexual assault - all currently in force – directly discriminate against undocumented women. The first two regulatory norms sanction undocumented women and the last stops women from gaining access to compensation when the assailant claims insolvency.
- *Normalization and invisibility of sexual violence.* If sexual violence is a form of violence that is generally hidden from the mainstream, when committed against undocumented migrant women, either within the family setting or when employed as casual workers, it becomes even more insidious. It has been shown to a significant degree that for certain sectors, normalization and invisibility of sexual violence is accepted as something normal, especially in the domestic services sector. The victims themselves affirm that sexual assault in this context is sustained under the impunity of the assailants, and is bound up in sexist and xenophobic attitudes of employers and relatives.
- *Barriers to healthcare.* Despite the progress made by the Spanish government in the area of healthcare, thanks to the promotion of the Common Protocol of Actions against Gender-based Violence (2007/2012), this study has identified specific obstacles for undocumented migrant women seeking emergency services, post-assault examination and medical care to palliate the effects of sexual violence. In addition to preventing victims from exercising their full right to healthcare access, these obstacles also increase suffering among victims. This goes against the guidelines established by WHO which are based on the premise that victims of sexual violence should receive care that comprises emergency services, post-assault treatment and follow-up of victims.



By way of an example, we have the healthcare regulations currently in force (Royal Decree - Act 16/2012) which prevents undocumented immigrant women from receiving adequate and comprehensive treatment after experiencing sexual violence, since all foreign persons who “not insured” are excluded from public healthcare coverage.

This leads to discrimination in the access to adequate treatment and follow-up, access to test results for STDs and other sexually-transmitted diseases such as HIV, access to treatment of pre-existing conditions that are exacerbated by rape or access to treatment of depression exacerbated by sexual assault.

- *Obstacles in reporting assault: sanctions by Immigration.* One of the fundamental obligations of a State concerning victims of sexual violence is to facilitate reporting of the assault. This mechanism ensures that assailants are brought to justice and guarantees justice and compensation for victims. It is the key to victims' future security and support. Yet there is no guarantee under Spanish law that an undocumented female migrant who contacts the police after experiencing sexual assault will not be sanctioned or even deported to her country of origin.

In spite of the sanctions established by the Spanish Immigration Law concerning the irregular status of persons, two exceptions to the general regulations have been established when disciplinary proceedings are opened for undocumented persons. The reform of the Spanish Immigration Law in 2009 and its ratification in 2011 introduced two provisions which protect undocumented female migrants who are victims of gender-based violence at the hands of their intimate partners or ex-partners and female victims of trafficking. Yet these provisions do not apply to victims of sexual violence.

The absence of legal protection and the fear of being deported when they report the crime is used by sexual assailants as a strategy to ensure their impunity, as has been demonstrated by this study. Similarly, victims fear being sanctioned and deported, which discourages them from reporting the assault and requesting protection. Aspacía has observed that in practice, police departments are addressing this legal vacuum and helping victims. Nevertheless, the lack of legal criteria in the work of the police to prevent sanctions for undocumented women migrants may lead to a breach in the law.

- *Credibility of undocumented victim's testimony.* As the WHO warns, one of the most common myths and prejudices concerning sexual violence is the suspicion that women falsely report instances of sexual violence and use this tactic to achieve certain ends. This myth is probably one of the most pervasive, existing in all settings and sectors.

The teams of experts who work with victims affirm that this attitude is even more prevalent in the case of undocumented immigrants, putting at risk the credibility of their testimony. Experts working in the field worry about the prejudices that surround this type of crime. These prejudices and myths involve messages that link the reporting of a crime with certain legal benefits.

Their irregular status leads to the suspicion of false testimony. The opinion among professionals of the penal system interviewed (police, public prosecutors and judges) is that reporting a crime to avoid deportation is a strategy used by some victims. Nevertheless, the reality still remains: victims have no legal protection against deportation, regardless of the veracity of their testimony.

- *Barriers to compensation.* Receiving compensation for a crime of sexual violence that has been legally recognised by a court of law is quite difficult for many women - both Spanish and foreign, even if they are entitled to receive it. This state of affairs means that fraud related to compensation is rare. For undocumented women immigrants, there are also further legal and structural impediments which constitute discrimination in access to compensation as established by legal sentence when the convicted assailant declares insolvency.

Law 35/1995 on financial aid and assistance for victims of violent crimes and crimes against sexual freedom, and its regulatory mechanisms, establishes a restrictive and discriminatory interpretation with regard to undocumented women migrants, preventing them from benefiting from financial aid even though a violation of their rights has been acknowledged by a firm sentence in a court of law.



MAIN CONCLUSIONS

- As in the case of trafficking of women or gender-based violence committed by an intimate partner or ex-partner, Spain should have a public policy in place at the state-wide level which addresses sexual violence. This policy should include preventative measures, mechanisms that ensure specialised services for victim care, specialised legal assistance and specific judicial treatment which incorporates a gender-based perspective.
- We must act now to recognise and mitigate multi-faceted gender-based discrimination, the status of immigrants, and the undocumented status which increase the vulnerability of women in situations of sexual violence and prevents survivors from exercising their basic rights. The intersection between gender and the non-regulated condition of an undocumented migrant breeds discrimination and is a key factor in their vulnerability when their rights are violated.
- Although the prohibition of discrimination is the cornerstone of our mandate to ensure human rights are upheld, there are specific factors leading to their vulnerability in situations of sexual violence that bring about real discrimination against undocumented women migrants.
- There are structural factors which are discriminatory; these notably include three laws currently in force in Spain which discriminate against women in these cases, hindering them from exercising a) their right to adequate healthcare b) their right to freely report the crime and c) their right to receive compensation for damages when the convicted assailant declares insolvency.
- The passing of the Act 16/2012, of April 20, on Emergency measures which guarantee sustainability of the National Healthcare System, has been identified as an obstacle to their right to healthcare assistance. This act prevents undocumented women immigrants from accessing adequate medical treatment and follow-up care to palliate effects of sexual violence.
- The lack of protection for victims of sexual violence under the Spanish Immigration Law means that when sexual violence is reported, disciplinary proceedings are filed by the Immigration department, or the victims are detained for deportation if a deportation order had previously been filed against them.
- The fear of undocumented women immigrants in becoming “visible” due to deportation is one of the main obstacles facing women when they are deciding whether to report the crime. This constitutes discrimination with respect to the rest of the victims in terms of access to justice.
- The restrictive interpretation of the regulations for the Act 35/1995 on financial aid for victims of violent crimes and crimes against sexual freedom impedes undocumented female migrants who have had their rights violated by a crime accredited by a court of law from receiving said aid.
- The cultural factors leading to this vulnerability, as seen in professional discourse and beliefs, mean that victims who report sexual violence are subject to suspicion as to the veracity of their testimony and are thought to turn to this strategy to avoid deportation.

RECOMMENDATIONS BY THE FUNDACION PARA LA CONVIVENCIA ASPACIA

To eliminate the obstacles identified in this study, to advance in the effective protection of human rights for women who are victims of sexual violence, and to ensure no discrimination occurs, it is essential that there be changes to legislation, public policy and an improvement in attitudes among professionals. We offer the following recommendations:

- The implementation of an Action Plan against Sexual Violence on the part of the Spanish government, which sets out an integrated, nation-wide public policy plan based on research, prevention, victim protection and care, and justice for all victims of sexual violence, regardless of their immigration status.
- Greater reforms to current legislation concerning access to the National Healthcare System, to guarantee healthcare for all victims of sexual violence and to ensure they receive all services provided by the same.
- Reform of immigration laws to ensure that victims are protected in cases of sexual violence when disciplinary proceedings are filed due to their irregular status or when an existing order is pending execution, after they report a case of sexual violence.
- Amend the regulations of Act 35/1995 on financial aid for victims of violent crimes and crimes against sexual freedom, so that undocumented women migrants are guaranteed access to financial aid when a legal sentence ratifies the violation of their rights.
- An in-depth study of the factors that contribute to the vulnerability of migrant women working in casual and opaque contexts such as prostitution or the domestic services sector, to ensure the rights of women working in these sectors are protected.
- Ensure that the professionals working in integrated care of victims of gender-based violence are fully trained in the subject of sexual violence.
- Deploy nation-wide resources for emergency care and recovery specifically geared towards sexual violence and ensure that they are sufficient, accessible and of high-quality.
- Provide training for professionals in the area of legal services, police, public prosecution and the judicial system, to promote greater specialisation and further understanding of sexual violence.

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The background of the entire image consists of a repeating pattern of diagonal stripes. The stripes are a bright, slightly textured yellow, set against a solid black background. The stripes run from the top-left towards the bottom-right at a 45-degree angle.

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