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## COMPLIANCE WITH THE INTERNATIONAL GENDER FRAMEWORK IN MARITIME MIXED MIGRATION INTERCEPTION AND RESCUE OPERATIONS: THE CASE OF SPAIN IN A EUROPEAN CONTEXT

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I.INTRODUCTION. II. THE APPROACH OF THE EU AND ITS MEMBER STATES TOWARD MIXED MIGRATION BY SEA: IMPLICATIONS FOR INTERCEPTION AND ASSISTANCE AT SEA. III. THE INTERNATIONAL GENDER FRAMEWORK: IMPACT ON MARITIME INTERCEPTION AND RESCUE OPERATIONS. IV. SPAIN’S FULFILMENT OF INTERNATIONAL GENDER OBLIGATIONS AND COMMITMENTS WITH RELATION TO SEA OPERATIONS LINKED TO MIXED MIGRATION. V.CHALLENGES AND DIFFICULTIES IN SPAIN’S COMPLIANCE: AREAS AND PROPOSALS FOR ACTION. VI.CONCLUSIONS

**ABSTRACT:** Women make up around 10% of those arriving irregularly to Spain through mixed migration by sea. For its part, Spain has carried out an extensive overhaul of regulations relating to gender. This national framework has not only been driven by social changes but is largely due to international obligations and commitments arising from the Convention on the elimination of all forms of discrimination against women, the Council of Europe Convention on preventing and combating violence against women and domestic violence, the UN Women, Peace and Security Agenda, and the 2030 Agenda for Sustainable Development.

Taking these factors as a basis, this article focuses on an analysis of the extent to which Spain is complying with these international obligations and commitments on gender in cases of rescue or interception operations at sea involving mixed migration in a European context. Information from

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current international and national monitoring and follow-up mechanisms is used for this evaluation. Following this, problems and obstacles hampering compliance are identified, and potential changes and improvements are proposed.

**KEYWORDS:** mixed migration, gender, sea rescue, interception, Spain, European Union.

## **RESPECT DU CADRE INTERNATIONAL SUR LE GENRE LORS DES OPÉRATIONS MARITIMES D'INTERCEPTION ET DE SAUVETAGE LIÉES À LA MIGRATION MIXTE: LE CAS DE L'ESPAGNE DANS UN CONTEXTE EUROPÉEN**

**RÉSUMÉ:** Les femmes représentant environ 10% des personnes qu'arrivent en Espagne de manière irrégulier dans le cadre de la migration mixte par voie maritime. Par ailleurs, l'Espagne a réalisé un développement normatif intense en matière de genre. Ce cadre normatif national n'est pas seulement le résultat de changements sociaux, mais principalement des obligations et des engagements internationaux découlant de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (« Convention d'Istanbul »), et les agendas des Nations Unies « Femmes, paix et sécurité » et « L'Agenda 2030 et les objectifs de développement durable ».

Sur la base de ces idées, ce travail porte sur l'analyse du respect pour l'Espagne de ces obligations et engagement internationaux en matière de genre dans le cas d'opérations d'interception et/ou de sauvetage maritimes liées à la migration mixte dans le contexte européen actuel. Pour ce faire, les informations issues des mécanismes de supervision et de suivi existant au niveau international et national sont prises comme référence. Ensuite, les problèmes et les difficultés pour atteindre ladite conformité sont identifiés, en proposant des voies possibles de changement et d'amélioration.

**MOTS-CLÉS:** migration mixte par voie maritime, genre, sauvetage en mer, interception, l'Espagne, Union européenne.

## **CUMPLIMIENTO DEL MARCO INTERNACIONAL EN MATERIA DE GÉNERO EN OPERACIONES MARÍTIMAS DE INTERCEPCIÓN Y SALVAMENTO LIGADAS A LA MIGRACIÓN MIXTA: EL CASO DE ESPAÑA EN UN CONTEXTO EUROPEO**

**RESUMEN:** Las mujeres representan el 10% aproximadamente de las personas que llegan a España irregularmente en el marco de la migración mixta por mar. A su vez, España ha llevado a cabo un intenso desarrollo normativo en materia de género. Este marco normativo nacional no sólo es el resultado de cambios sociales, sino principalmente de las obligaciones y compromisos internacionales derivados del Convenio para la eliminación de todas las formas de discriminación de la mujer, del Convenio del Consejo de Europa sobre prevención y lucha contra la violencia contra la mujer y la violencia doméstica, y de las agendas de Naciones Unidas, "Mujeres, paz y seguridad" y la "Agenda 2030 para el desarrollo sostenible".

Partiendo de estos presupuestos, el trabajo se centra en el análisis del cumplimiento por España de tales obligaciones y compromisos internacionales en materia de género en el caso de las operaciones marítimas de intercepción y/o rescate ligadas a la migración mixta en el presente contexto europeo. Para ello, se toma como referencia la información que resulta de los mecanismos de supervisión y seguimiento existentes en el plano internacional y nacional. A continuación, se identifican los problemas y dificultades para dicho cumplimiento, proponiendo posibles vías de cambio y mejora.

**PALABRAS CLAVE:** migración mixta por mar, género, salvamento marítimo, interceptación, España, Unión Europea

## I. INTRODUCTION

Irregular movements of people by sea constitute a case of what is known as “mixed migration.” This term has become widespread in the international arena to refer to migratory flows made up of migrants who, finding themselves in different circumstances depending on what has led them to leave their countries of origin, share the same migratory routes and means of transportation.<sup>2</sup>

Due to its geostrategic location, there has been continual mixed migration by sea to Spain in recent years,<sup>3</sup> resulting in it now being one of the main entry points of the so-called “Southern Border” of the European Union.<sup>4</sup> The routes and the patterns followed by those attempting to arrive irregularly to the Spanish coasts from Africa via the Mediterranean and the Atlantic are well known,<sup>5</sup> although variations may occur depending on weather conditions, the extent of coastal surveillance and the interests of the smuggling or human trafficking networks involved in the organization of the illegal voyages.<sup>6</sup> The migrants, travelling in precarious boats, leave mainly from the Moroccan coast, including the Western Sahara area, or from other Northern or Western coastal African countries. During these crossings, they may be intercepted in the

<sup>2</sup> For more on the concept of mixed migration see, among others, SHARPE, M. “Mixed Up: International Law and the Meaning(s) of “Mixed Migration”, *Refugee Survey Quarterly*, vol 37, n° 1, 2018, pp. 116–138. We use the word migrants rather than immigrants to accurately reflect the breadth of situations in which those included in this concept find themselves in.

<sup>3</sup> According to the International Organization for Migration (OMI) and the Ministry of the Interior of Spain, data relating to irregular entries by sea into Spain during the period 2016-2023 (July) is as follows: 13,487 people in 2023; 28,930 in 2022; 40,000 in 2021; 40,106 in 2020; 26,103 in 2019; 57,498 in 2018; 21,971 in 2017; 8,162 in 2016 (Data from <https://migration.iom.int/europe/arrivals#content-tab-anchor>).

<sup>4</sup> Specifically, the Spanish Southern Border mainly includes the ports of Andalusia and the Canary Islands, as well as the entrances by sea and land to Ceuta and Melilla (COMISIÓN ESPAÑOLA DE AYUDA AL REFUGIADO (CEAR), *Las personas refugiadas en España y en Europa*, Informe CEAR, 2022, p.85).

<sup>5</sup> See MALAKOOTI, A., FALL, C., *Migration Trends Across the Mediterranean: Piecing Together the Shifting Dynamics*, *Global Initiative Against Transnational Organized Crime*, Clingendael Institute, 2020.

<sup>6</sup> KUSCHMINDER, K., DE BRESSER, J., SIEGEL, M., *Irregular Migration Routes to Europe and Factors Influencing Migrants’ Destination Choices*, UNU-MERIT, 2015, pp. 51.

maritime areas where immigration is controlled by Spain or rescued in its or another country's Search and Rescue (SAR) region.

Despite the difficulties in obtaining data disaggregated by gender from public sources, available information shows that women account for around 10 percent of the irregular migrants arriving in Spain by sea.<sup>7</sup> Other sources show that in most cases, they come from Sub-Saharan African countries.<sup>8</sup> Some of them are pregnant and others travel by boat with babies or very young children.<sup>9</sup> In all cases, their journey is linked to the smuggling of migrants; many of them are subject to human trafficking and on most occasions, they have suffered assaults, exploitation, and sexual harassment during the various stages of their displacement.<sup>10</sup>

Without further propagating the usual gender stereotypes associated with mixed migration by sea, which portray migrant women as vulnerable and in need of protection,<sup>11</sup> these circumstances highlight specific consequences

<sup>7</sup> The reports on irregular immigration published fortnightly by the Spanish Interior Ministry are not disaggregated by sex. However, when asked to release data via the Portal de Transparencia (Transparency Portal) for 2016-2022, (File n°001-067534), the response was that the number of women who arrived irregularly by sea was 18,889 from a total number of 160,734 of irregular sea arrivals.

<sup>8</sup> For example, according to data from the Spanish Red Cross, during the period between 2015-2019, of the women arriving irregularly by sea to Almería province were 86% Sub-Saharan, 12.67% North African and 2.24% Asian, see PICÓN MARÍN, C., JIMÉNEZ LASERROTE, M., RUIZ MUELLE, A., FERNÁNDEZ SOLÁ, C., "Salud reproductiva de la mujer migrante", in Jiménez Laserrote, M., Ruiz Muelle, A., *Atención a las personas migrantes, de cerca*, Edual, Almería, 2021, p. 107.

<sup>9</sup> Cf. CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, 2017, pp. 7-8 and JIMÉNEZ-LASSERROTTE, MDM., LÓPEZ-DOMENE, E., HERNÁNDEZ-PADILLA, JM., FERNÁNDEZ-SOLA, C., FERNÁNDEZ-MEDINA, IM., FAKYR. K., DOBARRIO-SANZ, I., GRANERO-MOLINA, J., "Understanding Violence against Women Irregular Migrants Who Arrive in Spain in Small Boats", *Healthcare*, vol. 8, 2020, n°3, pp.299ff.

<sup>10</sup> See CORTÉS MAISONAVE, A., "Mujeres migrantes y refugiadas en la Frontera Sur: resistencias de género y violencias encarnadas", *Anuario CIDOB de la inmigración*, 2019 pp. 128-140; GERARD, A., PICKERING, S., "Gender, Securitization and Transit: Refugee Women and the Journey to the EU", *Journal of Refugee Studies*, vol 27, 2014, n° 3, pp. 338–359; and UNOC, *Abused and neglected - A gender perspective on aggravated migrant smuggling and response*, 2020, pp. 43ff.

<sup>11</sup> Cf. SACHSEDER, J., STACHOWITZ, S., BINDER, S., "Gender, race, and crisis-driven institutional growth: discourses of 'migration crisis' and the expansion of Frontex", *Journal of Ethnic and Migration Studies*, 2022, pp. 4676ff.

that women who arrive irregularly to Spain by sea face as a result of their gender.<sup>12</sup>In the light of these situations, it should be noted that Spain is a European Union Member State that has made a strong commitment to gender issues in recent years, which is reflected in a political and regulatory agenda.<sup>13</sup> This agenda has come about as partly as the result of social changes, but also because of the international obligations and commitments Spain has taken on relating to gender.<sup>14</sup>

In this regard, Spain is a signatory of the UN Convention on the Elimination of Discrimination Against Women (CEDAW)<sup>15</sup> and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention).<sup>16</sup> Alongside these, Spain has assumed further international commitments relating to gender resulting from the United Nations action, namely the “Women, Peace and Security Agenda”<sup>17</sup> and the “2030 Agenda for Sustainable Development.”<sup>18</sup>

<sup>12</sup> HOLVIKIVI, A., REEVES, A. “Women, Peace, and Security after Europe’s ‘refugee crisis’”, *European Journal of International Security*, vol. 5, 2020, n°2, pp. 135-154.

<sup>13</sup> Spanish legislation and political engagements on gender conforms one of the most advanced regulatory frameworks in terms of gender issues which is focused on: a) measures against gender violence: State Pact against Gender Violence (2017), Organic Law 1/2004, on Integrated Protection Measures against Gender Violence, Organic Law 10/2022, of comprehensive guarantee of sexual freedom, National Strategy to Combat Machista Violences in Spain 2022-2025 (2022); b) measures to achieve full and effective equity of women and men: Organic Law 3/2007, for the effective equality of women and men, Law 15/2022, a comprehensive law covering equal treatment and non-discrimination, III Strategic Plan for the Effective Equality of Women and Men 2022-2025); and c) action to combat the trafficking of women and girls for sexual exploitation and abuse (National Strategic Plan against Trafficking and Exploitation of Human Beings 2021-2023).

<sup>14</sup> MESA, M., “Política exterior feminista: la apuesta de los gobiernos por la igualdad”, *Anuario CEIPAZ 2020-21*, pp.135ff.

<sup>15</sup> Instrument of Ratification, *B.O.E.* n.69, March 21, 1984.

<sup>16</sup> Instrument of Ratification, *B.O.E.* n.137, June 6, 2014.

<sup>17</sup> II National Action Plan on Women Peace and Security, *B.O.E.* n.222, Sept. 14, 2017, adopted in the implementation of United Nations Security Council Resolution 1325, of 31 October of 2000 and development Resolutions.

<sup>18</sup> UN GENERAL ASSEMBLY, “The 2030 Agenda for Sustainable Development.”, *Doc. A/RES/70/1*, 21 October 2015, and MINISTRY FOR SOCIAL RIGHTS AND THE 2030 AGENDA (SPAIN), *Estrategia de desarrollo sostenible 2030. Un proyecto de país para hacer realidad la Agenda 2030*, 2021.

With these circumstances in mind, the objective of this article is to analyse Spain's compliance with these international commitments and obligations on gender during maritime interception or rescue operations in the European Union context. To this end, we will first examine the shared approach taken by the European Union and its Member States towards mixed migration by sea. This approach, with its focus on security and control at the expense of migrants' rights, has not yet resulted in the adoption of common rules governing maritime rescue operations. Consequently, except for search and rescue missions carried out in the framework of border surveillance by Frontex, maritime rescue operations are the responsibility of the Member States, who must comply with the international obligations and commitments regarding human rights including those that protect people according to their gender. For this reason, we will subsequently investigate the international framework on gender to identify its implications for maritime operations involving mixed migration.

From this contextual and legal framework, we will move on to analyse how Spain complies with these obligations and commitments. First, we will provide an overall assessment, considering the existing monitoring and follow-up mechanisms on an international and national level. Next, we will identify the problems and difficulties with Spain's compliance, and propose ways it could be changed or improved.

Regarding methodology, this paper has a predominately legal focus, investigating the point of convergence between two different but interconnected lines of research. The first is the application of gender perspectives in maritime security and the law of the sea,<sup>19</sup> while the second refers to an analysis of border management, and immigration and asylum policies in the European Union. A qualitative method has been used, analysing legislative documents and political instruments at a national, European and international level, as well as reports from governmental and non-governmental organizations, and public and private agencies, in addition to a review of the most relevant literature.

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<sup>19</sup> See, among others, PAPANICOLOPULU, I., *Gender and the Law of the Sea*, Brill/Nijhoff, Leiden/Boston, 2019 and FREEDMAN, J. "Gender Perspectives on Maritime Security" in Boşilcă, R-L., Ferreira, S., Ryan, J., (ed.) *Routledge Handbook of Maritime Security*, Routledge, 2022, pp. 93-104.

## II. THE APPROACH OF THE EU AND ITS MEMBER STATES TOWARD MIXED MIGRATION BY SEA: IMPLICATIONS FOR INTERCEPTION AND ASSISTANCE AT SEA

Mixed migration by sea to the European Union's southern border has been continuous in recent decades. This is due to several factors including crisis situations and instability in Africa and Asia in areas near the Mediterranean and Atlantic. Although it is true that the number of people entering irregularly by sea is lower than the rate of entry through other routes, entry in this way is considered a threat to the security of both the EU and its most directly affected Member States.<sup>20</sup> This is because of circumstances like a sudden increase in numbers (from migration crises spurring from the Libyan and Syrian conflicts, for example) as well as its association with human trafficking. These circumstances have led to crucial differences between Member States on how to interpret regulations governing their obligation to render assistance at sea. These include determining in which State disembarkation happens and how costs of taking in those rescued or intercepted should be shared.<sup>21</sup>

In spite of such tensions, Member States are in total agreement that the principle objective is to control mixed migration by sea from a security perspective, prioritising the reduction of arrivals over the protection of migrants.<sup>22</sup> This approach has led to the adoption of a series of measures that can be categorised in the following ways: “humanitarianism” (where control measures are justified in order to protect migrants from mafia groups who engage in people smuggling and human trafficking);<sup>23</sup> “externalisation” (where control is handed over to third states outside the European Union in order to avoid or reduce protection);<sup>24</sup> “orchestration” (directly or indirectly supporting the development of border control capacities of these third

<sup>20</sup> See ARCOS RAMÍREZ, F., DÍEZ PERALTA, E., “Control de fronteras y derechos humanos en el Mediterráneo”, *Deusto Journal of Human Rights*, 2018, n°3, pp. 13-47.

<sup>21</sup> Cf. ABRISKETA URIARTE, J., *Rescate en el mar y asilo en la Unión Europea*, Thomson Reuters, Aranzadi, Cizur Menor, 2020, pp. 183ff.

<sup>22</sup> FONTANA, I., “The human (in)security trap: how European border(ing) practices condemn migrants to vulnerability”, *International Politics*, 2022, pp. 465-484.

<sup>23</sup> MORENO-LAX, V., “The EU Humanitarian Border and the Securitization of Human Rights: The ‘Rescue-Through-Interdiction/Rescue-Without-Protection’ Paradigm”, *Journal of Common Market Studies*, vol. 56, 2018, pp.119– 140.

<sup>24</sup> See SÁNCHEZ LEGIDO, A., “Externalización de controles migratorios versus derechos humanos”, *Revista Española de Estudios Internacionales*, n° 37, 2019, pp.1-24; SANTOS VARA, J.,

States);<sup>25</sup> “technification” (priority is given to the use of technological means for migration control);<sup>26</sup> and “criminalisation” (focusing on the use of police powers rather than humanitarian or protection-based approaches).<sup>27</sup>

This security-based approach and accompanying regulatory and operational measures have had a direct impact on maritime interception and rescue operations. In general terms, Member States are showing a trend towards abdicating their search and rescue duties. Measures are increasingly taken via air rather than sea. In addition, they are strictly limiting operations to their own Search and Rescue (SAR) zones (even when help is requested in third States’ SAR zones) and at the same time, criminalising the actions of NGOs.<sup>28</sup>

There is also evidence of pernicious confusion between marine police interception of vessels, which are carrying those travelling irregularly, and Search and Rescue (SAR) operations that are fulfilling their obligations to render assistance at sea.<sup>29</sup> This frequently leads to interception operations becoming sea rescue operations since the crossings, organised by gangs of people-smugglers, put the lives of the migrants at risk because of the precariousness of the boats used, overcrowding and unsafe sailing.<sup>30</sup>

At the same time, intercept operations are often portrayed as rescue operations to circumvent restrictions on the use of maritime police powers established by international law. This modus operandi is accompanied by the

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*La dimensión exterior de las políticas de inmigración de la Unión Europea en tiempos de crisis*, Tirant lo Blanch, Valencia, 2020, pp. 47ff.

<sup>25</sup> MÜLLER, P., SLOMINSKI, P., “Breaking the legal link but not the law? The externalization of EU migration control through orchestration in the Central Mediterranean”, *Journal of European Public Policy*, vol. 28, 2021, n.º. 6, pp.801-820.

<sup>26</sup> JUMBERT, M.G., “Control or rescue at sea? Aims and limits of border surveillance technologies in the Mediterranean Sea”, *Disasters*, vol. 42, 2018, n.º4, pp. 674–696.

<sup>27</sup> KOKA, E., VESHI, D., “Irregular Migration by Sea: Interception and Rescue Interventions in Light of International Law and the EU Sea Borders Regulation”, *European Journal of Migration and Law*, 2019, pp 26–52.

<sup>28</sup> CUSUMANO, E., PATTISON, J., “The Non-Governmental Provision of Search and Rescue in the Mediterranean and the Abdication of State Responsibility”, *Cambridge Review of International Affairs*, 2018, pp.53-75.

<sup>29</sup> BUTTON, R., “International Law and Search and Rescue”, *Naval War College Review*, vol. 70, 2017, n.º1, pp. 1-41, MILTNER, B., “Irregular Maritime Migration: Refugee Protection Issues in Rescue and Interception”, *Fordham International Law Journal*, vol. 20, 2006, n.º1, pp.75-125.

<sup>30</sup> *Ibidem*.



increase of the technical and operational capacities of third States so that they can effectively operate in their respective SAR zones. As has been pointed out, this has led to a “securitisation” of the SAR system, meaning it is being used to control irregular immigration by sea, especially in spaces outside the jurisdiction of States, such as the high seas.<sup>31</sup>

This use of sea rescue as migration control, which undermines the principle of assistance at sea, is reflected in “A common European approach to search and rescue” which is referred to in a New Pact on Migration and Asylum.<sup>32</sup> Indeed, the legislative proposals so far presented by the Commission in development of a common approach confirm that:

The emphasis is on minimizing opportunities for rescue to translate into arrival and entry into EU ports by investing in building third countries’ interdiction capacity, while divesting from Member States’ and EU rescue missions, and keeping SAR NGOs under close scrutiny, treating them as suspicious and potentially criminally liable for their contribution to facilitating irregular crossings.<sup>33</sup>

There is therefore no desire at the moment to establish common rules for maritime rescue operations across the European Union, although some of the proposals presented in the development of a New Pact on Migration and Asylum may have implications for or impact on search and rescue operations.<sup>34</sup>

<sup>31</sup> GHEZELBASH, D., MORENO-LAX, V., KLEIN, N., OPESKIN, B., “Securitization of Search and Rescue at Sea: The Response to Boat Migration in the Mediterranean”, *International & Comparative Law Quarterly*, vol 67, 2018, n°2, pp. 315-351.

<sup>32</sup> EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum *COM (2020) 609*, 25/09/2020, pp.14-16.

<sup>33</sup> MORENO-LAX, V., “A New Common European Approach to Search and Rescue? Entrenching Proactive Containment”, in Thym, D. (coord), *Special Series of post on the New Migration pact*, available at <https://eumigrationlawblog.eu/a-new-common-european-approach-to-search-and-rescue-entrenching-proactive-containment/>.

<sup>34</sup> EUROPEAN COMMISSION, “Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]” *COM(2020) 610 final*, 23.9.2020; “Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817” *COM (2020) 612 final*, 23.9.2020; “Proposal for a Regulation of the European

There are several reasons why the European Union struggles to establish a common normative framework governing mixed migration by sea. First, although there has been harmonisation in external border legislation (primarily via the Schengen Borders Code), the European Union's powers concerning border, asylum and immigration controls are shared (art. 4, 2.j TFEU), and do not include a duty to render assistance at sea. In addition, national security remains the sole responsibility of each Member State (art. 4. p.2 TEU). As a result, despite external borders being shared, "each State retains control and administrative management of its national borders—and coercive power—as this management is considered a responsibility linked to national sovereignty that affects the security, defence and protection of the territory."<sup>35</sup> Thus, the majority of the responsibility for sea border checks and surveillance and for maritime rescue remains with individual Member States.<sup>36</sup>

The convenience of using the European Border and Coast Guard Agency (FRONTEX) to carry out search and rescue operations has also been suggested. However, Regulation 2019/1896 specifies that the Agency's powers are limited to "situations which may arise during border surveillance" (art.3) and the "(...) support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea" (art.10, g.i).<sup>37</sup> Furthermore, the provisions of Regulation 656/2014 only apply in the case of operations coordinated by FRONTEX.<sup>38</sup> Consequently, FRONTEX does not have its own maritime rescue powers and its rules do not apply to operations

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Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum" *COM (2020) 613 final* 23.9.2020.

<sup>35</sup> ESTEVE, F, "El rescate como nueva función europea en la vigilancia del Mediterráneo, *Revista CIDOB d'Afers Internacionals*, 2015, n° 111, pp. 153-172 in 155-156.

<sup>36</sup> MARINAI, S., "The Interception and Rescue at Sea of Asylum Seekers in the Light of the New EU Legal Framework", *Revista de Derecho Comunitario Europeo*, 2016, n°55, pp.901-939.

<sup>37</sup> EUROPEAN UNION, "Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624" *OJEU n°L 295*, on 14.11.2019.

<sup>38</sup> EUROPEAN UNION, "Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union" *OJEU n°L 189* 27.6.2014, article 1.

carried out by Member States without its coordination, but FRONTEX is obligated to respect fundamental rights of those intercepted or rescued.<sup>39</sup>

Therefore, except for operations coordinated by FRONTEX, search, interception, rescue and disembarkation operations are generally carried out by Member States. This does not mean that such operations are not subject to limits or controls. They must comply with European Union law as well as with international obligations and commitments,<sup>40</sup> including those that protect people according to their gender, as will be discussed below.

### III. THE INTERNATIONAL GENDER FRAMEWORK: IMPACT ON MARITIME INTERCEPTION AND RESCUE OPERATIONS

#### 1. Obligations under CEDAW and the Istanbul Convention

Although CEDAW does not contain any explicit references to gender-based violence or mixed migration, both issues have been included within the scope of the Convention through the General Recommendations and by decisions taken by the CEDAW Committee. In addition, CEDAW imposes a general obligation on States parties to eliminate any discrimination against women because of their gender, as well as to adopt all necessary measures to guarantee substantive equality.<sup>41</sup>

General Recommendations 19 and 28 clarify that gender-based violence, i.e. violence directed against a woman because she is women or that affects women disproportionately, constitutes a form of “discrimination against women.” It includes, “acts that inflict physical, mental or sexual harm or

<sup>39</sup> Cf. SÁNCHEZ LEGIDO, A., *Controles migratorios y Derechos Humanos*, Tirant lo Blanch, Valencia, 2020, pp. 177ff.

<sup>40</sup> It should be noted that the European Union has acceded to the Istanbul Convention, albeit with a limited scope that nevertheless includes asylum and non-refoulement. See Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, *OJEU n° L143I*, on 2.06.2023.

<sup>41</sup> CUSACK, S., PUSEY, L., “CEDAW and the Rights to Non-Discrimination and Equality”, *Melbourne Journal of International Law*, vol. 14, 2013, pp. 54-92 in pp.58-59.

suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>42</sup> In a very clear way, General Recommendation 28 states that the core obligations of States parties under article 2 of the CEDAW apply “without discrimination both to citizens and non-citizens, including refugees, asylum-seekers, migrant workers and stateless persons, within their territory or effective control, even if not situated within the territory” and that “States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory.”<sup>43</sup>

More specifically, General Recommendation No. 26 refers to migrant women, highlighting that, because of their vulnerability during the journey to and arrival in the destination State, States have a responsibility to adopt measures aimed at preventing discrimination or gender-based violence towards migrant women regardless of their irregular migration status.<sup>44</sup>

Similarly, General Recommendation No. 32 recognises the gender dimension of refugee status, asylum, nationality and statelessness of women during displacement, as well as the obligation of States to guarantee the rights of women under their control or effective jurisdiction, even if they are not within their territory, even when the perpetrators of such violations are private individuals and non-State actors.<sup>45</sup> Those obligations entail respecting the principle of non-refoulement and therefore the duty to ensure that “no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence.” They also include duties to ensure that women are not victims of discrimination at any point

<sup>42</sup> UN: Committee On The Elimination Of Discrimination Against Women (Cedaw), *General Recommendation No. 19: Violence Against Women* Cedaw, 29 December 1992, Para.6 And *General Recommendation No. 28 On The Core Obligations Of States Parties Under Article 2 Of The Convention On The Elimination Of All Forms Of Discrimination Against Women*, 16 December 2010, Para.19

<sup>43</sup> *Ibidem*, para. 12.

<sup>44</sup> UN: Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 26 on women migrant workers*, 5 December 2008, para. 26, l.

<sup>45</sup> UN: Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014 para. 7.

during the asylum process “beginning from the moment of arrival at the borders.”<sup>46</sup>

General Recommendation No. 35, which updates General Recommendations 19, reinforces States parties’ obligations to respect, protect and fulfil a woman’s right to freedom from gender-based violence in the case of migrant women, women in conflict and post-conflict situations, and refugee and asylum-seeking women.<sup>47</sup>

More recently, Recommendation No. 38 reaffirms that “displacement has specific gender dimensions” and that “the Convention applies at every stage of the displacement cycle,”<sup>48</sup> specifying a number of obligations of States in relation to the identification, referral and protection of women and girls who are victims of trafficking.<sup>49</sup>

Turning our attention to the Istanbul Convention, it expressly refers to gender-based violence, understood as violence perpetrated against a woman because she is a woman, or violence that disproportionately affects women. (art.3) Furthermore, it contains a chapter specifically dedicated to “Migration and Asylum” where it identifies women migrants, including undocumented migrant women and women seeking asylum as being two subcategories of women who are particularly vulnerable to gender-based violence.<sup>50</sup> On the basis of these assumptions, the Istanbul Convention establishes “a number of obligations that aim at introducing a gender-sensitive understanding of violence against migrant women and women asylum-seekers.”<sup>51</sup> These include general obligations of protection from and prevention of gender-based violence. Some stand out as particularly relevant: the exercise of due

<sup>46</sup> *Ibidem*, para. 23 and 24.

<sup>47</sup> UN: Committee on the Elimination of Discrimination Against Women (CEDAW) *General recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19*, 26 July 2017, para. 11.

<sup>48</sup> UN: Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration*, 20 November 2020, para. 22 and 25.

<sup>49</sup> *Ibidem*, para. 77, 80, 86, 87 and 89.

<sup>50</sup> COUNCIL OF EUROPE, “Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence”, Istanbul, 11 May 2011, para. 298, p.5.

<sup>51</sup> *Ibidem*, para. 299.

diligence (art.5); the obligation to regularly collect detailed statistical data (art. 11); the obligation to provide training for professionals on the scope of the Convention (art.15); and the obligation to take necessary or other measures to protect “all victims from any further acts of violence.” (art.18)

Regarding migration and asylum, the Convention details the need for States parties to “take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures.” (art. 60, p.3) It also includes the principle of non-refoulement, establishing the obligation of States parties to take necessary legislative or other measures to ensure that, “victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.” (art.61)

## **2. Commitments under the WPS Agenda and other related UN agendas**

Although it may appear that gender issues related to mixed migration by sea are not covered by the “Women, Peace and Security” (WPS) Agenda, this restrictive interpretation should be widened. That means that instead of limiting the agenda’s scope only to armed conflicts and considering it a question of foreign policy, its implication for maritime security should also be taken into account.<sup>52</sup>

It is therefore necessary to include in its scope “conflict-affected women on the move” to the extent that, as has been pointed out, “although displaced people of all genders experience intense hardship, gender mediates the security risks involved in forced displacement.”<sup>53</sup> In order to move past the dichotomy of conflict and peace laid out in Resolution 1325, situations that pose a threat to human security should also fall within its scope. This includes gender-based discrimination and abuse suffered by women within mixed migration by sea, which, in many cases, takes place in the context of threats to maritime security such as people trafficking.<sup>54</sup> Similarly, a broader interpretation could consider

<sup>52</sup> PAPPÀ, M., “UNSCR 1325 and Maritime Security”, *Max Planck Yearbook of United Nations Law Online*, vol. 24, 2021 n°1, pp. 137-169 in 139-140.

<sup>53</sup> HOLVIKIVI, REEVES, *op.cit.*, pp. 135-154.

<sup>54</sup> PAPPÀ, *op.cit.*, pp.141-143.

other roles that women have in such situations, not just as victims but as perpetrators or agents of change.<sup>55</sup>

Additionally, it is important to consider the interaction between the WPS Agenda and other United Nations Agendas, like the “2030 Agenda for Sustainable Development.” Goals 5, 10 and 16 of this agenda contain aims (5.2, 10.7 and 16.1,2,3) that directly affect issues of gender related to mixed migration by sea. The same can be said of the “Global Compact for Migration,” in relation to Objective 7: Address and reduce vulnerabilities in migration. The teleological, legal, and strategic interactions between all these agendas<sup>56</sup> need to be incorporated at the domestic level to avoid the degradation or “washing” of human rights.<sup>57</sup> For this reason, national implementation of these agendas should consider issues around gender that arise in sea operations linked to mixed migration.

#### **IV. SPAIN'S FULFILMENT OF INTERNATIONAL GENDER OBLIGATIONS AND COMMITMENTS DURING SEA OPERATIONS LINKED TO MIXED MIGRATION**

##### **1. An assessment considering the international supervision provided by the CEDAW and GREVIO Committees**

Spain's compliance with the obligations relating to gender and mixed migration as set out by the CEDAW and the Istanbul Convention has received attention within the framework of their respective monitoring mechanisms. These take place through the actions of the CEDAW Committee<sup>58</sup> and the

<sup>55</sup> HOLVIKIVI, REEVES, *op.cit.*, pp.142-143.

<sup>56</sup> MARTÍN MARTÍNEZ, M., “Repensando el marco jurídico internacional en la lucha contra la violencia hacia mujeres y niñas. La interconexión entre el ODS 5 y la Resolución 1325 (2000)”, in Pigrau I Solé, A. (dir.), Font I Mas M. (dir.), Marín Consarnau, D. (dir.), Borràs Pentinat, S.(dir.), González Bondía, A. (dir.), *La comunidad internacional ante el desafío de los objetivos de desarrollo sostenible*, 2023, Tirant lo Blanch, Valencia, pp.457-478.

<sup>57</sup> VACAS FERNÁNDEZ, F., “La migración en la Agenda 2030, el desarrollo en el Pacto de Marrakech: Plasmación programática de una inescindible relación”, *Revista de las Cortes Generales*, 2021, n° 111, pp. 371-412, in pp.405-406.

<sup>58</sup> UN: Committee on the Elimination of Discrimination against Women (CEDAW), “Concluding observations on the combined seventh and eighth periodic reports of Spain”, *CEDAW/C/ESP/CO/7-8*, 29 July 2015; “List of issues and questions prior to the presentation of the ninth periodic report of Spain,” *CEDAW/C/ESP/QPR/9*, 19 August 2019; “Ninth periodic report submitted by Spain under article 18 of the Convention due in

GREVIO Committee.<sup>59</sup> A review of the documentation relating to these monitoring processes shows there is a great deal of agreement between both Committees on the problems encountered and the measures that Spain should take regarding this issue.

These measures relate mainly to compliance with the obligations to: (a) have disaggregated information and data; (b) ensure specific training on gender-based violence for relevant professionals; (c) guarantee the rights of refugee and asylum-seeking women; and (d) respect the principle of non-refoulement.

a) With regards to the obligation to have disaggregated information and data on the situation of women,<sup>60</sup> the CEDAW Committee reminded Spain in the run-up to the submission of its Ninth Periodic Report that, “information and statistics, disaggregated by sex, age, disability, ethnicity, religion and location, on the current situation of women in the State party are required to monitor the implementation of the Convention.” Spain was asked to indicate how it intended to “improve the collection and analysis of data pertaining to the areas covered by the Convention so as to support policymaking and programme development and to measure progress towards the implementation of the Convention.”<sup>61</sup>

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2020”, *CEDAW /C/ESP/QPR/9*, 10 August 2022; and “Concluding observations on the ninth periodic report of Spain,” *CEDAW/C/ESP/CO*, 31 May 2023.

<sup>59</sup> GROUP OF EXPERTS ON COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (GREVIO), “GREVIO First Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) SPAIN,” *GREVIO/INF(2020)*, 18 October 2020; “Comments submitted by Spain on GREVIO’s final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report),” *GREVIO/Inf(2020)21*, 19 November 2020; COMMITTEE OF THE PARTIES, Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), “Recommendations on the implementation in Spain of the Council of Europe Convention on preventing and combating violence against women and domestic violence,” *IC-CP/Inf(2020)10*, 15 December 2020.

<sup>60</sup> General Recommendation No. 19 on violence against women, *cit.*, and art. 11 of the Istanbul Convention.

<sup>61</sup> List of issues and questions prior to the submission of the ninth periodic report of Spain, *cit.*, para.1



Although Spain responded in its Report that “currently, almost all official statistics and surveys are disaggregated by gender,”<sup>62</sup> this is not so in the case of mixed migration by sea. As predicted,<sup>63</sup> although the Ministry of the Interior has data on the number of women arriving irregularly to Spain in this way, the information published detailed only the number of arrivals, specifically whether they had arrived in mainland Spain, the Balearic Islands, the Canary Islands, Ceuta or Melilla and the number of boats in each case, but without disaggregating the data by sex. In fact, one of the recommendations made by the CEDAW Committee to Spain in its concluding observations on the Ninth Report is to “Strengthen the existing data collection system and coordination mechanisms.”<sup>64</sup>

For its part, the GREVIO Committee has advised Spain on the limitations in how it compiles statistical information on violence against women, as it focuses on violence committed in the context of a partner or ex-partner, but does not include data on other forms of violence covered by the Istanbul Convention.<sup>65</sup> For this reason, it recommends that Spain ensure “that efforts made by the Government Delegation for Gender-based Violence to collect and publish data extend to *all* forms of violence against women as covered by the Istanbul Convention, in particular sexual violence, forced marriage and female genital mutilation (FGM).<sup>66</sup> It is precisely these forms of violence against women that are more relevant in the case of those who may be intercepted or rescued by sea operations related to irregular immigration. However, Spain’s response that data on this is collected in annual large-scale surveys on the topic of violence against women seems insufficient as these surveys do not detail violence in these cases.<sup>67</sup>

In a similar way, it should be noted that the GREVIO Committee has encouraged Spain to collect data on the annual numbers of asylum applications based on gender-related persecution, and the numbers of such applications

<sup>62</sup> Ninth periodic report submitted by Spain under article 18 of the Convention, *cit.*, para.4.

<sup>63</sup> See above note 6.

<sup>64</sup> Concluding observations on the ninth periodic report of Spain, *cit.*, para. 18 (d).

<sup>65</sup> GREVIO, First Evaluation Report *cit.*, para. 56.

<sup>66</sup> *Ibidem*, para. 57 and Recommendations on the implementation in Spain of the Council of Europe Convention on preventing and combating violence against women and domestic violence, *cit.*, para. 8.

<sup>67</sup> Comments submitted by Spain on GREVIO’s final report, *cit.*, p.3.

granted and rejected.<sup>68</sup> Although the Spanish government indicates that it has this information,<sup>69</sup> it does not appear in the periodic reports compiled by the Office for Asylum and Refugees, which instead only show data disaggregated by age and sex. This omission seems significant, given that data on gender is of relevance in order to identify the needs of women who have arrived irregularly by sea.

b) As for the obligation to provide specific training on gender-based violence for relevant professionals,<sup>70</sup> it remains questionable if Spain has taken adequate measures to correct the deficiencies already recorded in the follow-up to the concluding observations on the combined seventh and eighth periodic reports of Spain.<sup>71</sup>

The reports carried out in the framework of civil society made clear that the compulsory training around gender-based violence was only introductory and aimed at professionals who worked in areas that specialised in gender-based violence. The reports highlighted weaknesses in the breadth and quality of the training which did not contain specific content on CEDAW or the Istanbul Convention.<sup>72</sup>

The information offered by Spain in the Ninth Periodic Report does not make it clear whether the personnel who take part in sea interception or rescue operations have training on gender. In this sense, of the measures adopted for the training of civil servants, only the “Annual Plan for in-service training for the staff of the State Secretariat for Migration” would be relevant, which includes courses on “human trafficking, gender-based violence, women’s rights and equality, and vulnerable groups.”<sup>73</sup> In a similar vein, the training measures for defence personnel and State security bodies and forces (FCSE) appear to be

<sup>68</sup> GREVIO First Evaluation Report *cit.*, para. 295.

<sup>69</sup> Comments submitted by Spain on GREVIO’s final report, *cit.*, p.6.

<sup>70</sup> General Recommendation No. 35 on gender-based violence against women, *cit.*, and art. 15 of the Istanbul Convention.

<sup>71</sup> Concluding observations on the combined seventh and eighth periodic reports of Spain, *cit.*, para. 20, b.

<sup>72</sup> PLATAFORMA CEDAW SOMBRA ESPAÑA *et alter.*, “Informe sobre seguimiento parcial de las observaciones finales del Comité CEDAW en el examen del Estado Español de julio 2015 (CEDAW/C/ESP/7-8)”, *Informe Sombra 2017*, 2 August 2017, p.5 (not available in English).

<sup>73</sup> Ninth periodic report submitted by Spain under article 18 of the Convention *cit.*, para. 37.

more aimed at protecting gender equality for women who are in the National Police Corps and Civil Guard rather than training for dealing with sea rescue operations for mixed migration, regardless of however welcome training “on equality, combating violence against women, and diversity awareness” may be.<sup>74</sup>

In view of this situation, it is pertinent to consider that the CEDAW Committee in its concluding observations on the Ninth Periodic Report “notes the training and awareness-raising activities for the judiciary and women concerning the Convention and the Optional Protocol.” However, it is concerned about “the limited effectiveness” of the progressive framework of laws and policies to achieve substantive equality between women and men, “notably in the areas of (...) guarantees for refugee and migrant women.”<sup>75</sup> In this regard, the Committee also recommends Spain to “Adopt guidelines and adequately train asylum officers on addressing gender-based persecution of women to ensure effective and accelerated border procedures and the adequate assessment of asylum applications.”<sup>76</sup> These statements mean that it remains doubtful whether Spain has adequately complied with the obligation to provide specific training for the personnel involved in rescue and interception operations.

To what concerns GREVIO, it has encouraged the Spanish authorities to “strengthen training efforts for professional groups such as law-enforcement officers, nurses and other medical professions, (...) in particular by incorporating mandatory initial and in-service learning modules on the different forms of violence against women, (...), the detection of such violence, secondary victimisation and equality between women and men.”<sup>77</sup> Spain has responded by saying that medical personnel training has been improved by the inclusion of the “acquisition of specific skills for the assessment of gender violence.” It has also stated that training for the National Police Corps and other professional that assist victims “has been adapted according to the needs of society and to the international commitments that Spain has made

<sup>74</sup> *Ibidem*, para. 42-61.

<sup>75</sup> Concluding observations on the ninth periodic report of Spain, *cit.*, para.9.

<sup>76</sup> *Ibidem*, para. 41 (c).

<sup>77</sup> GREVIO First Evaluation Report, *cit.*, para. 104.

with regard to the fight against violence against women.”<sup>78</sup> This is an overly general response that does not allow knowledge of the training content or the methods used. Therefore, it cannot be determined whether this training can fulfil the obligations established by the Convention.

c) Regarding the obligation to ensure the rights of refugee and asylum-seeking women,<sup>79</sup> the CEDAW committee has repeatedly insisted that Spain establish “gender-sensitive contingency and preparedness plans for arrivals at land and sea borders that will address mixed migration flows” and provide “entry systems that take protection into account and also have a gender and age perspective.”<sup>80</sup> Surprisingly, Spain’s Ninth Periodic Report does not contain any reference to establishing such irregular-entry contingency plans for mixed migration by sea. It refers only to the general measures and provisions for asylum and international protection in Spain, noting that there is a provision that specifically protects girls and women by providing them with “differentiated treatment in formalization interviews.”<sup>81</sup>

In this respect, it should be noted that the CEDAW committee has reiterated to Spain in its concluding observations on the Ninth Periodic Report to “Adopt and implement standard operating procedures and referral mechanisms on disembarkation to attend to the specific needs of women arriving irregularly by sea.” The committee also recommended to “Strengthen steps taken to reinforce the international protection system, such as the opening of two police offices in Ceuta and implementation of the new digital system for case follow-up.”<sup>82</sup>

<sup>78</sup> Comments submitted by Spain on GREVIO’s final report, *cit.*, p. 5.

<sup>79</sup> General Recommendation No. 35 on gender-based violence against women, *cit.*, and art.60 of the Istanbul Convention.

<sup>80</sup> Concluding observations on the combined seventh and eighth periodic reports of Spain, *cit.*, para. 37; List of issues and questions prior to the presentation of the ninth periodic report, *cit.*, para. 21. Similarly, PLATAFORMA CEDAW SOMBRA ESPAÑA et aliter, “Sobre la aplicación en España 2015-2018 de la CEDAW (Convención sobre la eliminación de todas las formas de discriminación contra la mujer)”, *Informe SOMBRA 2019*, 13 May 2019, p.9 and the letter sent on 6 March 2020 by the Spanish Shadow Platform to the highest representatives of gender equality in Spain.

<sup>81</sup> Ninth periodic report submitted by Spain under article 18 of the Convention, *cit.*, para.317-326.

<sup>82</sup> Concluding observations on the ninth periodic report of Spain, *cit.*, para. 41 (c) and (d).

It is also worth drawing attention to the mention of the new Spanish “Regulation for the international protection and reception system,” which, according to the Ninth Report “includes specific measures for displaced women.”<sup>83</sup> Although it is again surprising that this Regulation does not identify any specific measures for irregular arrivals by sea, it should be noted that it contains, as a general principle of action, “a focus on human rights, gender and intersectionality in all programmes, measures and actions taken,” since such a focus “recognises the discrimination and violence that affect women specifically and the protection from the human violations needed by people because of their status as LGBTI+ or because of their nationality or ethnic origin.”<sup>84</sup>

With regards to this same obligation to ensure the rights of women refugees and asylum-seekers, the GREVIO committee recognised that Spain’s “stark increase in sea arrivals has caused significant challenges in securing the identification of vulnerable individuals, in particular women and children.” It also welcomes the efforts taken to move to a more structural approach to vulnerability screenings, such as the mandatory health screenings that take place in some parts of Andalusia, and are beginning to include the identification of women in need of international protection.<sup>85</sup> As the report expressly states, these measures “can only be regarded as initial steps towards a more comprehensive approach to the identification of vulnerable women with a view to enabling their protection, support and safety.”<sup>86</sup>

In particular, the GREVIO Committee points out the urgency of taking measures to ensure rapid access for women asylum seekers to the asylum procedure, regardless of how they entered the country, and therefore including sea arrivals. In this regard, it refers to the need for ordinary and accelerated asylum procedures to be gender-sensitive, introducing systematic vulnerability screenings of women and girls to identify international protection needs upon arrival.<sup>87</sup> However, the GREVIO committee states that disembarkation points

<sup>83</sup> *Ibidem*, para. 327 in reference to Regulation regulating the system of reception in matters of international protection, B.O.E. n.76, 30 March 2022.

<sup>84</sup> Art. 6, c).

<sup>85</sup> GREVIO’s (Baseline) Evaluation Report, *cit.*, para. 290.

<sup>86</sup> *Ibidem*.

<sup>87</sup> *Ibidem*, para. 295.

are not set up in a way that allows for swift access to asylum procedures or that allows special protection needs or vulnerabilities to be identified. Rather, the priority in entry points appears to be police migration control.<sup>88</sup>

d) With regard to the principle of non-refoulement,<sup>89</sup> at present the CEWAW Committee has only referred to this issue as far as Spain is concerned with reference to the trafficking of migrant women, generally recommending “to ensure application of the principle of non-refoulement to guarantee protection against gender-based violence against women.”<sup>90</sup> This is not the case with other nearby countries that are also an entry point for mixed migration by sea, like Italy. This country has been specifically asked to report on what measures are being taking to guarantee that the principle of non-refoulement is being respected “for victims rescued at sea, in particular women and children.”<sup>91</sup>

In contrast, the fulfilment of this obligation has been addressed in the follow-up to the application of the Istanbul Convention. The corresponding Shadow Platform has called attention to the issue of “hot returns” of migrants by Spain, calling for a state plan that would include a unified protocol of action to improve the management of arrivals of migrants and refugees by sea, and that would allow the identification of people with special needs, including women victims of gender-based violence.<sup>92</sup>

In the same vein, the GREVIO Committee highlighted how failure to carry out vulnerability assessments to adequately detect victims of gender-based violence can lead to returns that violate the obligation of non-refoulement.<sup>93</sup> For this reason, it has urged Spain to ensure that the vulnerability assessment

<sup>88</sup> *Ibidem*, para. 291.

<sup>89</sup> General Recommendation No. 32, *cit.*, and art. 61 of the Istanbul Convention.

<sup>90</sup> Concluding observations on the ninth periodic report of Spain, *cit.*, para. 27 (c). Regarding issues raised by the monitoring of compliance with the principle of non-refoulement under CEDAW, see ÇALI, B., COSTELLO, C., CUNNINGHAM, S. “Hard Protection through Soft Courts? Non-Refoulement before the United Nations Treaty Bodies.” *German Law Journal*, vol. 21, 2020, n°3, pp.355-384.

<sup>91</sup> UN: Committee on the Elimination of Discrimination Against Women (CEDAW) “List of issues and questions prior to the submission of the eighth periodic report of Italy,” *CEDAW/C/ITA/QPR/8*, 8 March 2021, para.7-8 and 21.

<sup>92</sup> PLATAFORMA ESTAMBUL SOMBRA, “Informe SOMBRA al GREVIO”, 22 October 2018, p.34.

<sup>93</sup> GREVIO First Evaluation Report, *cit.*, para. 301.

of women asylum seekers is carried out in a way that allows them to be identified as victims of violence against women and in need of international protection.<sup>94</sup> It is therefore striking, given the importance of respect for the principle of non-refoulement in the case of mixed migration by sea<sup>95</sup> that Spain has not submitted any comments on the matter and has limited itself to pointing out that “the asylum and refugee office tries to provide appropriate treatment to women and girls with specific needs who request international protection.”<sup>96</sup>

## 2. Implementation and follow-up of the WPS and 2020 Agendas

The evaluation of Spain’s compliance with the WPS Agenda refers to the examination of the Spanish implementation plan, namely, the Second National Plan for Action on Women, Peace and Security, and the functioning of the mechanisms envisaged for its evaluation and follow-up.<sup>97</sup> The mechanisms involve a Working Group evaluation report being presented in Parliament every two years and a meeting of an Advisory Group, at least once a year, to follow-up on the plan’s objectives and actions taken.

At first glance, the Second National Plan for Action on Women, Peace and Security suffers from the same general issues already detailed in the WPS Agenda: the lack of attention to issues at sea and its execution mainly focused on foreign policy. This narrow interpretation can be evidenced by the fact that the monitoring of Spain’s obligations regarding the right to asylum and the identification, protection and assistance of women victims and survivors of violence as established by the Palermo Protocol, the Trafficking-prevention Plan, and the Istanbul Convention is addressed exclusively within the framework of Goal 3 of the Spanish National Plan of Action (“ensure the protection of and respect for women’s human rights and girls in conflict and post-conflict situations”). However, the Spanish Plan of Action allows for a broader interpretation of the WPS agenda, since it covers the area of “refugee

<sup>94</sup> *Ibidem*, para.302.

<sup>95</sup> Among others, TORRECUADRADA GARCÍA-LOZANO, S., “Human rights as a limit to the management of mixed migratory flows,” *Revista Electrónica de Estudios Internacionales*, n° 36, December 2018, pp.1-25 and TREVISANUT, S., “The Principle of Non-Refoulement and the De-Territorialization of Border Control at Sea,” *Leiden Journal of International Law*, vol. 27, 2014, n° 3, pp. 661-675.

<sup>96</sup> Comments submitted by Spain on GREVIO’s final report, *cit.*, p.6.

<sup>97</sup> II National Action Plan on Women Peace and Security, *cit.*, p.7.

and displaced women and girls,” noting that Spain “is working on implementing the recommendations made in CEDAW’s reports on this matter.”<sup>98</sup>

In any case, there has been a lack of information about Spain’s compliance with the Second National Plan, making it difficult to know if gender-sensitive measures have been adopted in sea rescue and interception operations. This situation stems from delays both in the submission to Parliament of the follow-up report and the creation of the civil society monitoring group called for in the plan.<sup>99</sup> The presentation of the first evaluation report of the Second National Plan for Action on Women, Peace and Security has not served to clarify the issue to the extent that only indirect references are made to situations that may be related to such operations, as is the case of women displaced for climate reasons or people affected by armed conflicts and post-conflicts.<sup>100</sup> Other initiatives promoted by the Spanish government aimed at evaluating the extent of compliance with the National Plan haven’t addressed issues of gender raised by mixed migration by sea either.<sup>101</sup>

Similar criticisms can be made in relation to the “Action Plan for the Implementation of the 2030 Agenda.” Beyond the generic statement that, “if there is a group of particularly vulnerable women, it is migrant women who add their migrant status to the inequalities faced by all women,” there is no explicit reference in the plan to measures aimed at women who arrive in Spain irregularly by sea. It merely stresses that the most serious manifestation of inequality between women and men is gender-based violence and highlights interventions relating to detection and action in possible cases of human trafficking for the purpose of sexual exploitation.<sup>102</sup>

Furthermore, the Action Plan for the Implementation of the 2030 Agenda misses the opportunity to work alongside the Second National Plan for Action

<sup>98</sup> *Ibidem*, Thematic area 4.2 Refugee and displaced women and girls.

<sup>99</sup> MESA, *op.cit.*, p.138.

<sup>100</sup> SPANISH PARLIAMENT, “Comparecencia de la señora secretaria de Estado de Asuntos Exteriores y Globales (Moreno Bau), para presentar el primer informe de evaluación del II Plan Nacional de Acción Mujeres, Paz y Seguridad. A propuesta del Gobierno”, *Diario de Sesiones del Congreso de los Diputados*, Comisiones, 19.12.2022, XIV Legislatura, No. 829, pp. 4-15.

<sup>101</sup> SPANISH GOVERNMENT, *MPS, Mujeres, paz y seguridad, Por una agenda eficaz y sostenida*, 2019.

<sup>102</sup> SPANISH GOVERNMENT, *Plan de acción para la implementación de la Agenda 2030. Hacia una Estrategia Española de Desarrollo Sostenible*, 2018, p.27ff.



on Women, Peace and Security. In fact, it reinforces the idea that the latter is only of international relevance and has no domestic application. Regarding monitoring, the Spanish Commission for Refugees (CEAR) highlights the need for urgent improvements to the access and guarantee of migrants' and refugees' rights, calling for change to Spanish regulations on "hot returns" and in policies on outsourced border control.<sup>103</sup> These same two issues have also been raised by civil society entities in relation to the implementation of the Global Compact for Migration by Spain.<sup>104</sup>

In summary, in view of the follow-up mechanisms of CEDAW and the Istanbul Convention and of the WPS and 2030 Agendas, it can be concluded that Spain has not yet fully met its international obligations and commitments regarding gender in sea interception and rescue operations in cases of mixed migration. Further measures are needed to address this situation. Spain should make available data disaggregated by sex on numbers of people intercepted and/or rescued, provide training on gender-specific issues for those who work in those operations, establish contingency plans for mixed migration arrivals by sea (which include systematic vulnerability screenings for women and children), and guarantee to uphold the principle of non-refoulement.

## **V. CHALLENGES AND DIFFICULTIES IN SPAIN'S COMPLIANCE: AREAS AND PROPOSALS FOR ACTION**

### **1. Limitations and uncertainties regarding the application of Spanish legislation on gender to maritime interception and/or rescue operations**

First, although Spain's Organic Law 3/2007 for effective equality between women and men guarantees equal treatment and the prohibition of discrimination on grounds of sex to everyone, the obligations established by this Law only apply to those who are or act in Spanish territory. Therefore, sea operations beyond the territorial sea would initially be excluded.<sup>105</sup>

<sup>103</sup> CEAR, *La agenda 2030 y las personas migrantes y refugiadas*, 2021, pp.25ff.

<sup>104</sup> Vid. ALIANZA POR LA SOLIDARIDAD et aliter, *El Pacto Mundial para la Migración y el ODS 10.7 implementación en la política migratoria española. Análisis de la sociedad civil*, 2021.

<sup>105</sup> Art. 2, Organic Law 3/2007 for effective equality between women and men, B.O.E. n.71, 23 March 2007.

Similar doubts arise in relation to Law 15/2022, a comprehensive law covering equal treatment and non-discrimination.<sup>106</sup> Although this provision is applicable to any person “without exception regardless of their nationality, whether they are minors or adults or whether or not they enjoy legal residence” (article 2), its objective scope is limited to a number of sectors, which do not include immigration. This means that, unless it is understood that sea interception or rescue operations fall under “citizen security,” women who are in irregular situations do not come under the scope of this law, as their treatment would first be determined under immigration regulations. However, the 2022-2025 Third National Plan for the effective equality of women and men considers various actions relating to immigrant women, which could include measures relating to sea interception and rescue operations.<sup>107</sup>

Secondly, the Organic Law 1/2004 of 28 December on Integrated Protection Measures against Gender Violence<sup>108</sup> focuses only on one of the types of violence contemplated by the Istanbul Convention: violence related to the relationship of a partner or ex-partner. It excludes other forms of gender-based violence covered by the Convention such as sexual violence, forced marriage, sexual harassment, or genital mutilation.<sup>109</sup> Although there are laws of the Autonomous Communities that include a broad concept of gender violence and include all victims regardless of their administrative situation, their scope of application is limited to people who are in that region, so protection with sufficient objective and subjective scope cannot currently be guaranteed.<sup>110</sup>

<sup>106</sup> Law 15/2022, a comprehensive law covering equal treatment and non-discrimination, B.O.E. n.167, 13 July 2022.

<sup>107</sup> SPANISH GOVERNMENT, III *Plan Estratégico para la Igualdad Efectiva de Mujeres y Hombres 2022-2025*, Line of action EV.3.2.1 (Resources: fighting against the feminization of poverty and precariousness).

<sup>108</sup> Organic Law 1/2004, on Integrated Protection Measures against Gender Violence, B.O.E. n.313, 29 Dec. 2004.

<sup>109</sup> CONSEJO GENERAL DEL PODER JUDICIAL, *Guía Práctica de la Ley Orgánica 1/2014, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*, 2016, p.34.

<sup>110</sup> As is in the case of the Law 13/2007, regarding prevention measures and comprehensive protection against gender-based violence in the Autonomous Community of Andalusia, B.O.E. n.38, 13 February 2008.

This situation seems to have changed with Law 10/2022 on the comprehensive guarantee of sexual freedom, where the concept of “sexual violence” includes female genital mutilation, forced marriage, harassment with sexual connotations and trafficking for the purpose of sexual exploitation.<sup>111</sup> However, criticism about the inadequate transposition by Law 10/2022 of the concept of “sexual violence” included in the Istanbul Convention cannot be ignored.<sup>112</sup> Likewise, its subjective scope of application raises doubts, since it is limited to “women, girls and boys who have been victims of sexual violence in Spain,” albeit positive that such application is independent of nationality and administrative situation. On the other hand, cases that have occurred “abroad” and with those who do not have Spanish nationality are excluded, unless they are within the jurisdiction of the Spanish courts as established in Organic Law 6/1985.<sup>113</sup> Thus, it is not clear if the law will be applicable to cases in which the “sexual violence” against migrants has taken place before entering Spain, unless they constitute international crimes, and therefore may eventually enter within the jurisdiction of the Spanish courts.

In any case, in addition to the possibilities that Law 10/2022 may open, the State Pact against gender violence does consider under its third line of action: “design specific protocols or incorporate specialized measures in those that already exist, for the attention of women from more vulnerable groups, such as [...] migrant women in an irregular situation.”<sup>114</sup> This keeps open further avenues of action that could be extended to sea interception or rescue operations.

<sup>111</sup> Art.3, 1, Organic Law 10/2022, of comprehensive guarantee of sexual freedom, *B.O.E.* n. 215, 7 Sept. 2022.

<sup>112</sup> See ÁLVAREZ GARCÍA, F.J., who considers that the definition of “sexual violence” that incorporates the norm “departs diametrically” from the Istanbul Convention, (“Algunos comentarios generales a la Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual”, *Revista Electrónica de Ciencia Penal y Criminología*, 2023, n° 25-r3, pp. 4-5, <http://criminet.ugr.es/recpc/25/recpc25-r3.pdf>).

<sup>113</sup> Art.3, 2, Organic Law 10/2022, of comprehensive guarantee of sexual freedom.

<sup>114</sup> SPANISH GOVERNMENT, *Documento refundido de medidas del Pacto de Estado en materia de Violencia de Género*, 13 May 2019.

## **1. The many public agencies and entities involved and the lack of applicable protocols relating to gender for mixed migration sea operations**

It should first be noted that there is no single agency responsible for the surveillance and control of maritime areas in Spanish administration. In addition, as Acosta Penco points out, Spain does not have specific border surveillance regulations with clear exercisable powers for the authorities responsible and those involved in this type of activity.<sup>115</sup> This legal gap is covered by direct application of Article 13 of the Schengen Border Code<sup>116</sup> and by general authorisations given to the respective bodies that carry out those tasks.

In the case of interception operations linked to irregular migration, it is the task of the Maritime Service of the Civil Guard, and where applicable, vessels belonging to the Spanish Navy.<sup>117</sup> Meanwhile, assistance at sea is the responsibility of SASEMAR, the Maritime Safety and Rescue Agency who collaborates with other parties,<sup>118</sup> sometimes via cooperation agreements, as is the case with the Maritime Service of the Civil Guard, the Spanish Navy and the Red Cross.<sup>119</sup>

There is also the recent creation of ACIE, the Coordination Authority to combat irregular immigration in the Gibraltar Strait, the Alboran Sea and adjacent waters.<sup>120</sup> Its responsibilities include monitoring of operations related

<sup>115</sup> ACOSTA PENCO, T., *La vigilancia de las fronteras marítimas de la Unión Europea*, Thomson Reuters-Aranzadi, 2020, pp.73-77.

<sup>116</sup> EUROPEAN UNION, “Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)”, *OJEU n° L 77*, on 23.3.2016.

<sup>117</sup> GARCÍA ANDRADE, P., “Migrants by sea”, *Spanish Yearbook of International Law*, n° 21, 2017, pp. 4-5.

<sup>118</sup> For a critical perspective of the consequences of the collaboration between SASEMAR and other bodies with opposing aims in sea rescue, see VIVES, L., “Death at Sea: Dismantling the Spanish Search and Rescue System”, *Geopolitics*, 2021, pp.1-26.

<sup>119</sup> See FRANCO GARCÍA, M.A., *Las relaciones jurídico-militares en el ámbito marítimo nacional*, Ministerio de Defensa, 2015, pp. 164ff.

<sup>120</sup> Administrative Order PCI/121/2019, publishing the agreement by the Spanish Council of Ministers on additional measures to strengthen operational capabilities and to ensure the permanent adaptation of the Coordination Authority to actions to deal with irregular immigration in the area of the Strait of Gibraltar, Alboran Sea and adjacent waters, *B.O.E.* n.37, 12 Feb 2019.

to the detection and rescue of immigrants in the area under its jurisdiction, as well as the management of maritime traffic flow of intercepted immigrants.

In principle, Organic Law 3/2007 for effective equality between women and men is applicable to all those who make up these agencies and entities that do have specific sexual assault protocols.<sup>121</sup> However, it could not be confirmed whether these gender-related protocols apply to those who have been intercepted or rescued.<sup>122</sup>

To start with, ACIE has a “Regional Contingency Plan” which is aimed at establishing a comprehensive coordination and response system on occasions where responsible agencies and entities would need increased capacity due to a mass arrival of irregular immigrants, because of either the number of arrivals or their specific needs. However, for reasons of national security,<sup>123</sup> it has not been possible to access this information to check if the plan contains any provision for gender-related issues that may arise in such situations.

SASEMAR, meanwhile, in response to a request for information on the existence of a gender protocol in relation to rescue and rescue operations for irregular immigrants, refers to Article 2.1.10 of the SAR Convention, which establishes the obligation to render assistance at sea to any person “regardless of nationality, status or circumstances.” It also points out that “every attempt is made to respond to the most vulnerable on board the rescued boat” but without detailing what the responses consist of or whether they relate to a previously established protocol. It also adds that the identification of persons and the storage of information about age, origin, sex, physical condition and health, and other personal data, are excluded, since it is the responsibility of other bodies and institutions onshore.<sup>124</sup> Indeed, the official published

<sup>121</sup> Action Protocol against sexual harassment and harassment based on sex in the Civil Guard, *Boletín Oficial de la Guardia Civil*, 30 July 2019; Action Protocol for sexual and gender-based harassment in the Armed Forces, *Boletín oficial del Ministerio de Defensa*, 11 Dec 2019; Protocol for the protection of the dignity and integrity of workers and prevention of workplace violence (SASEMAR), *B.O.E.* n.18, 11 Dec. 2021.

<sup>122</sup> To this end, requests for information have been consulted or carried out through the electronic office associated with the Transparency Portal of the General State Administration, created within the framework of Law 19/2013, of December 9, on transparency, access to public information and good governance, *B.O.E.*, n.295, 10 March 2013.

<sup>123</sup> Resolution 484/2019 de 3 October 2019, (S/REF: 001-034953, N/REF: R/0484/2019; 100-002715), Result of Resolution: Dismissal.

<sup>124</sup> Resolution 19 May 2022 (File: 001-068442).

information on rescued persons only indicates the total number of people and boats assisted annually but does not provide data disaggregated by gender.<sup>125</sup>

Regarding the Maritime Service of the Civil Guard, the consultation confirms that there is no type of Protocol of action on gender in relation to interception or rescue operations of migrants. It is noted, however, that “during the proceedings, family units are kept together, women and men are kept separate and provided with separate toilets.”<sup>126</sup>

In short, none of the agencies involved in interception or rescue operations in Spain have a specific protocol on gender, although some measures are adopted in this regard, such as those indicated in relation to the actions of SASEMAR and the Maritime Service of the Civil Guard. This lack of specific protocols confirms the invisibility of gender issues in sea operations linked to mixed migration.

As can be inferred from the CEDAW and GREVIO reports, this invisibility continues after disembarkation due to the inexistence of an overarching arrival protocol which is gender sensitive. In general, once they have disembarked, those rescued or intercepted go to triage and vulnerability screening provided by the Red Cross Emergency Response teams (ERIE).<sup>127</sup> Then, once they have been informed about their legal situation, they are identified by the police, and then subject to immigration regulations.<sup>128</sup>

In practice, the gender-specific measures that can be taken vary according to both the material and human resources available at the different disembarkation points.<sup>129</sup> However, these actions are of great importance. First, they guarantee the rights of all intercepted/rescued women. They are also fundamental so that, where appropriate, the legal channels for the suspension of the return procedures for gender reasons can be made effective. These

<sup>125</sup> As stated in SPANISH GOVERNMENT, *Plan Nacional de servicios especiales de salvamento de la vida humana en la mar y de lucha contra la contaminación del medio marino, 2021 – 2024*, February 2021, pp. 27-28.

<sup>126</sup> Resolution 1 June 2022, (File: 001-068434)

<sup>127</sup> See CORTÉS GARCÍA, E., MARTÍN SECADO, A., DÍAZ SOTERO, V., PICÓN MARÍN, C., “Equipo de Respuesta Inmediata en Emergencias de Ayuda Humanitaria a Inmigrantes de Cruz Roja Española (ERIE AHI)” in *Atención a las personas migrantes...*, *op.cit.*, pp.40-44.

<sup>128</sup> See CONSEJO GENERAL DE LA ABOGACIA ESPAÑOLA, *Protocolo de actuación en casos de entrada de personas extranjeras por vía marítima*, 2018.

<sup>129</sup> “Las personas refugiadas en España y en Europa...”, *cit.*, pp.100-102.

include applying for international protection, specific protection for victims of human trafficking, and pregnant women at risk.<sup>130</sup> Again, in practice, there are clear difficulties with ability to access to these channels. For example, there is a lack of interpreters who can tell women about these channels as well as pressures caused by overcrowding during police procedures and shortcomings in legal assistance.<sup>131</sup> In the case of victims of trafficking, it is particularly difficult to successfully implement the existing legal provisions because they are often unaware of their existence, in part due to their situation and in part because the regulatory focus has been placed on addressing the crime rather than protecting victims.<sup>132</sup>

Hence, the importance of the measures provided by Law 10/2022 for the prevention and awareness of sexual violence in the health, socio-sanitary and social services fields, and in centres for involuntary internment. These measures are essential to protect women who have been rescued or intercepted at sea, once they have landed.

Specifically in the health field, the idea is to promote the adequate training of health and non-health personnel for the detection of sexual violence. Likewise, a common protocol of action is foreseen that ensures homogeneous and adequate action of health personnel in the whole of the State. The intention is added to establish action protocols “that allow the detection and care of cases of female genital mutilation, [as well as] women trafficking for the purposes of sexual exploitation and forced marriage, for which specific training for professional specialization is necessary”<sup>133</sup>. Specific training on

<sup>130</sup> Art. 23, p.6 a), b), Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009, B.O.E. n.103, 30 April 2011 and Regulation regulating the system of reception in matters of international protection, *cit.*, arts. 10 y 26.

<sup>131</sup> Cf. MORENILLA BELIZÓN, F., “Tratamiento jurídico práctico del procedimiento de devolución”, en *Atención a las personas migrantes...*, *op.cit.*, pp.56-59.

<sup>132</sup> See AMNESTY INTERNATIONAL, “Las autoridades españolas priorizan el control policial y migratorio por encima de la protección a las víctimas de trata con fines de explotación sexual”, Madrid, 15 October 2020, available at <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/>; SANTOS OLMEDO, B., “Las víctimas de trata en España: el sistema de acogida de protección internacional”, *Anuario CIDOB de la Inmigración*, 2019, pp.144-166; VILLACAMPA, C., TORRES, “Aproximación institucional a la trata de seres humanos en España: valoración crítica”, *Estudios Penales y Criminológicos*, vol. 41, 2021, pp.189-232.

<sup>133</sup> Art. 22.

gender perspectives is also outlined for those entering State Security Forces and Corps, regional and local Security Forces and Corps, and for the personnel who provide their services in detention centres for foreigners and other detention centres or shelters, including those used for temporary stays.

In addition, Law 10/2022 stipulates that “victims of sexual violence in an irregular administrative situation, in accordance with immigration legislation” may have the right to residence and work under the terms provided for authorizations for exceptional circumstances in the Organic Law 4/2000 of January 11 in cases not covered in this regulation.<sup>134</sup> Once developed, this provision clearly opens up a new avenue of gender-based protection for migrant women arriving irregularly in Spain by sea.

## **VI. CONCLUSIONS**

Although women make up 10% of those who arrive in Spain irregularly via maritime interception or rescue operations that Spain is responsible for, this article confirms that gender issues arising in these operations remain largely invisible. This takes place in a larger European context, where in response to mixed migration by sea, State Members prioritise security, and sea rescue is used as a form of migrant control to the detriment of the protection of migrants’ rights. It appears this approach will be continued in light of the New Pact on Immigration and Asylum, although some of the proposals submitted have a direct impact on irregular arrivals by sea, and, therefore, on the situation and rights of rescued or intercepted persons.

The difficulty in adopting a common European framework for mixed migration sea operations should also be noted. Except for those conducted by FRONTEX, search, interception, rescue and disembarkation operations are generally carried out by the Member States, meaning that they have to ensure the fulfilment of their international obligations and commitments, and more specifically, those on gender.

The CEDAW, the Istanbul Convention, the WPS agenda and other related UN agendas do not expressly refer to interception and/or rescue operations linked to mixed migration, but their review identifies a number of gender obligations which are relevant in these cases. These include the obligation to have disaggregated information and data, to ensure specific training in gender-

<sup>134</sup> Art.36.



based violence for relevant professionals, to guarantee the rights of refugee and asylum-seeking women, and to respect the principle of non-refoulement.

Spain, as the Member State of the EU on which we have focused our analysis, has been taking measures within the framework of internal legislation on gender that are applicable to interception and rescue operations. However, our analysis of the international monitoring procedures of CEDAW and the Istanbul Convention, as well as that of the WPS and 2030 Agendas, shows that Spain has not yet fully met its international obligations and commitments on gender in this area. Therefore, following the recommendations formulated by the CEDAW and GREVIO Committees, it is necessary to continue to develop measures to ensure that data collected on the numbers of those rescued or intercepted is disaggregated by sex, to provide training on gender-sensitive issues to all those who take part in sea operations, to prepare contingency plans which include systematic vulnerability screening for women and children, and to guarantee that the principle of non-refoulement is respected.

By looking at what hinders the adoption of these necessary measures, two areas can be identified in which Spain needs to fully implement the existing national framework, and, if necessary, make the necessary regulatory changes. The first area to highlight is Spanish legislation on gender, both in terms of equal treatment as well as protection against gender-based violence. To this point, it is a priority to clarify the uncertainties raised by the subjective scope of application of Organic Laws 3/2007 and 15/2022. It is also necessary to proceed with the adoption of the measures on prevention, training, and detection of sexual violence provided for in Organic Law 10/2022 as well as with the regulatory development of its provisions affecting migrant women in an irregular situation who have been subjected to sexual violence.

The second area of concern is that of public agencies and entities involved in sea interception and rescue operations to surmount the absence of gender-specific protocols applicable to them. This absence poses the risk that gender issues may remain invisible during these operations and after disembarkation. This confirms the urgent need for Spain to adopt a comprehensive gender-sensitive perspective, both during interception or rescue operations and on dry land, using specific protocols that are applied generally to all actors involved in these operations. Such an approach is essential to overcoming some of the

main shortcomings of specific protections covering rescued or intercepted women.

The adoption of these measures is not an easy task. Management of mixed migration by Spain is complex due to the number of arrivals, the large number of parties involved and the limited availability of both material and human resources. However, pending regulatory developments and the required policy and operational changes are necessary to fully comply with Spain's international commitments and obligations on gender.

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