

Rights awareness in circular migration: a multi-stakeholder approach

The case of Moroccan women migrant workers in Huelva (Spain)

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ACRONYMS

ANAPEC	National Agency for Promotion of Employment and Skills of Morocco
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CCOO	Comisiones Obreras (Labor Union)
CSR	Corporate Social Responsibility
DGPM	Dirección General de Políticas Migratorias (Regional government agency)
GECCO	Collective Management of In-Origin Recruitments
GDP	Gross Domestic Product
GVA	Gross Value Added
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organization
IOM	International Organization for Migration
JHL	Jornaleras de Huelva en Lucha (Labor Union)
MZC	Mujeres en Zona de Conflicto (NGO)
OEIGWG	Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights
UNGPs	United Nations Guiding Principles on human rights and businesses
UGT	Unión General de Trabajadores (Labor Union)
SAT	Sindicato Andaluz de Trabajadores (Labor Union)

1. Introduction

International human rights law recognizes the rights inherent to all humans, while it identifies several categories of particularly vulnerable people who need special protection. This is reflected in the main UN human rights mechanisms, some of which focus on groups of people such as children, migrant workers, women or disabled people¹.

When two of these identities intersect, it results in a particularly vulnerable position, a double disadvantage. Such is the case of the workers subject of this study: female temporary migrant workers travelling annually from Morocco to Spain to work in the commercial berry harvest. The intersection between their migrant status and their gender plays a key role in their enjoyment of human rights. It is therefore not sufficient to just consider the difficulties they experience as migrant workers in foreign territory. A gender perspective is needed to understand the full implications of this phenomenon: why they are selected, why they *choose* to temporarily leave their home countries and families behind, and how they are treated during their stay in Spain.

Unlike other movements of people, this migratory flux is not spontaneous. It happens within the frame of a circular migration agreement: a regulated flow of migrants moving periodically between their country of origin and a country of destination where they perform temporary work. This institutionalized solution is considered a ‘triple win’ that benefits countries of origin, countries of destination, and migrant workers.

Civil society members have nevertheless been critical of these programs since their establishment, arguing that, while they benefit countries of destination and origin, migrants can become victims of a system where they are used as disposable tools; a system that turns a blind eye to their rights and silences their voices.

This difference in perception between institutions and civil society is also reflected in the case study of this thesis. While Spanish and Moroccan authorities consider the arrangement a success, members of civil society are critical with the program and claim there are abuses in all stages: from the selection criteria and the treatment these women receive in Spain, to the real developmental impact of this migration in Moroccan society. The abuses reported by the participating women include abusive working conditions, poor living conditions and sexual abuse in the workplace.

While these claims have even reached UN officials, who have requested information from Spain and Morocco concerning the situation of migrants², there seems to be a lack of

¹ See, for example the International Convention Against all forms of Discrimination Against Women (1979), the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) or the Convention on the Rights of Persons with Disabilities (2006).

² UN AL ESP 1/2020 and AL MAR 1/2020.

coordination between stakeholders regarding the adoption of measures. Despite some practical improvements, new claims arise every seasonal campaign and there is still no transparency or accountability. When analyzing the reasons behind this deficient system, most acknowledge the existence of sufficient legal standards protecting the rights of workers, but blame the State for not complying accordingly, corporations for their lack of transparency and cooperation, or the judiciary for not investigating the claims.

These three demands fall directly within the frame of business and human rights: State's duty to protect human rights, corporate responsibility to respect human rights and guaranteed access to justice and remedies.

While all of these aspects are crucial to the well-functioning of this migrating process, this thesis wants to contribute to the academic debate by investigating an issue that has yet not received sufficient attention: the need for migrant workers to be properly informed of their rights in circular migration schemes, as a precondition to identify potential rights violations and facilitate access to justice. Previous research has concluded, through interviews and direct work with the migrants, that they are often unaware of their rights. Among other factors, the high illiteracy rate, the fact that they do not speak Spanish, and their lack of awareness about national and international regulations hinders a proper understanding of rights and contributes to their invisibility, to a deafening silence where their voices are not heard. How could they claim their rights, when they are not aware of them?

With this question in mind, this research aims to find out what is being done to inform these women of their rights. Using business and human rights as the point of departure, the thesis suggests the adoption of a multi-stakeholder approach as the best possible solution to ensure that both the State and business enterprises carry out their due diligence with respect to this particular aspect of access to justice.

Since this is not an isolated phenomenon, analyzing the interaction between stakeholders and the strategies used to guarantee the protection of migrants' human rights could prove useful in other contexts of corporations recruiting migrant workforce to carry out temporary work.

2. Methodology

This thesis draws from Langford's argumentation in favor of a multidisciplinary approach to human rights research and considers that human rights issues such as the one analyzed in it 'cannot be answered within the confines of a single tradition'³. Mixed methods are therefore used to obtain and organize the information needed to answer the core research question. Based on the reports of lack of rights awareness made by workers and civil society members, the thesis explores the extent to which the provision of rights information is addressed in this migration

³ Malcom Langford, 'Interdisciplinarity and multimethod research' in Bård Andreassen et al. (eds) *Research Methods in Human Rights: A Handbook* (2017).

program, and suggests ways for the State and businesses to improve the existing system. This research question is tackled through four sub-questions:

- 1) Which legal standards are applicable to Spain, and what rights do these recognize to migrant workers?
- 2) Who are the Spanish actors involved in this migratory flux, and how many of them are currently providing rights information to workers?
- 3) What are the specific actions carried out by these stakeholders and how do they interact with each other?
- 4) What could State and business do to improve the current situation?

The thesis was set to be written between February and May 2022. Answering the second and third sub-questions has taken up longer than expected, due to difficulties that had not been identified prior to beginning the research, namely:

- i. The large number of actors involved, particularly business enterprises and associations (>1300 business enterprises, at least six associations, one interbranch organization).
- ii. The timeline of the thesis coinciding with the peak of the harvesting season. Involved actors were less inclined to attend to an academic project due to their own workload, and several attempts have been necessary to contact the different participants and agree on interview dates, prolonging the data collection until late May.

The thesis is organized in four different parts, each leading to the following:

- a) Part I contains background information about key general concepts, such as that of labour migration and circular migration, the particularities of women migration or the relevance of applying a business and human rights approach to these contexts.
- b) Part II contains an analysis of the legal standards applicable to Spain and the rights granted to migrant workers within these standards, with particular attention to the provision of rights information.
- c) Part III contains a brief introduction of Huelva's commercial berry production sector and details the human rights violations claimed by workers and civil society.
- d) Part IV contains the results of the empirical research and improvement suggestions by the author.

Part I has been influenced by both international legal standards and scholarly articles and books. Within the first category are included mechanisms regulating migrant workers' rights (International Labour Organization conventions and the International Convention on the

Protection of the Rights of All Migrant Workers and Members of Their Families⁴), women migrant workers (CEDAW General Recommendation No. 26⁵) and business and human rights activities (UN Guiding Principles⁶ and the Draft-Treaty on Business and Human Rights⁷). Worth mentioning within the second category are the analysis by Vankova of the institutionalization of circular migration⁸, or Skeldon's analysis of the consequences of circular migration for human welfare⁹. Regarding women migration, this thesis reviews Satterthwaite's argumentation for the protection of women migrant's rights through intersectionality¹⁰ and Hainfurther's proposal to do so specifically using the CEDAW¹¹.

The review for part II includes the legal instruments mentioned above, as well as other human rights treaties, and national legislation regulating migrant rights in Spain, particularly those of the participants of circular migration programs.

Part III is largely based on previous research on the topic of female Moroccan seasonal migration in Huelva, namely the case study carried out by González and Reynés¹², and the book by Chadia Arab¹³. National and international articles by journalists, and reports by civil society members are also used as a source of information regarding the human rights violations claims.

The three first parts are therefore written using desk-based research and secondary data collection methods.

Part IV, while also being desk-based, is mostly based on primary methods: digital interviews with the participants of the investigative research carried out for this thesis. These participants were found after extensive documentation and the design of a map of stakeholders (Annex I). They are divided in four categories: government bodies, business associations, labor unions and social agents. Due to time and language limitations, the focus of the thesis is restricted to Spain and includes only the view of Spanish actors. Further research is needed to include the

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990) 2220 UNTS 93.

⁵ UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No. 26 on women migrant workers' (2008) UN Doc CEDAW/C/2009/WP.1/R.

⁶ UN Guiding Principles on human rights and businesses. Implementing the United Nations "Protect, Respect and Remedy Framework" (2011) UN doc HR/PUB/11/04.

⁷ UN OEIGWG, 'Third revised draft of the Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises' (August 2021).

⁸ Zvezda Vankova, *Circular Migration and the Rights of Migrant Workers in Central and Eastern Europe. The EU Promise of a Triple Win Solution* (2020) IMISCOE Research Series 1.

⁹ Ronald Skeldon, 'Going round in circles: Circular migration, poverty alleviation and marginality. International Migration' (2012) 50(3).

¹⁰ Margaret L. Satterthwaite, 'Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers' (2005) 8 Yale Hum Rts & Dev LJ 1.

¹¹ Jennifer S. Hainfurther, 'A Rights-Based Approach: Using CEDAW to Protect the Human Rights of Migrant Workers' (2009) American University International Law Review 24 no 5 849-854.

¹² Carmen González and Miquel Reynés, 'Circular migration between Spain and Morocco: Something more than agricultural work?' in *The METOIKOS Research Project, Circular migration patterns in Southern and Central Eastern Europe: Challenges and opportunities for migrants and policy makers* (2011).

¹³ Chadia Arab, *Dames de fraises, deigns de fée. Les invisibles de la migration saisonnière marocaine en Espagne* (2018).

perspective from Moroccan actors and obtain a full picture of the migration flow. Part IV ends with improvement proposals and a final conclusion.

Regarding the research design, a total of 41 actors were approached first via email, then through telephone calls. A personalized email was sent to each one of them, detailing (1) publicly available information about their involvement in the migration flow, and (2) personalized open questions about their role in the provision of rights information, provided as guidance for potential interviews. Out of these actors:

- a) Seventeen did not reply to any of the contact attempts.
- b) Fourteen replied but did not participate, since they are not doing anything related to the specific object of this study.
- c) One did not participate in the research due to them not performing any relevant action, but still answered other general questions via email.
- d) One manifested interest in participating but finally did not, due to them being too busy with campaign work.
- e) Eight agreed to participate in the investigation and explain their actions regarding to the object of our study. Two of them did not agree to an interview but sent their responses in email, the other six were digitally interviewed. They are detailed in the following table:

PARTICIPANTS			
Type of actor	Name	Communication via	Date
Government (national)	Subdirección General de Gestión y Coordinación de Flujos Migratorios	Email	26 April– 11 May
Government (regional) + NGO	Dirección General de Coordinación de Políticas Migratorias (DGPM)	Digital interview	11 May
Businesses (interbranch organization)	Interfresa		6 May
Labor unions	Comisiones Obreras (CCOO)		20 April
	Unión General de Trabajadores (UGT)		17 April
	Sindicato Andaluz de Trabajadores (SAT)		24 May
NGO	Mujeres en Zona de Conflicto (MZC)	26 April	
	Cruz Roja	Email	10 May

PART I: KEY BACKGROUND CONCEPTS

3. Migrant workers' human rights

International law defines migrant workers as 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national'¹⁴. The latest global estimate, from 2019, sets the number of international migrant workers in 169 million¹⁵.

Migrant workers are particularly vulnerable to violations of their human rights. National legislations do not grant the same rights to citizens and non-citizens, nor does society and employers treat them equally. These differences get aggravated in the case of undocumented migrants.

The International Labour Organization (ILO) has, since the beginning of the 20th century, recognized the protection of workers employed in foreign countries as one of their main objectives¹⁶. Several instruments set forth the principles and standards included in this protection, such as C97, C143, C86, R151, C29 or C105.

Human rights treaty bodies have also considered migrant workers a group deserving of special protection. All the principles embodied in the basic human rights instruments are of particular application to migrants, and State Parties must therefore take appropriate measures to respect, protect and fulfill their rights.

Regardless of these protections, the UN deemed it necessary to create a specific treaty addressing this issue in 1990: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). This convention holds the lowest number of ratifications among the main human rights treaties, with 57 State Parties (while other core treaties have 150 -170 State Parties). Unfortunately, there is a clear pattern in the roles played by countries that have ratified/not ratified the convention, that of sending countries versus receiving countries. Despite the low number of ratifications, some authors argue that migrant workers' rights can be invoked through other treaties due to intersectionality¹⁷.

Leaving aside how ineffective the ICRMW is as a binding legal mechanism, its catalogue of rights shows a clear picture of the abuses frequently suffered by migrant workers, either at the country of origin, transit or destination. Worth noting is also the work developed by the Committee on Migrant Workers, who determines where the protection of migrant workers is most urgently needed, highlighting the abuses suffered by two groups: undocumented workers

¹⁴ ICRMW (n.4) art 2.1.

¹⁵ ILO, 'Global Estimates on International Migrant Workers. Results and Methodology' (3rd ed 2021) 11.

¹⁶ ILO, 'Constitution of the International Labour Organization' (1919) Preamble.

¹⁷ Satterthwaite (n.10).

and seasonal workers¹⁸.

3.1 Circular migration

Seasonal migrant workers often participate in what is referred to as circular migration: ‘the fluid movement of people between countries [...] which, when it occurs voluntarily and is linked to the labor needs of countries of origin and destination, can be beneficial to all involved¹⁹.

The concept has changed through the last decades, from spontaneous movements to a potential migration policy tool²⁰, and is nowadays promoted by both UN and UE as a way to establish orderly and regular migration flows. Mobility partnerships are promoted as a ‘triple win solution’ that benefits countries of origin and destination, as well as migrant workers themselves²¹.

Many scholars have nevertheless contested this solution and argue that voluntariness and free movement are essential to circular migration²², both of which are restricted under the creation of institutional schemes. Some authors assimilate these programs to guest-working models developed after World War II, which treated migrants as ‘temporary labor units’ to be returned when no longer needed²³. Others critique the lack of rights-based approaches in these policies and argue that circular migration often has an inevitable outcome: migrants use temporary permits to enter the country of destination and then stay as irregular migrants, which perpetuates the cycle²⁴.

4. Women migrant workers

The last two decades have seen a feminization of labor migration characterized by women who migrate in search of better wages and conditions, instead of just following their families²⁵. Despite this change, the majority of migrant workers (58,5%) are still men²⁶. The ILO points at two possible reasons for this estimate: either (1) there are still less women of working age migrating than men, or (2) women who migrate do not always join the workforce of the receiving country, due among other factors to gender roles and stereotypes. To fully understand the implications of female migration beyond statistics, it should thus be studied ‘from the perspective of gender inequality, traditional female roles, a gendered labour market, the

¹⁸ UNGA, ‘Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 19th and 20th Sessions’ (2014) UN Doc A/69/48.

¹⁹ Kathleen Newland and Dovelyn Agunias, ‘How Can Circular migration and Sustainable Return Serve As Development Tools?’ (July 2007) Global Forum on Migration and Development.

²⁰ Vankova (n.8) 4

²¹ *ibid* 1.

²² See, for example Skeldon (2012) or Newland et Al. (2008).

²³ Vankova (n.8) 4.

²⁴ Arab (n.13) 193- 197.

²⁵ ILO, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An Information Guide, Booklet 1 Introduction: Why the focus on women international migrant workers* (Geneva 2003) 9.

²⁶ ILO (n.15) 12.

universal prevalence of gender-based violence and the worldwide feminization of poverty'²⁷.

Researchers who have adopted such gender perspective contribute to expanding the knowledge about migrating women and the precarious jobs they are offered, depicting women beyond just being passive and accompanying others²⁸. They analyze matters such as the transformation of traditional structures into gendered roles in paid jobs, which creates cheap labor force embodied in poor, rural, widowed or divorced women²⁹.

The fact that labour migration is not a gender-neutral phenomenon has advantages and disadvantages. On the one side, migration can contribute to women's empowerment, grant access to education and careers, allow women to earn better incomes and have more autonomy³⁰. On the other side, women migrant workers face a double discrimination on account of the intersection between their migrant and women identities: first they are discriminated due to their nationality; and second because they are women, and as such victims of the traditional attitudes concerning the place of women in society and working life.

One of the most thorough analyses about the impact of this double disadvantage was developed by the CEDAW Committee, which concluded that it negatively affects women migrant workers':

- i. Working conditions (trouble obtaining binding contracts concerning terms and conditions of work, causing them sometimes to work for long hours without overtime payment),
- ii. Living conditions (poor and overcrowded accommodation, when provided, which may lack running water, sanitary facilities or privacy),
- iii. Economy (lower wages, non-payment, delayed payments or transfer of wages into accounts not accessible to them, expectation to remit earnings to even extended families),
- iv. Health (denied access to health services corresponding to female health needs, especially reproductive health, dismissal due to pregnancy, resulting in irregular immigration status or deportation),
- v. Vulnerability to sexual abuse, harassment and physical violence (especially in sectors with majority of women workers),
- vi. Freedom of movement (restricted residence permits, isolation),
- vii. Access to justice (lack of legal protection due to legislation gaps, threats of dismissal)

²⁷ CEDAW Committee (n.5) para 5.

²⁸ Arab (n.13) 39.

²⁹ Fatima Ait Ben Lmadani, 'Femmes et émigration marocaine. Entre invisibilisation et survisibilisation : pour une approche postcoloniale' (2012) *Hommes & Migration* 1300.

³⁰ IOM, 'Migration in the 2030 Agenda. Achieving gender equality through migration governance: opportunities and solutions in support of the sustainable development agenda' (2017) 64.

upon reporting, or even harassment by the police),

- viii. Rights-awareness (many do not know the language of the country and are not aware of their rights).³¹

Scholars have also contributed to the analysis of this double disadvantage. A good example is Hainfurther's identification of abuses affecting domestic workers. Her analysis points at abuses both in the country of origin (often by recruiting agencies providing false or inaccurate information and charging high fees that lead women to debt) and destination. Both states and employers are responsible for human rights violations in receiving countries. On the one side, States often fail to grant gendered jobs the protection guaranteed by labor codes and social security programs, as well as they fail to monitor worksites and encourage migrant women to report rights violations. On the other side, employers frequently fail to comply with contracts or offer undesirable conditions, and place restrictions on workers' freedom of movement, confiscating their travel documents or subjecting them to excessive control³².

Although these analyses are often focused on the domestic work sector, the conclusions can be applied to any other gendered sector or jobs, where women face additional obstacles compared to their male peers. In the following subchapter we will analyze how

4.1 Rights awareness among women migrant workers

International law recognizes the right of all migrant workers to be informed of the conditions, rights and obligations under the law of the receiving state. Such information should be provided by employers, trade unions or other appropriate bodies, and given upon request, free of charge, and in a language the migrants are able to understand³³.

Regarding women migrant workers, the CEDAW Committee identifies the lack of access to relevant information about rights and entitlements as one of the barriers they face due to gender-insensitive environments³⁴. The committee considers the provision of gender- and rights-based should include:

- i. Contents of labour contracts,
- ii. Legal rights and entitlements in countries of employment,
- iii. Procedures for invoking formal and informal redress mechanisms,
- iv. Processes by which to obtain information about employers,
- v. Cultural conditions in countries of destination,
- vi. Stress management,
- vii. First aid and emergency measures, including emergency telephone numbers,
- viii. Information about safety in transit, including airport and airline orientations,

³¹ CEDAW Committee (n.5) Own categories.

³² Hainfurther (n.11).

³³ ICRMW (n.4) art 33.

³⁴ CEDAW Committee (n.5) para 13.

ix. Information about general and reproductive health.

5. Business and human rights

Since both States and employers have been identified as being responsible of migrant worker's violations of rights in countries of destination, this thesis considers it is relevant to analyze labor migration policies within the frame of business and human rights.

Human rights law was born to protect citizens' rights against potential abuses by States. But societies are dynamic, and as they face new challenges and threats, human rights are rethought and reinterpreted. While states' authority has decreased, business enterprises have been gaining power, and with it the ability to impact large groups of people.

This is especially relevant in the case of migrant workers employed by enterprises instead of individual employers. In a globalized and capitalist world ruled by neo-liberal policies, states often look away and fail to monitor the activities carried out by these enterprises, due to their economic contributions. However, society's call for stronger regulations is motivating the development of a new field within human rights law: business and human rights. This rapidly growing legal domain aims at defining duties but also represents a golden opportunity for businesses to participate, in cooperation with other stakeholders, in building fairer societies. By the 1990s, this notion was already widely accepted in global markets under the name of Corporate Social Responsibility (CSR)³⁵. However, it was not until the beginning of the 2000s that human rights entered the debate in the shape of voluntary standards of conduct³⁶. The last decades have seen a rapid development of these standards, including the 2008 'Protect, Respect and Remedy Framework for Business and Human Rights' and the 2011 'UN Guiding Principles on Business and Human Rights', both of which rely on previously existing human rights norms.³⁷ These principles focus on the concept of due diligence and are structured around three ideas: states' duty to protect human rights, corporate responsibility to respect human rights and the provision of remedies through different grievance mechanisms.³⁸

After the support given by multiple actors to these non-binding mechanisms, the UN is now working on a treaty draft, a step forward in creating legal obligations for corporations — even though the primary obligation would remain with States. Access to justice and remedies is expected to be another important component.³⁹

As this is also one of the vulnerabilities experienced by migrant workers, and especially by women migrant workers, the entry into force of a business and human rights treaty could

³⁵ Bård A. Andreassen and Võ Khánh Vinh, 'Business duties across borders: the new human rights frontier' in *Duties Across Borders, Advancing Human Rights in Transnational Businesses* (2016) 3.

³⁶ *ibid* 4.

³⁷ *ibid* 8.

³⁸ UN (n.6).

³⁹ OEIGWG (n.7).

contribute to strengthening their legal protections.

5.1 Rights awareness as a precondition to access to justice

The question remains whether the existence of an internationally binding instrument will improve businesses' respect for human rights, since the main problem with human rights legislation is the lack of enforcement⁴⁰. Be that as it may, these developments are more than welcome, since they also aim at improving victims' access to remedies. Different factors such as the existence of legal gaps, the complexity of supply chains or the unwillingness to act by states and courts have led to a recurrent problem of access to justice in the context of abuses committed by business enterprises.

In this context, the provision of rights information to workers could be both a deterrent for rights violations and a tool to facilitate victims access to justice: rights awareness is essential to identify violations and claim remedies. Procedural rights can therefore be key to the enjoyment of substantive rights.

PART II: LEGAL STANDARDS

6. Legal standards

Before addressing the issue of rights awareness within the program of circular migration, it is necessary to analyze the existing legal standards applicable to Spain, with the aim of identifying the rights granted to these women, those they should be informed of.

Spain is considered a parliamentary democracy with a symbolic constitutional monarchy. The division of powers — executive, legislative and judicial — is the core concept of the political system and it is meant to guarantee the rule of law. Spain's legal system is continental, mostly composed of laws and regulations, and focusing to a lesser extent in jurisprudence and customary law.

As to the hierarchical relation between national and international law, the Spanish Constitution affirms that 'validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order'.⁴¹ In case of conflict, the norms contained in international treaties ratified by Spain prevail over any other national norm, except for the Constitution.⁴²

Legal norms in Spain are therefore hierarchically ordered as follows: Constitution > International Treaties > Organic Laws and regulatory laws > Royal Decree-Law and Royal Legislative Decree > Laws promulgated by the Executive (Royal Decree, Decree, Ministerial Order) – Regional norms. The relationship between national and regional norms is not hierarchical, but reliant on the different powers vested to national and regional governments.

⁴⁰ Andreassen and Khánh Vinh (n.35).

⁴¹ Constitución Española (1978) BOE-A-1978-31229 art 93 – 96.

⁴² Ley 25/2014, de 27 de noviembre, de Tratados y otros Acuerdos Internacionales (2014) BOE-A-2014-12326.

The following subchapters analyze the relevant binding norms, specifically the articles regarding the protection of rights for which there have been repeated claims of violations. This includes mentions of the provision of rights information.

6.1 Relevant national law

The analysis of national law is structured from superior to inferior norms, and from national to local norms.

6.1.1 The Spanish Constitution

The supreme law in Spain is the Constitution, which regulates all other laws and norms. It establishes that aliens shall enjoy the rights and public freedoms guaranteed to national citizens, except for those concerning national elections, in the terms laid down by treaties and laws. This includes the right to life, to personal freedom and security, to intimacy, to peacefully assemble and associate, to judicial protection, to unionize and to freedom of religion or belief and freedom of expression (which includes the right to receive accurate information)⁴³.

6.1.3 Organic Law 4/2000

This act covers the rights and liberties of foreigners in Spain and their social integration, based on the principle of equality of treatment. In accordance with the Constitution, it establishes that it is the Government of Spain who shall define, plan, regulate and develop migration policies, without prejudice to the powers vested in the regional administrative divisions.

Article 39 regulates the management of ‘in-origin’ hiring, which is the specific type of circular migration analyzed throughout this dissertation. Although it establishes that the Ministry of Labor and Immigration is responsible for these temporary job permits, it is now the Ministry of Inclusion, Social Security and Migrations who holds the power to approve an annual provision of positions to be covered through this type of labour migration. The law explains that the procedure is oriented to those countries with which Spain has signed cooperation agreements regulating migratory flows: Morocco (2001), Ecuador (2001), Colombia (2001), Dominican Republic (2002) Mauritania (2007) and Ukraine (2009).⁴⁴

6.1.2 Royal Decree-Law 2/2015

The Statute of Workers is the main legal instrument regulating employment practices in Spain. This law regulates labour rights such as working hours, maximum duration of ordinary working weeks, payment of extra hours, etc, as well as the right to join labour unions. It also recognizes the right to information and establishes the obligation of employers to hand a copy of the contract to workers, as well as to inform them of the essential elements included and the main

⁴³ CE (n.41) art 15 - 24.

⁴⁴ Ley Orgánica 4/2000, de 11 enero, sobre derechos y libertades de los extranjeros en España y su integración social (2000) BOE-A-2000-544.

conditions of the job, if these are not included in the contract itself.⁴⁵

6.1.4 Order ISM/1485/2021

This ministerial order, commonly known as ‘GECCO order’, will be mentioned several times in Part III and IV, since it is the norm that explains in detail the process of hiring foreign temporary workers ‘in-origin’. It regulates temporary residence and work authorizations of maximum 1 year, to be offered to foreign citizens from countries outside of the European Union who are not currently in Spanish territory. The selection process must comply with the principles of equality of opportunities, non-discrimination and transparency, guaranteeing that all applicants are aware of the conditions stipulated in the job offer. Once in Spain, the norm recognizes legal guarantees such as:

- a) Continuity of work, which in agriculture is at least 75% of the usual working time offered to other workers.
- b) Contract compliance with the conditions specified in the job offer. Employers shall register contracts with public employment services, granting access to public health and Social Security protections.
- c) The provision by employers of
 - a) Transportation arrangements between both countries and to the workplace (partially covered), including the presence of bilingual assisting personnel.
 - b) Accommodation in accordance with the requirements detailed in the order.
 - c) Basic assistance and information about the characteristics of the recruitment, the job, workers’ rights and duties, etc.

Another particularity of the program is that it requires the participants to return to their home countries once the campaign is finished (or their contract terminated). Compliance with this rule allows the worker to apply for a job in the following campaigns.

The order also mentions the provision of courses aimed at improving the adaptation process of workers to their new working environment but does not regulate the provision of social and health assistance services.⁴⁶

6.1.5 Multi-stakeholder agreement for the management, coordination and socio-occupational integration of labor migration flows in seasonal agricultural campaigns

This agreement was signed in October 2020 between the Ministry of Inclusion, Social Security and Migrations, business representatives, labour unions and the Spanish Federation of

⁴⁵ Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (2015) BOE-A-2015-11430.

⁴⁶ Orden ISM/1485/2021, de 24 de diciembre, por la que se regula la gestión colectiva de contrataciones en origen para 2022 (2021) BOE-A-2021-21795.

Municipalities and Provinces, and has a duration of four years. The aim is to establish a cooperation system between the signing parties, guaranteeing an adequate provision of workers, compliance with labor and immigration norms, working and living conditions and the provision of adequate information and assistance in matters related to social and labour rights and obligations. Labour unions and business associations are expected to coordinate all these matters with the Public Administration and social and health services, who are not active members of the agreement.⁴⁷

6.1.6 Regional and local norms

Statute of Autonomy

Andalusia's Statute of Autonomy, a law hierarchically located under the Spanish Constitution, grants the regional government powers regarding the design of integration policies and regulation of migrants' social, economic and cultural participation.⁴⁸

Huelva Province Agricultural Workers' Agreement

This collective agreement signed between business associations and labor unions contains the specific working conditions of the sector (wages, working hours, rest days, suspension of working days due to weather conditions, union affiliation, etc.). The agreement in force was signed in 2018 and should have been updated in 2020, but negotiations are still ongoing due to differences of opinion between the parties. This is problematic because the agreement in force is not updated to the latest labour legislation, which can lead to abusive practices.⁴⁹

6.2 Relevant international law

Apart from all the local regulations, Spain is bound by several relevant international standards and norms. In 2020, the Permanent Mission of Spain was reminded of some of the mechanisms applicable to the protection of migrants in Huelva, through a Special Procedure written by several UN Special Rapporteurs.⁵⁰ The next subchapters analyze the specific protections contained in these and other international instruments.

Before beginning with the analysis, it is worth mentioning that Spain has not ratified the ICRMW, which particularly addresses discrimination affecting migrant workers. Although ratifying this treaty would be a step forward in the protection of migrant workers' rights, other human rights treaties can be invoked as well by using intersectionality, as mentioned in section 3.

⁴⁷ Resolución de 20 de octubre de 2020, de la Secretaría General Técnica, por la que se publica el Convenio con Asaja, Coag-Ir, Upa, Fepex, CCOO-Industria, UGT-Fica Y FEMP, para la ordenación, coordinación e integración sociolaboral de los flujos migratorios laborales en campañas agrícolas de temporada (2020) BOE-A-2020-13290.

⁴⁸ Ley Orgánica 2/2007, de 19 de marzo, de reforma del Estatuto de Autonomía para Andalucía (2007) BOE-A-2007-5825 art 10.3.17, 23 and 37.1.9.

⁴⁹ Convenio de Trabajadores del Campo en la Provincia de Huelva (2018) BOH num 215 p 6117.

⁵⁰ UN OHCHR (2020) AL ESP 1/2020.

6.2.1 ICESCR

As a State Party to the International Covenant on Economic, Social and Cultural Rights, Spain must respect, protect, and progressively realize a catalogue of rights, including some that apply to the protection of these workers:

- i. The equal right of men and women to the enjoyment of all economic, social and cultural rights,
- ii. The right of everyone to just and favorable conditions of work, fair wages and equal remuneration for equal work, a decent living for oneself and their families, safe and healthy working conditions, and rest, leisure and reasonable limitation of working hours and holidays with pay,
- iii. The right of everyone to join trade unions,
- iv. The right of everyone to social security,
- v. The widest possible protection and assistance to the family [...] particularly [...] while the worker is responsible for the care and education of dependent children.
- vi. The right of everyone to an adequate standard of living, including adequate food, clothing and housing,
- vii. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.⁵¹

6.2.2 ICERD

Women migrant workers can be vulnerable to racial discrimination when they are working in a country where they belong to a racial minority. In this case, the Convention on the Elimination of All Forms of Racial Discrimination can also be invoked to protect their economic, social and cultural rights, in particular the rights to:

- i. Work, free choice of employment, just and favorable conditions of work, equal pay for equal work, just and favorable remuneration,
- ii. Join trade unions,
- iii. Housing,
- iv. Public health, medical care, social security and social services,
- v. Education and training.⁵²

Furthermore, the Committee has recognized in their communications with Spain, that migrant

⁵¹ International Covenant on Economic, Social, and Cultural Rights (1966) UNTS 993 art 2, 3, 7-12.

⁵² International Convention on the Elimination of All Forms of Racial Discrimination (1965) UNTS 660 p 195 art 5(d).

women are particularly vulnerable to gender-based violence and less likely to report violence and access care services, due to their poor living conditions and fear of expulsion⁵³.

6.2.3 CEDAW

Due to the intersection of worker's migrant and women identities, the CEDAW can also be used to protect these women, such as their right to:

- i. Work,
- ii. Same employment opportunities, including the same criteria for selection in matters of employment,
- iii. Free choice of profession and employment and job security,
- iv. Equal remuneration, including benefits, and equal treatment in respect of work,
- v. Social security,
- vi. Protection of health and safety in working conditions.

The Convention also prohibits dismissal on the grounds of pregnancy.⁵⁴

The CEDAW Committee has consistently considered migrant women one of the vulnerable groups of women deserving special attention⁵⁵, and it formalized this view through General Recommendation No. 26 on women migrant workers. Even though general recommendations are not binding, State parties are expected to comply with their stipulations, since they expand on the contents of the Convention.

According to this recommendation, States are entitled to regulate migration but have the obligation to respect, protect and fulfil the human rights of women through the migration cycle, especially considering the social and economic contributions these workers make to receiving countries. The Committee argues that sex- and gender-based discrimination lies as a cause of the violations of their human rights. The document contains a list of recommendations to sending and receiving countries, to better protect the rights of women migrant workers, particularly those working low-paid jobs, who are at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship.

Countries of destination are expected to provide legal protection and guaranteed access to justice and remedies, establish culturally and linguistically appropriate services, care for the social inclusion of workers, provide awareness-raising programs concerning the rights of migrant women workers for recruitment agencies, employers and State employees, and monitor both recruiters and employers.

⁵³ UN Committee on the Elimination of Racial Discrimination (2011) UN doc CERD/C/ESP/CO/18-20.

⁵⁴ Convention on the Elimination of All Forms of Discrimination Against Women (1979) UNTS 1249 p 13 arts 11, 12.

⁵⁵ CEDAW Committee (n.5) 2.

Furthermore, the CEDAW is a particularly useful tool to hold receiving states accountable in the event of abuses by employers, since it establishes the obligation of states to take all appropriate measures to eliminate discrimination ‘by any person, organization or enterprise’⁵⁶. In the absence of a binding treaty regulating businesses’ legal human rights obligations, this is one of the strongest appeals of invoking the CEDAW for the protection of women migrant workers.

In communications with Spain, the Committee noted in 2009 ‘a sharp increase of migrant female workers in the agricultural-food industry who are employed as temporary farmhands’, regretting the little information provided by Spain on their situation⁵⁷. State representatives recognized that there were ‘numerous cases of discrimination in the area of working conditions’ but assured that there were guarantees regarding recruitment and the provision of decent housing for migrant women, regulated by a ministerial order⁵⁸. The Committee also asked Spain to pay special attention to issues such as the enhancement of awareness among migrant women of their rights and of the remedies available to them to claim violations of such rights, the promotion of equal treatment in employment and to limit the concentration of women in segregated and precarious work⁵⁹, but Spain has yet to send its 9th report with updates about these issues.

6.2.4. ILO Conventions

The ILO sets standards that help states realize human rights in the workplace. Through the 1998 Declaration on Fundamental Principles and Rights at Work, Spain has the obligation to respect, promote and realize the core labour standards, three of which are applicable to this case study: freedom from forced labour, from discrimination in respect of employment and of association⁶⁰. These three standards are included in the fundamental conventions (C87, C98, C29, C105, C100, C11)⁶¹.

Spain has, furthermore, ratified other relevant conventions and therefore acquired the following obligations:

- i. Providing adequate and free services to assist migrants, including accurate information, adequate medical attention and treatment no less favorable than that applied to citizens in respect of labour and social security rights.⁶²

⁵⁶ CEDAW (n.54) art 2(e).

⁵⁷ CEDAW Committee, ‘Concluding observations of the Committee on the Elimination of Discrimination against Women. Spain’ (2009) UN doc CEDAW/C/ESP/CO/6.

⁵⁸ CEDAW Committee, ‘Consideration of reports submitted by States parties under article 18 of the Convention, combined seventh and eighth periodic reports of Spain’ (2015) UN doc CEDAW/C/SR.1310.

⁵⁹ CEDAW Committee, ‘List of issues and questions prior to the submission of the ninth periodic report of Spain’ (2019) UN doc CEDAW/C/ESP/QPR/9.

⁶⁰ ILO Declaration on Fundamental Principles and Rights at Work (1998).

⁶¹ The conventions related to child labor are not mentioned, since they are not relevant for this thesis.

⁶² ILO, ‘C097-Migration for Employment Convention’ (1949) art 2, 5 and 6.

- ii. Establishing labour inspections in agriculture (no matter the type, form or duration of contracts) to secure the enforcement of legal provisions related to work, supplying information and advice to employers and workers concerning compliance with the legal provisions.⁶³
- iii. Fulfilling the right of rural workers to join independent and free organizations, free from coercion or repression.⁶⁴
- iv. Informing workers before they enter employment (or in the event of changes) of the conditions in respect to wages under which they are employed.⁶⁵
- v. Guaranteeing minimum wages and applying appropriate penal or other sanctions to employers who fail to respect them.⁶⁶
- vi. Ensuring that there is work for all who are available and seeking work.⁶⁷
- vii. C156, which recognizes that Members shall enable persons with family responsibilities who are engaged in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.⁶⁸

Though not binding, other ILO publications are useful tools for States to adequately protect migrant workers, such as the ‘Multilateral Framework on Labour’, containing principles and guidelines for a rights-based approach to labour migration, or the guide ‘Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers’.

Conclusion

Labour and social rights of Moroccan migrant women working in the commercial berry harvest are thoroughly recognized both by national and international legislation binding on Spain.

PART III: CASE STUDY BACKGROUND

7. Migratory route Morocco-Spain

The western Mediterranean route, from Morocco and Algeria to Spain, is one of the two major routes for African migrants trying to reach Europe and beyond⁶⁹. This migratory route is used by tens of thousands of people, most of which are undocumented migrants, and is one of the

⁶³ ILO, ‘C129-Labor Inspection (Agriculture) Convention’ (1969) art 3, 4, 6.1 (a) and (b), 16 and 26.

⁶⁴ ILO, ‘C141-Rural Workers’ Organizations Convention’ (1975) art 3.1 and 3.2.

⁶⁵ ILO, ‘C095-Protection of Wages Convention’ (1949) art 14 (a).

⁶⁶ ILO, ‘C131-Minimum Wage Fixing Convention’ (1970) art 2.

⁶⁷ ILO, ‘C122-Employment Policy Convention’ (1964) art 1. The relevance of this article is due to Spanish workers claim that they are not offered adequate positions in the agrarian sector, since employers prefer hiring foreign workers under worse conditions.

⁶⁸ ILO, ‘C156-Workers with Family Responsibilities Convention’ (1981) art 3.

⁶⁹ IOM, ‘UN Migration World Migration Report’ (2022) 73.

main reasons behind the creation of regulated migration schemes between Europe and northern African countries.

Regarding the specific displacement of Moroccan citizens, their first country of destination is France, due to the colonial past and shared language, followed by Spain. The border between Morocco and Spain registers one of the biggest socioeconomic differences in the world⁷⁰, observable in indexes such as Spain's GDP being eleven times higher than Morocco's⁷¹, or Spain's minimum wage being six times higher than Morocco's (for agricultural work)⁷².

Accordingly, Spain receives the most immigrants from Morocco, followed closely by Romania.⁷³ The last available data shows 872.759 Moroccan citizens living in Spain in 2021, the biggest African community in Spanish territory⁷⁴. Apart from those living in Spain in a more or less permanent way, around 30,000 people, mostly women, cross on a daily basis the frontiers of the Spanish cities of Ceuta and Melilla, located in Northern Africa. They are granted a special permit that allows them to work on condition that they leave before midnight.⁷⁵

Due to the language facilities, university graduates find jobs in French speaking countries, while those who have not received a formal education often migrate to Spain to perform low qualification jobs, in sectors in which the language barrier is not as problematic. Some researchers have concluded that this low level of formal education weakens migrants' position in the labor market and diminishes the developmental impact of their migration once they return to Morocco.⁷⁶ The migration of temporary workers doing agricultural work is the only kind of circular migration taking place between these two countries, according to the existing literature. It focuses on Huelva, with a minor presence in Almería and Lleida⁷⁷. Circular migration is therefore still a minimal part of the migration flow between the two countries.

8. Agricultural sector in Andalucía

Almost 17 million hectares, 33% of the Spanish territory, are occupied with crops. Out of these, 4,3 million are located in Andalucía, which equals 25,2% of the national agrarian surface⁷⁸.

⁷⁰ José M. López Bueno, 'España-Marruecos la frontera más desigual' (2005) *Política Exterior sobre la internacionalización de la economía española* no 34 p 59-66.

⁷¹ The World Bank Data, 'World Bank national accounts data and OECD National Accounts data files' (2020) <<https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2020&locations=MA-ES&start=1960&view=chart>> accessed 10 March 2022.

⁷² Wage Indicator, 'Minimum wage-Morocco' (2019) <<https://wageindicator.org/salary/minimum-wage/morocco>> accessed 1 May 2022.

⁷³ IOM, 'Interactive IOM World Migration Report' (2022) <<https://worldmigrationreport.iom.int/wmr-2022-interactive/>> accessed 15 March 2022.

⁷⁴ Instituto Nacional de Estadística, 'Población extranjera por Nacionalidad, comunidades, Sexo y Año' (2022) <<https://www.ine.es/jaxi/Datos.htm?path=/t20/e245/p08/10/&file=02005.px>> accessed 15 March 2022.

⁷⁵ González and Reynés (n.12) 5.

⁷⁶ *ibid* 27.

⁷⁷ *ibid* 25.

⁷⁸ Ministerio para la transición ecológica y el reto demográfico, 'Sector agrícola y ganadero', <https://www.miteco.gob.es/es/cambio-climatico/temas/mitigacion-politicas-y-medidas/agricola.aspx> accessed 20 March 2022.

According to the last available data, the gross value added (GVA)⁷⁹ of the Andalusian agricultural sector represents 36,9% of the national agricultural sector's GVA⁸⁰. The most common occupation for the Andalusian population is still the hospitality sector (76,1%), centered on coastal touristic destinations and capitals, while agriculture is the main source of employment in half of the cities throughout the region.

In the last years, producers have complained about the profitability of farms. They claim the sector is struggling due to increased production prices, unfair competition from other countries, agrarian reforms and severe droughts. Strikes and protests have been organized during the first months of 2022 to demand urgent measures and more investment.⁸¹

8.1 Commercial berry production sector

Huelva's commercial berry production sector is one of the biggest economic sectors in Europe in terms of production, turnover and creation of wealth and employment⁸² and is formed by 1300 companies⁸³. However, business associations have also joined the general agrarian protests, to complain about increased costs that are affecting the profitability of the sector. They also complain about the raises in salaries⁸⁴ and Social Security payments.⁸⁵

The majority of the production is focused on strawberries (76%), followed by blueberries and raspberries. Except for 20% of the strawberry production, which is sold in the national market, the rest is exported to Europe. The last campaign yielded a total of 1,27 billion EUR in exportations.

Every year, around 100,000 people are directly employed in this sector. According to the data provided by Interfresa, the interbranch organization representing the sector, 53% are either Spanish citizens or foreigners living in Spain, 15% are Moroccan workers recruited through the GECCO order, and the rest are EU workers, with a minimal participation from third countries⁸⁶.

The hiring of foreign workers is justified by employers due to the lack of local applications, since the harvest season coincides with the high season of the hospitality sector, but not everyone agrees with this explanation, as the next chapter will show.

⁷⁹ The GVA measures the value of goods produced in an economic sector and shows the contribution to GDP made by that sector.

⁸⁰ Consejería de Agricultura, Ganadería, Pesca y Desarrollo Sostenible, 'El sector agrario y pesquero en Andalucía' (2020) <https://www.juntadeandalucia.es/export/drupaljda/producto_estadistica/19/06/Datos%20del%20sector%20agrario%20y%20pesquero_2020.pdf> accessed 12 April 2022.

⁸¹ Cooperativas Agro-Alimentarias de Andalucía, 'Más de 15,000 agricultores y ganaderos dicen basta al expolio al campo andaluz' (2022) <<https://agroalimentarias-andalucia.coop/noticias/3149-mas-de-15-000-agricultores-y-ganaderos-dicen-basta-al-expolio-al-campo-andaluz>> accessed 12 April 2022.

⁸² Interfresa, 'Saber más', <<https://www.interfresa.com/saber-mas/>> accessed 17 April 2022.

⁸³ Interview with Interfresa (6 May 2022).

⁸⁴ In the last four years, the minimum monthly wage in Spain has increased from 735 to 1000 euros.

⁸⁵ Freshuelva, 'Freshuelva advierte de las graves consecuencias de los incrementos de costes en el sector de los berries' (2022) <https://freshuelva.es/freshuelva-advierte-de-las-graves-consecuencias-de-los-incrementos-de-costes-en-el-sector-de-los-berries/> accessed 4 April 2022.

⁸⁶ Interfresa (n.82).

9. Seasonal female Moroccan migration in Huelva

*'All workers suffer from exploitation,
but there are different degrees.
Local workers are less affected,
then there is those coming from Eastern Europe,
and last, the women from Morocco and Sub-Saharan Africa'⁸⁷*

Migrant workforce has been common in the Spanish agriculture since the 90s⁸⁸. Due to several sociological reasons, farmers started hiring migrants instead of local manpower, and it soon became the main point of access to the labor market for undocumented migrants, who would use this working experience to later regularize their stay⁸⁹.

Starting from 2000, these irregular workers were slowly substituted by circular migrants from Romania and Poland, then Morocco, and from this year, also Honduras and Ecuador. This thesis focuses on the group of women migrant workers coming from Morocco. The number of participants has for the last five years varied between 14,000 and 19,000 women arriving in Spain in four different stages, from December to March⁹⁰.

The women are recruited through the GECCO order (introduced in section 6.1.4), justified by the Spanish authorities as a way to support the recruiting needs of the agricultural sector while creating safe, orderly and regulated migration routes to combat irregular migration⁹¹.

According to the order, job offers are first published in the regional employment service and offered to local workers. If the vacancies are not filled, companies request permits to recruit foreign workforce. The offers are forwarded to the National Agency for Promotion of Employment and Skills of Morocco (ANAPEC), who then select Moroccan workers who want to participate in the circular migration scheme⁹².

Business representatives, government officials and some conservative media outlets sustain that, despite the high unemployment rates in Huelva⁹³, this is the only solution to cover job

⁸⁷ Sindicato Andaluz de Trabajadores in Kamchatka, 'Huelva, durante la campaña de la recogida, es como un campo de concentración' (2022) <https://kamchatka.es/huelva-durante-la-campana-de-la-recogida-es-como-un-campo-de-concentracion/>

⁸⁸ González and Reynés (n.12) 1.

⁸⁹ *ibid* 6.

⁹⁰ Dirección General de Políticas Migratorias (DGPM), 'Memoria justificativa sobre la necesidad y oportunidad de contratar los servicios de mediación intercultural para la atención a las mujeres inmigrantes temporeras procedentes de la migración circular de Marruecos para las campañas de frutos rojos de Huelva 2021-2022' (2021) 2

⁹¹ Irregular migration is nevertheless still present in the fields of Huelva. Three thousand workers live in irregular settlements near the farms, an issue that has even caught the attention of UN Special Rapporteurs. Living conditions at the settlements are very poor, with no water, heating or electricity. Frequent fires destroy their few possessions, sometimes even causing mortal accidents. The documentary '*Vecinas, vivas donde vivas*' (Neighbours, wherever you live), can be watched to know more via <<https://youtu.be/iQzZrM-1n3M>>

⁹² The selecting committee includes one government representative, ANAPEC, and employers' representatives.

⁹³ The current unemployment rate (1st trimester 2022) is 18,24%.

offers, which receive an average of 200 local applications for 11,000 available positions⁹⁴.

Local workers and journalists have contested this explanation given by business owners. They claim the positions are not covered because the conditions are not good enough to be accepted by locals, and are therefore offered to migrants in more desperate situations.

‘We are just asking them to respect us and give us our dignity back, because there is a massive lack of rights behind the fruit harvest, and the companies are only getting richer and richer.’ (JHL, labor union)⁹⁵.

Furthermore, while local workers are offered contracts to start in March, Moroccan women arrive in Spain as early as December. Local workers argue they cannot wait until March to work just one or two months. According to local media, the offers published for local workers are fake, since employers know nobody will apply, and are just used to justify in-origin recruiting⁹⁶.

This recruitment system for seasonal workers is considered a success by both the Spanish and Moroccan governments, who are satisfied with the ‘positive’ results⁹⁷. Likewise, employers show great satisfaction with the circular migration scheme, to the point of being the ‘salvation’ their businesses needed⁹⁸. However, civil society members claim recurrent violations of rights and a deficient access to justice. ANAPEC officers have also recognized that many things could improve, such as the general protection offered to workers, the working and living conditions, and the lack of training initiatives⁹⁹.

The next three subchapters will analyze these claims, which take place before, during and after the harvest season.

9.1 Before leaving Morocco

*‘There were six thousand women...
We were queuing and pushing each other [...]
Come to think about it, we were fighting to go work in misery,
when it was misery forcing us to leave.’¹⁰⁰*

Even though participation in the program is voluntary, and it is often said that these women

⁹⁴ ABC, ‘Falta mano de obra en Huelva para recoger fresas y frutos rojos’ (2019) <https://sevilla.abc.es/andalucia/huelva/sevi-falta-mano-obra-huelva-para-recoger-fresas-y-frutos-rojos-201911051134_noticia.html> accessed 15 April 2022

⁹⁵ Kamchatka (n.87).

⁹⁶ El Salto Diario, ‘El descontento de jornaleros hondureños contratados en origen para la campaña de la fresa no sorprende a los colectivos críticos con el sector de los frutos rojos’ (2022) <<https://www.elsaltodiario.com/mi-gracion/el-descontento-de-jornaleros-hondurenos-contratados-en-origen-para-la-campana-de-la-fresa-no-sorprende-a-los-colectivos-criticos-con-el-sector-de-los-frutos-rojos>> accessed 1 May 2022.

⁹⁷ Yabiladi, ‘Huelva Gate: While Yatim is satisfied with the program, Spanish NGOs are angered by its flaws’ (2018) <https://en.yabiladi.com/articles/details/69581/huelva-gate-while-yatim-satisfied.html> accessed 4 May 2022.

⁹⁸ González and Reynés (n.12) 23.

⁹⁹ *ibid* 87.

¹⁰⁰ Arab (n.13) 27.

choose to migrate to Spain, many see this job as their only alternative. Most of the participants did not attend primary school, come from big families with low income, and had forced marriages. Some were abandoned by their husbands and others escaped from them to get a divorce, after which they became the main providers for their children. They claim that single women with children are marginalized in Morocco, so the job in Spain is an opportunity they cannot reject¹⁰¹. In Morocco, they earn 4,7 EUR (50 MAD) for seven hours of work a day, which is below the minimum wage. In Spain, they work six hours and a half a day, for a gross salary of 51,09 EUR¹⁰². In this context, it is not uncommon to hear that they prefer any foreign hell to the hell they know in Morocco.¹⁰³

‘Who would get away from their families for two or three months if they had another option? We go because there is no other alternative to survive. We are not doing anything wrong; we do not deserve being treated poorly.’ (Moroccan worker)¹⁰⁴

Despite the offers being gender-neutral in Spain, those offered in Morocco are addressed to rural women between 25 and 45 years old with underage children¹⁰⁵. The first years there was no gender discrimination in the selection process and the rate of compliance with the return commitment was very low, with over 80% of the participants staying in Spain¹⁰⁶. This is argued by the authorities as one of the reasons why employers now seek rural women with children: to ensure they will return to Morocco after the campaign¹⁰⁷. Researchers do not agree about whether this criterion led to a long-time reduction of non-returnees. While some saw a clear decrease during the first years of implementation¹⁰⁸, more updated research shows that irregular migration has increased since 2014¹⁰⁹.

‘If I died, who was going to take care of him [my son]? I held on those three months...I was only thinking of him.’ (Moroccan worker)¹¹⁰

These selection requirements have been criticized by human rights advocates as being in breach of basic rights and contravening the principles of equality of opportunity and non-discrimination recognized in the GECCO order. The result, they say, is the recruitment of vulnerable women who will most likely stay silent in the face of abuses. Officials from ANAPEC acknowledge that this is a discriminatory criterion but argue that it is a positive one,

¹⁰¹ Arab (n.13) 65.

¹⁰² Interview with UGT (17 April 2022).

¹⁰³ Arab (n.13) 36.

¹⁰⁴ Kamchatka (n.87).

¹⁰⁵ Violeta Doval, Carolina Jiménez and Cristina M. Zamora, ‘Los derechos humanos de las mujeres migrantes temporeras en Andalucía’ (2021) 33.

¹⁰⁶ Consejo Económico Social de la provincia de Huelva, ‘La inmigración en la provincia de Huelva’ (2006) Informe 1/2016.

¹⁰⁷ Doval et al (n.105) 34.

¹⁰⁸ Philippe Fargues, ‘Circular Migration: Is it relevant for the South and East of the Mediterranean?’ (2008) CARIM Analytic and Synthetic Notes 2008/40, 11.

¹⁰⁹ Arab (n.13) 197.

¹¹⁰ *ibid* 53.

aimed at promoting development in Morocco after the women go back home¹¹¹.

The gender discrimination has also been justified by employers with gender stereotypes, such as the women being physically better adapted for the ‘delicate job’ and being more careful with the berries¹¹². This position was corroborated by officials at the Embassy of Spain in Rabat, so the authorities are well aware of the situation¹¹³.

Regarding the women’s origin, employers have declared that they benefit from their cultural habits because they are less likely to create disturbances¹¹⁴, more obedient, hard-working and submissive, unlike Spanish or European workers¹¹⁵.

After being selected, the women have declared spending at least 300 EUR before traveling to Spain¹¹⁶, which often leads to debt. This money is spent on the visa, medical certificates, working equipment and the trip back to Morocco¹¹⁷. This goes against the recommendations of the ILO, who considers that governments should aim at eliminating recruitment fees and related costs, and that it should be employers, and not the workers, who bear the cost of recruitment.¹¹⁸

9.2 While working in Spain

‘If we chose the most vulnerable on purpose, not so they can develop here, but to ensure that they will return there, where is our legitimacy?’¹¹⁹

As discussed in Part I, receiving states frequently fail to recognize the legal rights of women migrant workers who work in gendered sectors¹²⁰. That is not the case for these women, whose rights are well protected under the existing legislation, as shown in section 6.

Instead, civil society members argue that the problem is one of inaction and lack of enforcement, which negatively impacts many aspects of the workers stay. First and foremost, they denounce that these women suffer a triple oppression by their employers, which creates the preconditions for abuse: nationality (Moroccan-Spanish), sex (female workers and male employers) and class (agrarian workers and business owners)¹²¹.

¹¹¹ *ibid* 149.

¹¹² Freshuelva president’s introductory remarks at the 4th International Berry Congress, in La Mar de Onuba (2019) <<http://revista.lamardeonuba.es/el-congreso-no-oficial-de-los-frutos-rojos-denuncia-listas-negras-en-la-contratacion-en-origen-de-mujeres-marroquies/>> accessed 3 March 2022.

¹¹³ Doval et al (n.105) 34.

¹¹⁴ González and Reynés (n.12) 14

¹¹⁵ Arab (n.13) 79.

¹¹⁶ *ibid* 57

¹¹⁷ Doval et al (n.105) 53.

¹¹⁸ ILO, ‘General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs’ (2019) 16.

¹¹⁹ François Bourguignon, ‘Le salaire du déshonneur. Le combat d’Aïcha et des “Dames de fraises” de Huelva’ (2020) 31^e concours international des plaidoiries des avocats du Mémorial de Caen

¹²⁰ Hainfurther (n.11) 853.

¹²¹ Arab (n.13) 136.

Social agents and media outlets have contributed to making these problematics known by society, which in turn attracts the attention of authorities and business associations. Every year, farm owners gather in the ‘International Berry Fruit Congress’ to discuss innovation techniques, sustainability practices and other similar questions. However, worker rights have never been discussed.

For years, civil society members have openly complained about it in street protests where they denounce the human rights violations claims¹²². In April this year, social agents gathered a panel of national and international experts and arranged the first official conference about the abuses affecting the workers. Some of the covered topics were the negative impacts on the environment, labor reforms, gender and racial discrimination, right to housing, and a North-South dialogue about the female workers arriving from Morocco. Despite four business associations being invited, only one of them participated in one of the talks. The other participants included labor union representatives, a delegate from the local office of the Government of Spain, an employee of the regional Employment Service, the Vice-Chair of the UN Working Group on discrimination against women and girls, former UN Special Rapporteur on Extreme poverty and human rights, UN Special Rapporteur on the rights to water and sanitation, and members of other international non-governmental associations..

The next subchapters analyze the most common claims of abuses during the workers’ stay in Spain.

9.2.1 Working conditions:

Social agents claim the women are subject to frequent contract breaches. Despite the GECCO order guaranteeing a minimum of 75% continuity at work¹²³, Moroccan workers assure they are often told not to work that day, thus not earning as much as expected¹²⁴. Official data from supports this claim, since the average contract in 2020 covered 114 days and the average number of worked days was 22,03¹²⁵. This practice is even justified by some as a punishment for low productivity:

‘I wouldn’t say it is a punishment, it’s more of a ‘psychological arrest’. Some women have been selected and they are not good enough for agricultural work. [...] A way to motivate the workers is [...] to leave them resting one or two days, and they will be stronger to start again.’ (Farm owner)¹²⁶

Regarding salaries, it is reported that extra hours are not properly compensated and wages are often lower than the minimum wage recognized in Spain. Migrant workers coming from

¹²² La Mar de Oñuba (n.112).

¹²³ Orden ISM/1485/2021 (n.46) art 3.1 (a).

¹²⁴ Arab (n.13) 126.

¹²⁵ Email by Oficina de Empleo y Migraciones de la Subdelegación de Huelva (7 April 2022).

¹²⁶ Salvados, ‘Temporeras’ (March 2019) <<https://youtu.be/bbSM0dAd5tk>> accessed 1 May 2022.

Ecuador and Honduras for the first time this year have also complained about this issue¹²⁷. Business representatives acknowledge the problem but blame market prices for the situation. Nevertheless, previous research points at 96% of the workers being satisfied with the salary, since they compare it to the salary earned for a similar job in Morocco¹²⁸.

The workers also claim being paid by harvested kilos instead of by the hour¹²⁹, being subject to productivity lists that humiliate the less productive workers or enduring longer working days than stipulated on their contracts. They also complain of supervisors' oral aggressiveness and say they need anxiety pills to withstand the pressure at work.¹³⁰

9.2.2 Living conditions

The GECCO order establishes that employers must provide accommodation for the recruited workers¹³¹.

'I was able to visit [...] some prefabricated containers in the middle of the countryside, several kilometers away from town, surveilled by a guard 24h a day. I thought that the women did not like these facilities due to their state of disrepair, the stench of the drainpipes, the isolation and distance from the city...' (Researcher)¹³²

After claims of inadequacy, this is one of the aspects that have been more strictly regulated by the authorities. The Ministry of Inclusion signed an agreement with the IOM in 2020 to carry out inspections and ensure that accommodations comply with the conditions established in the ministerial order. The IOM carried out 525 inspections in 2021 and found that 97% of them complied with the requirements¹³³.

There are, however, other claims. Despite the collective agreement stipulating that accommodation must be free of charge¹³⁴, some workers claim being unexpectedly charged for water, electricity or housing insurance. Distance and isolation are also an inconvenience, since the housing is often surrounded by fences and located inside the farms, far from town¹³⁵. According to Interfresa, most employers provide transportation once a week¹³⁶. However, the GECCO order establishes that accommodations should be either close to town or public transportation, and that whenever there is no public transport or the accommodation is further

¹²⁷ El Salto Diario (n.96).

¹²⁸ Arab (n.13) 126.

¹²⁹ *ibid* 29.

¹³⁰ JHL, 'I Jornada Internacional de Reflexión sobre el Entorno Agrícola Onubense' (7 April 2022).

<https://www.youtube.com/watch?v=kZHMx_fgo2A> accessed 8 April 2022.

¹³¹ Orden ISM/1485/2021 (n.46) art 3.2 (b).

¹³² Arab (n.13) 62.

¹³³ UPA president affirmations at the panel discussion 'Trabajo en el campo en la era post covid y efectos de la reforma laboral en entorno agrícola' (6 April 2022) <<https://youtu.be/PVBZkptdtIw>> accessed 8 April 2022.

¹³⁴ Convenio de campo (n.49) art 13.

¹³⁵ González and Reynés (n.12) 19.

¹³⁶ Interfresa (n.83).

than 1km to urban areas, transportation should be provided at least three times a week¹³⁷.

‘We are criticized for it, they even call them ghettos, but it is an advantage, especially for the workers coming from abroad, who can live in the farms, usually for free. [...] it is a benefit for the worker, who can live in the farm, with the rest of workers, who does not need to look for accommodation in town after arriving here.’ (Interfresa, interbranch organization)¹³⁸

This isolation and dependence on employers have been found to contribute to the vulnerability of women workers to gender-based violence¹³⁹, it hinders women’s access to informative campaigns carried out by social actors in public places, makes cultural integration difficult and increases the chance of cohabitation conflicts between workers. Furthermore, despite business associations’ commitment to allow labour unions’ access to these accommodations¹⁴⁰, union representatives have complained that owners are often reluctant to let them in¹⁴¹.

9.2.3 Access to health

Social agents and labor unions also manifest that workers’ access to health is not guaranteed, including claims of delayed registry in the public health services, job dismissal due to sickness, lesions or pregnancy, inadequate management of sick leaves, lack of transportation to health centers, etc.

‘We assisted a woman with breast cancer who had an ulcer, and she was alone in a house, her sick leave had not been handled [...] she had no potable water, her fridge was empty, her room did not have windows.’ (JHL, labour union)¹⁴²

‘One worker [...] said she was pregnant when she began working [...] After two weeks, she miscarried. She bled and asked her supervisor to take her to the doctor, but he said she would have to pay [...] for the gas. Two weeks later, when her condition had still not improved, he eventually took her to a clinic, which immediately referred her to the hospital.’ (Journalist)¹⁴³

Social agents also claim that public administrations fail to design specific strategies to deal with the increased number of patients. This leads to the collapse of health services, which creates conflicts between the local population and migrant workers. NGOs complain as well of the workers’ lack of knowledge regarding access to health services in Spain, and of the lack of

¹³⁷ Orden ISM/1485/2021 (n.46) Annex IX A.6.

¹³⁸ Interfresa (n.83).

¹³⁹ Hainfurther (n.11) 852.

¹⁴⁰ Ministerio de Trabajo, Migraciones y Seguridad Social, ‘Código de Buenas Prácticas en las campañas agrícolas de temporada’ (2018) 5.

¹⁴¹ UGT (n.102) and interview with CCOO (20 April 2022).

¹⁴² Doval et al (n.105).

¹⁴³ Al Jazeera, ‘In Spain’s strawberry fields, migrant women face sexual abuse’ (2021)

<<https://www.aljazeera.com/news/2021/7/10/in-spains-strawberry-fields-migrant-women-face-sexual-abuse>> accessed 1 May 2022.

interpreters assisting these women when they need medical care.

9.2.4 Sexual abuse

In 2018, several cases of sexual abuse, harassment and rape were uncovered by Moroccan, Spanish and German media. In their interviews, workers report being touched by managers while they were working, being offered money in exchange for sex, or managers entering their accommodation while they were naked. A nurse at a local health center assured there had been 185 abortions in a year, 90% of which were of migrant workers. She presumed many of the pregnancies could be due to rape¹⁴⁴.

‘He has the phone numbers of all the women. He forces them to have sex with him. Every night with a different woman. When you say no, he punishes you at work’ (Moroccan worker)¹⁴⁵

The same year, several Moroccan women filed complaints against their employers for crimes against humanity, human trafficking, sexual harassment and sexual assault. They claimed the interpreter at their workplace said that harassment ‘was a common thing’ and she was not going to report it¹⁴⁶.

‘The woman claims her boss insisted on having anal sex with her while he showed a 50 EUR bill. “I told him to leave me alone, that I was pregnant. He said it was ok [...] my coworkers came and took him out [...] Once my rights are recognized, I will return (to Morocco) [...] but my life will be over. My husband will divorce me and will take my children from me.’¹⁴⁷ (Moroccan worker)

Different legal procedures were opened, but almost all of them have been closed due to lack of evidence, or by the women’s refusal to testify in court. Their lawyers consider these are not only cases of sexual abuse, but that they amount to human trafficking, since ‘women are put in a vulnerable position with the intention of forcing them to have sex’¹⁴⁸. These testimonies show it is key to address the role that gender plays in this labour migration, since it adds another layer to the imbalance of power between employers and employees. Selecting just female workers contributes to the perpetuation of dynamics of oppression and impunity.

9.2.5 Access to justice

Social agents agree that there is a deficient access to justice. They claim workers are scared to talk and do not want to risk not being called the following year, due to their economic

¹⁴⁴ Correctiv, ‘Rape in the fields’ (2018) <<https://correctiv.org/en/top-stories/2018/04/30/rape-in-the-fields/>> accessed 2 May 2022.

¹⁴⁵ *ibid.*

¹⁴⁶ Salvados (n.126).

¹⁴⁷ El País, ‘El precio de denunciar los abusos en la fresa’ (2019) https://elpais.com/politica/2019/03/23/actualidad/1553361492_904277.html accessed 2 May 2022.

¹⁴⁸ *ibid.*

dependence on the job.

‘When I asked her if she has suffered abuses, she started crying and repeated “I cannot say anything, I cannot lose my job, I need to come back next year”’ (Journalist)¹⁴⁹.

Besides, their return commitments mean they have to petition the government for a special temporary residence permit. Previous claimants have waited ‘in limbo’ for seven months before getting these permits¹⁵⁰. There is also a general distrust in the courts, due to the lack of credibility given to women who have claimed abuses in the past.

‘The plaintiff bases her accusation on her own version of the facts, without offering signs of plausibility, not even by circumstantial evidence, and her testimonies are radically and forcefully contradictory’ (Judge)¹⁵¹.

According to the Justice Administration Users Association (ASAUJ), the unwilling judicial system is a big part of the problem¹⁵². Lawyers of this organization assure that local police did not cooperate when they decided to represent a group of Moroccan workers.

‘They [the police] did not do anything to identify the victims. [...] Next day, most of these workers were returned to Morocco. [...] Four women who managed to escape went to the police station to file a complaint for sexual abuse and the officer showed an aggressive attitude. [...] After my protests, he said “Who is the judge going to believe, me or you?”’ (Lawyer)¹⁵³

These circumstances have led to social organizations affirming that is often more useful to create public debate than to pursue cases through the legal path¹⁵⁴.

9.2.6 Provision of information

Another common claim, and the research object of this thesis, is that the workers are not properly informed of their working conditions, social and labour rights and obligations. Different organizations have claimed the women sign one contract in Morocco but are given a different one in Spain. They sign them despite not being able to understand the content, due to language barriers and illiteracy¹⁵⁵.

¹⁴⁹ Vice, ‘Testimonios de las jornaleras de Huelva que denuncian acoso sexual’ (2018) <https://www.vice.com/es/article/43pp5g/jornaleras-campo-huelva-denuncia-acoso-sexual-marruecos> accessed 2 May 2022.

¹⁵⁰ El País (n.147).

¹⁵¹ ABC, ‘Absuelven al empresario demandado por despido en Huelva por temporeras de Marruecos que denunciaron abusos’ (2019) <https://sevilla.abc.es/andalucia/huelva/sevi-absuelven-empresario-demandado-despido-huelva-temporeras-marruecos-denunciaron-abusos-202103091035_noticia.html#vca=mod-sugeridos-pl&vmc=relacionados&vso=absuelven-al-empresario-demandado-por-despido-en-huelva-por-temporeras-de-marruecos-que-denunciaron-abusos&vli=noticia.foto.andalucia> accessed 2 May 2022.

¹⁵² Arab (n.13) 12.

¹⁵³ Kamchatka (n.87).

¹⁵⁴ JHL (n.130).

¹⁵⁵ Ibid.

‘We don’t know anything, but we trusted our employers. I signed a 7-page long contract, but I didn’t know what it said. I was hesitant, because maybe I was committing to doing something I did not want to.’ (Moroccan worker)¹⁵⁶

Labor unions assure they have repeatedly suggested the Ministry that workers should obtain copies of their contracts translated into Arabic, identifying this as a need that has not been solved¹⁵⁷. However, the Permanent Mission of Morocco ensured, in response to document AL MAR 1/2020, that the joint delegation that visited the farms in 2018 noted the existence of employment contracts written in Arabic.

9.3 After termination of contracts

Once their contracts end, workers either stay in Spain as irregular migrants or comply with their commitment and return to Morocco.

Even though GECCO order participants are not usually tied to the issue of irregular migration, some stay in Spain instead of returning to Morocco. Social agents claim the workers are sometimes laid off during their trial period and asked to return to Morocco. They see no other exit but to stay in Spain as irregular migrants, since they need to work to repay the debt they have. In other cases, they are tired of coming and going after several campaigns, so they decide to stay and try to regularize their migratory status. Some of the organizations contacted during this research work with this specific profile of migrant: ex-participants of the GECCO order who are now undocumented migrants in Spain. The uncertainty they face regarding future campaigns often plays a role in this decision.

‘These contracts treat us like puppets. They told us to return, that we could come back next year, but they lied. We went back and have not been able to return. We are a toy in their hands. [...] Who thinks of us, of our needs? (Moroccan worker)¹⁵⁸

However, most of them have internalized the return rule to the point of expressing moral judgments towards the few who decide to stay. Social agents are critical about the lack of emancipation for those who return, despite this being one of the highlighted aspects within the responsibilities of participating countries in circular migration. They claim that the absence of mechanisms ‘undermines any possibility of improving their situation in their country of origin’¹⁵⁹. There are some initiatives in this regard, such as the project WAFIRA, signed in 2021 by Spain’s national government, the ILO, the business association Cooperativas Agroalimentarias de Andalucía and ANAPEC¹⁶⁰. Their impact is nevertheless small, compared to the number of women migrating every year.

¹⁵⁶ Kamchatka (n.87).

¹⁵⁷ Interview with CCOO (20 April 2022).

¹⁵⁸ Arab (n.13) 67.

¹⁵⁹ Doval et al (n.105) 80.

¹⁶⁰ Email with the Consejería de Trabajo, Migraciones y Seguridad Social, Embassy of Spain in Morocco (25 April 2022).

Regarding the workers' own assessment of the experience, there are of course different perceptions. Researchers have found that most participants feel an improvement of their confidence and autonomy¹⁶¹. While some women highlight the lack of rights as a negative aspect, others consider that the respect for human rights is one of the positive aspects of the program. It is important to keep in mind that this appreciation comes when comparing the conditions they have in Spain to those they can expect working in Morocco, which is an unfair comparison. The standard of treatment should not be set at the best of two experiences of abuse, but at the level of respect, protection and fulfilment of rights that Spain owes these women due to its legal obligations, and at the standards of good practices to which businesses have committed.

PART IV: RESEARCH

10. Multi-stakeholder approach to business and human rights

In this context of human rights violations claims, carried out by private companies within an institutionalized frame of circular migration, both governments and businesses have been 'passing the buck' — as recognized by UN Special Rapporteur De Schutter on his visit to Huelva in 2020. His analysis concluded that the dependence on seasonal migrant workers leads to situations amounting to forced labour, 'in complete disregard of international human rights standards and domestic legislation'.¹⁶² This conclusion is similar to the idea defended in this thesis: legal standards are an important part of rights protection, but not enough to ensure compliance. The unwillingness to abide by their due diligence, both by State and some businesses, brings about a lack of enforcement that leaves plenty of space for abuse. Despite all the existing mechanisms aimed at protecting worker and migrant rights, claims of abuse keep arising, thanks to the involvement of non-profit organizations, labor unions, academic researchers, independent lawyers or journalists. The cooperation between these actors has proved essential for the dissemination of information and awareness-raising regarding the situation in Huelva. And they have not stopped at that: in the absence of positive measures by governments and businesses, civil society has for years taken the lead with a variety of initiatives to support migrants and suggest solutions.

States' legal obligations are undoubtedly necessary for the creation of protection mechanisms and for accountability reasons. The current development of business and human rights legislation is another step forward, acknowledging the shift in power and the fact that companies can protect or abuse human rights with their policies. But the protection of rights requires more than just legal norms. It has become increasingly clear that there is a need to

¹⁶¹ González and Reynés (n.12) 26 and Arab (n.13) 143.

¹⁶² UN, 'Spain: Passing the buck on exploited migrant workers must end, says UN expert' (2020) <https://www.ohchr.org/en/press-releases/2020/06/spain-passing-buck-exploited-migrant-workers-must-end-says-un-expert> accessed 6 March 2022.

involve more actors in the monitoring of standards, and also in ‘promoting, as well as preventing, mitigating and seeking effective remedy for business-related human rights abuses’¹⁶³, and that business enterprises should consult externally ‘with Governments, civil society, human rights defenders and multi-stakeholder initiatives’¹⁶⁴.

This idea is what has led this thesis to consult the current work of governments, businesses, labour unions and social agents regarding the strategies and measures taken to inform migrant workers of their rights during the development of agricultural campaigns. The results of these interviews will be analyzed next.

11. Rights awareness in the berry harvest

‘Women come with a tremendous lack of knowledge.

They are given very general information.’¹⁶⁵

Previous chapters have established how informing workers of their rights and obligations, and of the services at their disposal is a key aspect to the correct functioning of these migratory movements.

International labour law and human rights law is clear that migrant workers should have access to ‘free, comprehensive and accurate information including admission requirements, living and employment conditions, rights and labour laws’¹⁶⁶, either as a responsibility of countries of origin or destination.

Spanish national mechanisms are also straightforward in recognizing the importance of this aspect. It is contained in the GECCO order, as an obligation delegated to businesses, and it is a central part of the code of good practices in seasonal agricultural campaigns signed by government, labor unions and business associations:

‘Offering general information to workers about the obligations and rights of the GECCO order, their employment contract, the activity to be carried out, the prevention of occupational risks, the conditions of stay and return, some basic cultural facts [...] as well as the telephone numbers and addresses of basic public attention services [...] and those of the business associations and the most representative labour union organizations.’¹⁶⁷

However, migrant women have repeatedly expressed their lack of awareness, claims that have been taken up by researchers and social agents. Previous research shows the women highlighted three improvement points: being able to regularize their stay, learning the language and getting to know their rights. Researchers found that worker’s responses mean that either they are not

¹⁶³ OEIGWG (n.7).

¹⁶⁴ UN (n.6).

¹⁶⁵ Interview with MZC (26 April 2022).

¹⁶⁶ ILO (n.118) 17.

¹⁶⁷ Ministerio de Trabajo (n.140).

aware of their rights, or employers do not comply with their basic obligations¹⁶⁸. The situation does not seem to have improved in recent years, according to the testimonies in reports published in 2021.

‘Since most of us are illiterate, we sign documents without knowing the contents. We know if we are accepted, how much money we will earn, and when should we get ready to travel, and that is it.’ (Seasonal worker)

‘I do not know the contents of the contract, nobody explained anything to me. [...] We just go, work hard, and come back home.’ (Seasonal worker)

‘Regarding our rights, we do not know anything. We sign without knowing what we are signing. They do not give us information [...] But we are happy to be able to travel and bring food back to our children.’ (Seasonal worker)¹⁶⁹

The claims are so extended, that even the UN asked both Spain and Morocco in communications AL MAR 1/2020 and AL ESP 1/2020 about the measures they have taken to improve the situation. In their response, Morocco assured that ‘a whole set of systems, measures and/or initiatives have been taken and/or have been developed’, namely: information sessions carried out by ANAPEC, Spanish language courses, the provision of a telephone number for guidance and advice, and the distribution of leaflets to raise awareness of the rights guaranteed.

They further add that contracts are translated into Arabic, as the Moroccan-Spanish delegation confirmed on their visit to Huelva in 2018¹⁷⁰. This contradicts the version given from the Embassy of Spain in Morocco, who acknowledged in 2021 that contracts are not translated due to the illiteracy of these women¹⁷¹.

In their interviews, government representatives, labour unions and business associations recognize not being aware of how the process starts in Morocco, with affirmations such as ‘we do not know what goes on there’, ‘there have been many problems, due to lack of coordination with Moroccan authorities, and mistrust’, or ‘theoretically, the women should receive this information.’

Social agents from both countries agree on their analysis of the situation: the women are unprepared when they arrive in Spain and employers take advantage of their ignorance¹⁷². Workers assure the information they receive in Morocco does not match the working conditions in Spain. Once in Huelva, they claim not having access to information or counseling resources,

¹⁶⁸ Arab (n.13) 127, 129.

¹⁶⁹ Doval et al (n.105) 35-36.

¹⁷⁰ Mission Permanente du Royaume du Maroc auprès des Nations Unis, ‘Observations relatives à la communication conjointe se rapportant à la situation des travailleurs saisonniers marocains en Espagne (2020) 4.

¹⁷¹ Doval et al (n.105) 36.

¹⁷² Fédération de la Ligue Démocratique des Droits des Femmes (n.130).

further adding that those who ask or claim their rights are not hired the next season.¹⁷³

11.2 Measures taken by Spanish stakeholders

Even though the initial map of stakeholders' developed for this thesis includes more actors, this chapter only contains information about the ones identified as being active (or having been active in the past) regarding the provision of rights information to workers.

11.2.1 Government bodies

Spanish authorities generally agree on the advantages of circular migration, but their responses to this research show lack of coordination between national, regional and local levels. Internationally, the Embassy of Spain is involved in development projects in Morocco once the workers return, but they are not involved in the hiring and stay of Moroccan women in Spain and will therefore not be included in this section.

11.2.1.1 National level

According to the agreement between Morocco and Spain, three ministries shared the responsibility of overseeing the correct development of the agreement: the Ministry of Foreign Affairs, the Ministry of Interior, and the Ministry of Labor and Social Affairs¹⁷⁴. However, the 2022 GECCO order states that the body in charge of this specific migration flow is now the Secretariat of State for Migration within the Ministry of Inclusion, Social Security and Migrations, ('the Ministry') created in 2020. The Secretariat contains a Sub-Directorate General for Management and Coordination of Migration Flows, which is the body we have been able to contact for this research. This department has among its responsibilities 'the organization of the collective management of in-origin contracts, the selection processes and recruitment of foreign workers in their countries of origin [...] as well as the provision of support to selected workers and follow up on the contracts.'¹⁷⁵

The multi-stakeholder agreement signed in 2020 between the Ministry, business associations and labor unions has, among its main objectives, '[...] that adequate information and counsel is given in matters of socio-occupational rights and obligations.'¹⁷⁶

Just like the GECCO order, which identifies the provision of information to workers as an obligation of companies, this agreement also shows that national authorities are not directly responsible for developing any kind of actions related to the provision of rights information, but rather supervising and following up on the work carried out by others and ensuring they comply with their obligations. To sum up, the Ministry delegates the provision of information

¹⁷³ Brigada feminista de observación, 'La situación de las jornaleras en los campos de fresa de Huelva. Informe jurídico' (2021) 15-16.

¹⁷⁴ Aplicación Provisional del Acuerdo sobre mano de obra entre el Reino de España y el Reino de Marruecos (2001) BOE-A-2001-17764.

¹⁷⁵ Subdirección General de Gestión y Coordinación de Flujos Migratorios, <<https://www.inclusion.gob.es/es/organizacion/organigrama/migraciones/contenido/OM74.htm>> accessed 1 May 2022.

¹⁷⁶ BOE-A-2020-13290 (n.47).

to business associations and labor unions and maintains a supervision role.

In their response to AL ESP 1/2020, the Spanish mission recalls that the provision of information is an obligation of business enterprises, as contained in the GECCO order. They further refer to an information campaign carried out in the selection process, where employers and ANAPEC cooperate to inform workers, and to a guide given to workers upon their arrival to Spain, as well as a video created in 2019¹⁷⁷.

In their response to the enquiries carried out by this research project, national authorities reply in a very similar way, assuring workers are informed in Morocco by business representatives and Moroccan authorities, mentioning an informative video created in 2019, some leaflets printed out in different languages and another video including testimonies by previous workers. However, they claim not having access to any of these materials. After their arrival, they assure workers are informed by companies, often through other ‘experienced workers’, and later by labour unions. They guarantee that ‘no worker participates in this program without being duly informed’.¹⁷⁸

11.2.1.2 Regional level

Within the regional government of Andalucía, where Huelva is located, the body in charge of migrants’ integration is the *Dirección General de Coordinación de Políticas Migratorias* (Directorate-General for Coordination of Migration Policies), which has participated in the interviews carried out for this research.

The regional government is not part of the multi-stakeholder agreement mentioned before and is discontent by being left out of this initiative. It was not involved in the process of circular migration from Morocco until 2018, when the first scandals appeared in the media. It then took the initiative to cover the social and health intermediation services that had been left out of the GECCO order, claiming that:

‘It is necessary to support these women coming from rural areas, who do not speak Spanish, do not know the area nor the existing social resources at their disposal, who live in accommodation facilities provided by companies within the farms. It is also necessary to prevent discrimination, given the vulnerability of the group, worsened by the uncertainty regarding the renewal of their contract [...], the risk of non-compliance with contract conditions and the dependence on the employer to be called for future campaigns.’¹⁷⁹.

To that end, they subcontracted a local NGO to carry out cultural mediation tasks with a budget of 18.000 EUR. Four years later, the project has grown considerably and is now awarded to

¹⁷⁷ Misión Permanente de España ante los organismos internacionales, ‘Respuesta de España a la comunicación conjunta de los procedimientos especiales AL ESP 1/2020 y AL ESP 2/2020 (2020).

¹⁷⁸ Email by the Sub Dirección General de Gestión y Coordinación de Flujos Migratorios (26 April 2022).

¹⁷⁹ DGPM (n.90).

another NGO (Red Cross Huelva) through a public tender allocating 129,000 EUR for two campaigns.

The service provided by the Red Cross consists of 7 bilingual mediators. They offer a public service of support upon arrival to Spain, but it is the companies themselves who have to request their presence, since some already use the welcoming services provided by business organizations. When these public services are requested, mediators join the buses taking the workers to the farms. During the trip they play a welcoming video including some basic information in Arabic, which they use to engage into conversations with the workers. The guidelines include:

- 'Not complying with the contract means you will not be able to come back to Spain to work next year.
- Companies are not obligated to hire you during the whole year.
- You must comply with the conditions included in the contract.
- If you do not return to Morocco, you will have an irregular administrative status.
- Do not pay attention to what strangers might tell you. They make fake promises of documentation and work if you stay and do not return to Morocco, but they are mobs carrying out fraudulent businesses.'¹⁸⁰

During the campaign, the mediators visit the workers at their lodgings to see if they have sociosanitary needs or doubts. They have also created Spanish-Arabic-French dictionaries for workers, which include basic vocabulary and sentences such as 'I am worried about...', 'I want to talk to the boss', 'I want to work', 'I'm feeling anxious, I cannot work', etc. However, mediators cannot get involved in the event of labour complaints, since their competencies are only social and sanitary. They refer all conflicts of this nature to the integration advisers provided by the interbranch organization Interfresa.

Despite this apparent cooperation, they also complain of having difficulties to access some of the farms, where employers argue they do not need the support of public mediators because they already use the services provided by Interfresa¹⁸¹.

11.2.1.4 Local level

Within the province of Huelva, it is worth mentioning (1) the *Subdelegación del Gobierno* (Local Office of the Government of Spain), which represents the central government in the province of Huelva; and (2) city councils of the different towns where farms are located.

The Local Office is not involved in the provision of information and only assumes bureaucratic duties such as issuing permits and managing applications. They do participate in the multi-

¹⁸⁰ Welcoming video showed to workers by the Red Cross Huelva (2022), provided for this research.

¹⁸¹ Interview with DGPM (11 May 2022).

stakeholder agreement and acknowledge that the transparency of their meetings could improve, since only a press release detailing some of the topics discussed is publicly shared. When asked if the topic of this research is dealt with in these meetings, they assure it is, since '[mediation] impacts all areas of the life of migrants: work, accommodation, leisure, training, etc', which is why they 'usually invite representatives from the regional government, or even social agents who work with these social aspects' to their meetings.¹⁸² Social agents have nevertheless expressed in their interviews that they were only invited as guests for a couple of years, when the scandals appeared in the media.

Regarding city councils, they claim not to be involved in any way in the recruitment of migrant workers, and refer to business enterprises who, in coordination with national authorities, have to provide the necessary tools for migrants' stay.

The situation was different when neither regional governments nor businesses provided mediation services. In partnership with other stakeholders, the city council of Cartaya led the way and received funding from the EU to develop several projects. The first was known as 'AENEAS-CARTAYA'. It took place between 2005 and 2008, during which 21,000 work and residence permits were issued, and received 1,196,000 EUR from the European Commission. The aim was to develop a management system for all stages of the employer-worker relation and services for the attention of workers to prevent illegal practices, which would in turn ensure compliance with social agreements, contribute to the integration of workers and offer supplementary training¹⁸³. This included having a delegation in Morocco, creating centers for seasonal workers and the creation of an NGO to coordinate the project.

The external evaluation of the program was positive: both employers and employees felt supported. The report found reciprocal interest shown by all stakeholders and concluded that the consolidation of an institutional network was an asset that could allow its continuity¹⁸⁴.

Cartaya coordinated another EU funded project known as M@RES (2010-2012), which received 1,4 million EUR, followed by M@RES II (2012-2013), with 1.5 million EUR. The aim was similar, focusing on the promotion of an ethical, integral and orderly management of circular migration. They included training plans developed by a private company with courses related to social integration: Spanish lessons, banking, access to health, gender equality, etc. These were carried out only for two months (March - April 2011) and taught in Arabic. The evaluation concluded that the activity had a small but visible change and could contribute to workers having a full and meaningful life in Spain¹⁸⁵. After the funding ran out, the structures

¹⁸² Oficina de Empleo (n.125).

¹⁸³ ICCS-NTUA Consortium, 'Synthesis Report for the Monitoring of Migration Projects AENEAS 2004' (2007).

¹⁸⁴ González and Reynés (n.12) 13.

¹⁸⁵ Proyecto M@RES, 'Memoria Final de Actividades de la Dirección General de Coordinación de Políticas Migratorias' (2011).

that had been created slowly disappeared.

11.2.2 Companies

Understanding the sector has been one of the biggest difficulties for this research, due to its large size. Despite contacting nine other business associations and companies, only Interfresa, the interbranch organization representing the sector, has agreed to an interview. The organization is formed by three associations of farmers and distributors.

Although the claims of human rights violations are mostly addressed at employers, all the stakeholders interviewed agree that there are good and bad practices within the sector.

‘They [employers] do not care about anything, as long as they get paid. I met one of them in a healthcare center, and he was carrying a handful of passports. I told him that taking the passports from workers was illegal. Do you know what he said? That if he didn’t do it, they would escape.’ (SAT, labor union)¹⁸⁶

In response to these claims, Interfresa decided in 2018 to update its protocols with the adoption of a corporate social responsibility plan named PRELSI. According to them, it is the biggest CSR plan in Europe, in terms of users¹⁸⁷. Since it requires the payment of a fee, affiliation is voluntary, although the plan aims at covering ‘all the agri-food farms that make up the industry’¹⁸⁸. The PRELSI explicitly talks about the list of affiliated companies being public for transparency reasons, but it has not been published to this date, and Interfresa has not complied with their commitment to send it after their interview. It has therefore been impossible to find out the percentage of farms actually governed by this plan.

The initiative is labeled by local government officials as an ‘example of good practices’¹⁸⁹, and is built with a rights-based approach, its main highlight being the recruiting of integration advisers who contribute to a ‘working environment in which [...] each and every one of the human rights inherent to people are observed, ensuring their dignity, regardless of their origin’¹⁹⁰.

However, civil society members once again disagree with businesses and authorities¹⁹¹, arguing that it is difficult for workers to trust PRELSI mediators, since they are hired by the industry itself. Small labor unions assure workers take back their complaints whenever the PRELSI gets involved. Big labor unions say they have unsuccessfully asked Interfresa to be part of this system. The general criticism is that this figure should be independent, not selected and paid by

¹⁸⁶ Kamchatka (n.87).

¹⁸⁷ Interfresa (n.83).

¹⁸⁸ Interfresa, ‘Plan de Responsabilidad Ética, Laboral y Social de Interfresa (2018) PRELSI.

¹⁸⁹ Agrodinario Huelva, ‘Marín asegura que el PRELSI de Interfresa sitúa al sector de los frutos rojos como modelo de buenas prácticas’ (2020) <https://agrodinariohuelva.es/juan-marin-asegura-que-el-plan-de-responsabilidad-de-interfresa-prelsi-situa-al-sector-como-modelo-de-buenas-practicas/>.

¹⁹⁰ Interfresa (n.188) 8.

¹⁹¹ In their interviews for this research, both labor unions and NGOs have expressed their dissatisfaction with the way the PRELSI works.

employers through business associations.

‘They gave us their numbers, but we were scared to call them. We were also scared of the owner, scared [...] that the owner would develop animosity towards us and would not let us come back’ (Seasonal worker)¹⁹².

Faced with these complaints, Interfresa claims they perform a long recruiting process that includes a five week long training course, precisely to ensure that mediators are objective and impartial. Their aim with PRELSI is to facilitate the relationship between companies, workers and society, even though, according to their interview, the vast majority of conflicts take place between workers and the incidents between employers and workers are rare¹⁹³. When asked about the possibility to involve more stakeholders, they say they occasionally cooperate with other organizations offering mediation services, according to the needs of each campaign. They nevertheless argue that these services cannot be regulated by the authorities, since it is a voluntary initiative of the sector itself, not part of the GECCO order. Even though it is true that there is no mention to the figure of mediators, the order identifies the provision of information as an obligation of participating companies, in cooperation with social agents:

‘The provision of support, assistance and basic information to workers, especially regarding the characteristics of their contract, the activity to be carried out [...] and their rights and obligations, cooperating with social agents. Likewise, specific and updated information and training must be provided on the [...] measures included in all the plans or protocols which employers are obliged to carry out in accordance with current regulations on equality, prevention of sexual harassment and harassment based on sex at work.’¹⁹⁴

In their interview, PRELSI representatives recognize there is no guarantee that the women are properly informed in Morocco. Regarding the way they comply with their obligation to inform the workers after their arrival, they say that the two first years they tried to hold mass communication events and use pictograms, but that women’s illiteracy was a big obstacle. In the following years they have changed their strategy, and they now inform the workers orally during the bus trips to their accommodation. Bilingual mediators use this journey to explain the basics of contracts and Spanish regulations, as well as cohabitation rules. They nevertheless recognize that the women sometimes are too tired to follow these explanations after their trip and choose instead to sleep. For this reason, they argue, they try to explain everything again in the first visit that intermediators carry out at the farms, after the women start working.¹⁹⁵

¹⁹² Arab (n.13) 61. It is unclear which intermediators this testimony refers to, but it shows how difficult it is for workers to trust this figure.

¹⁹³ When asked to specify these affirmations, they assure 60/70% of the conflicts are cohabitation issues between workers, 15/20% are misunderstandings about the contracts, and 5/10% are more serious issues.

¹⁹⁴ Orden ISM/1485/2021 (n.46) 3.2(f).

¹⁹⁵ Interfresa (n.83).

11.2.3 Labor Unions

The two main labor unions in Spain are *Comisiones Obreras* (CCOO) and *Unión General de Trabajadores* (UGT), which receive public funding to carry out their work. They are party to the multi-stakeholder agreement with the Ministry and business associations, which establishes as their obligations the promotion and provision of social and labour counseling to workers, supervision of business compliance with legal norms, and visitation of the accommodations.

When asked about their activities regarding the provision of information, they point out that they mostly try to communicate with the workers during their free time, since they do not want to disrupt the working rhythm in the farms, but that the differences in ‘language, culture and idiosyncrasy’, together with the temporality of their stay, render their efforts ineffective. Furthermore, they claim that companies often obstruct their access to workers’ lodgings.

UGT assures that they disseminate basic labor information in pamphlets delivered to workers in public places¹⁹⁶. CCOO says they hold public informative assemblies, but recognize that Moroccan women are not present, due to the lack of transportation from their accommodations. The union also edits and translates a guide with social and labour information and factsheets that they distribute among the workers they meet.

The two unions agree there is a lack of resources and blame the government for not providing sufficient funding to allow for them to be present during the selection process and to create gender-sensitive mediation services for the workers.¹⁹⁷

Two other small unions are also present in Huelva, despite not having representation in institutional agreements or getting public funding for their work: the *Sindicato Nacional de Trabajadores* (SAT) and *Jornaleras de Huelva en Lucha* (JHL). They both argue that the bigger unions are not really present in the farms and if they are, they tend to agree with employers.

SAT representatives agreed to an interview and assure they are the only active union on the ground. Despite them being an officially recognized union, which grants them free access to workplaces at all times, they claim having to sneak in due to employers’ reluctance. They have a very critical view of the way the GECCO recruitment takes place, and claim abuses are the norm in the agricultural fields of Huelva, in collusion with the authorities, Interfresa and the judiciary. The union sends an average of 200 complaints to job inspection authorities every campaign, who almost always reply that ‘no irregularities have been detected’. The reason there are no proper investigations of the abuses, the SAT claims, is the wealth this sector creates.

The SAT cooperates with a Moroccan labor union prior to the workers’ arrival in Spain, to gain awareness about the selection process. Regarding the provision of rights information, they first try to get in touch with the women either by putting up posters with their contact information

¹⁹⁶ These were allegedly translated into Arabic in previous campaigns, but the translation was found not to be linguistically correct, and they are now only available in Spanish.

¹⁹⁷ Interviews with UGT and CCOO (n.141).

or directly talking to them in the workplace, accommodation or public places. They then inform them of the courses they teach about labour aspects (contracts, leaves, salary, etc.). These courses are taught several times every campaign, in Spanish, French and Darija, and are held in the irregular settlements where other undocumented migrant workers live, since the women visit these places to socialize. When contacted by workers who have complaints the SAT either tries to negotiate with the employers or connect the workers with their own legal team who offers free assistance.¹⁹⁸

11.2.4 Social agents

Non-profit organizations and other social agents have been at the front line, either interviewing workers and publishing reports¹⁹⁹, organizing awareness-raising events²⁰⁰ or carrying out projects to prevent abuses and assist migrants. Unfortunately, and as it often is the case with these associations, the projects they carry out are limited in time and reach, due to dependance on external funding.

The NGO Mujeres in Zona de Conflicto (MZC) agreed to participate in this research. They were in charge of the public mediation services offered by the regional government between 2018 and 2020. The MZC staff still works with the migrant women through a small project that receives public funding, but their current reach is rather small. Like PRELSI advisors and Red Cross mediators, this NGO also welcomes women upon arrival and informs workers during the bus trip to the lodgings. MZC gives oral information about social and healthcare aspects, and does not get involved in labor issues, which they say is responsibility of businesses and labor unions. They therefore refer claims of labor abuse to labor unions.

MZC assures that despite the existence of different mediation services, it is not enough to cover the need. They also claim the distribution of services is a bit chaotic: one single company can be part of two business associations and have a few workers covered by PRELSI advisors and other workers with a different association, which leads to women in the same farm getting different information, depending on the service offered to them.

When asked about improvement suggestions, they identify a need for better coordination between actors, the inclusion of social entities in decision-making meetings and the follow-up of social assistance services by the authorities.²⁰¹

Results

None of the interviewed actors have available and first-hand information regarding the provision of information in Morocco. Most of them agree (except for national authorities) that

¹⁹⁸ Interview with SAT (24 May 2022).

¹⁹⁹ E.g., FIDH (2012), Women's Link Worldwide (2019), Doval et al (2021), Brigada Feminista de Observación (2021).

²⁰⁰ E.g., Mujeres 24H, APDHA or Mujeres de la Otra Orilla.

²⁰¹ MZC (n.165).

the women arrive to Spain with little knowledge about their labour, social and health rights. According to their responses, national authorities seem not to have a clear overview of what others do. The thesis has identified four actors currently providing information to migrant women in Spain:

- i. Regional government, through a public contract granted to the Red Cross: public service offered to all women participating in the GECCO order.
- ii. NGOs such as MZC: independent projects carried out with public funding, offered to women working at the companies with which they have agreements.
- iii. Integration advisors hired by the CSR plan of the commercial berry production: service offered to women working at affiliated businesses.
- iv. Labour unions: service offered to all agricultural workers.

The main differences of these services are:

- Their field of intervention: while the two first only assist on social and health aspects, businesses and labor unions also deal with labor rights.
- The place where they intervene: the first three welcome and assist the women upon arrival and inform them during the trip to their accommodation. Officially only PRELSI advisors talk to the women at the farms, but small labor unions also try to do so, despite the difficulties. Labour unions meet them later, either in public places or in their lodgings.

All of them agree that illiteracy is the biggest obstacle when it comes to informing workers of their rights, which is why most choose to do it orally through skilled mediators.

As per improvement suggestions, labor unions, social entities and some members of regional and local governments have identified two main shortcomings: lack of transparency in the processes and lack of coordination between stakeholders. Except for the big unions, these actors have also manifested feeling left out of the existing institutional multi-stakeholder initiatives.

12. Improvement proposal

After gaining an overview of how the system currently works, this thesis aims to identify possible ways to improve it, both at the general level and at the specific level by way of providing rights information to migrant workers.

The proposal includes understanding the process not only as an institutional agreement to regulate migration flows, but to acknowledge the claims of abuses and consider from a rights-based approach the implications of bringing vulnerable migrant workers into a large business sector formed by thousands of companies. Implementing business and human rights policies and strategies is key to ensure the respect, protection and fulfillment of rights and to contribute to both State and businesses' compliance with their due diligence obligations. The improvement

suggestions of this section are thus addressed to both actors, taking as a starting point the Draft-Treaty in Business and Human Rights, which stresses that (1) primary human rights obligations lie with the States, who must protect against abuses by third parties, including businesses and (2) that businesses, regardless of their size, operational context or structure have the obligation to respect human rights, including by avoiding causing abuses and addressing them when they occur. To guarantee the best possible outcome, these two actors should coordinate with and involve other stakeholders such as labor unions and members of civil society, as recommended in the current international standards of business and human rights.

Since these situations of abuse are unfortunately not an isolated phenomenon, some of these suggestions can be of interest to other countries employing migrant workforce in agricultural work. Rights activists and media outlets from France, Italy and Norway have identified the same hazards: migrants arriving with false information, contract breaches and forgery, unpaid salaries, undeclared occupational accidents, lack of rest...²⁰²

‘The obstacles are similar; we experience the same violation of human rights in all countries. Civil society needs to get involved [...] to guarantee that workers migrate with decent conditions’

‘We have the same problem; women are not properly informed of their rights and do not know how to claim abuses. It is time to make alliances to fill the gap between women’s needs and the institutional response’.²⁰³

It would be interesting to create an international coalition of actors to promote the application of multi-stakeholder business and human rights approaches for the protection of migrant workers, sharing experiences of failure and success, strategies, policies, CSR plans, etc.²⁰⁴

12.1 To the State

Since this thesis focuses on Spain, it offers recommendations directed to the Spanish government. For a complete analysis of the situation, more research should be carried out from the perspective of social entities and labor unions in Morocco.

The recommendations are particularly addressed to the Ministry of Inclusion, Social Security and Migration, as the body regulating the GECCO order, but also to the Ministry of Labour and Social Economy, Ministry of Social Rights and Agenda 2030 and Ministry of Equality.

General:

- i. Advance in the enactment of the ‘Law for the protection of human rights, sustainability and due diligence of transnational business activities’ proposed in the Annual

²⁰² *Afterposten* (2010), *Le Figaro* (2018), *VG* (2019, 2020), *Dagsavisen* (2020), *Italian Post* (2022).

²⁰³ CODETRAS and Action Aid (n.130).

²⁰⁴ Following this line of thought, *Interfresa* is currently participating in an EU project to share their experience with PRELSI in the Italian region of Basilicata (n.83).

Regulatory Plan 2022.

- ii. Ensure national business activities are also included in this law, with special attention to the employment of vulnerable groups such as migrant workers.
- iii. Ratify the ICRMW.

Pertaining to the GECCO order:

- iv. Include a business and human rights approach to the existing multi-stakeholder agreement managing in-origin recruitment of seasonal foreign workers, through the creation of a special commission responsible for the implementation of national and international standards of good practices involving the aforementioned ministries.
- v. Include civil society members and regional governments in the existing multi-stakeholder agreement.
- vi. Include and regulate the provision of social and sanitary support through the GECCO order.
- vii. Consider, in coordination with other stakeholders, family balance measures such as the provision of childcare services during working hours and extended residence permits to family members.

Pertaining to the management of labour migration in Huelva's commercial berry harvest:

- viii. Include civil society members and regional governments in the provincial commission implementing the multi-stakeholder agreement.
- ix. Guarantee non-discrimination in the selection process, applying the same standards expected of job selection processes in Spain²⁰⁵.
- x. Ensure that employers prioritize the recruitment of previous participants, to reduce the uncertainty faced by workers every campaign.
- xi. Ensure contracts are translated to Arabic.
- xii. Provide gender-sensitive business and human rights training to business associations.
- xiii. Follow up on businesses CSR plans, including but not limited to Interfresa's PRELSI program, to ensure compliance with national and international standards.
- xiv. Strengthen supervision and inspection of workplaces, as it has been done with accommodations.
- xv. Follow up on the provision of mediation and social and labour counseling services, in

²⁰⁵ From a gender perspective, temporary special measures such as prioritizing women's access to certain job positions should only be allowed to ensure substantive equality, not as a vulnerability that facilitates migrants' return to their home country in the context of circular migration.

coordination with other stakeholders.

Specific to the improvement of access to justice:

- xvi. Ensure free and adequate legal counseling for migrant workers.
- xvii. Allow for a change of employer in the event of complaints of abuse, without resorting to deportation.
- xviii. Allow for the extension of residence permits of workers involved in legal procedures.
- xix. Provide gender-sensitive training to the judiciary and state security forces.
- xx. Explicitly prohibit early dismissal or non-renewal of contracts in the event of claims of human rights abuses.

12.2 To businesses

Due diligence has been promoted in the commercial berry production for a few years, through different initiatives.

The 2005 project AENEAS-CARTAYA already aimed to promote CSR ‘through the adoption of ethical labor practices and production labels’. This project also included multi-stakeholder participation, through different commissions including regional and local governments, labor unions, social organizations and business associations.²⁰⁶

In 2019, the Ministry, labour unions and business associations approved the code of good practices, which aims to ‘contribute to the better organization, development, and good image of the seasonal agricultural campaigns’.

The creation of PRELSI, a joint CSR plan for the whole commercial berry production sector was another step forward and a positive aspect to highlight. Private funding allows for the continuation of plans and strategies, which social agents cannot guarantee. However, there is always room for improvement. These recommendations may be considered timely, since (1) the PRELSI was created in 2018 and is still growing and undergoing changes and (2) international and national business and human rights norms are currently under development. While adherence to the plan is now voluntary, the current development of business and human rights points at the establishment of legal obligations. The commercial berry production sector in Huelva has an opportunity to present itself as a pioneer in the promotion of human rights and good practices, especially after the claims of abuses have raised concerns both at the national and international level. It would therefore be positive if all business associations involved in the commercial berry harvest joined Interfresa and the PRELSI, to present a united sector regulated by the same CSR plan. These are the specific recommendations:

²⁰⁶ Mercedes Gordo, Juan A. Márquez and José M Jurado, ‘La FUTEH y la gestión colectiva de los contratos en origen en Marruecos’ (2013) AGIR ano 1 vol 1 no 1, 184 – 185.

- i. Further promote business affiliation to PRELSI, ideally in coordination with the business and human rights commission suggested in recommendation (iii) to the State.
- ii. Encourage the employment of different profiles of workers, not just vulnerable women.
- iii. Encourage increased transportation services between workers' accommodations and urban areas.
- iv. Ensure continued coordination with other stakeholders offering mediation services before and during the campaign, to provide efficient and harmonized support to migrant workers.
- v. Ensure all the lodgings inside farms are accessible to labor unions and social agents.
- vi. Consult and invite labor unions and social agents to
 - a. Assess and monitor human rights impacts,
 - b. Carry out randomized monitoring of the work of PRELSI advisors.
- vii. Act on the information provided by these actors, sending reminders of their obligations and compromises to businesses,
- viii. Consult workers' satisfaction through anonymous surveys and analyze and prioritize their improvement suggestions.
- ix. Guarantee transparency through the publishing of
 - a. Business affiliation lists,
 - b. Reports including information about the activities carried out by integration advisors, types of conflicts encountered and rates of conflict resolution.²⁰⁷
- x. Expand the scope of PRELSI to include a company-based grievance mechanism as an alternative to the existing judicial mechanisms, which
 - a. Considers possible barriers such as language, illiteracy, lack of awareness and fears of reprisal,
 - b. Involves other stakeholders to ensure impartiality.²⁰⁸

12.3 Provision of rights information

Regarding the specific aspect of provision of rights information to migrants, the State should:

- i. Better coordinate with Moroccan authorities to be aware of the measures taken before workers arrive in Spain.

²⁰⁷ Despite agreeing to sharing this kind of information after the interview carried out for this research, Interfresa has not complied with their commitment.

²⁰⁸ This is particularly important given the current atmosphere of distrust against businesses.

- ii. Follow-up and monitor the provision of information provided by business enterprises through CSR plans, and the involvement of social agents and labor unions.
- iii. Fund rights information projects and initiatives to ensure continuity.

Since national norms recognize this as an obligation of employers, business associations should also pay special attention to this aspect and specifically:

- iv. Create and share appropriate materials and strategies considering illiteracy and language barriers, in coordination with social agents and labor unions, to ensure all workers receive the same information,
- v. Ensure these materials include information about
 - a. Basic labour and social rights,
 - b. Illegal practices that should not be tolerated,
 - c. Common concerns expressed by previous participants,
 - d. Stakeholders that provide assistance in the case of social or labour complaints,
 - e. Phone numbers for free legal counseling provided by the authorities,
 - f. Access to both judicial and non-judicial grievance mechanisms.
- vi. Make all information available to workers at all times, not just right after their arrival.

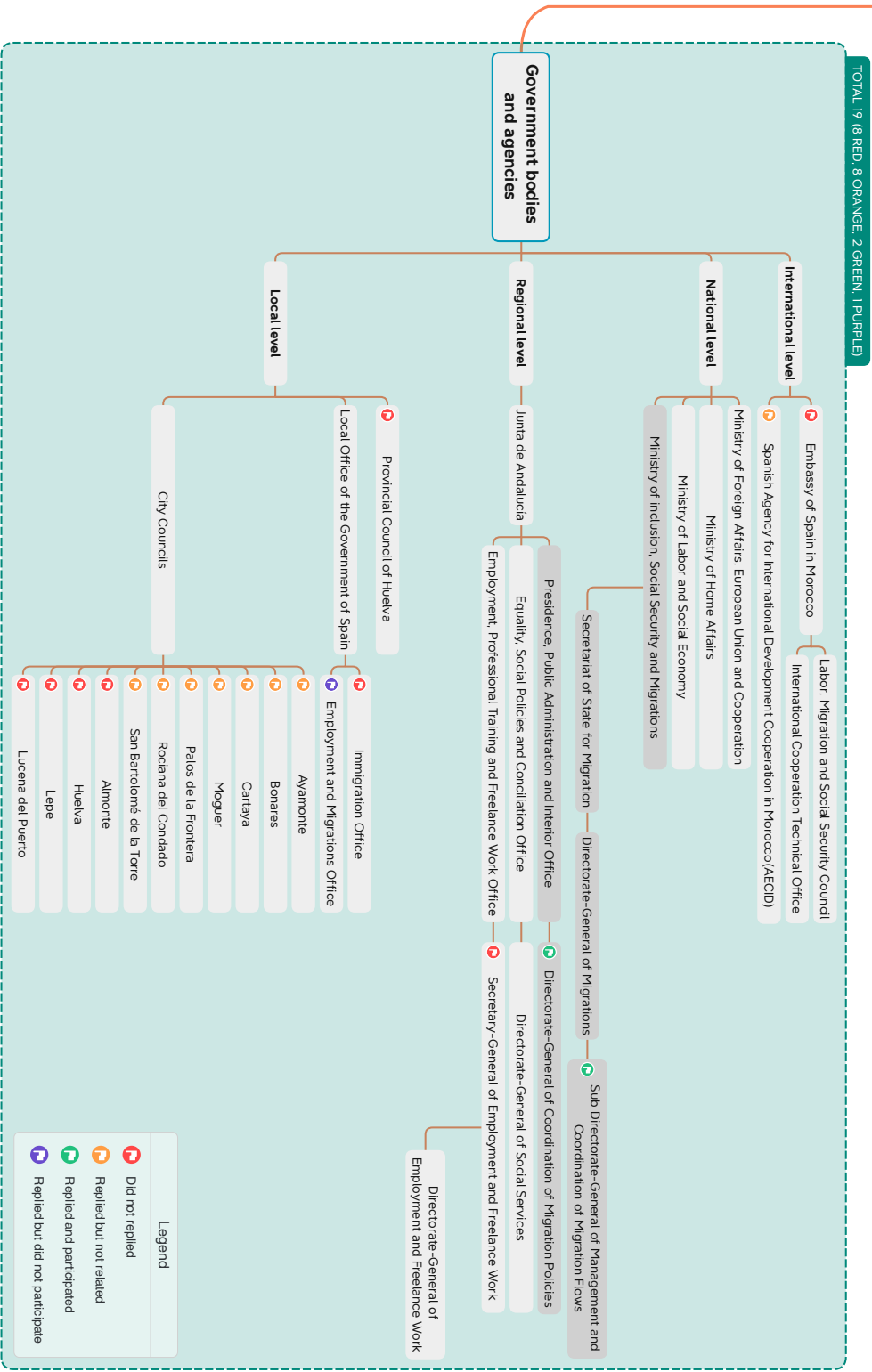
Designing appropriate strategies would require the expertise of different stakeholders, but this thesis would like to suggest the creation of audiovisual materials made available to workers in mobile information stations (e.g., buses) equipped with screens. Since lodgings are far from each other and the workers are dependent on the transportation provided by employers, it could be a solution to bring this information to them. It would only be necessary to inform them in advance of the times and days where these stations are close to them. The screens could contain audiovisual information in Arabic/Darija including FAQs regarding the aspects mentioned in suggestion V above, as well as satisfaction surveys to collect statistical information.

13. Conclusion

This thesis has analyzed the labour migration of Moroccan women within an institutional circular migration agreement signed between the States of Spain and Morocco. While authorities are satisfied with the experience and consider it a success for the economies of both countries and for the empowerment of women, civil society members and some of the participants claim human rights violations such as gender discrimination, labour and sexual abuse, infringement of the right to health and to an adequate standard of living. In this context, the thesis researches if the women are being informed of their rights prior to the development of agricultural campaigns, as a means to facilitate access to justice. While there are many stakeholders (national and regional authorities, business organizations, social agents and labor

unions), interview results show that they work independently and that there is a lack of coordination and transparency. The existence of a business CSR plan in the sector is a positive step, and the obligation to provide rights information could be included and harmonized through it. However, this thesis suggests the plan could be improved with better State supervision and the participation of civil society members. After the claims of abuses have reached international human rights agencies and media outlets, the commercial berry production sector in Huelva now has an opportunity to improve its standards and stand as a pioneer in the development of business and human rights best practices, which could be implemented in other contexts of agricultural labor migration.

Main stakeholders I



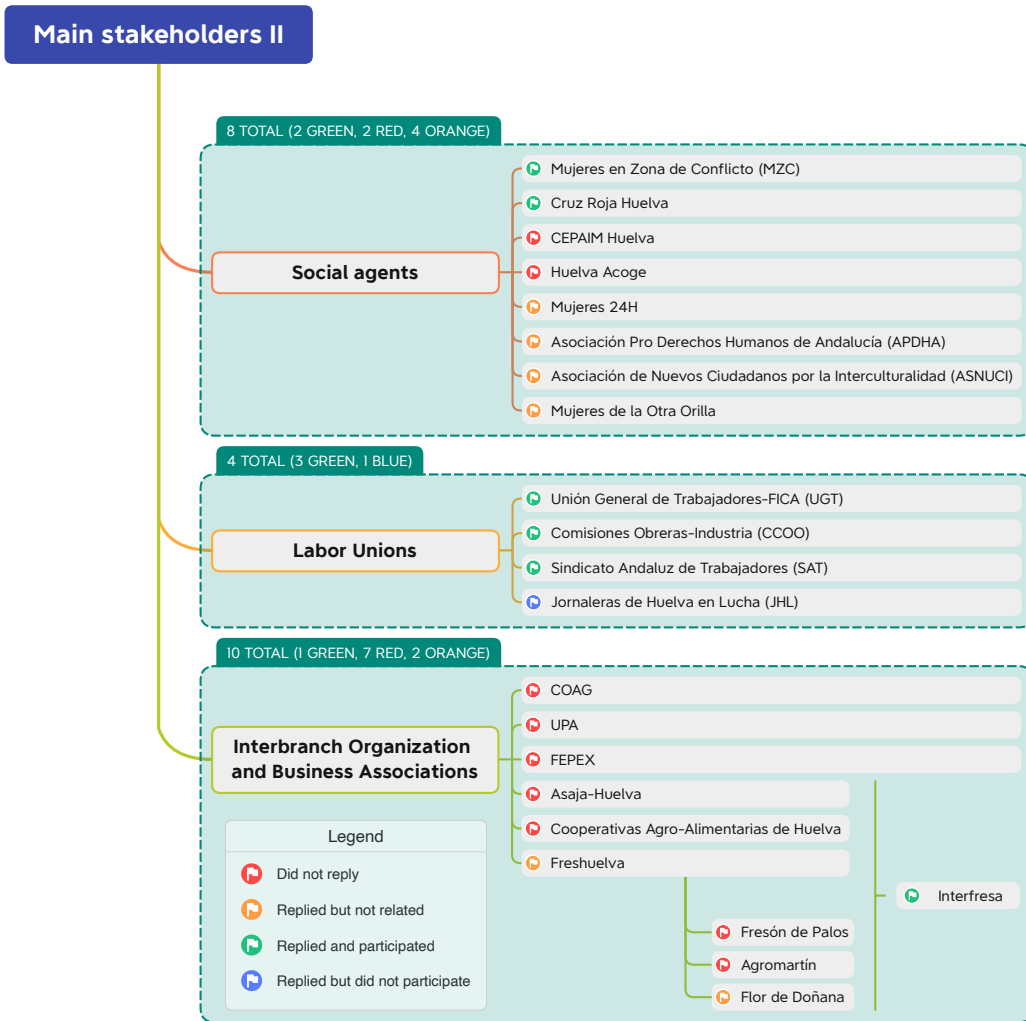
Legend

- Red circle with 'X': Did not replied
- Orange circle with 'X': Replied but not related
- Green circle with 'X': Replied and participated
- Purple circle with 'X': Replied but did not participate

ANNEXES

ANNEX I

ANNEX I



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