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## Joint Shadow Report – SPAIN

### Table of Contents

Authors.....	1
INTRODUCTION .....	2
1. Legal Framework .....	3
2. Policy Framework .....	4
MAIN ISSUES AND RECOMMENDATIONS .....	6
1. Prevention .....	6
2. Protection .....	7
3. Prosecution.....	10
4. Integrated Policies .....	10
CONCLUSIONS.....	12

### Authors

**Médicos del Mundo:** [MDM](#) at national level is a vital part of civil society with a rights-based approach, playing a role to make health a reality for all. MDM Spain have links with organisations at local, regional and national level. MDM Spain have close contact with migrant communities in 14 out of 17 regions in Spain and FGM programmes in 6 of them. As a health organisation, they are well connected to national and regional health services in Spain and, most of all, have a good experience through their intercultural mediators with migrant communities. MDM is a Spanish member of the End FGM European Network.

**Save a Girl Save a Generation:** [Save a Girl Save a Generation](#) is a non-governmental organization fighting against female genital mutilation (FGM), exploitation of minors, against any form of abuse and forced marriage of young girls. Founded and led by women who were themselves denied the right to speak, the organization now seeks to defend the rights of young girls. Therefore, they felt the need to protect other girls and women so that they do not have to experience the same. It was registered in Spain in 2007, but had been working anonymously from 20 years earlier. The main focus has been to publicize the reality of the experience of girls and justify the need to secure girls through a combined effort. Save a Girl Save a Generation is a Spanish member of the End FGM European Network.

**Unión de Asociaciones Familiares (UNAF):** [UNAF](#) is a platform of 22 NGOs working for the defence and promotion of families' rights and welfare since 1988, from an inclusive perspective of families' diversity and from a number of areas, such as health, education, social and gender equality, end of gender-



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based violence, etc. UNAF was declared to be of “Public Utility” and has a special consultative body of the United Nations Economic and Social Council (ECOSOC). UNAF develops a sexual health promotion program aiming at fostering sexual and reproductive rights for migrant population that includes a specific project on Prevention and Intervention facing FGM. Project’s main activities comprise awareness raising and training workshops addressed to migrant population and health, education and social workers; collaboration with cultural mediators; production of manuals, awareness-raising publications and other resources; communication; advocacy and networking. UNAF is a Spanish member of the End FGM European Network.

**End FGM European Network (End FGM EU):** [End FGM EU](#) is a European umbrella network of 22 organizations working in 12 European countries and who are expert on FGM. End FGM EU operates as a meeting ground for communities, civil society organisations, decision-makers and other relevant actors at European level to interact, cooperate and join forces to end all forms of FGM in Europe and beyond. We put at the heart of our work grassroots voices to influence European governments and policy-makers to work towards the elimination of FGM. We build our members’ capacity, offer spaces to share expertise and develop partnerships. While being dedicated to being the driving force of the European movement to end FGM, we are equally committed to build bridges and cooperation with all relevant actors in the field of FGM both in Europe and globally. In this sense, we actively promote and foster cooperation between the European movement and movements in other regions of the world.

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## INTRODUCTION

The present joint shadow report is produced by Médicos del Mundo, Save a Girl Save a Generation and UNAF, in coordination with End FGM EU, in order to highlight the current situation and propose concrete recommendations on the issue of prevention, protection, prosecution and integrated policies concerning female genital mutilation in Spain. Despite this report focuses only on this harmful practice, its aim is not to single it out in isolation, but just to put emphasis on it while still seeing it in the *continuum* of gender-based violence against women and girls and in a holistic and comprehensive manner.

This report represents the Spanish chapter of a wider coordinated effort of End FGM EU to engage all its members who are under GREVIO revision to present an **FGM-focused report** in



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order to bring to the experts' attention the topic, which is too often neglected by State authorities. This project stems from our Guide on the [Istanbul Convention as a tool to end female genital mutilation](#). It puts in practice the Guide's holistic approach by considering its full application to FGM as a form of violence against women and girls which needs to be addressed through prevention, protection, prosecution and integrated policies. It does not only analyses the application of the specific FGM Article 38 of the Istanbul Convention, but addresses the full range of articles in the Convention and how they are applied to tackle FGM in Spain.

## 1. Legal Framework<sup>1</sup>

### Criminal Law

The **Spanish Criminal Code includes specific regulation on FGM**. The modified article 149.2 of Organic Act 11/2003 on Concrete Measures in Matters of Public Safety, Domestic Violence and Social Integration of Foreigners foresees: a penalty from six to twelve years for whoever causes to another person a genital mutilation in any form, adding the punishment of special barring from exercise of parental rights, guardianship, care, safekeeping or fostering shall be applicable for a term from four to ten years, in case the victim was a minor or incapacitated. The offence has extraterritorial applicability (Organic Act 6/1985 of the Judiciary Branch, Article 23.4 (modified by Organic Act 1/2014)) if carried out by a resident of Spain of Spanish or foreign nationality, or on an individual of Spanish nationality or residence. Finally, judges have the power to adopt preventive measures in case of imminent risk of FGM (Article 158 of the Civil Code, modified by Organic Act 9/2000).

### Child Protection Law

Child protection is a competency of the Autonomous Communities. Organic Act 1/1996 on the Legal Protection of Minors (partial modification of the Civil Code and the Civil Procedure Act) establishes the 'superior interest of minors' in situations of risk to or lack of protection of children, requiring Autonomous Communities to intercede. **Autonomous Community regulations for the protection of minors vary**, with some regions' making explicit reference to FGM and other communities covering FGM within the law on gender equality and gender-based violence<sup>2</sup>.

<sup>1</sup> For a more detailed information visit: <https://uefgm.org/index.php/legislative-framework-es/>

<sup>2</sup> Some of the regional laws which make reference to FGM within laws on gender equality and gender-based violence, defining FGM as a form of violence against women and children, are (in chronological order): Law



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### Asylum Law

**Organic Act 12/2009 regulating the Right of Asylum and Subsidiary Protection does not specifically refer to FGM.** However, it is **included in article 7**, regarding reasons for persecution, specifically gender related aspects (similar to article 10 Directive 2011/95/EU of the European Parliament and of the Council, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted).

### Professional Secrecy Law

**Professionals who are aware of an actual or at-risk case of FGM are subject to mandatory notification** to public police and judicial authorities (Article 450 of the Criminal Code, Article 262 and 355 of the Civil Procedure Act, Organic Act 1/1996. The notification must be exclusively to competent authorities and professionals; the maintenance of professional secrecy is otherwise mandatory. The conflict between legal obligations and ethical principles must be resolved according to general legislation and codes of conduct. The professional is required at all times to be respectful and supportive, protecting the life and health of girls and women (principle of beneficence), minimising negative consequences (do-no-harm principle) and to observe all ethical principles governing professional practice.

## 2. Policy Framework<sup>3</sup>

### National Action Plans

Spain does not have a specific plan to combat FGM. However, a **National Strategy for the Eradication of Violence against Women (2013-16)**, which was published in 2015 and promotes a **Healthcare Common Protocol**, specifically refers to FGM (measure 185).

Moreover, in 2017, the **National Agreement against Gender-Based Violence (2017-2022)** was approved, together with a dedicated budget, to eliminate all forms of gender-based violence. It involves national and regional governments, as well as the national Observatory against Violence against Women. It is made of 10 pillars, and the 8<sup>th</sup> concerns “Highlight and give attention to other forms of violence against women”, including FGM. It intends to address FGM through three measures: information campaigns, research and common protocol for healthcare response.

5/2005 Madrid; Law 4/2007 Aragón; Law 5/2008 Catalonia; Law 7/2012 Comunidad Valenciana; Law 14/2015 Navarra; Law 1/2017 Canary Islands; Law 7/2018 Andalusia.

<sup>3</sup> For a more detailed information visit: <https://uefgm.org/index.php/policy-framework-es/>



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In a number of Autonomous Communities, departments of health, social services, gender, education and/or immigration are increasingly including FGM prevention and awareness in integral programmes and plans<sup>4</sup>.

Given the political structure of Spain, there is a critical **lack of homogeneity of policies and services throughout the country between Autonomous Communities** regarding prevention, protection and prosecution of cases of FGM. Factors leading to such diversity include: whether the Autonomous Community has included FGM in its specific legal framework on gender-based violence against women; whether it has developed a concrete action plan or a protocol; and whether this latter is focused on healthcare or is more comprehensive.

### Multidisciplinary guidelines and protocols

Spain has developed several protocols both at national and autonomous community levels:

#### **National level**

At national level the only existing protocol is the [Common Protocol for Healthcare Response on FGM](#) (2015), which guides healthcare professionals to detect, treat and prevent FGM. The fact that such protocol is only focused on healthcare does not guarantee a comprehensive approach to the issue. It would be important to have an **integrated protocol to handle FGM at national level**, taking the example from protocols developed by some Autonomous Communities (see next point).

#### **Autonomous Community level**

Some Autonomous Communities have adopted multidisciplinary and multi-institutional professional and institutional protocols for the prevention, detection and treatment of FGM. Among these there are [Catalonia](#) (2007), [Navarra](#) (2013), [Aragón](#) (2016) and Castilla-La Mancha, which have an integrated approach. Valencia has a Healthcare Protocol (like the national one). The integrated protocols foresee among their tools for prevention and protection the signature of a family “Commitment” not to perform FGM on their daughters when travelling to their country of origin. Such official Commitment entails a paediatric revision of the girl before and after the journey.

Moreover, other Communities have opted for action guidelines, as is the case in [Andalucía](#) (2015) and [País Vasco](#) (2014), Madrid and Cantabria. Finally, several cities have their own Action Protocol against FGM, for example, [Bilbao](#) (2014).

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<sup>4</sup> For instance: Guideline with recommended actions in the Basque health system (Basque Country, 2016); Guidelines for sensitization on FGM (Andalusia, 2016); Guideline for health intervention in cases of FGM (Madrid, 2017).



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## MAIN ISSUES AND RECOMMENDATIONS

### 1. Prevention

#### Article 12

The Spanish government has increasingly been more involved in visibilisation around the issue of FGM within the broader public. However, it would be crucial to **invest more in awareness raising among migrant communities** and involve all stakeholders within them, including men and boys, to ensure a meaningful deconstruction of deeply rooted gender stereotypes. We would also recommend, within this effort of awareness-raising, that the Spanish government **speedily and better inform newly arrived female asylum seekers** around their right to international protection within the country on the ground of FGM.

#### Article 14

Education around FGM is very variable throughout the Spanish territory and heavily depending on projects carried out by civil society. It would be important that **awareness and education on FGM be officially established as compulsory at all school levels** and included in modules talking about gender stereotypes, gender-based violence, respect and the right to personal integrity. Without a thorough work on awareness raising from a very young age, it will be difficult to eliminate the practice and prevent the risk for all girls.

#### Article 15

National and Autonomous Communities' protocols and guidelines have been instrumental to ensure coordination between different stakeholders, authorities and professionals in terms of prevention and protection of FGM cases. All protocols recognise that training of professionals is one of the priorities in which there should be more investments. However, insufficient resources and time are allocated to training professionals around FGM, as well as more broadly around gender, gender- and culturally-sensitive contact with patients, and violence against women and girls. FGM is not part of the curriculum within relevant professionals' university education, including medicine and nursing schools, nor is it foreseen in the continuous training that professionals need to undergo throughout their career. Moreover, a survey conducted by Médicos del Mundo in Navarra showed that more than 50% of professionals did not even know about the existence of the integrated FGM protocol, which undermines its benefits and correct implementation on the territory.



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It is important that **more efforts at national and local level are put by authorities on systematically training professionals** and on raising awareness among them about the importance of FGM protocols and guidelines, as well as gender-sensitive service provision. It would be also recommendable to create **dedicated referral units or focal points** for consultations in different professional sectors to ensure that competent people are always available for the affected population in case needed.

### Article 17

Over the years, the Spanish media discourse around FGM has improved, but there is still a lack of awareness and sensitisation in the communications and media sector in order to avoid stigmatising the population at risk and re-victimise and re-traumatise the survivors, especially when there are press articles dealing with specific court cases of FGM or targeting individual survivors and their stories. We recommend to the Spanish government to **ensure media professionals, including journalists, are adequately trained around sensitive language and imagery on how to talk about FGM** to ensure they put in practice a sensitive approach based on the principle of do-no-harm.

## **2. Protection**

### Articles 20 & 22

Treatment of psycho-sexual complications of FGM is not adequately granted throughout the nation, because in most of the Autonomous Communities there are no specialized units providing such service. The national healthcare protocol should ensure to **increase and homogenise the provision of psychosexual accompaniment for women and girls survivors of FGM** to ensure a comprehensive approach to their health, which is not only physical but also mental. Moreover, such protocol should foresee the optional provision of **genital reconstructive surgery** to women after having undergone such psychosexual accompaniment. All the aforementioned services should be included within the **public health system** and the connected expenses fully covered.

It would be also important to **ensure legal access to universal health coverage for everyone, regardless of their migration or residence status**. Indeed, currently newly arrived undocumented migrants, including women and girls who might have undergone FGM and are in an irregular administrative situation, cannot access healthcare, neither according to Law 16/2012 nor in line with Royal Decree 7/2018, which requires at least three months of legal residence in Spain.



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Moreover, women who have undergone FGM should be provided with information and awareness raising on FGM consequences, as well as with contacts of organisations working on the territory to end FGM and provide support to survivors to ensure their highest protection and the one of their daughters.

#### Article 60 & 61

Despite FGM is considered in Spanish legislation as a ground for asylum as a form of gender-based persecution, Spain has only recognised (at least) 20 female refugees on this ground over the last number of years, particularly from Gambia, Mali, Guinea Conakry, Ivory Coast and Somalia.

Some of the cases in which girls or women have been recognized as refugees are girls born in Spain from mothers originating from countries where FGM is usually practiced. Others are cases of girls travelling to Spain who did not undergo FGM, but whose FGM-affected mothers have been denied asylum. In these cases, the mothers were finally granted refugee status by extension of their daughters.

This low number of girls and women recognised as refugees on the ground of FGM cannot be explained with the country of origin of asylum seekers arriving in Spain, since Nigeria, Mali, Guinea Conakry, Ivory Coast and Somalia are some of the African nationalities with the highest numbers of asylum requests in Spain<sup>5</sup> and have all a high FGM prevalence. On the one hand, the lack of asylum recognition on ground of FGM can be due to the lack of information provided to girls and women regarding the possibility of asking for international protection if they have suffered, or are afraid of suffering, FGM. On the other hand, another reason could be the invisibility of gender-based violence, including FGM, compared to other more predominant elements within the asylum request. Therefore, as further explained in this document, providing the necessary information to women and girls upon arrival and training of the different professionals involved in the asylum system are key elements to ensure these women and girls the adequate international protection.

One of the elements taken into consideration by Spain in order to grant asylum to women and girls affected by FGM is the availability of national protection systems throughout the territory of the country of origin which could ensure safety to the woman or girl. We recommend that this **analysis does not only refer to the existence of a national legislation prohibiting the practice**, but to its actual implementation and concrete effectiveness. It is also important to reflect on the difference between statutory law and customary law in countries where FGM is

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<sup>5</sup> For more information, see:

[http://www.interior.gob.es/documents/642317/1201562/Asilo\\_en\\_cifras\\_2016\\_126150899.pdf/58bf4ed4-0723-4e84-afa8-265c52a4dbf7are](http://www.interior.gob.es/documents/642317/1201562/Asilo_en_cifras_2016_126150899.pdf/58bf4ed4-0723-4e84-afa8-265c52a4dbf7are)



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practiced, since the mere existence of a national law very often does not affect ethnic customs and cultural traditions that coexist in parallel with the national legal framework.

Moreover, another issue is that **asylum recognition in Spain concerns mostly women and girls who are at risk of being cut**, while those who have already undergone the practice are not considered to be anymore facing persecution and their asylum application is therefore mostly rejected. Unfortunately, this approach does not take into consideration the *continuum* of violence to which these women and girls are subjected regardless whether they have been or not cut (forced marriage, domestic violence, sexual violence, etc.), as well as the risk of multiple episodes of FGM throughout their lives. In this sense it is important to ensure a proper reflection within the Spanish asylum system around the return of these cut women and girls to their countries of origin, which can cause re-traumatisation and re-victimisation.

It appears clear that a big issue in this regard is related to lack of **training and sensitisation of professionals around gender-sensitive asylum procedures and around Country of Origin Information** that highlight the gender dimension of persecution, gender-based violence happening in the country, including FGM. Moreover, it would be advisable not to use general lists of Safe Countries of Origin, but to always carry out an individual case-by-case analysis, since applying gender lens to this analysis, for instance, a peaceful country is not necessarily equally safe for men and for women and girls. These latter might experience partner violence and other forms of violence in the private sphere.

It is also important to train other professionals, such as doctors, midwives, psychologists, since, in most cases, in order to obtain a positive resolution regarding international protection in cases related to FGM, it is necessary to provide a medical or psychological certificate proving the girl or woman has suffered the FGM, or not, and its consequences.

Finally, it would be important to ensure a **greater accessibility to the asylum procedure in Spanish embassies and consulates** in third countries, through granting different kinds of visa (including humanitarian or family reunification) in order to ease and speed up the process. This is particularly important for urgent cases of girls at risk of FGM who do not have guardians authorising them fleeing, or including for mothers who want to protect their daughters from an imminent risk of FGM. **Asylum procedures should also be more gender-sensitive** and ensure that female asylum seekers are able to interact with female asylum officers upon request, particularly in cases dealing with taboo issues such as gender-based violence and FGM.



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### 3. Prosecution

#### Article 45

The provision criminalising FGM in the Spanish Penal Code entails a particularly severe penal mechanism which is apparently applied automatically after reporting. For this reason, the law is being debated among academics, professionals and within civil society actors. It would be important to always take into consideration the best interest of the child and the primary duty to protect children from harmful consequences of a severe application of the law.

After collecting this necessary data, an **institutional reflection on the legislation and its consequences on the principle of the best interest of the child** should be initiated, with the meaningful participation of civil society, academics and professionals contributing to the provision of support and services to affected communities.

### 4. Integrated Policies

#### Article 7

In Spain there is not a coherent mechanism to ensure FGM is tackled through a comprehensive approach at all levels of government in the country. It would be important to have a **framework for comprehensive and coordinated policies and services at the municipal, autonomous and national levels** to ensure the establishment of a homogenous system to tackle FGM throughout the Spanish territory.

#### Articles 8 & 9

The Autonomous Communities' Protocols put a lot of focus on FGM prevention, but rely heavily -when not solely- on NGOs to carry out the job with the help of **cultural mediators from affected communities**, often without allocating dedicated funding. It is crucial that municipalities and Autonomous Communities **scale up their support for activities carried out by civil society**, through the implementation of collaboration agreements or the direct hiring of cultural mediators working with the municipalities in their different sectors (healthcare, social, juridical, etc.). **Appropriate financial and human resources** are key to ensure the effective implementation of policies and services throughout the national territory.

Moreover, the Spanish government should closely work in partnership with civil society organisations, involving them in all decision-making, policy designing and implementation,



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and adequately supporting them. The same attention should be paid to **facilitating mechanisms and spaces for community engagement in the definition of needs, strategies, actions and decision-making**, as well as supporting the strengthening of their associative life. In particular, it is important to ensure recognition and budget allocation for the fundamental figures of intercultural mediators and interpreters to ensure appropriate community engagement.

#### Article 10

In Spain, despite the existence of several FGM protocols both at national and autonomous community levels, there has not been an appropriate in-depth evaluation on their implementation. Moreover, when such evaluations are carried out, it is mostly done by civil society organisations through their own budget<sup>6</sup>. It is key that the Spanish government and Autonomous Communities ensure to engage in a **thorough and transparent monitoring and evaluation mechanism**, involving all relevant and concerned stakeholders (including professionals, civil society and affected communities).

#### Article 11

Three nation-wide studies have been conducted attempting to have estimates of the amount of FGM-affected population living in the country by the Wassu-UAB Foundation, in 2009, 2012 and 2016<sup>7</sup>. Moreover, Médicos del Mundo and some Autonomous Communities have realised local data collection in specific communities. However, not enough data is collected at national and regional level concerning FGM. It is paramount that the government **invests more in data collection and research** around the issue, in order to improve knowledge around FGM and all forms of violence against women and girls in Spain.

Moreover, there is no national register centralizing the number of cases of women and girls affected by FGM who live on Spanish soil. It would be crucial to have such **national register**, involving public administrations at different levels and a wide representation of CSOs, to ensure proper protection and service delivery to the concerned population and ensure the implementation of better targeted policies.

Finally, it would be important to **carry out a centralised assessment of all available resources at national, autonomous and municipal level**, within the framework of a comprehensive and integrated national mechanism around FGM, to map possible gaps and identify potential new necessary resources.

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<sup>6</sup> In the case of Catalonia, the 2002 protocol was revised by the authorities and updated in 2009, but the only in-depth evaluation of that protocol has been carried out by Aina Mangas, researcher of the Interdisciplinary Group for Prevention and Study of Harmful Traditional Practices (IGPS / HTP) of the Wassu-UAB Foundation.

<sup>7</sup> See [https://mgf.uab.cat/esp/publicaciones\\_cient%C3%ADficas.html](https://mgf.uab.cat/esp/publicaciones_cient%C3%ADficas.html).



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## CONCLUSIONS

In conclusion, Médicos del Mundo, Save a Girl Save a Generation and UNAF, together with End FGM EU, would like to call upon the Spanish authorities to keep working towards putting an end to FGM, by taking the following measures:

- Develop an integrated national protocol on FGM and establish a framework for comprehensive and coordinated policies and services at the municipal, autonomous and national levels, with adequate humane and financial resources;
- Invest more in awareness raising among the migrant communities;
- Inform female asylum seekers upon arrival about the possibility to request for asylum on grounds of gender-based persecution, including FGM;
- Provide awareness and education around FGM at all school levels, within the framework of modules on gender stereotypes, gender-based violence, respect and the right to personal integrity;
- Adequately train professionals in all sectors around FGM and establish a system of dedicated referral units or focal points throughout the Spanish territory to provide support to survivors and prevention measures for girls at risk;
- Ensure media professionals, including journalists, are adequately trained around sensitive language and imagery on how to talk about FGM;
- Increase and homogenise the provision of psycho-sexual accompaniment for women and girls survivors of FGM, including offering the option of genital reconstructive surgery, within the public health system;
- Ensure legal access to universal health coverage for everyone, regardless of their migration or residence status;
- Ensure that all professionals working in the field of asylum are trained around the specificities of FGM and how to analyse COI in a gender-sensitive way;
- Ensure that asylum procedures are more gender- and child-sensitive, specifically in terms of: recognition of the specificity of FGM as a social norm and the consequent pressure put on families to perform it; gathering, updating, analysing and using quality COI in a gender-, culture- and child-sensitive way; greater accessibility in Spanish embassies and consulates in third countries;
- Initiate an institutional reflection on the FGM legislation and its consequences on the principle of the best interest of the child;
- Scale up the support for activities carried out by civil society, including through substantial financial allocations to sustain the crucial work of cultural mediators;



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- Facilitate appropriate mechanisms and spaces for effective community engagement in the definition of needs, strategies, actions and decision-making, as well as in monitoring and evaluation;
- Establish thorough and transparent monitoring and evaluation mechanisms for existing protocols at all levels of government;
- Invest more in data collection and research around FGM;
- Establish a national register on the number of cases of women and girls affected by FGM who live in Spain;
- Carry out a centralised assessment of all available resources at national, autonomous and municipal level and ensure to allocate adequate resources to fill the potential gaps.

We thank the GREVIO for the opportunity given to civil society to provide our expertise and concrete recommendations to improve Spanish authorities' actions to end FGM.