

## Human Trafficking in Spain: Invisible Victims

### **Methods used to Produce Report**

The decision was made to approach human trafficking through a monographic report because of the **complaints received** from non-governmental organizations that work with the victims, as well as the knowledge obtained through periodic **visits by the Ombudsman Institution**.

This report aims to carry out an analysis of the current state of affairs regarding human trafficking, giving voice to all of the organizations and organisms that work in this field. It also aims to analyze the international conventions signed by Spain as well as the European regulations, with the objective of confirming whether the standard of protection for victims in Spain is sufficient.

Finally, the report seeks to offer a **profound analysis on human trafficking in Spain** to the Parliament and Spanish society, together with corresponding **conclusions and recommendations** directed to **the relevant organisms of the Public Administration**.

### **Preparation and Production of the report**

The Ombudsman Institution relied on the **participation** of departments of the **Public Administration**, representatives from various **international organisms**, and labor unions as well as the organizations that comprise the **Spanish Network to Combat Human Trafficking**.

In addition, in 2008, the Ombudsman Institution incorporated a new section to the **Visit Protocol**, which it carries out in its Migration and Equal Treatment Area. This section **is comprised of data on human trafficking**, with focus paid to relevant **aspects according to each of the centers** visited. Accordingly, the Ombudsman Institution visited immigrant detention centers, temporary immigrant reception centers on the Peninsula and in Ceuta and Melilla, border posts in Madrid Barajas and El Prat in Barcelona, Civil Guard command headquarters, and provincial immigration units. During these visits, the Ombudsman Institution analyzed files of potential trafficking victims and evaluated the degree of expertise and commitment of those responsible for each department in the fight against human trafficking.



The Ombudsman Institution initiated **174 inspections** within distinct departments of the Public Administration, framed within **61 *ex officio* investigations and 32 complaints**.

In addition, **the Ombudsman Institution accompanied organizations that carry out fieldwork** with victims and **visited facilities for trafficking victims and interviewed those in charge** of these organizations. The Ombudsman Institution also interviewed **fifty-nine human trafficking victims and potential victims**.

### **I. Human trafficking from a human rights perspective**

**Trafficking is** a violation of human rights. It is **a crime**. Traffickers are criminals and must be persecuted. The victims must be protected. For this reason, the law must offer the victims a safe environment that allows them to recuperate and report the crime.

It is very important not to forget that the obligation **to protect the victims does not depend on whether the victims decide to report the crime**.

In Spain, human trafficking is a crime persecuted and punished by the Criminal Code. The purpose of this crime is exploitation, which includes sexual, labor, begging, trafficking of organs, and slavery. The consent of the victim becomes irrelevant when it is shown that it was obtained by unlawful means.

The **lack of data regarding the true extent of human trafficking seriously compromises the capacity of potential measures to combat this crime**, especially considering the transnational dimension of this crime. The lack of data also hinders the realistic evaluation of the impact of any future plan for intervention.

**Other forms of exploitation remain hidden** in the majority of cases. In labor exploitation cases, active participation of all pertinent authorities is necessary. These authorities should continually pledge their commitment to combating this crime.

Globally, the majority of human trafficking crimes occur on a national or regional level. This is not the case in Europe, the destination for many victims. The majority of the human trafficking victims detected in Europe come from Romania, Bulgaria, China and Nigeria.



## Gender Perspective

According to **data from the United Nations, two thirds of the trafficking victims detected globally are women. Seventy-nine percent of the victims are trafficked for the purpose of sexual exploitation.** In fact, gender-based violations of human rights are one of the fundamental causes for the existence of human trafficking. Gender violence and other forms of discrimination against women and girls can foster and exacerbate their vulnerability, leading them to become victims of human trafficking.

This trend is seen **in Europe, where 70% of the victims detected are women.**

## II. Types of human trafficking in Spain

### **For the purpose of labor exploitation**

In order to analyze the situation in Spain, the Ombudsman Institution **consulted** the **Office of the Attorney General's latest annual reports** as well as the **data** provided by the **Labor and Social Security Inspection Agency**. In addition, the Ombudsman Institution **monitored** distinct police operations that have dismantled criminal networks.

Despite the fact that various situations of trafficking for the purpose of labor exploitation have been detected, **the Ombudsman Institution was not able to interview victims of this type of exploitation in Spain**, nor have formal complaints been received regarding this situation. Therefore, the Ombudsman Institution has opted to use **ex officio investigations** and the existing study analysis in order to approach the current state of affairs.

According to Labor Inspection Agency data, between **2009 and 2011 only 21 cases of trafficking for the purpose of labor exploitation were detected in Spain.** During this timeframe, each year there were more than 100 cases in which labor exploitation was detected but which did not comply with all of the elements required in order to be considered human trafficking.

In order to make up for the lack of interviews with victims of labor exploitation, **between May 2010 and January 2012, the Ombudsman Institution began 11 ex officio investigations** as a result of the media reports on the dismantling of criminal rings dedicated to labor exploitation. The Ombudsman Institution **monitored police conduct regarding presumed victims as well as the procedural steps** taken following arrests.



It is important to emphasize that the **results** of the **11 ex officio investigations** reveal that **not a single presumed victim of labor exploitation** included in the investigation **was actually deemed by law enforcement authorities to be a victim of human trafficking for the purpose of labor exploitation. Of these cases, 68% of the victims did not opt to receive the reflection and recovery period provided under the Foreign Nationals Act.**

This is found to be a common phenomenon, in keeping with the findings of the International Labor Organization (ILO). Their reports point to the fact that the victims are generally reluctant to testify, not only for fear of retaliation from those who exploited them, but also for fear of the measures that authorities could undertake against them.

In order to better understand this situation, it must be noted that the criminal code (which incorporated the correct classification of the crime of trafficking) only came into effect as recent as December 2010. Not enough time has passed in order to evaluate the impact the reform may have on the improved effectiveness of the persecution of this crime.

Thus, it is **necessary to improve victim detection procedures**. In addition, for efficient detection and prevention of these situations, it is essential to **augment efforts to obtain increased participation on behalf of the Labor and Social Security Inspection Agency**. Thus, one of the report's recommendations references the need to **put into action the Comprehensive Plan to Combat Human Trafficking for purposes of Labor Exploitation**, which at this time is in preparation stages.

#### **For purposes of sexual exploitation**

**Efforts** made by the various relevant and qualified departments of the **Public Administration** have **focused** almost exclusively on **trafficking for purposes of sexual exploitation**. Likewise, the studies carried out and the official statistics which provide, among other data, the complaints regarding trafficking in Spain received by the Ombudsman Institution, also refer almost exclusively to this type of trafficking.

In order to analyze the situation in Spain, the Ombudsman Institution **analyzed data** provided by the Attorney General's Office, together with the data provided by the Interior Ministry's **Center for Intelligence to Combat Organized Crime (CICO)**.



In addition to carrying out a number of **investigations**, the Ombudsman Institution also relied on **direct testimonies from victims**, together with the **contribution from the specialized organizations that work with them**. Thus, the Ombudsman Institution has approached the situation in Spain from various perspectives.

According to the data provided by the Secretary of State's Department of Security, between 2009 and 2010 the main **profiles** of persons in an **at-risk** situation for falling victim to human trafficking with the purpose of **sexual exploitation in Spain** are: a **female** with **Romanian** nationality between the ages of **18 and 32** and a female of **Brazilian** nationality between the ages of **33 and 42**.

The **data from 2011 is not broken down by nationality, although it does reference Romanian, Brazilian and Paraguayan nationalities**. The information provided by the appointed department reveals that **47% of victims come from the Americas, 45% from Europe and 7% from Africa**.

In many instances, the organized groups dedicated to this criminal activity rely on infrastructure that extends across countries of origin, transit and destination. These groups are comprised of Spaniards and foreigners, mainly middle-aged males. Frequently there are females members of these criminal groups who are of the same nationality of the victims. In some cases, these females responsible for controlling the victims may be (or may previously have been) in a situation of exploitation themselves.

**Spaniards** usually form part of the criminal group as **mere exploiters** of the victims (namely as owners **or managers of establishments** where exploitation is carried out, or as other related professions). Exploitation is common in the service industry, providing this criminal activity the appearance of legality. Relatively frequently, the exploiters and victims are of the same nationality.

The figures analyzed demonstrate a **growing commitment from the law enforcement agencies** in the fight against these situations. While in **2009 law enforcement agencies detected 6,157 individuals** in at-risk situations, in **2010 and 2011 15,075 and 14,370 were identified**, respectively.

In order to grasp these figures, **it is essential to understand the difference between human trafficking for the purpose of sexual exploitation and mere sexual exploitation**.



Human trafficking refers to the process of recruitment, transportation, transfer, harboring, or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power, or by taking advantage of the vulnerability of the victim for the purpose of sexual exploitation.

Sexual exploitation is also a crime; however, it does not consist of all of the elements necessary to be deemed human trafficking.

**At the moment of detection, it is difficult to clarify whether a person is a victim of human trafficking for the purpose of sexual exploitation or on the contrary, is a victim of sexual exploitation:** a situation which does not involve all of the elements to classify it as human trafficking.

According to the estimation of the United Nations Office on Drugs and Crime in Europe, **only 1 out of 20 potential victims of human trafficking for the purpose of sexual exploitation is detected.**

CICO data confirms this trend in Spain and the **figures clearly demonstrate that the number of victims identified is much lower than the number of individuals detected in an at-risk situation:** In 2009, 1,301 victims were identified compared to 6,157 persons detected to be at-risk; in 2010, 1,641 victims were identified compared with 15,075 persons detected to be at-risk; and in 2011, 1,082 victims were identified while 14,730 at-risk persons were detected.

Investigations carried out by the **Ombudsman Institution** for this report **reveal that the Public Administration does not account for a group of potential victims, whose number is unknown:** foreigners, mostly **women**, mainly of **Nigerian** nationality. They are undocumented and are **detected when trying to access national territory**, or are **identified** by police during **immigration controls** in public places.

Complaints received and visits carried out at temporary immigrant reception facilities in Motril (Granada) revealed that there are a number of women and minors with profiles of possible trafficking victims. These potential victims were mainly Nigerians, although some were from other African countries.

For this reason, various types of research were initiated: **In July 2011 the Ombudsman Institution** addressed the Central Department of Immigration and Boarder Police to **inform them of the results** of the so-called **Indalo Operation**



carried out by **Frontex** (the European Agency for Coordination of European Border Management). Frontex investigated a number of locations on the Spanish Coast as well as operations carried out regarding possible trafficking cases.

Information was requested from the Public Administration regarding their actions. The **Administration** responded by declaring that the persons found trying to reach the coast of Granada, Murcia and Almeria, were generally victims of migrant smuggling. However, **it recognizes that “the sub-Saharan women and minors could have fit a profile that would deem them individuals at-risk for human trafficking.”**

**Through monitoring police operations**, the Ombudsman Institution detected a number of **circumstances that commonly occur when police identify** potential Nigerian victims of human trafficking for the purpose of sexual exploitation.

The first is the habitual **refusal, on behalf of the women, of the recovery and reflection period** offered by the police in the hours following their entrance into Spain. Second is the low number **of applications for international protection on the part of those detected on the coasts** (mainly in the South of the peninsula) in an attempt to enter Spanish territory.

Frequently, women who are in advanced stages of pregnancy or who are accompanied by young children **are not admitted into immigrant detention centers. Instead, they are released or referred to social organizations with humanitarian aid programs.** The data on adults (including their photograph and fingerprints) are recorded in the police database for foreigners. Deportation orders for attempting to enter the country illegally are also recorded. As of 2011, this database also includes data on individuals who refuse the recovery and reflection period.

However, **data on minors is not registered in any police database, and Child Protection Services is not informed of the presence of minors in the country.** Therefore, once they leave temporary shelters, the monitoring and identification of minors becomes very difficult. If their mothers are subsequently identified again by the police during immigration controls, **it is impossible to know if the children accompanying them are the same ones that were with them when they entered Spain.**





### **III. Identification and Protection of Victims in Spain**

Through a number of **real cases**, the Ombudsman Institution has highlighted the **shortcomings in the identification of victims** at the border, and has laid guidelines to interview potential victims. (They include: cause no harm, properly select an interpreter, ensure that the victim is aware of what he or she is consenting to, listen and respect the evaluation of each person's situation and risk assessment, avoid re-traumatizing, make sure that the information collected is used correctly by taking into account the action protocols for victims of trafficking, and refrain from asking the same question more than once even if the answer given is considered unsatisfactory).

Moreover, according to the Ombudsman Institution, greater **cooperation is needed between the authorities and NGOs** specialized in the care and protection of trafficking victims. NGOs should participate in regulated procedures for victim identification. In the Ombudsman Institution's opinion, the lack of regulations regarding the implementation of Article 59bis of the Foreign Nationals Act (which lays out the conditions for cooperation with NGOs) seriously limits Spain's capacity to identify trafficking victims. Furthermore, the Ombudsman Institution also notes the overall lack of clarity on this issue in the Framework Protocol for the Protection of Victims of Trafficking.

#### **Recovery and reflection period**

The recovery and reflection period is the time that the Public Administration grants to individuals who show reasonable signs of being a victim of trafficking. During this time, the victim cannot be deported to their country of origin and is offered shelter and assistance. This period is intended to allow the victim to recover and to make an informed decision regarding their collaboration with the relevant authorities. According to the Ombudsman Institution, there must be a **clear distinction** between these **two phases**. First, the **victim should recover** and feel safe. Only when this first phase has been completed successfully and always with the support and advice of a specialized organization, can the second phase be addressed. In this second phase, the victim should be informed that they will have the opportunity to **cooperate with relevant authorities**.



The Ombudsman Institution expresses concern over the **very low number of applications for the recovery and reflection period, which it attributes to officials using a too routine approach to offer the measure.** Thus, the Ombudsman Institution encourages the review of this procedure as well as of methods to consider the unique situations of certain groups of potential victims. An example are those who arrive in small boats and witness the death of their fellow travelers, including even their own children or other relatives.

According to data released by the Ministry of State Security, **in 2011** authorities offered **763 recovery and reflection periods**, of which 680 were denied or rejected by the victims and **98 were granted**. In 2010, of the 219 periods that were offered, 21 were granted; 6 were rejected by the authorities and 171 were refused by the victims. The Ombudsman Institution recognizes that there has been an improvement in the procedure for offering this period but remains concerned with the low number of applications.

### **International Protection**

The most common obstacle human trafficking victims face in being approved for international protection lies in the **difficulty to establish well-founded fear of persecution and the membership of a particular social group.**

Furthermore, in light of the complaints received and investigations conducted for this report, the Ombudsman Institution voices its concern for the conduct of the organism responsible for the review and resolution of applications for International protection. This organism routinely excludes any request for international protection by applicants who are or who have been trafficked. The organism alleges that the Asylum Law and its subsidiary protection do not legally cover these cases, and that these cases must be redirected to the Foreign Nationals Act.

One of the conclusions of the report points to the **ineffectiveness of the methods used to identify potential victims of trafficking during international protection procedures.**

Moreover, by analyzing a real case, the report also notes the consequences for trafficked persons seeking international protection whose situation may lead to the provisions outlined in the **Dublin Convention**. These provisions force the victim to leave the country where he or she has been carrying out his or her recovery process in



order to move to a country where the international protection application can be examined.

### **Trafficked Minors**

The international legal definition of trafficking minors differs from that of adults because it requires only the act (transfer, sale, receipt, etc.) made for the purpose of subjecting them to exploitation. It is not necessary to prove any means, such as deception, coercion, or abuse of power or of a position of vulnerability.

**There is a widespread lack of data regarding the number of child victims of trafficking.** The Ombudsman Institution points out that, when dealing with child arrivals, authorities must give notice to the public prosecutor's office and must record the arrival of the minor in a separate database. Furthermore, authorities must confirm the legal relationship between the minor and the adult(s) with whom they are traveling.

Moreover, in 2011 **the Ombudsman Institution launched an investigation with each office of Child Protection Services in Spain's regional autonomous communities and the autonomous cities of Ceuta and Melilla.** The objective was to identify the number of child trafficking victims in the custody of different State protection agencies in each of the autonomous communities and cities. The Ombudsman Institution also requested information on the presence of specific protocols for the prevention, detection and protection of trafficked minors, as well as the existence and number of specialized residential facilities for these victims.

Eight of the regional **autonomous communities and the autonomous cities of Ceuta and Melilla** indicated that they had no trafficked minors under their protection. The three **autonomous communities** that have the largest number of child trafficking victims under their protection are Andalusia, Valencia and Galicia. None of the regional offices of Child Protection Services have specialized housing centers for trafficked minors.

Subsequently, the Ombudsman Institution requested information from all the autonomous regions that had submitted data on child victims of trafficking, in order to determine the legal proceedings with respect to these minors. With the exception of Valencia, the responses revealed that the child protection agencies lack information regarding the existence and status of the criminal proceedings, in which some of the minors under their protection are involved as victims or witnesses.



This **lack of coordination between the Public Prosecutor's Office and the child protection agencies** that have custody of trafficked minors severely hinders the recovery process and the work of specialized institutions that assist them. It also triggers a re-victimization of the children, as they are subjected to the same procedures repeatedly.

#### **IV Conclusions**

The report outlines **41 conclusions**. Among them are:

##### **GENERAL**

- It must be ensured that actions against human trafficking are not reduced merely to the problems of migration, public order and the fight against organized crime.
- Sexual exploitation is noted as the most commonly identified form of human trafficking followed by forced labor. The exploitation of women tends to be more visible and more frequently reported. In comparison, other forms of exploitation are under-reported. Therefore, action is required from all relevant labor authorities. They must take an increased role in addressing this matter, which until now has been mainly handled by police and immigration authorities.
- The lack of data seriously limits measures to combat trafficking and makes it difficult to realistically evaluate the impact of any evaluation plan.
- It is common for authorities to incorrectly identify trafficked persons as illegal immigrants. There is a lack of reliable victim identification procedures.
- Effective action against forced labor requires authorities to go beyond the criminal or administrative approach.
- Human trafficking is a very lucrative criminal activity. The low number of convictions is due in part to the fact that trafficking cases are too often prosecuted as other crimes.
- Judicial proceedings that charge traffickers continue to rely almost exclusively on the statements of the victims. However, financial research is an important tool for obtaining evidence and for risk assessment, in order to better understand the *modus operandi* of traffickers and to perfect methods of detection.



- It is necessary to establish the participatory role of social organizations that are specialized in identifying and providing assistance to victims of trafficking.
- The lack of clear standards on the recovery and reflection period causes significant variation in national practices and a high degree of confusion regarding the necessary requirements for offering and obtaining this measure.
- The residence permit is an important measure to guarantee victims' protection and it increases the likelihood of a victim cooperating with the authorities for criminal prosecution.
- It is essential that the State does not take criminal action against the victims for crimes related to their trafficking situation, such as carrying false passports or working without authorization.
- The right to access an effective remedy is a fundamental human right of all individuals, including victims of trafficking, who must be respected, protected and compensated by the State.
- Those individuals who have been trafficked and fear persecution upon return to their home country, or those who fear being trafficked, should be guaranteed refugee status by the State, so that they may receive the corresponding international protection.
- The identification of a minor as a trafficking victim should not reduce or restrict their right to seek international protection or to be recognized as a refugee.
- It is important that the State adopts proactive identification measures, such as strengthening the procedures for the registration of births as well as for data registered on missing and exploited children.
- Procedures for identifying trafficked minors should include the obligation of institutions and agencies to adequately refer them to appropriate services without delay.

## **SITUATION IN SPAIN**

- There has been significant progress in the new legal framework against human trafficking in Spain. However, confusion persists regarding the definitions of human trafficking and migrant smuggling, especially when the person embarks



on his or her journey voluntarily and later becomes a victim of trafficking in transit or at their destination.

- The capacity for victim identification is impeded by the lack of regulations implementing article 59bis of Organic Act 4/2000, which guarantees NGO participation in identification procedures. In addition, the lack of definition and guidelines regarding NGO participation in the Framework Protocol for the Protection of Victims of Trafficking further hinders the effectiveness of victim identification.
- Organizations working with victims express dissatisfaction regarding the evaluation carried out by authorities in order to identify a potential victim. Identification requires time and specialized assistance.
- Victims commonly go unidentified as a result of the lack of understanding on behalf of authorities that victims' defensive and erratic behavior is often rooted in trauma or fear of reprisals.
- Despite the progress made, the numbers of recovery and reflection periods requested and granted remain very low. Therefore, it is necessary to review this procedure.
- The Ombudsman Institution's investigations reveal that the measures for detection of victims or potential victims of trafficking are not working properly. Deficiencies have been detected in the procedures and in coordination.
- A lack of training was also detected, especially with regards to officials at border crossings and officials involved in international protection procedures.
- There are difficulties with the issuance of residence permits for the personal situation of the victim. Commonly, this guarantee is only considered when a victim's testimony is considered insufficient for a criminal proceeding.
- Coordinating mechanisms between different governmental agencies must be improved in order to prevent re-victimization. When the testimony of victim has not been deemed sufficient enough for police to continue with a criminal proceedings, the victim may be left feeling more helpless and at a greater risk than they were prior to cooperating with the authorities.
- The fight against human trafficking cannot exclude victim detection at the border or the prosecution of offenders, regardless of whether they are in Spain.



- The lack of action protocols leads to the absence of early detection of minors, and places them in an at-risk situation. The lack of police records that include data of minors exacerbates this situation.
- Weaknesses have also been identified in the monitoring of trafficked minors born in Spain. Merely registering these children is not enough.
- There are no common action protocols to detect trafficked minors between the regional agencies that protect minors.

## **V. Recommendations**

This report concludes with recommendations for the Interior Ministry and the Employment and Social Security Ministry, the Secretary of State's Department of Social Services and Equality, the Attorney General's Office, the General Directorate of Police and the relevant agencies of Spain's regional autonomous communities and the autonomous cities of Ceuta and Melilla.

Among the recommendations for the **Employment and Social Security Ministry** is the request to **amend** Article 140 of the Regulation implementing the **Foreign Nationals Act in order to develop the stipulations for collaborating with NGOs** dedicated to the assistance and protection of victims of trafficking. In addition, it is recommended that the authorities expedite the tasks necessary to publish the **Plan to Combat Trafficking** for the Purpose of **Labor** Exploitation.

Among the recommendations sent to the **Interior Ministry**, the Ombudsman Institution emphasizes the need to **review the Asylum and Refugee Office's criteria** for applications for international protection in which the applicant is a potential victim of trafficking. The recommendations call for a **database to register all** undocumented **minors** who are detected trying to cross the border. The Ombudsman Institution also recommends that necessary measures be established to **verify the legal relationship** between minors and the adult(s) with whom they are traveling.

The Ombudsman Institution recommends a **review of the procedures** which guarantee the **recovery and reflection** period, as well as **the role of organizations specialized in identifying victims**. It also recommends **two distinct phases** in this



procedure: the first of which allows the victim to recover and once recovered, the next phase allows the victim to decide whether to **cooperate** with authorities.

Moreover, additional **training** courses are recommended for agents, as is **improved coordination** between the National Police, the Civil Guard and autonomous police.

The Ombudsman Institution also recommends the development of a **national protocol for the detection of and assistance to child victims of trafficking**.

Finally, the Ombudsman Institution is committed to promoting the creation of mechanisms for coordination and monitoring among provincial prosecutors and autonomous child protection agencies. This is particularly relevant to cases in which trafficked minors placed in custody of the State are involved in criminal proceedings as protected witnesses. The objective of these mechanisms is to protect minors during such procedures and to prevent re-victimization.