

Defensor del Pueblo

Human Trafficking in Spain

INVISIBLE VICTIMS

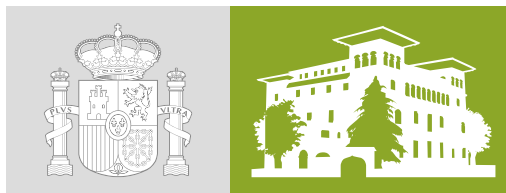


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INVISIBLE VICTIMS

Madrid
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SUMMARY



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, boarder 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** or **interviewed those in charge** of these organizations. The Ombudsman Institution also interviewed **fifty-nine human trafficking victims and potential victims**.

1. 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.

1.1. 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.**

2. Types of human trafficking in Spain

2.1. 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.

2.2. 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 fall-

ing 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 Border 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.**

3. 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.

3.1. 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. Ac-

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.

3.2. 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.

3.3. 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.

4. 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.

5. 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.



FORMS OF HUMAN TRAFFICKING IN SPAIN

*“I thought maybe they would
know my family.”*

1. For the purpose of labor exploitation

1.1. THE SITUATION IN THE INTERNATIONAL CONTEXT

In 2005, the International Labour Organization (ILO) published a report titled *Global Alliance Against Forced Labor*. The report cited an analysis of global and regional estimates of forced labor, including abusive practices of forced labor resulting in human trafficking. The data and analysis highlighted, on the one hand, that the abolition of forced labor represents a challenge for virtually every country in the world and secondly, that most cases of forced labor occur in the private sector of the economy, rather than because of requirements imposed directly by the State.

The objective is the abolition of forced labor

"... Sexual exploitation is, by far, the most frequently detected form of trafficking (79%), followed by forced labor (18%), which could be due to a statistical bias... Other forms of exploitation are not significantly reported: forced labor or conditions of servitude, domestic servitude and forced marriage, organ removal, the exploitation of children by forcing them to beg, the sex trade, and war. "

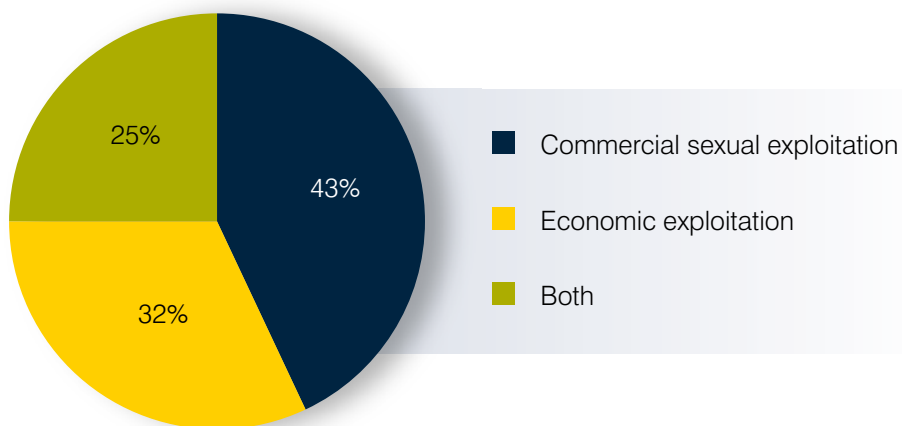
(Source: United Nations Office on Drugs and Crime. Global Report on Trafficking in Persons. Executive Summary. February 2009.)

Distribution of forced workers subject to trafficking by regions

	Number of persons subject to forced labor as result of human trafficking
Asia and the Pacific	1,360,000
Industrialized countries	270,000
Latin America and the Caribbean	250,000
Middle East and North Africa	230,000
Transition Countries	200,000
sub-Saharan Africa	130,000
Global Total*	2,450,000

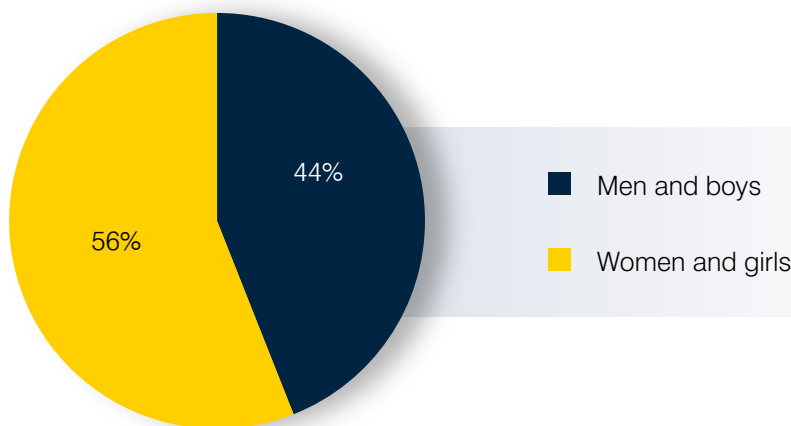
(*) Note: The total is not the sum of the categories due to rounding.
 Source: SAP-FL.

Human trafficking for the purpose of different forms of forced labor



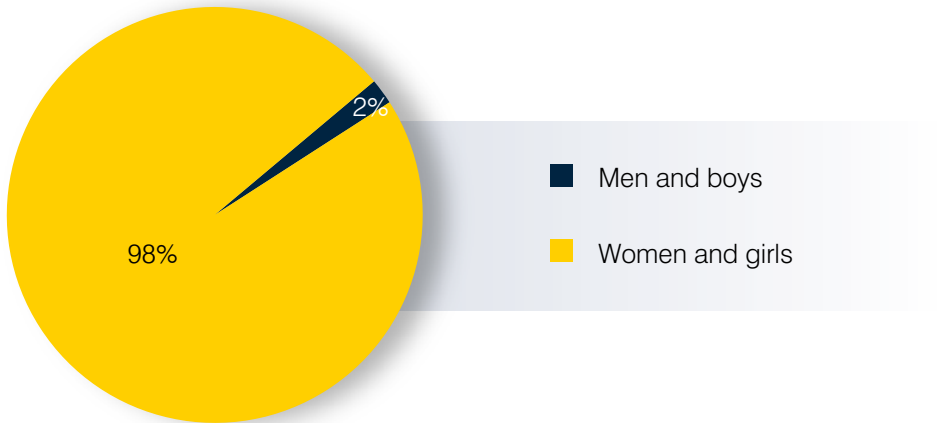
Source: SAP-FL.

Forced economic exploitation by sex



Source: SAP-FL.

Forced commercial sexual by sex



Source: SAP-FL.

Three main forms of forced labor:

- a. *Forced labor imposed by the state for economic, political or other reasons;*
- b. *Forced labor linked to poverty and discrimination in developing countries;*
- c. *Forced labor derived from migration and trafficking worldwide, often related to globalization.*

(Source: ILO. *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*. Geneva: ILO, 2005, p. 2.)

In 2009, the ILO published a new report called *The Cost of Coercion*, in which it was determined that not enough time had passed to review the initial global estimate outlined in the 2005 report. Thus, the need to make reliable national statistics on forced labor and trafficking available was reiterated, while concurrently recognizing the difficulty in doing so. It was also made clear that one of the aims of the report was to encourage governments—in view of the global and regional estimates from 2005—to calculate their own national estimates of forced labor. However, despite some pilot initiatives, in most countries the process has yet to begin.

It is necessary to make reliable national statistics available

“5. Forced labor is a sensitive issue and governments are sometimes reluctant to investigate and acknowledge the existence of this phenomenon within their borders. It is difficult to create and sustain the political will, as well as to instigate and perform the detailed investigations required to detect and combat forced labor practices. The victims themselves may be reluctant to testify, not only for fear of reprisals from those who exploit them, but perhaps also of measures that could be taken against them by immigration authorities or other institutions responsible for ensuring compliance with the law.”

(Source: ILO. A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Geneva: ILO, 2005, p. 2.)

The difficulties of establishing quantitative estimates

However, the importance of qualitative studies is recognized—in particular, research that contributes to improving the understanding of the main forms of forced labor, its causes and appropriate programmatic measures to combat it. In other cases, policies aimed at strengthening the enforcement of the laws against forced labor, including trafficking in persons for sexual exploitation or other forms of economic exploitation, have exposed some forms of abuse not previously detected.

With respect to the quantitative estimates, the report identifies two major difficulties. The first involves gathering and contrasting information from other sources and existing databases, while ensuring that they are as comparable as possible. The second involves making estimations of the probable number of people who are victims of forced labor or trafficking. The latter takes into account the difficulties involved with the identification and criminal prosecution of perpetrators, thus underscoring that records and official databases can give only a partial picture.

In 2005, approximately 56% of the victims were women and girls

In 2005, the ILO estimated that worldwide, approximately 12.3 million people were victims of some form of forced labor or servitude. Of these, 9.8 million were exploited by private agents, of which 2.4 million were subjected to forced labor as a result of human trafficking. The highest figures were recorded in Asia, with 9.4 million people affected, followed by an estimated 1.3 million in Latin America and the Caribbean, and at least 360,000 in industrialized countries. About 56 percent of all persons subjected to forced labor are women and girls. Annual earnings derived only from human trafficking amounted to at least 32,000 million USD.

During the preparation of this report, the ILO published a new report called *ILO Global Estimate of Forced Labour* (June 2012). The main purpose of that document was to produce a detailed description of the revised methodology used to generate the global estimate of forced labor in 2012, spanning the period from 2002 to 2011 and highlighting the main findings. “This revised methodology has been developed

by the ILO in close collaboration with a peer review group composed of four academicians who are experts in forced labor and human trafficking. The methodology follows the same two-step approach used for the 2005 estimates, but it also incorporates improvements rooted in experience the ILO has gained since 2005. Further improvements include the availability of new primary data sources, feedback by external experts on the methodology used in 2005, and suggestions made by the ILO statistical consultants and peer group reviewers.

In light of the changes introduced in methodology and the greater quantity and quality of data available for the current estimate, the resulting figures in the 2012 estimate are not considered to be comparable with those presented in 2005. The 2012 estimate should not be considered a 'minimum estimate', although it is still considered somewhat conservative. This is due to the nature of the 'capture and recapture' methodology, and to the limitations of existing national survey data available for extrapolation purposes."

The ILO estimates that 20.9 million people are victims of forced labor worldwide, trapped in jobs in which they are coerced or deceived and cannot leave. Human trafficking can also be considered forced labor and, therefore, this estimate reflects the full scope of trafficking in persons for labor and sexual exploitation, known as modern slavery. The data on which this estimate is based covers a reference period from 2002 to 2011. Thus, the estimate indicates that about 20.9 million people, or three out of every one thousand people in the world were forced into labor at some point in those ten years.

(Source: ILO, 2005, p.13)

The Organization for Security and Cooperation in Europe (OSCE), through the office of the special representative and coordinator for combating the trafficking of persons, has published several papers on various aspects of trafficking. With regards to trafficking in persons for labor exploitation, three of them are considered relevant for the purposes of this monographic report. The annual report for 2011, titled *An Agenda for Prevention: Trafficking for Labour Exploitation*, brought attention to the importance of identifying measures that can be applied in both victims' countries of origin and destination.

In the 2012 report revised the methodology used in the past

The ILO estimates that worldwide, there are 20.9 million victims of forced labor

The 2011 OSCE report recognizes the importance of identifying measures

Trafficking is becoming less of a marginal phenomenon limited merely to sexual exploitation or to victims with a certain profile. Trafficking is even becoming increasingly connected to economic trends, especially in sectors such as agriculture and construction, where the exploitation of immigrant workers is already an endemic problem. Therefore, it tends to become a critical social policy issue although it is not recognized as such. For this reason, for the prevention and combating of trafficking, it is necessary to foster a society with zero tolerance for exploitation, and one that builds on a belief of social justice. Each government, social agent, and individual has a role to play in this fight.

(Source: OSCE. An Agenda for Prevention: Trafficking for Labour exploitation. In-house translation.)

*Take action to
protect the rights of
workers*

In the presentation of this document, the special representative and coordinator for combating trafficking in persons outlines four messages. The first refers to the ease with which people seeking a better job may find themselves in a position of vulnerability and of human trafficking, noting that they would not fall so easily into trafficking networks if they were able to obtain decent living conditions and a decent job. Therefore, the special representative emphasizes the need to take concrete action to protect the rights of workers, such as by organizing migrant workers in collaboration with trade unions. The special representative also emphasizes the need for increased workplace inspection, which should be strengthened and complemented by an effective response from criminal law against human trafficking.

Secondly, with regards to prevention, it is necessary to address not only the immediate factors that cause or facilitate trafficking, but rather a wider range of exploitive situations which may be particularly harmful to migrant workers. In this sense, it is necessary to implement solutions tailored to meet the different needs of workers, in order to reduce their vulnerability or likelihood of falling victim to trafficking.

*The use of coercion
determines whether
the person is
considered a victim
of trafficking*

In this sense, the report notes that a case of human trafficking may begin with a trip across a border (with or without proper documentation), facilitated by a trafficker, or undertaken by someone completely on his/her own. However, if a person is exploited by means of coercion or by the abuse of a position of vulnerability, the situation may be considered human trafficking regardless of whether that person has irregular immigration status. The use of coercion is what should determine whether the person is considered a victim of trafficking, even when there is no connection between the first phase—the journey, and the second phase—the exploitation, or even if the person is in a position of vulnerability and is exploited *in loco*.

In accordance with an advanced interpretation of international instruments and in the spirit of the Palermo Protocol, trafficking in persons is the framework that includes

all forms of new slavery. They include trafficking for labor exploitation and other forms of new slavery such as trafficking for the purpose of organ trade, forced begging, or forced criminal activity, as well as the various forms of trafficking for sexual exploitation. This second message ends by emphasizing that criminal response must be more effective in terms of deterrence, as well as by implementing financial investigation, freezing, seizure and confiscation of the proceeds of the crime. Simultaneously, vulnerable workers must be identified as such to prevent them from being subjected to the worst forms of exploitation.

Third, it is necessary to ensure coherence between the policies taken to combat trafficking and relevant policies related to immigration, the labor market, etc. Finally, the fourth message emphasizes the need to truly treat victims of trafficking as rights holders. Furthermore, it is necessary to shift the approach and methods used for the detection of the victims, noting the importance of focusing on the areas and sectors most prone to exploitative situations. Appropriate measures must also be adopted for all workers in a dangerous or exploitative situation, regardless of whether they are considered to be or are recognized as trafficking victims.

Assistance and social inclusion designated for individuals trafficked for the purpose of labor exploitation should always include measures aimed at identifying sustainable employment solutions. The payment of wages and compensation plays a key role that permits workers to rebuild their plans for employment or immigration. Finally, the most difficult problem cited is the irregular immigration status of many foreign victims, which continues to be an impediment, of fact or law, to accessing an effective judicial remedy.

The OSCE has also produced numerous reports about the various aspects of trafficking for the purpose of labor exploitation. Thus, in 2009 a report on human trafficking in the agricultural sector was produced, titled *A Summary of Challenges on Addressing Human Trafficking for La-*

Agricultural workers are particularly vulnerable victims



States should devote resources to strengthening labor rights

bour Exploitation in the Agricultural Sector in the OSCE Region. The report notes the consequences of globalization and the general implications of agriculture and migration, which have led farm workers to be particularly vulnerable to exploitation and human trafficking. The victims of such trafficking are also workers, and in many cases, undocumented immigrants. Therefore, to combat trafficking in the agricultural sector, it is not only necessary to identify and prosecute criminal offenses, but also to strengthen the rights of workers in general, regardless of their immigration or employment status. Tools, including both international legal standards and effective examples of best practices, may be employed to launch a campaign against trafficking in persons for the purpose of labor exploitation in the agricultural sector. The report notes that all States must be willing and able to devote resources and attention to what is referred to as the 'reinforcement mechanism' of labor rights (including labor inspectors, courts, and administrative agencies), as well as to train employers, workers and contracted agencies about these rights. The report also emphasizes the promotion of labor rights to help States address structural causes, reducing the vulnerability of workers and thus helping to eschew certain situations that could end up as cases of trafficking.

Special vulnerability of victims for purposes of domestic servitude

Finally, reference is made to the report published in 2010 on trafficking in persons for the purpose of domestic servitude, titled *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*.⁵³ The document draws attention to the special vulnerability of the victims subjected to this form of trafficking, which in many cases are minors, especially girls. It also refers to the harsh working conditions and abuse, including sexual abuse, which may be perpetuated by their employers. Various cases from several countries are presented to illustrate the situations described herein.

The report identifies four types of trafficking cases for the purpose of domestic servitude: trafficking of migrant workers, trafficking specifically of migrant workers who move from one country to another to follow their employers, trafficking of minors, and employers with diplomatic status and au pairs.

F. was a student in her home country, Ecuador. Due to financial difficulties in her family, she decided to go work abroad to pay for university. A fellow Ecuadorian offered her a job as a maid in Madrid. Before leaving, she signed a contract that outlined the working conditions, salary and job description. F. arrived in Spain at the end of 2002 as a tourist, and subsequently her status was not adjusted. She was provided accommodation in the home of an Ecuadorian couple with a child. She was forced to work seven days a week for 16 hours a day, and was given food once a day. F. had to watch the baby, do housework and sell handmade products from Ecuador in the street. F. slept on the floor or in the van when she went with her employer to sell products outside the city. She was threatened verbally and received no salary for her work; she was not allowed to contact her family and her employer withheld her passport. If she fell ill, she was not allowed to see a doctor. After six months with the family, she asked an Ecuadorian man who she met on the street to help her. He encouraged her to report the situation, and eventually the organization Proyecto Esperanza (Project Hope) took her in.

(Source: OSCE. Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude, p. 10 Report by Proyecto Esperanza, 2010. In house translation.)

The report concludes by identifying three key elements that signal when an exploitative situation has crossed the threshold to be deemed domestic servitude, which consequently fulfills the legal requirements to be considered human trafficking, slavery or forced labor.

The first of these elements is poor living and working conditions: victims of domestic servitude are subject to long hours which generally exceed 12 hours, and which may even extend to 18 hours a day. They frequently suffer from lack of sleep at night, or may be made to get up and do part of their work at night without adequately making up for the lost sleep during the day. Normally, they live with their employer and have no private space in the house. Furthermore, they are not offered adequate food, which on occasion leads to starvation.

The lack of salary (or even a low wage) constitutes the second element. Domestic servitude does not necessarily imply the complete absence of wages; even if the worker receives a small amount of money, the situation may be deemed exploitation if the amount is not adequate for the number of hours worked. The same is true of a meager salary that does not cover mere subsistence for the worker, or even if it does not cover enough to achieve the migratory objectives of the worker, which usually include sending money home to financially support their family.

Furthermore, the violation of human dignity and autonomy is the third element that qualifies a situation as human trafficking, slavery or forced labor.

Poor living and working conditions

The absence of a salary, or a low wage

One of the main problems is detecting and identifying victims

Finally, the report highlights the small number of cases in which domestic servitude is classified as trafficking. In these situations, the courts normally apply other types of criminal charges (such as harboring an undocumented immigrant, abusing a situation of vulnerability, lack of compensation or the retention of documentation) rather than deem them as human trafficking. Thus, the report references the low number of convictions for human trafficking as partly being due to the fact that these cases are prosecuted as other crimes instead of as cases of human trafficking. Evaluating the facts and the detection and identification of victims is one of the main problems in these cases. These issues are related because if domestic servitude is not identified as human trafficking, the indictments will be cited as other crimes and will never be identified as cases of trafficking. In the aforementioned Spanish case studied in the report, the employer was eventually convicted for withholding another individual's passport.

Begging is understood as a form of forced labor or service

To conclude this section, it is important to mention Directive 2011/36/EU, which adopts a broader concept of what should be considered human trafficking under Framework Decision 2002/629/JHA, and which includes, therefore, other forms of exploitation. Thus, recital number 11 specifies that, "forced begging should be understood as a form of forced labor or service as defined in the Convention number 29 of the ILO with regards to forced labor, from 1930." The inclusion of begging as exploitation, involving the use of a dependent person who has been a victim of trafficking for the purpose of begging, depends on whether all elements of forced labor or service are present.



Regarding the validity of potential consent to perform such work or service, the Directive states that each case should be evaluated, except for cases of minors in which consent cannot be considered valid. Finally, the recital states that “exploitation for the purpose of criminal activities” should be understood as exploitation of a person made to pickpocket, shoplift, smuggle drugs, or commit other similar activities that are punishable as crimes and that imply financial gain.

The possible consent of an exploited minor should not be considered valid

In its report titled *An Agenda for Prevention: Trafficking for Labour Exploitation* (2011), the Organization for Security and Cooperation in Europe (OSCE) refers to the use of children for begging and petty theft and signals the need to take action in cases in which adults use children for these purposes. It notes that victims of trafficking should not be detained, charged or prosecuted for their involvement in illegal activities, as long as their participation is the direct consequence of their situation as trafficked persons. Regarding minors who are victims of trafficking, it signals that States must adopt measures to establish effective procedures to identify and protect minors. This implies that minors should not be turned over to adults who claim to be their parents or guardians, without first checking whether family members may actually be the ones exploiting them. The OSCE notes that this guideline is still not met in a number of countries.

1.2. THE SITUATION IN SPAIN

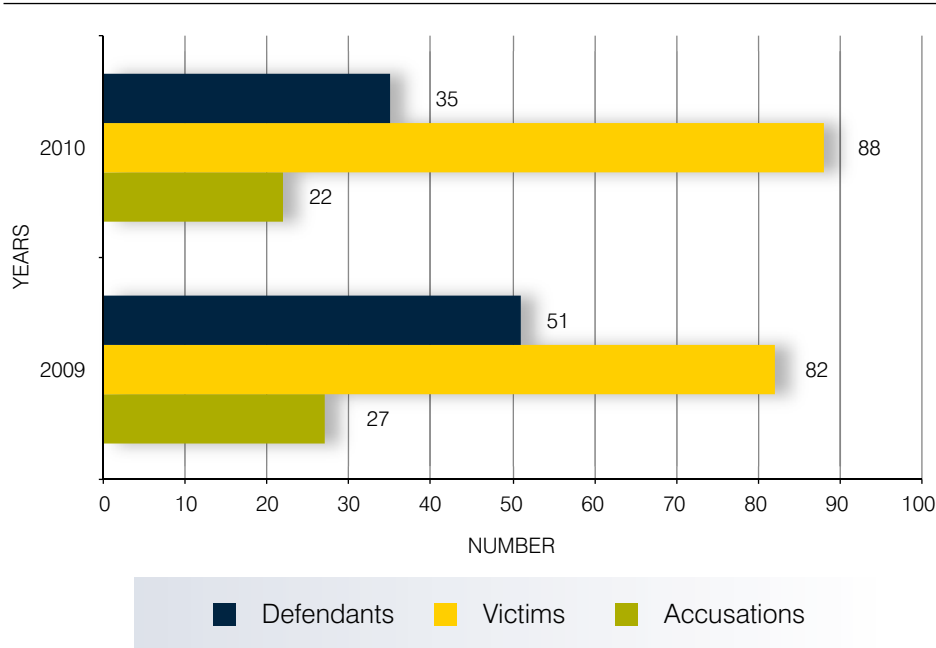
In order to analyze the situation in Spain, the latest reports of the Office of the Attorney General and the data submitted by the Labor and Social Security Inspection Agency have been examined. Various accounts that appeared in the press of police operations dismantling sexual exploitation networks were also monitored.

According to the Attorney General's Office in 2010, criminal cases of labor trafficking did not exist

The Office of the Attorney General's latest report (published in 2010 while this report was being drafted) recognized the lack of circumstances that, during that year, could fit the standard definition of labor trafficking. These circumstances refer to cases “involving the recruitment or transfer or the receipt of someone from their place of residence to another place by any contributive means as defined in Article 177 bis of the Spanish Criminal Code (CP) for the purpose of labor exploitation through slavery or servitude”.

In the report, the Public Prosecutor's Office does acknowledge situations of abuse of foreign citizens who did not possess corresponding authorization for residency in Spain, who were hired and who were subjected to labor or social security conditions that were clearly illegal or unreasonable, punishable under Article 312 CP. This situation is repeated in the 2008 and 2009 reports.

Abusive situations against immigrants are reported



Source: Attorney General's Office Annual Report 2010. In-house compilation.

The majority of those accused are Spanish

For this reason, 22 indictments (-18.51%) have been issued. The defendants are mostly Spanish citizens (62.85%), without significant representation from any other nationality. The largest number of victims referenced in the written conclusions of the prosecutors corresponds to Romanian citizens (22.72%), followed by Moroccans (17.05%), Guatemalans (11.36%) and Bangladeshis (10.22%).

Predominant nationalities of victims (2010)

Romania	22.72%
Morocco	17.05%
Guatemala	11.36%
Bangladesh	10.22%

Source: Attorney General's Office 2010 Annual Report. In-house compilation.

It is noted that all lucrative activities that do not require special labor skills have been affected, highlighting construction work (20.93%), agriculture (13.95%), hotel and food service (11.62%), and domestic work or eldercare (9.3%).

Predominant labor activities (2010)

Construction	20.93%
Agriculture	13.95%
Hotel and food service industry	11.62%
Eldercare and domestic service	9.30%

Source: Attorney General's Office 2010 Annual Report. In-house compilation.

In the last quarter of 2011, the Attorney General's Office sent a new Memorandum (Memorandum 5/2011, from November 2, 2011) to prosecutors outlining criteria for unified action on the part of prosecutors specializing in immigration matters. In paragraph II 4.1, the Memorandum analyzes the acts described in paragraph a) of Article 177bis1 of the Spanish Criminal Code, which are characterized as objectives of the crime of human trafficking. They are: the imposition of work or services, slavery or practices similar to slavery or servitude, or begging.

*Lucrative activities
that require no
special skills are
most vulnerable*



It is important to note at this point that, at least from the national legal standpoint, human trafficking in Spain is seen as being closely linked with debt bondage. This refers to a situation in which an individual is subjected to domination as their only means of resolving a debt with their oppressor. There are several cases being prosecuted in our courts in which immigrants, regardless of their origin, were displaced from their place of residence by false promises of a good job in Spain, whose transportation costs were covered and who were brought to stay in flats or prearranged places. Only afterward were they informed that they had incurred a significant debt that could only be paid off by working in extremely abusive and undignified conditions (including exhausting days, being made to pay back elevated sums of money for their 'maintenance,' practically nonexistent wages, accommodation in inhumane conditions, fines, etc.). Those who refused to work were forced and threatened, which ultimately culminated in a total deprivation of freedom. This category clearly includes cases in which young foreign women were recruited for consensual prostitution in Spain—both women who had worked as prostitutes in their country of origin, as well as women who were informed that this was the “work” they would do in Spain.

(Attorney General's Office. Memorandum 5/2011, p. 21.)

Begging for the purpose of criminal activities is a form of forced labor

With regards to begging, the Memorandum states that the Directive has included begging as one of the main forms of forced service, and adds a new form of exploitation—“for the purpose of criminal activities” (Article 2). Begging is considered a form of forced labor or service as defined in Convention number 29 of the ILO regarding forced labor, from 1930. Therefore, exploitation through begging, including the use of a dependent trafficked victim to beg, only falls within the scope of the definition of human trafficking when all of the elements of forced labor or services are present (recital 11 of the preliminary draft of the Directive).

Regardless of the victim's gender, age or physical or mental capacity

The Memorandum further states: “Begging is considered a purpose for trafficking regardless of the sex, age or mental or physical capacity of the victim. If minors or individuals with disabilities are involved in the actual practice of begging once they reach their destination, the crime outlined in Article 232.1 CP comes into play. (The crime noted in the second paragraph of that provision refers to effectively employing exploitation, violence, or intimidation, or by giving an individual substances that are harmful to their health). However, cases of smuggling children for the purpose of begging (Article 232.2 CP) can obviously be included in the crime of trafficking—because they are minors, it is not necessary for all of the requirements of the crime to have taken place— leading to apparent combination of offences with regulations in Article 177 bis CP, to be resolved in accordance with Article 8.4 CP, with punishment only designated for the offense of trafficking (alternative criterion).

As indicated at the beginning of this section, in March of 2011 an investigation was undertaken before the Directorate General of the Labor and Social Security Inspection Agency, in order to obtain general data on inspections of trafficking rings for the purpose of labor exploitation. The report states that the Office of the Secretary of State for Security of the former Ministry of Labor and Immigration had drafted joint instructions. This report also relied on collaboration between the Labor and Social Security Inspection Agency, and the State Security Forces responsible for labor, immigration and social security. In June of 2012, it was still awaiting approval.

Moreover, the Directorate General of the Labor and Social Security Inspection Agency, along with other areas of the Office for the Undersecretary for Labor and Social Security, participated in the development of the “Plan to Combat Illegal Employment and Social Security Fraud”. It was approved by the Cabinet in its meeting on April 27, 2012, with the main objective of persecuting conduct that violates the rights of workers and that adversely affects the competitiveness of companies. According to information received, among other measures, this Plan includes the strengthening of coordination and cooperation of the Labor Inspection Agency with other relevant agencies that work with employment, social, and employment policy. These include the General Council of the Judiciary, the Attorney General’s Office and the State Security Forces, among others, which has led to the incorporation of the aforementioned draft Statement of other issues related to the fight against illegal employment.

*Cooperation
between authorities
in the areas of
monitoring labor,
immigration and
social security*

*Protocol Framework
for Protection of
Victims of Trafficking*



*Coordination
between the Labor
and Social Security
Inspection Agency
and State Security
Forces*

*When indicators for
human trafficking
are detected, the
Public Prosecutor's
Office will be
immediately
informed*

The Protocol Framework for Protection of Victims of Trafficking includes the participation of the Labor and Social Security Inspection Agency in the fight against human trafficking. This is in collaboration with other relevant institutions as noted in section V.c) a, in order to detect situations of labor exploitation by the Labor and Social Security Inspection Agency or by other competent regional bodies. To this end, actions carried out on a scheduled basis in cases of crimes of trafficking for labor exploitation, shall be conducted in coordination (and ideally in conjunction) with the State Security Forces.

In regard to unscheduled inspection activities, when the acting officer detects signs of human trafficking, s/he is obliged to immediately inform the Provincial Labor and Social Security Inspection Agency. Pursuant to the provisions of Article 10.3 of Act 42/1997, (from November 14), the Regulatory Labor and Social Security Inspection Agency, the case will be immediately transferred to the Public Prosecutor's Office by an organic channel determined by regulation, which will coordinate the activities in any case, as well as to the territorially appropriate Security Forces.

Finally, it is noted in that section that a report of both any action taken and the actual outcome should be forward to the prosecution, through the head of the Provincial Inspector. The report should be sent with the evidence obtained, without reprisal for sharing the information with the competent court, and for registering an infraction record, if the conduct also constituted labor infringement.

196. In most countries, forced labor and human trafficking have not been central to the work of the labor administration and labor inspection. This is understandable, since most cases of forced labor occur in the informal economy, as well as in homes and in the sex trade, areas in which labor inspectors face great difficulties with regards to the supervision and enforcement of labor laws. Because forced labor constitutes an offence, labor inspectors may also feel that they lack a clear mandate for action.

197. However, labor inspectors can play a key role in many arenas with regard to both the prevention and identification of forced labor cases and trafficking as well as the remedial measures. The Commission of Experts of the ILO has noted that, "In some situations, a number of violations of labor laws may constitute forced labor and thus should be considered of a criminal nature." Effective action against forced labor necessarily implies a number of agencies in order to ensure compliance with the law, making creative use of the mandates, capabilities and competences of each. Such should not be limited to the arenas of criminal justice and labor, and thus includes border control, immigration and customs officials, among others. In some circumstances, special units may be necessary to conduct investigations and to prosecute crimes, thus involving the participation of the police and labor inspectors.

Source: ILO. The Cost of Coercion: Global Report under the follow-up to the Declaration on Fundamental Principles and Rights at Work. Geneva: ILO, 2009. p. 51-52.)

Moreover, it should be noted that in June 2011 a meeting was held at the Ombudsman Institution headquarters with representatives from the Directorate General of the Labor and Social Security Inspection Agency. In the course of this meeting, it was noted that in 2010 over 10,000 workplace inspections were conducted, some of which were intentional and in collaboration with the State Security Forces. However, scheduled inspections by the Inspection Agency itself have very rarely detected cases of human trafficking for labor exploitation. In the cases in which there is evidence of a crime, the incident is reported to the Public Prosecutor's Office so it may initiate appropriate actions. It was also noted that the main problems identified in the majority of inspections are related to unpaid wages or remarkably low salaries, lack of proper registration with and not paying Social Security, or abusive working days. However, in these cases, foreigners are neither considered nor reported as being victims of trafficking.

Immigrants do not claim to be, nor are they considered human trafficking victims

Following that meeting, in 2011 the Directorate General of the Labor and Social Security Inspection Agency referred a report to the Ombudsman Institution outlining proceedings for criminal behavior and practices relating to labor exploitation. This report gives an account of the existence of various acts that may be considered forced labor in Spain, from the notion of labor exploitation, to acts that may be defined under the term of trafficking for the purpose of labor exploitation. In order to detect criminal cases in the course of proceedings that generally involve informal economics, (both in coordination with the State Security Forces, and, where appropriate, exclusively by inspectors / sub-inspectors) the Labor and Social Security Inspection Agency is undertaking measures, including those which are highlighted in the aforementioned document:

- **Statistics development:** Questionnaires have been sent to various headquarters of the Provincial Inspection of Labor and Social Security. Of note is the difficulty in determining the true nature of the conduct detected: labor exploitation / trafficking for sexual exploitation constitutes criminal conduct and therefore, is subject to administrative proceedings. These proceedings may take place, through the inspector's judgment, and in accordance with the provisions of Act 42/1997 of November 14, through the Labor and Social Security Inspection Agency. If the alleged public offense is evaluated, the Inspection Agency shall send all relevant and circumstantial facts to the Public Prosecutor's Office. Therefore, the judicial decision reached in each case cannot be determined by the Inspector Agency. With respect to the questionnaire, it must be noted that the judicial process may extend over time, as the information in this questionnaire may be requested annually.
- **The development of indicators:** As an initial phase, a set of indicators on trafficking for the purpose of labor exploitation was developed for subsequent dissemination. This phase will be followed by the development of guidelines or criteria that outline action to be carried out by inspectors / sub-inspectors, including

Procedures against criminal conduct and practices of labor exploitation

The resulting court cases may be unknown by the Labor and Social Security Inspection Agency

the specific training to be imparted thereon. The indicators are based on documents from various sources, taking into account necessary adaptation considering the current state of human trafficking in Spain today.

In 2010, the most common form of forced labor was labor exploitation

- **A specific code for the Inspection Agency's computer system:** A specific code was developed in order to note actions carried out as they relate to trafficking and forced labor. This will result in the Inspection Agency having a better understanding of the phenomenon.
- **The development of guidelines or criteria and training:** According to the measures already taken, the development of guidelines or criteria and training is anticipated.

The data provided at the provincial level has limitations that stem from the intervention on the part of the Labor and Social Security Inspection Agency. As previously noted, labor / sexual exploitation and trafficking for the purpose of sexual exploitation constitute criminal conduct, so corresponding data must be in possession of the Attorney General's Office and the State Security Forces.

Situations detected by the Directorate General of the Labor and Social Security Inspection Agency

Operations and results of inspection visits	Year 2009	Year 2010	Year 2011
Inspection visits to the FCS during operations to regulate irregular economy	8,290	10,232	1,193
Inspection visits to the FCS regarding forced labor		1,166	776
Alleged cases of organized crime networks		14	1
TOTAL	8,290	11,412	1,970

Operations and results according to establishment	Year 2009	Year 2010	Year 2011
Bar or hostess club	267	340	346
Wholesale or retail commerce	54	106	66
Agriculture exploitation	45	110	91
Textile, leather and footwear manufactures	16	14	4
Laundry services		3	1
Other services	124	194	73
TOTAL	506	767	581

Operations and results according to form of exploitation	Year 2009	Year 2010	Year 2011
Human trafficking for the purpose of sexual exploitation	8	134	6
Human trafficking for the purpose of labor exploitation	5	6	6
Sexual exploitation without components of trafficking	23	124	111
Labor exploitation without components of trafficking	4	364	150
Total inspections	40	822	271
TOTAL	80	1,450	544

Operations and results according to the victims affected	Year 2009	Year 2010	Year 2011
Affected workers from Spain and the EU	189	1,227	1,073
Affected foreign workers	476	992	714
Adults over 18 years of age		1,954	1,377
Minors under 18 years of age	5	7	
Females	427	1,423	1,021
Males	151	743	499
TOTAL	1,248	6,346	4,684

Operations and results concerning the absence of work permits	Year 2009	Year 2010	Year 2011
Infringement proceedings due to workers not possessing a work permit	357	565	407
Citations due to absence of work permit	2,218,499.75 €	5,475,130.00 €	4,521,635.00 €
Workers affected by violation for not possessing work permit	0	594	434

Operations and results concerning the absence of Social Security records	Year 2009	Year 2010	Year 2011
Infringement proceedings due to not being registered with Social Security	526	1,123	720
Citations for absence of Social Security registration	846,098.00 €	864,582.00 €	1,028,458.00 €
Workers affected by violation for not being registered with Social Security	625	1,128	768

Operations and results concerning fee collection	Year 2009	Year 2010	Year 2011
Social Security fee collection proceedings	38	58	115
Amount of fees collected, including induced collection	741,117.86 €	422,371.00 €	151,486.00 €
Workers affected by fee collection	64	205	270
Ex officio registration with Social Security, induced or proposed.	504	1,964	903

A shift regarding the nationalities of those exploited

From the cases collected, in terms of type of establishment, bars or clubs are the most common.

In 2010, the most common form of forced labor was labor exploitation that did not involve human trafficking; however, sexual exploitation was also of note. The total number of inspections has increased greatly, which is partly due to specific actions carried out in several Spanish provinces.

In terms of the nationalities of the exploited individuals, there was a change in the trends that had been noted until 2009. Namely, the majority are non-EU citizens—87.54% compared to 44.7% in 2010. According to this report, this may partly correspond to changes in migration flows that have been taking place in recent years.

Among the results of the actions taken, of significance is the increase in the number of infringement proceedings due to not possessing a work permit. Even more notable is the increase of infringement proceedings due to not possessing Social Security records in 2010.

1.2.1. Main Investigations

The Ombudsman Institution has carried out ex officio investigations on labor exploitation

From May to January of 2012, eleven *ex officio* investigations were initiated to monitor police operations of exploitative labor situations that had appeared in the press. Consequently, they help shed light on current difficulties regarding effective prosecution of perpetrators and victim protection.

According to the report received, officials of the Spanish National Police Force (CNP) in Valencia arrested a Romanian citizen on suspicion of criminal labor exploitation of workers who were also Romanian. After being lured from Romania with the promise of work in Spain, the workers were housed in overcrowded apartments with absolutely no sanitation, and were also seriously coerced and threatened. The 'liberation' of fourteen Romanian immigrants and the initiation of the proceedings were also reported, such that the Attorney General's Office was informed of the steps taken in order to protect and assist, where appropriate, the Romanian citizens who had fallen victim to labor exploitation.

I. In May 2010, and *ex officio* investigation was initiated with the former Deputy General of the Police and Civil Guard in order to monitor arrests in Murcia due to labor exploitation.

“The police released 14 Romanians who had been exploited through labor, and who had paid 1,000 Euros for a work contract. An employee of a Temporary Employment Agency (ETT) in Valencia organized the scam. The victims received only 10% of their salary.”

In Valencia, the National Police arrested an employee of a temporary employment agency for exploiting Romanian immigrants by paying them only ten percent of their salary. The defendant, of Romanian origin, was the ringleader of an organized group based in Romania that charged victims a thousand Euros for a work contract. Police estimate that the Romanian criminal ring had deceived fifty Romanian immigrants. The workers lived in two overcrowded apartments in the Russafa neighborhood of Valencia. Officers have freed fourteen immigrants. The group deceived their victims in Romania through a temporary employment agency established in Bucharest that was operating under three different names. The Romanian firm charged workers between 700 and 1,000 Euros for a contract in Spain that turned out to be false. Police sources said the criminal ring promised “a living wage and housing in Valencia.” Once in Spain, were crammed into apartments in Russafa that were in ‘deplorable conditions.’ The immigrants paid between 100 and 200 Euros to sleep in apartments run by the organization. The criminal network made up to 2,000 Euros a month in rent for filling the apartments with workers. After one of the victims filed a complaint, the investigation was headed up by the Spanish Unit against Illegal Immigration Networks and fraudulent documentation (UCRIF). The officers found that, prior to the workers’ departure, the organization took responsibility for facilitating various steps, such as obtaining bus tickets from companies that also charged exorbitant fees. Several victims never got as far as actually engaging in any work. The defendant opened a bank account in the workers’ names, where their wages were deposited. The immigrants often worked in fields picking oranges, where they made only forty cents per box. In addition, the defendant charged “abusive fees” for transporting the workers.

Four previous arrests

Following investigations, police arrested the alleged head of the criminal organization for the alleged crimes against workers’ rights, fraud and forgery, and freed fourteen people who were in a “serious state of need”. The accused is 31 years old and had been arrested four other times in Valencia since 2006 for similar deeds. According to confirmed sources close to the police investigation, police received the first complaint against the criminal network in October. In recent weeks, the fourteen people who were freed provided police with all kinds of details about their lives in Valencia. The accused has already been brought before the assigned court. The National Police have reported the fraud to the Romanian authorities in order to proceed with the arrests of members of the network operating from Bucharest.

(Published on Tuesday, February 23, 2010, from “Levante-emv.com”.)

*Proceedings
dismissed for an
inability to locate
witnesses*

It was discovered in June of 2011 that a provisional dismissal of criminal proceedings had been agreed upon, considering none of the witnesses could be located. In the report received, it was noted that the Romanian citizens were summoned to the addresses they had provided in their police statements, although none collected the postal notice or the telegrams that had been sent. They did not appear to testify, nor did they contact the court or the police in any fashion. Therefore, the case was considered closed; however, it is indicated that the proceedings would be reopened if new information were brought to light that could support the case, or if the witnesses were located.

Indicators of trafficking in the phase of exploitation: This is the phase in which a situation of trafficking or exploitation will be brought to light by the Inspection Agency's visit to the workplace. Indicators are grouped into the following categories:

- *Physical violence (including sexual violence) over the worker.*
- *Restriction of freedom of movement.*
- *Debt bondage and other forms of servitude.*
- *Identifying documents.*
- *Communication with the outside environment.*
- *Abusive or unsafe working conditions.*
- *Other.*

*(Source: Sub-Directorate General for Inspection of Social Security,
Informal Economy and Immigration)*

II. Following a report in the press, in February of 2011 an ex officio investigation was initiated with the then General Directorate of the Police and Civil Guard to investigate the attention given to potential victims of criminal labor exploitation. This was following the arrest of a group of Chinese individuals in London who had been forcing other Chinese individuals to work without even the most basic sanitary and hygienic conditions.

“National Police shut down four illegal sweatshops in Madrid”

“The heads of every sweatshop were arrested for violating the rights of workers. During the inspection, officers found more than 50 Chinese individuals working in appalling sanitary conditions.”

“February 14, 2011—Agents of the National Police and the Municipal Police of Madrid arrested four Chinese nationals on suspicion of a crime against the rights of workers. Each of those arrested ran one of the textile factories that were shut down, all of which are located in the Usera district of Madrid. During the inspection, agents found more than 50 people working in appalling sanitary conditions, many of who were in the country illegally.

The operation began several weeks ago when officers learned of the location of four illegal garment sweatshops in the Usera district of Madrid. After significant investigation, the officers were able to confirm that Chinese citizens ran all of the sweatshops, and that most of the workers were also undocumented Chinese citizens.

Subsequently, through a coordinated joint effort between the two police forces, monitoring devices were established at each location. The agents were able to confirm and verify information so that, days later and with the required judicial authorization, agents simultaneously entered and searched all of the illegal workshops.

Inside, they found an average of ten workers in each location. There were more than 50 workers total, many of who were working illegally because they were in Spain without work and residence permits. Agents proceeded to the arrest the heads of all of the workshops on suspicion of violating the rights of workers.

In addition, and through the official framework, various records were processed for the misappropriation of workplace opening, activity, and health and safety licenses.

The operation was conducted jointly by the Group XII of the Provincial Immigration and Documentation Brigade of Madrid, and the Central Security Unit 2 of the Municipal Police of Madrid, with the collaboration with the Labor and Social Security Inspection Agency.

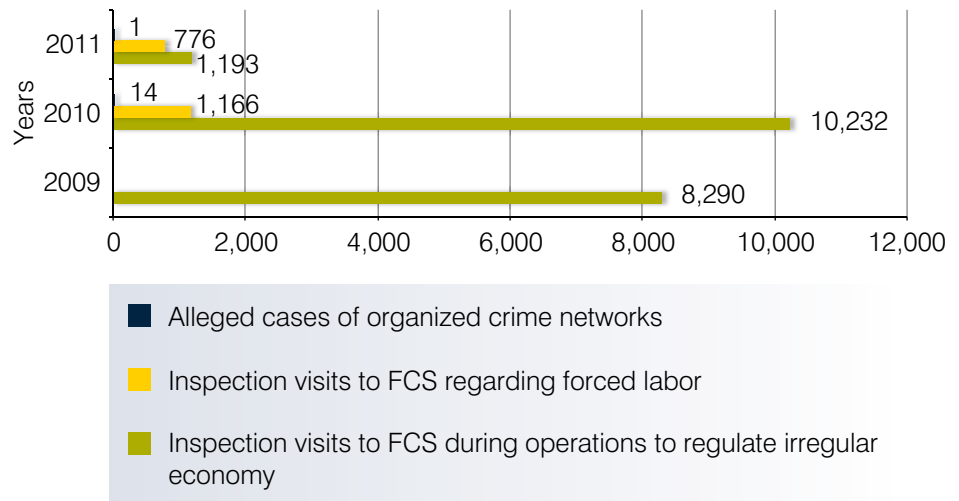
(Published on the official website of the General Directorate of Police (DGP). Press releases.)

The inspection could not prove signs of trafficking

After the investigations in several Usera workshops, a total of eight undocumented workers were discovered. None of them expressed having been subjected to an exploitative situation, nor did they express having been directly or indirectly forced into submission by anyone who resided over their work. They attested that they had found their job through family or friends. In sum, it was understood the situation was not subject to implementation of the Article 59 bis of the Foreign Nationals Act.

Nevertheless, the investigation with this agency continued, and a copy of the interviews conducted with those involved was requested. After receiving copies of the affidavits of seven Chinese individuals, it was confirmed that the indications outlined in the Instruction 1/2010 of the Ministry of State Security had not been complied with regarding the “transitional application of human trafficking victims as stated in Article 59 bis of the Organic Act 4/2000, of January 11th.” Based on the interviews and the material reflected in their statements, none of the workers expressed having been subjected to any labor exploitation whatsoever, or to having engaged in any activity against their will. Therefore, it could not be inferred that indicators of a human trafficking had been found. The same report outlined the personal situations of all individuals who had been affected; none had been expelled. One of the individuals was in the process of requesting a residence permit for exceptional circumstances, and another had been denied that same request. In view of this, in March of 2012 the investigation ended.

Operations and results of inspection visits



Source: Directorate General of the Labor and Social Security Inspection Agency. In-house compilation.

III. In May 2011 another *ex officio* investigation was launched in which information was requested about assistance given to a group of potential victims of labor exploitation. The victims were of sub-Saharan origin, and had been forced to live in an “apartment of multiple occupancy” in subhuman conditions and to sell counterfeit goods on the street. They were freed through a police operation in Madrid.

“An international human trafficking ring that housed their victims in an ‘apartment of multiple occupancy’ was shut down”

“Among the eleven arrested in Madrid were the three leaders of a criminal organization that lured individuals from sub-Saharan countries, mainly from Senegal, to travel to Spain with the promise of decent and well paid work. The immigrants were made to pay off a debt of 3,000 Euros by selling counterfeit goods on the street. Among twelve searches conducted, 2,480 articles of imitation clothing modeled after prestigious apparel, 3,553 “pirated” CD and DVDs, and 15,900 Euros in cash were seized.

May 1, 2011—A joint venture of the National Police and the Municipal Police of Madrid dismantled a transnational network centered on human trafficking for the purpose of labor exploitation, namely illegal immigration and other related crimes. The eleven detainees include three leaders of a criminal organization responsible for luring and bringing sub-Saharan citizens to Spain with the promise of a decent job. Once in Spain, the individuals were forced to live in an ‘apartment of multiple occupancy’ in Madrid and to work in subhuman conditions, in order to settle a debt of 3,000 Euros they owed to the criminal organization. Agents conducted twelve searches in which they seized numerous articles of prestigious imitation clothing, as well as “pirated” CDs and DVDs of recent premieres that victims of the (now dismantled) criminal network sold on the street.

The investigation began earlier this year. The information obtained led agents to a house in the Madrid suburb of Carabanchel, where a large number of people were residing. They lived in completely overcrowded, inhumane and unhealthy conditions.

After several steps, investigators found that the residents were individuals of sub-Saharan origin who were in the country illegally. In order to resolve their legal status, they filled out the corresponding applications and presented registration of residency from that apartment. Therefore, about 200 Euros a month was paid to the owner of the ‘apartment of multiple occupancy’ and one of the leaders of the criminal organization, Tanor M. M.

Up to 3,000 € for a fake job

The agents found that Tanor lured victims from the lowest social and economic conditions of various sub-Saharan countries, mainly Senegal. They traveled to Spain with the promise of a decent, well-paid job. In exchange, they were to pay the organization a large sum of money once they arrived in Spain. This debt, which could amount to 3,000 Euros, forced the individuals to become victims at the mercy of a network that operated a system of near slavery.

The work they were made to do was neither decent nor well paid. The individuals were forced to “work” on the streets to sell counterfeit goods such as clothing, accessories and perfumes by well-known brands like Lacoste, Carolina Herrera, Tommy Hilfiger, Channel and Gucci, among others. Likewise, they sold the latest CD and DVD releases. All of this work was undertaken without any formal contract, necessitating long hours on the street in order to sell more products.

At all times, the vendors were controlled by two other leaders of the network, Ibrahima D. and Ndongo D., who reaped the real economic benefit by taking a high percentage of the money obtained from product sales. In contrast, those who actually performed the work on the street made pitiful salaries.

A network with international connections

Investigators were able to confirm that the criminal ring was in fact a transnational criminal organization that operated not only in Spain, but spread to Greece, China and several African countries. From there, other members of the network were responsible for supplying all kinds of counterfeit goods through courier companies; they would subsequently receive financial gain through money transfer companies. In both cases, members always use codes and “fake” names on false documents.

After a long and difficult investigation, and after evaluating all of the information that had been gathered, agents instituted a large police operation. With the required judicial authorization, they undertook twelve searches at various homes, shops and warehouses. There, agents seized 2,480 articles of imitation clothing modeled after prestigious apparel, 3,553 “pirated” CD and DVDs, 15,900 Euros in cash, false documents and 72 doses of Kamagra, which is considered an illegal drug in the EU member countries.

A total of eleven people were arrested for being alleged perpetrators of various criminal activities including human trafficking for the purpose labor exploitation, and namely illegal immigration, fraudulent documentation, violations of intellectual property, crimes against public health, and conspiracy. Among those arrested were the three leaders of the organization including José Luis L. F. and Diagne M., who were responsible for supplying the textile goods and digital media respectively.

An investigation has been carried out by the Group VIII of the Provincial Immigration and Documentation Brigade of Madrid, as well as the cooperation of Groups II and III of the Brigade, Group XXIII of Judicial Police Brigade, the Police Intervention Unit (UIP), and the Citizen Security Brigade, the Provincial Brigade of Scientific Police and the Torrejón de Ardoz police, all of which are under the authority of the Police Headquarters in Madrid. Group II of Spain’s Central Department of Immigration and Border Police and the International Coordinating Unit (UCI), Central Security Unit (UCS) and Carabanchel Municipal Police of Madrid’s District Integrated Unit (UID) also intervened. “

(Published on the official website of the DGP. Press releases.)

From the information received from the Commissioner of Immigration and Borders, it was brought to light that the Provincial Brigade of Madrid had dismantled an organization motivated by illegal immigration and human trafficking for the purpose of labor exploitation. In the course of the police operation, eleven people were arrested and intervention was offered to potential victims. According to the report received, only one of them filed for the reflection period but then failed to appear at the time of the interview; the rest of the sub-Saharan citizens were released after declaring that they did not consider themselves to have been victims of any trafficking ring for the purpose of labor exploitation.

In light of the aforementioned facts, the police requested additional information on the judicial procedure for these events, as well as on the situation of the citizens against whom expulsion proceedings had been initiated. According to data received, five disciplinary procedures were initiated against Senegalese citizens. The Attorney General's Office declared the dismissal of the proceeding against 15 of the suspects and outlined further instruction for the rest, on charges of violating the workers' rights of foreign citizens, promoting illegal immigration, violations of intellectual property and industrial property, and forgery.

Information was sought on citizens with expulsion proceedings



IV. In July of 2011, a new ex officio police investigation was instituted after the media published accounts of Romanian citizens living in overcrowded slave-link conditions on a farm in the province of Seville, where they were victims of abuse and exploitation.

“They were confined and without electricity or running water; they had no money to afford any mode of transport ‘

“Eight exploited trafficking victims on a farm escaped from their captors by walking for six and a half hours to Seville. Agents arrested six members of the conspiracy, who had used death threats, imitation firearms, and beatings to quell any disobedience on the part of the “workers”.

They were taken from Romania with the promise of a decent job, and were exploited through agricultural labor along with five other people who have been freed by the National Police.

They were not compensated and furthermore, fell into endless debts with the criminal ring for providing accommodation, food, water and even the fuel for the vehicles that took them to the workplace. “

“July 13, 2011 - Agents of the National Police have freed five people who were taken from Romania with the promise of a decent job and who were exploited on a farm in Seville. Eight other victims escaped from their captors and walked six and a half hours to the capital, since they lacked the cash to purchase any form of transport. They lived in cramped and confined accommodations without electricity or running water. They did not receive any payments; moreover they incurred endless debts contracted with the criminal organization for providing accommodation, food, water and even the fuel for the vehicles that took them to the workplace. Agents arrested six members of the conspiracy, who had used death threats, imitation firearms, and beatings to quell any disobedience on the part of the “workers”.

Those arrested were suspected of crimes including human trafficking for the purpose of labor exploitation, illegal detention, coercion, threats and injuries. They are part of the same family and are of Romanian origin, like their victims.

Would you like to work in Spain?

In Romania, workers were recruited by the offer of a decently paid job in Spain. They were taken by bus to the Plaza de Armas station in Seville, where members of the criminal network were waiting for them. From that moment, they “took care” of the new recruits. Their final destination was the town of Cantillana, where initially they were housed on the roof of one of the family’s homes. Later, they were crammed into a slum without basic services like electricity, running water or sanitation.

Psychological and physical violence

On a daily basis, the criminal network completely controlled the victims, who did not speak Spanish and who were in a place unfamiliar to them. Additionally, they suffered episodes of psychological violence with constant death threats, insults and all sorts of unpleasant and humiliating treatment. This occurred in human and labor conditions of semi-slavery. In fact, one of the “workers” was so severely beaten by his captors that he suffered from a fracture of the ulna bone and a head injury.

35 miles to a National Police Station

Despite the surveillance and restrictions they were submitted to, eight men escaped from the slum and went on foot to the city of Seville, a journey that took about six and a half hours. Once in the city, they went to the South Precinct to

report what had happened, and agents provided them a place to sleep. Meanwhile, investigators at Seville's Provincial Immigration and Documentation Brigade located the slum, the home of members of the criminal network, and a second house where five other victims (four men and one woman) were confined inside. The victims have been freed, and six members of the conspiracy have been arrested.”

(Published on the official website of the DGP. Press releases.)

In its report, it is noted that after escaping, one of the individuals made the corresponding complaint to the Commissioner of the National Police Force of Seville. There, the individual declared to having been a victim of a human trafficking ring for the purposes of labor exploitation that had taken individuals from Romania. Once in the country, the criminal network engaged in psychological violence, threats, and all kinds of unpleasant and humiliating treatment.

A Romanian citizen declared to be a victim of a human trafficking network

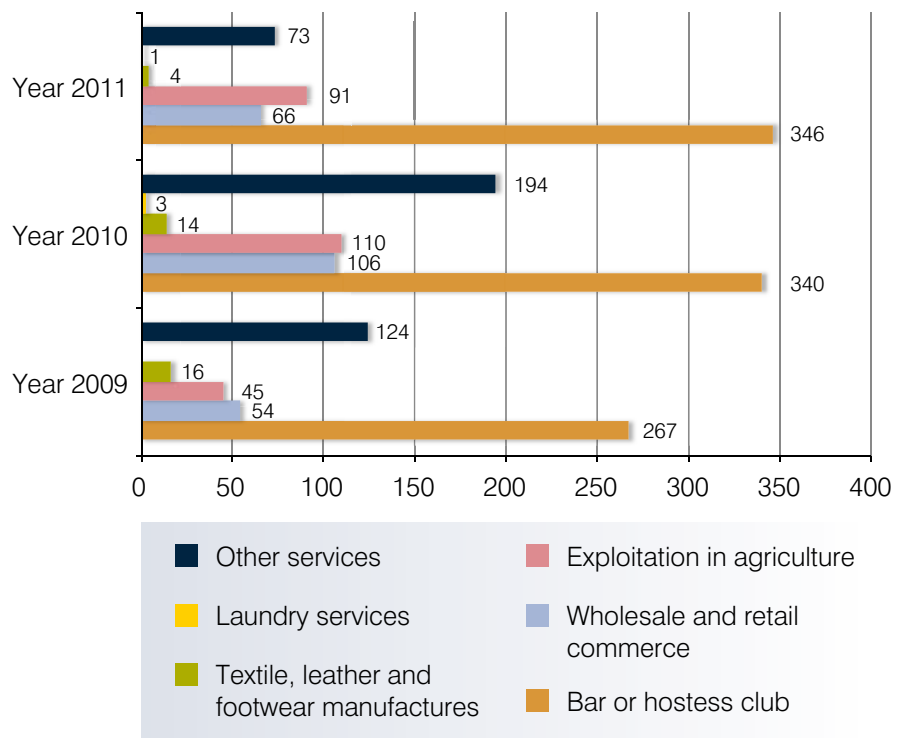


The victims did not collaborate in the investigation and returned home

As stated in the same communication, following various steps and the corresponding investigation, six people of Romanian origin who were alleged members of the criminal organization were arrested. As many as thirteen victim witnesses (also of Romanian origin) were located, although none of the victims wanted to collaborate in the investigation and instead requested to return to their country of origin. Spain's Central Department of Immigration and Border Police was informed that the victims had left Spain for their country of origin and thus were missing, and the investigation was completed. Some of the victims expressly withdrew the criminal or civil proceedings against their alleged exploiters.

With regards to the joint actions undertaken with the Attorney General's Office in relation to criminal proceedings that led to the arrests, at the time of preparing this report, the Prosecutor reiterated the examining magistrate's request, preferring that an official letter be issued to the Provincial Immigration Brigade in order to report on the situation of both the complainants and the witnesses and the accused, in order to provide existing evidence before the trial.

Operations and results according to type of establishment



Source: Directorate General of the Labor and Social Security Inspection Agency. In-house compilation.

V. In the other case, proceedings were initiated after a similar story was printed about the arrest of several people in Cadiz who were alleged members of an exploitative labor ring, and whose victims were sub-Saharan citizens.

“A blow against the counterfeiting of luxury brands”

“The criminal network took advantage of illegal immigrants in order to sell items on beaches and in tourist areas. The Civil Guard estimated the value to be over one million Euros. Everything had been perfectly organized, but no one expected the Civil Guard to pull a thread and shut down the business after only two months of investigation. At the time of writing this report, the team of Judicial Police of Jerez has dismantled a network that used undocumented immigrants to sell all kinds of fake goods, from clothes to watches as well as bags, shoes and perfume on beaches and in other tourist areas.

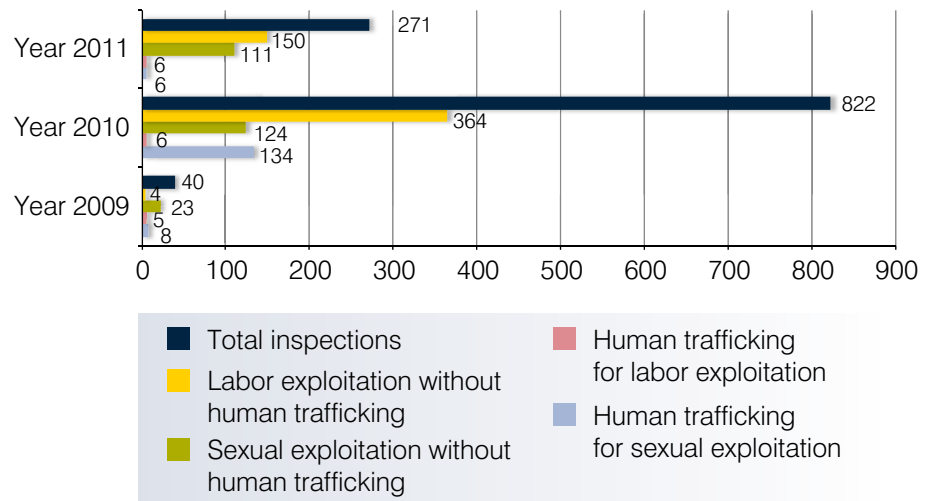
‘Operation Mecca’ has obtained more than a hundred boxes of imitation goods by major brands, which would have reached a market value of one million Euros. In addition to crimes against intellectual property, the ringleaders of the conspiracy are accused of the criminally violating the immigrants workers’ rights, as well as violating public health (since neither the perfumes or sunglasses had passed any sort of health regulations). According to the spokesman for the Civil Guard, Manuel González, “They ruthlessly took advantage of the needs of undocumented immigrants in order to exploit them, making them sell items from morning till night.” Therefore, the immigrants, who were mainly from Maghreb and sub-Saharan Africa, accepted the arrangement and thus committed a crime in exchange for minor economic benefits from their sales. The major retail locations were Chipiona, Sanlucar de Barrameda, Trebujena and the town of El Cuervo in Seville, where all the illegal activity started. After detaining the street vendors, the officers located ringleaders of the network and searched a private residence, a commercial establishment and a garage that served as a warehouse. In total, the operation ended with the arrests of twelve individuals and charges against two. Various interventions occurred in the municipalities mentioned, in addition to Jerez de la Frontera.

Top Brands

More than one hundred boxes seized by the Guardia Civil through “Operation Mecca” give a clear example of how powerful the counterfeiting market has become in recent years. Typical items include imitation sportswear (of clubs like Real Madrid or Barcelona), watches (many are counterfeit Rolexes), handbags (such as Louis Vuitton and Carolina Herrera, among others), lauded Rayban sunglasses, Hugo Boss perfumes, shoes by brands like Adidas and Gant, Levi’s jeans and Lacoste polo shirts, among other items. The fact that imitations very closely mimic the real brands has prompted the Civil Guard to rely on trademark experts to confirm which goods are counterfeit. A clear example is the fact that even sunglasses bearing the seal certifying UV protection had not undergone any sort of control. The spokesman for the Civil Guard further emphasizes the importance of these police operations to the economy of the province, as many of the seized imitation items were modeled after products manufactured in the area. This is especially true of wallets and leather bags that are made in the leather industry of the Sierra. The growth of this criminal activity endangers the stability of that sector.”

(Published on September 13, 2011, in “LAVOZDIGITAL.ES.”)

Operations and results according to form of exploitation



Source: Directorate General of the Labor and Social Security Inspection Agency. In-house compilation.

Sellers of counterfeit objects are detained, unaccounted for

The report submitted by the Civil Guard stated that all the individuals identified as a result of this operation were considered perpetrators of a crime against intellectual and industrial property, given that they engaged in the distribution of counterfeit objects on the beaches and in tourism towns of the province, and that they profited from these sales. After passing on the resolution to the competent judicial authorities and upon agreement that they would be released, the individuals were found to be missing. Thus, the agency’s investigation ended. Information was requested from the Attorney General’s Office regarding the continuation of the criminal proceedings, which had not been received at the time of preparing this report.



VI. In December of 2011, the media published an account of a textile factory in the province of Toledo that was shut down. According to the story that appeared in the press, citizens of Chinese origin were exploited through their labor.

“Chinese textile factory in Madridejos shut down due to labor exploitation”

“A Chinese businessman was arrested for having employed five undocumented Chinese workers in Spain. They did not have a work contract that regulated their wages and hours.

National Police troops shut down a Chinese textile factory in Madridejos, accusing a businessman of exploiting the labor of fellow Chinese citizens. As reported by the Provincial Commissioner of Toledo in a memo, the operation was carried out in collaboration with the Labor and Social Security Inspection Agency of that province as well as with the Civil Guard. Ten people worked in the aforementioned shop of the province of Manchego. Last Tuesday, the establishment was searched along with several others like it in Consuegra as a preventive measure to control illegal immigration. After examining the workplace in Madridejos, it was discovered that five of its members were undocumented in Spain. Not only did they lack a residence permit, but also an employment contract to defend their labor rights, working hours and salary.

Therefore, the head of the establishment, X. Y., age 40, was arrested for an alleged crime against the rights of workers, as he was in a position to profit from fellow Chinese citizens who were undocumented. The case has been given to the second Orgaz Court of Instruction, which is handling the appropriate legal proceedings on the matter. The five undocumented immigrants were also arrested for violation of immigration law. Three of them have yet to fulfill a decree of expulsion from the country, a process that has begun for the other two. They were endless days with low wages. In a memorandum, the National Police reiterated that its responsibilities include the prevention and investigation of the criminal activities of organizations involved in exploitation of undocumented immigrants in Spain. Mafias thrive economically by taking advantage of and exploiting immigrants who come to Spain without proper documentation. Among these illegal networks, the Chinese show a particular proclivity for bringing over fellow Chinese citizens as cheap labor for sweatshops, where they make clothes and other marketable products. One example occurred last month in Madrid, where another workshop of this nature was shut down. In this case, it was found that employees were forced to work without a contract on shifts of 14 to 16 hours a day, receiving a salary of 400 Euros a month. “

(Published on October 22, 2011, in “Digital Toledo Tribune”.)

Information obtained further shed light on the situation: Once in the workplace, officers from the Civil Guard of Madridejos, along with officials from the Provincial Labor and Social Security Inspection Agency Toledo, found ten people inside, all of Chinese origin. Five had residence and work permits, while the other five were completely undocumented. They were taken to the offices of Toledo’s Provincial Immigration and Documentation Brigade in order to identify and verify their legal status in Spain. This also led to the arrest of the owner of the clothing firm.

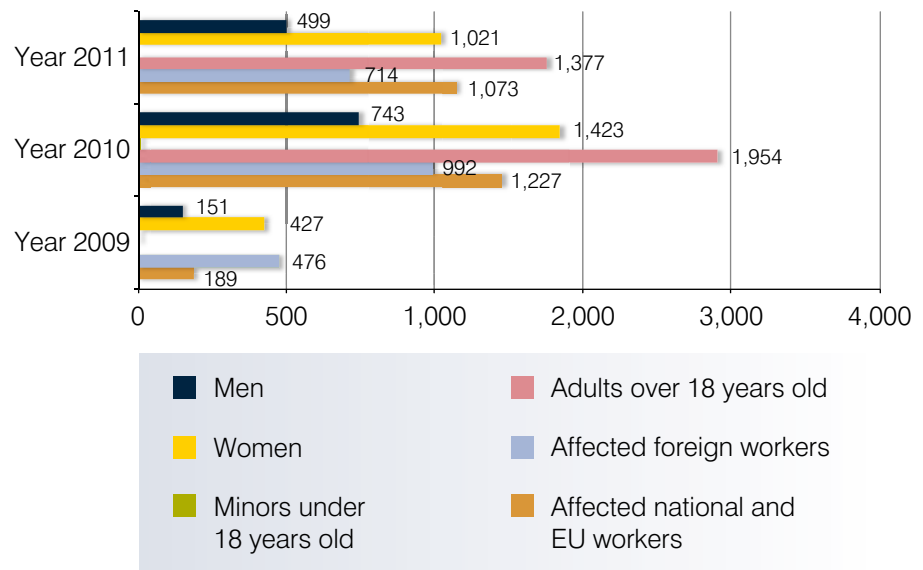
Business owner arrested

When the testimonies were taken of the victims of an alleged crime against the rights of workers, the five undocumented individuals refused to testify, and thus they could not be deemed victims of human trafficking. Expulsion proceedings have been initi-

Undocumented individuals refused to testify

ated against two of them, and the other three have had previous orders issued by various government delegations and sub-delegations; there have been expulsion proceedings against one of them. With regards to the criminal proceedings of the aforementioned events, the investigation continues before the Attorney General's Office regarding criminal proceedings of the aforementioned events.

Operations and results based on affected victims



Source: Directorate General of the Labor and Social Security Inspection Agency. In-house compilation.



VII. In the last quarter of 2011, another ex officio investigation was also initiated before the General Directorate of the Police, in order to shed light on the actions taken following the arrest of a criminal network. According to the press, the criminal ring exploited the labor of four hundred Pakistani citizens engaged in harvesting citrus in the towns of Nules and Vila-real (in Castellón / Castelló).

“400 Pakistanis harvesting oranges in the fields of Vila-real Nules”

“They charged much less: 0.50 EUR a case, although the agreement states 2.04 EUR. National Police are investigating whether the mafia is exploiting more undocumented immigrants. “

“Crews of 400 undocumented Pakistanis without work contracts harvested oranges in the fields of Nules and Vila-real, according to sources in the National Police of Valencia. They carried out an investigation that has resulted in 23 people arrested on accusations of exploiting immigrants in the province of Castellón.

As Albert Fernández of the CCOO Agrifood Federation in Castellón explained, “Once the workers were hired, they brought them here with forged papers through temporary employment agencies (ETT) in Valencia.” He added: “There are many Pakistani, Indians and Senegalese who work harvesting oranges in the province. However, the contractor, although he may suspect that they are being exploited or are undocumented, may accept the deal because the ETT charge less—0.90 Euros for a box containing 19 kilos of clementines. Meanwhile, immigrants may charge 0.50 Euros, despite the agreement marking a price of 2.04 Euros for one of these boxes of citrus”.

Albert Fernandez said that this greatly undermines legal workers, because in times of crisis, contracts are generally chosen based on the price, meaning the most economical price is chosen. Fernandez emphasized that until the National Police and Civil Guard take action, nothing can be done about this situation.

OPEN OPERATION // The Valencian National Police are keeping a case open on the labor exploitation of Pakistanis who were discovered to be working harvesting oranges without a contract or permit to be in Spain. According to the investigators, the immigrants were provided with fraudulent identity cards that bore information of other immigrants who were in Spain legally and who had no connection with the organization.

With the document, and always accompanied by another member of the criminal network, the victims entered Spain. Upon arrival, the criminal network confiscated the counterfeit card. Later on, they were put into working groups under the command of one of the heads of the network, who took them in vans to harvest citrus in Nules and Vila-real.

The agents identified 400 people traveling in 35 vehicles and arrested 23 people (22 were in Valencia) for exploitation.

According to sources close to the case, the 400 Pakistanis, “had to pay money to the mafia, who had taken away their papers and brought them to Spain illegally. ‘That is why they worked long working hours, “without pay, since the members of the criminal network took all the money’.”

(Published on Wednesday, November 23, 2011, in “The Mediterranean Newspaper”.)

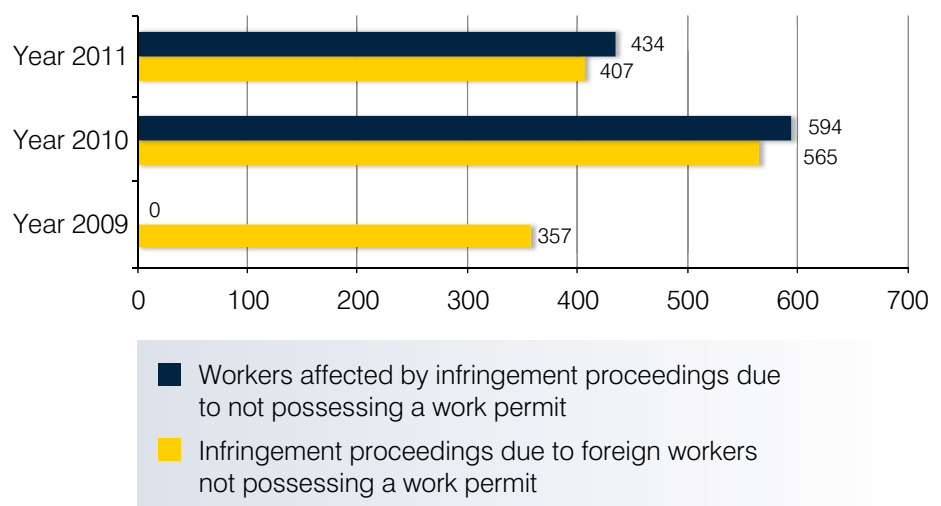
A criminal ring was dismantled for exploiting the labor of Pakistanis and Indians harvesting citrus

None of those arrested pleaded to having been a victim of exploitation

According to the information received, the investigation of the aforementioned case began to shed light on the crimes of forgery and usurpation of civil status that were allegedly being committed. The goal of the investigation was to dismantle the group of Indian and Pakistani citizens who used forged documents to pose as other foreigners who were in the country legally, thus making it seem like they were legally working in the citrus harvest in Valencia. This led to the arrest of those in charge of counterfeiting and selling IDs, as well as to the arrest of 20 people for offenses of forgery, theft and violation of civil status of the Foreign Nationals Act. Those arrested were of different origins—India, Pakistan and Cape Verde.

According to a report with statements taken from those arrested, none of them declared to be a victim of any kind of exploitation. The nuanced characteristics that point to an individual being a potential victim of human trafficking were not present either; therefore Article 59 bis of Organic Act 4/2000 was not applied. Of those arrested, two of them were in the Immigrant Detention Center (CIE) of Valencia pending deportation and the rest were released on the same day of the arrests. In April of 2012, the Public Prosecutor’s Office requested the continuation of the proceedings for three of the accused as being alleged perpetrators of the following crimes: unlawful use of an authentic and official document, and forgery of an official document. The Prosecutor also requested the provisional dismissal of proceedings of the other foreign defendants in the case. With respect to the ongoing criminal investigation, forthcoming action continues before the Attorney General’s Office.

Operations and results concerning the lack of work permits



Source: Directorate General of the Labor and Social Security Inspection Agency. In-house compilation

VIII. In January of 2012, an *ex officio* investigation began before the local Madrid police to bring to light actions taken in relation to Chinese individuals who were potential victims of labor exploitation. They were freed after the dismantling of a network that allegedly exploited them in sweatshops in the Carabanchel district of Madrid. However, at the time of writing, the necessary response from the aforementioned agency had not been received.

The so-called Operation Thimble has led to four arrests

“Municipal Police shut down a clandestine clothing sweatshop. In the sweatshop, located in the district of Carabanchel, nine Chinese people worked for more than twelve hours with no contract and for a salary of less than 500 Euros.”

“The Municipal Police shut down a clandestine clothing sweatshop located in the district of Carabanchel, where nine people of Chinese origin worked for over twelve hours a day, with no contract and for a salary of less than 500 Euros.

The so-called Operation Thimble occurred yesterday, December 27. It was undertaken by the Investigative Group of the Carabanchel District Unit, in collaboration with the Labor and Social Security Inspection Agency. The operation occurred at two premises located on the streets of Julia Nebot and Avocado. During the inspection, it was confirmed that one of the premises operated as a clandestine workshop, as it lacked the proper license and registration. Inside the other premises, nine employees were found to have neither an employment contract nor Social Security registration. Individuals were engaged in ironing and textile manufacturing during uninterrupted workdays of more than twelve hours, and for a salary of scarcely 500 Euros a month.

Regulations on basic safety and health were clearly violated on both of the premises, due to their poor wiring, fire hazards, lack of fire extinguishers, emergency lighting and ventilation, and a total blockage of the emergency exits.

The operation has led to the arrest of four individuals. Two individuals responsible for running one of the premises were arrested on suspicion of a crime against the rights of workers, and two employees were arrested for being in Spain without documentation. In addition, reports were filed because of the unhealthy states of the premises.”

(Published on December 28, 2011, on the official website of the Press Office of the City Hall of Madrid.)

IX. A network that exploited Romanian citizens by using abuse and aggression to make them beg was dismantled.

“A couple who exploited Romanians by forcing them to beg in the streets of Palma de Mallorca was arrested”

“Officials of the Provincial Immigration Brigade of the National Police Force (CNP) have broken up an alleged network whose mission was to capture Romanians, to later use them to beg in Palma de Mallorca. These recent events have resulted in the arrest of one couple charged with an alleged crime of human trafficking.

Specifically, according to a statement by the National Police, the investigation began earlier this month under the name of Operation Alms. It began after a complaint was filed by one of the victims, a Romanian national. He said that due to economic need and a precarious family situation back in his country, he had accepted an offer made by a fellow Romania, V. V., who was 34 years old. V.V. proposed moving to Spain to work in the olive harvest in the province of Seville, which would bring in 500 Euros per month.

The complainant accepted the offer and made the trip along with 14 other Romanian citizens. However, two months after their arrival, twelve of them left the job. V. V. had been lying to them and they were earning less money than they should have been, as they had acquired a debt with V.V. for having paid their travel expenses. The complainant reported the crime with two other individuals who, according to V. V., owed a greater debt.

The potential victim said his work in the olive harvest ended early last February and that upon returning to Romania to visit his family, he was owed 1,000 Euros that V. V. kept as payment for the debt.

However, his family situation remained precarious and after a few days, he contacted V. V., who offered him the opportunity to travel to Mallorca to work as a plumber. The Romanian citizen accepted. Upon arrival, he was hosted at the home of V. V. and his wife, M. V., who informed him that he was to beg on the streets of Palma, as there was no work.

According to the police, from the first month he was subjected to strict control by M. V. so that he would not pocket any of the proceeds. However, a month later, V. V. began requiring a minimum daily amount of 40 Euros from him, which most days he was not able to comply with. For that reason, V.V. physically assaulted and threatened him, including with a large knife.

The victim remained in this situation until early April. Taking advantage of their carelessness, he escaped from their control and began to sleep in city parks and to roam the streets. He did not go to shelters, lest the couple or one of their acquaintances might find him. According to what he told the police, he feared for his safety and the safety of his family. Further investigation brought to light several Romanian citizens who were engaged in acts of begging. In those cases, the travel expenses had also been paid by V.V., which indebted victims 250 Euros to the criminal ring. In addition, they were made to turn in all of the money obtained by begging, an activity that caused the victims ‘great harm to their being’.

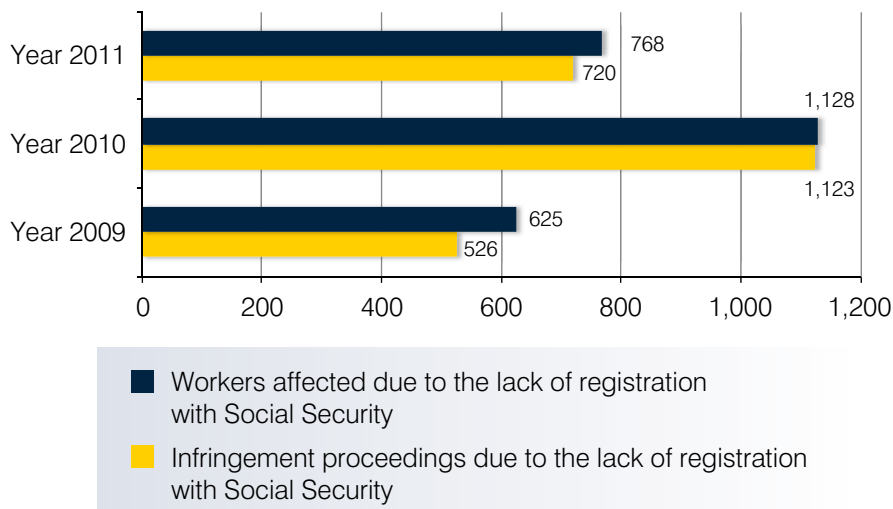
On the 26th, agents proceeded to arrest the couple for allegedly committing crimes of human trafficking, a violation of the rights of workers, and coercion. After the case went to court, the judge ruled in favor of imprisoning the man.”

(Published on Friday, April 29, 2011, in “El Día.es”.)

In May of 2011, Spain's Central Department of Immigration and Border Police opened an *ex officio* investigation. It was prompted by a report in the newspaper about the arrests of several people who had taken potential victims to exploit them by making them beg in public. A report received states that the complainant had gone to Spain in pursuit of a job offer that proved to be false. Because he had no resources at the time of the police operation, he was admitted to a shelter. Upon his request, the shelter helped him return to his home country. The report references the arrest of two people on suspicion of crimes against the rights of workers, and of human trafficking and coercion. The Attorney General's Office began an investigation that is still underway, in order to track the course of the criminal proceedings (carried out due to the aforementioned events) until their completion.

An ex officio investigation has been opened regarding the dismantling of a begging ring

Operations and results concerning the absence of registration with Social Security



Source: Directorate General of the Labor and Social Security Inspection Agency. In-house compilation.

X. Romanian gangs exploit their fellow citizens through a lucrative business of organized begging.

Hunting down the van of ‘the poor’

- **A Romanian mafia sends beggars around shopping centers in Palma.**
- **At the end of the day, the mafia takes the day’s earnings.**
- **There are shantytown dwellers from various settlements.**

These are not people who have lost everything and as a result, are forced to beg. These are slaves of a Romanian organized crime ring that works the commercial areas of Palma to exploit a common notion that many people share: an obligation to give to the poor. The Romanian ring keeps the money they collect. It’s a thousand dollar business.

The day starts between 9:00 a.m. and 10:00 a.m. Police go looking for a black Mercedes Benz Vito van that drops off those who will spend the morning begging around shopping areas between the Plaza de España (Spanish Square) and Jaume III. Normally, it is women who do the begging. On Jaume III, the van dropped off two people who seem to be mother and daughter. One stayed near the Playa de Mercat (Mercat beach). The other stayed around the upscale stores.

Several witnesses have confirmed that this has been occurring at set times, at least until two weeks previous. Then, for a while, they are seen less—police arrested a Romanian mother for exploiting her daughter on Jaume III. The little girl would beg while her mother looked on from afar. Every now and then, she would collect and pocket the money the girl had earned.

This business moves thousands of Euros day. However, those who do the begging earn the least. Having identified the beggars dozens of times, the police have come to learn that most of them reside in Romanian shantytowns near Makro and other similar areas. Those who do the begging live in shacks. Those who oversee them—by organizing the delivery, running the business, and collecting the money—drive Mercedes.

According to police accounts, the ring’s main targets are streets with high-end shops, the doorways of churches during times that coincide with mass, and at the entrances to neighborhood supermarkets. The beggars are driven to work. However, the criminal ring does not bother to pick them up when the day is over. Once they turn in the money they earned, they go home on foot.

Police had previously arrested a Romanian woman who was presumably part of this ring for showing off her baby while begging, which is punishable under the terms of child exploitation. A Romanian relative visited the courts to inquire about the woman. The police asked him to identify himself, and were surprised to glimpse a wad of 50 Euro bills in his wallet. Was that the day’s collection?

The business of organized begging entails other side jobs. Police have found that many of those seen begging may also begin to demand—meaning they end up committing petty thefts and robberies.

L. S. came to Mallorca 12 years ago and runs a tailor shop in Palma. He came here with his family when times were tough in his native Romania and he could not find work. Looking around the panorama of s’Arenal or the city center, which is full of scammers, prostitution, begging rings, pickpockets and robberies, it may seem that among his countrymen, Liviu is the exception, but that is not the case. Approximately 7,000 Romanians live on the island, of which 700, or 10%, likely live in this “zero area”.

He explains that it is difficult to foster any cohesion among this group because Romanians are very individualistic—probably because of “memories of the former regime,” which generated a great deal of mistrust. From 2006 to 2007,

he worked as a promoter for a community meeting that failed due to lack of participation, as did the Association of Romanians of the Balearics, of which he was the secretary.

L.S. explains that these criminal groups have two lawyers in charge of getting them out of jail when they have problems, and that is not all: “They already know the cops, not by their clothing, but rather by their features; they have no trouble identifying (the police) even when they are undercover. “ Most of them come from the south of Romania near Bucharest, and in the winter they leave. Why do they come here to commit crimes? “Spain is a tolerant country,” he says, adding, “Here there is no punishment. Deportation? No way, no one even considers it! They are not going to leave here—why would they?” He opines that there are criminals operating without borders “wherever you go”, and apparently, these have found a niche in the island.

(Published on Tuesday, September 13, 2011, in “El Mundo”.)

In the last quarter of 2011, an *ex officio* investigation was opened on the Spanish General Directorate of the Police in light of news that had surfaced in the media. The news told of a criminal organization that took potential victims to various shopping centers around Palma de Mallorca in order to engage in begging, and later took their earnings at the end of the day. A report that was submitted included mention of the arrest of a woman who obtained money by having her daughter beg. The girl was admitted to a shelter for youth before she eventually returned to her home country. Being that numerous people have been arrested for potential exploitation related to the criminal case in progress, an ongoing criminal investigation continues before the Attorney General’s Office.

Minors are used for organized begging

Operations and results concerning fee payments



Source: Directorate General of the Labor and Social Security Inspection Agency. In-house compilation.

XI. A disabled person was made to beg and was taken and beaten by three people.

“Police arrested three people for the crime of human trafficking for the purpose of exploitation through begging”

“They beat him, threatened him, and forced him to beg.

Castellón National Police agents arrested three Romanians with the initials F. N. (born in 1962), I. M. (born in 1980), and G. M. (born in 1981) on suspicion of several crimes: human trafficking for exploitation through begging, illegal detention, threats and coercion.

The three men forced a Romanian beggar, who had severe mental and physical disabilities (his right foot was totally amputated), to beg by using threats and insults and by beating him with his own crutches.

They had found the beggar at a traffic light in Castellón de la Plana, and after stealing all of the money he had collected, they took him forcefully (by grabbing his neck and intimidating him so that he would not resist). They brought him to where they lived—an abandoned house occupied by a Romanian gypsy family composed of eleven people.

The beggar was made to beg for this family every day from 6:00 a.m. to 12:00 p.m. They locked him in the house and took his crutches away from him, so that he could not escape when members of the family were not home to watch him.

While begging, he was always under the supervision of one of his captors so that he could not escape, and so they could take the money he collected without him having a chance to hide it.

The beggar lived in the abandoned house with the whole family, but in totally different conditions than they did. For instance, he was not allowed to shower, was not provided with clean clothes, and at times, was made to eat their leftovers.

They constantly pressured him to beg for more money, bullied or insulted him. When he failed to wake up early to beg, he was beaten—even with his own crutches.

When he managed to escape from this house on several occasions, he was found by the family and was forced to return to the house, where he was beaten as a reprimand. At one point, he escaped and sought help from another Romanian gypsy family, where he filed a complaint based on his experiences.

With that information, agents specializing in this type of crime carried out corresponding investigations and undertook efforts to establish all of the relevant facts. They proceeded to arrest three people who have since been brought to justice.”

(Published on Monday, November 28, 2011, in “elperiodic.com”.)

In January of 2012, an investigation was launched with Spain's Central Department of Immigration and Border Police. Its purpose was to shed light on actions that had been taken after the dismantling of a criminal ring that, according to the press, had exploited a disabled person by making him/her beg. A report was submitted stating that the victim claimed to be engaged in voluntary begging. The person declined assistance from various public administrations. Following the arrest of several people who were thought to be guilty of exploitation, an investigation was opened with the Attorney General's Office. After the arrest of several people on suspected exploitation, an investigation before the Attorney General's Office (related to the criminal proceedings carried out because of the aforementioned events) ended because the stated events could not prove that a crime had been committed.

In light of the monitoring undertaken in the eleven investigations presented here, a conclusion has been reached that each of these police operations has been transferred to the judicial authority that initiated the appropriate procedures. However, upon concluding the report, the court had ordered the provisional dismissal of two of the proceedings, while the rest are still being investigated. It must be noted that individuals who were initially identified as victims remain unaccounted for or are unwilling to collaborate. Thus, the abovementioned proceedings continue to be monitored in order to assess the impact this may have on all of them.

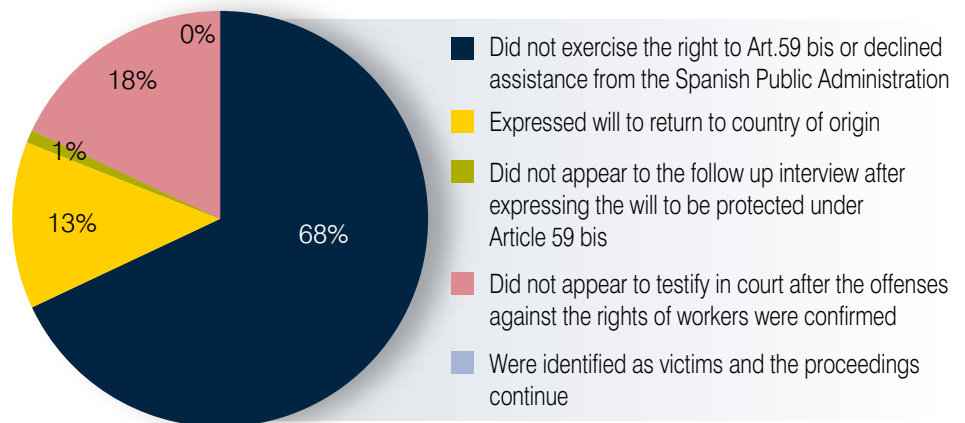
Nine of the eleven police investigations are under judicial investigation



Status of potential victims of labor exploitation affected in the *ex officio* investigations

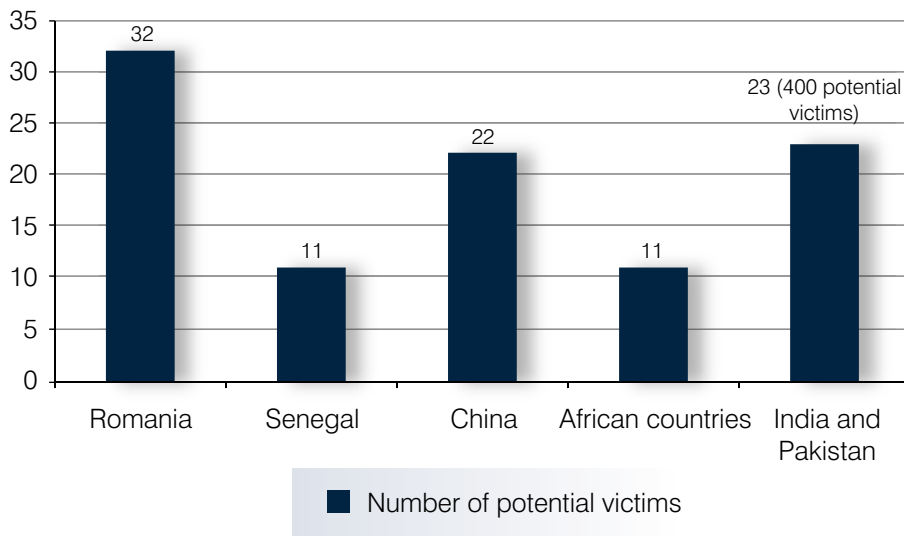
Did not exercise the right to Art.59 bis or declined assistance from the Spanish Public Administration	68.00%
Expressed their will to return to country of origin	13.00%
Did not appear to the follow up interview after expressing the will to be protected under Article 59 bis	1.00%
Did not appear to testify in court after the offenses against the rights of workers were confirmed	18.00%
Were identified as victims and proceedings continue	0.00%

Source: Ombudsman Institution



At the time of preparing this report, these investigations are subject to judicial intervention. In light of such, The Ombudsman Institution has had to suspend its activities in compliance with the provisions of the Organic Act governing the Ombudsman Institution. The Ombudsman Institution continues to maintain communication with the Attorney General's Office, in order to obtain information about related events.

Nationality of victims



Source: Ombudsman Institution.

Location of detention	Number of potential victims
Madrid	23
Valencia	37
Seville	15
Cádiz	11
Palma de Mallorca	2
Castelló/Castellón	1
Toledo	10
TOTAL	99

Source: In-house compilation based on investigations carried out by the Ombudsman Institution.

Nonetheless, a general reflection seems appropriate in light of the limited data available with which to quantify the various forms of trafficking for labor exploitation in Spain. In contrast, numerous international reports include caveats when referencing this form of trafficking in our country. In this sense, it is fitting to reference the U.S. State Department's 2011 Annual Report on human trafficking worldwide.

With respect to forced labor, that document regards Spain as a country of transit and destination, in which men and women may be victims of forced labor in agriculture, domestic service, construction and tourism. The aforementioned report also emphasizes that the Spanish government has yet to establish specialized services for the care of victims of forced labor, as well as the need to improve procedures for the identification of these victims.

International reports warn of trafficking for labor exploitation in Spain

*Comprehensive
Plan to Combat
Human Trafficking
for purposes of
Labor Exploitation*

Thus, it is first necessary to note that the amendment of the Criminal Code (CP), which incorporated the correct definition of the crime of trafficking into Spanish law, went into effect in December 2010. Therefore, and in light of the aforementioned figures, not enough time has passed to properly assess the impact of this reform on more effective prosecution of the crime.

Likewise, with regards to improvements in the procedures for the detection of the victims, not enough time has passed to assess the impact that the Framework Protocol for the Protection of Victims of Trafficking may have had in improving the process.

Finally, but perhaps most importantly, in order to efficiently detect and prevent these situations, it is necessary to renew efforts to achieve greater involvement on the part of the Labor and Social Security Inspection Agency. As indicated in the previous paragraph, the Comprehensive Plan to Combat Human Trafficking for purposes of Labor Exploitation is still in its preparatory stages. The plan should take into account the need to establish effective channels of cooperation and coordination with the various government agencies with competence on human trafficking, as well as with NGOs and unions.

2. For the purpose of sexual exploitation

2.1. SITUATION IN THE EUROPEAN CONTEXT

*Two thirds of
trafficking victims
are women; 79% for
the purpose of
sexual exploitation*

Of all types of human trafficking, trafficking for the purpose of sexual exploitation is the most visible and has the greatest number of studies and statistics. In its report titled *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010), the United Nations Office on Drugs and Crime (UNODC) stated that two-thirds of the victims identified by States worldwide are women, and that victims of trafficking for the purpose of sexual exploitation constitute 79% of identified victims. The report includes a section on trafficking to Europe for the purpose of sexual exploitation.

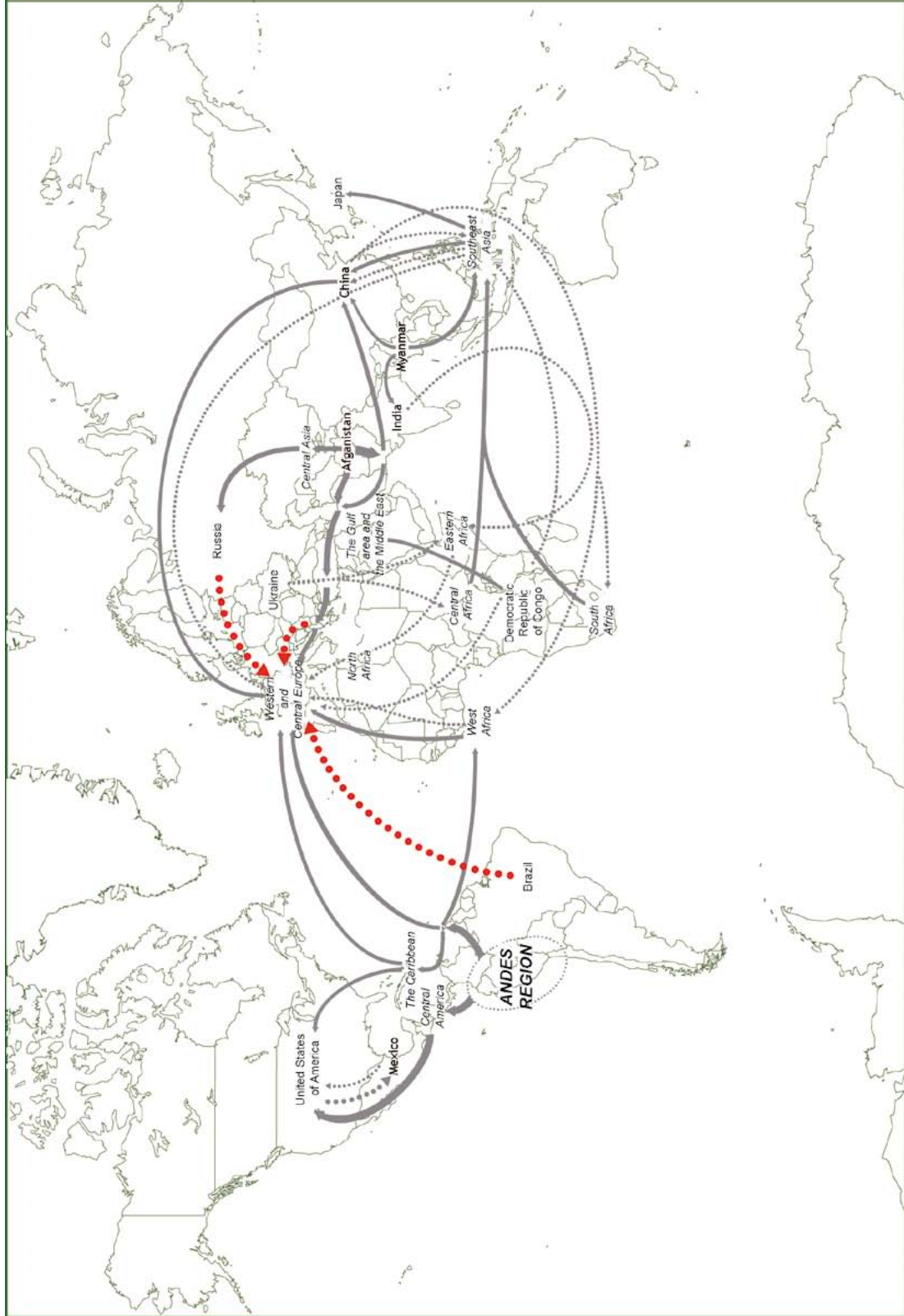
It was considered necessary to take into account the main findings of this paper, considering that it frames the situation in Spain in the proceeding pages. The document notes that compared to all other regions of the world, Western and Central Europe have seen greater diversity in terms of the nationalities of trafficking victims, which in the majority of cases (84%) were trafficking for purposes of sexual exploitation. However, it is striking that both the percentage of cases and the type of exploitation detected are determined through the guidelines for intervention by the authorities responsible for the prosecution of this crime.

Trafficking in persons to Europe for sexual exploitation

Route	
Origin:	Various countries from around the world predominantly from the Balkans and the former Soviet Union.
Transfer to destination:	Predominantly by land; but also by sea and air.
Destination:	Western and Central Europe.
Magnitude	
Annual number of new victims	Estimated 70,000 (based on a biennial cycle).
Market volume (number of victims):	Estimated 140,000 victims.
Business figures:	3,000 millions of dollars annually.
Traffickers	
Actors involved (nationality):	Western Europe, Balkans, Eastern Europe, North Africa, Turkey, Nigeria and China.
Residence of traffickers:	Countries of origin and destination.
Risk	
Estimated tendency:	Stable.
Possible effects:	Human rights violations.
Possibility that effects materialize	Very high.

(Source: UNODC. *Trafficking in persons to Europe for Sexual Exploitation*. Vienna: UNODC, 2008. p. 1.)

Trafficking in persons to Europe for sexual exploitation



Source: UNODC. *Trafficking in persons to Europe for Sexual Exploitation*. Vienna: UNODC, 2008. p. 1.

Regarding the magnitude of the problem in Europe, according to UNODC estimates, only one in twenty victims of trafficking is identified. In 2006, European countries identified 7,300 victims, while the estimated number of victims of trafficking for sexual exploitation in Europe amounts to approximately 140,000.

The report analyzes data from 2000 to 2007 to conclude that, “It is difficult to identify trends in the number of trafficking victims, because the knowledge of the problem as well as the relevant legislation are constantly evolving. As a result, it is difficult to discern trends in the number of cases registered by the authorities responsible for enforcement, as well as trends regarding its prevalence. The number of victims trafficked for the purpose of sexual exploitation that was detected by European authorities increased about 20% between 2005 and 2006 [...]. However, some trends are seen regarding the profile of victims. Currently, it seems that about 60% of the identified victims come from the Balkans, Central Europe and the former Soviet Union. About 13% are from Latin America, about 5% from Africa, and 3% from East Asian. A large proportion of the victims (around 20%) are of an undetermined or local origin. This is a different profile than that which was seen in the past.”

Regarding the evolving profile of the victims, it is shown that trafficking networks may change their tactics in light of changes occurring in traditional countries of origin. Examples of such changes include an increased awareness of the situation on the part of potential victims, an improvement in the economic situation, or stricter law enforcement. This indicates that in the last ten years, in countries of Western and Central Europe, the number of victims from countries like Russia or Ukraine has diminished. However, identified victims have increasingly been coming from countries like Romania and Bulgaria. That being said, from 2005 on, the number of victims from these countries seems to be diminishing. Finally, the report (which, as noted, was published in 2010), draws attention to the increase in trafficking cases nationwide in Western and Central Europe, in addition to nations more recently involved (such as China, Paraguay, Sierra Leone, Uzbekistan and Turkmenistan). This implies a diversification of nationalities of origin for women trafficked for sexual exploitation. In the case of Spain, it is indicated that the increase in cases of Paraguayan and Brazilian victims seem to be taking the place of Colombian victims' toll, which has been declining over the same period.

The report also analyzes the origin of traffickers, noting that most of those convicted are men, as is the case with nearly all other crimes. However, the percentage of female offenders is higher for human trafficking than for other crimes, which may be rooted in the importance of the trust relationship between the victim and the offender. Thus, in some cases, the only way for victims to prevent further exploitation may be to become traffickers themselves.

The report also notes different behavior patterns depending on the region of the trafficker. For instance, it is noted that in countries of the former Soviet Union,

The origins of the trafficking victims in Europe

Diversification of victims' nationalities of origin

The convicts are mostly men

Sometimes, there are women who go from being the victim to the exploiter

women who are in charge of recruiting victims were often previously engaged in prostitution. With regards to Nigeria, the report highlights the prevalence of female traffickers, noting that many women eventually go from being the victim to the exploiter. Nigerian networks are characterized by flexible structures that operate mainly inside Nigeria, although they may have bases in Europe, which the women pass through before reaching their final destination.

The report also highlights that in Europe, traffickers are generally not nationals of the country in which they operate, unlike in other regions. Another characteristic of the groups engaged in trafficking for sexual exploitation in Europe is their small size.

In recent years, most trafficking victims identified in Europe have come from the Balkans and the former Soviet Union, including Romania, Bulgaria, Ukraine, Russia and Moldova. Throughout all of Europe, victims have been identified as being from at least some of these five countries. However, the prevalence of these groups seems to change with the emergence of new countries of origin in Europe. Although trafficking that originates in South America affects fewer countries, where it is present, it is generally in large numbers. The main destination countries for South American victims are Spain, Italy, Portugal, France, the Netherlands, Germany, Austria and Switzerland. The majority of trafficking is done for purposes of sexual exploitation, and includes transsexuals. In Europe, South American victims are increasing from Brazil. Trafficking that originates in Brazil mainly affects the poorer northern communities (such as the Amazon states, Pará, Roraima and Amapá), and not the richest southern regions. Trafficking that originates in Africa mainly affects West African communities, particularly young Nigerians. Trafficking with origins in North Africa (Morocco and Tunisia) is still very limited, but may be increasing. For trafficking that originates in East Africa (Uganda and Kenya), the UK is the main destination country. Victims of trafficking in East Asia have always been mostly Thai women. More recently, victims also include Chinese, Vietnamese and Cambodian. Usually, these women are exploited by being forced into prostitution in establishments such as massage parlors, beauty parlors, or saunas.

(Source: UNODC, Trafficking in Persons to Europe for Sexual Exploitation.)

2.2. THE SITUATION IN SPAIN

The Comprehensive Plan to Combat Human Trafficking for purposes of Sexual Exploitation was adopted in 2008

The unquestionable efforts of various national agencies with competence in these issues have focused almost exclusively on trafficking for sexual exploitation. Along the same lines, the studies and official statistics available, along with complaints about trafficking in Spain that have been received by the Ombudsman Institution refer almost exclusively to this type of trafficking.

On December 12, 2008, the Cabinet approved the Comprehensive Plan to Combat Human Trafficking for purposes of Sexual Exploitation. It was intended to be a ho-

listic planning tool aimed at addressing situations of human trafficking, with a special emphasis on women and girls. The plan addresses the issue from four different perspectives, namely, from a gender perspective, as a violation of fundamental rights, as a transnational issue that requires international cooperation, and as a crime that requires police and judicial action. Following the implementation of the plan, an Inter-Ministerial Coordination Group and a Social Forum against Trafficking were created. Their purpose is to establish the coordinated action of different institutions and organizations in order to tackle this work from a multidisciplinary perspective, to be developed during the next three years.

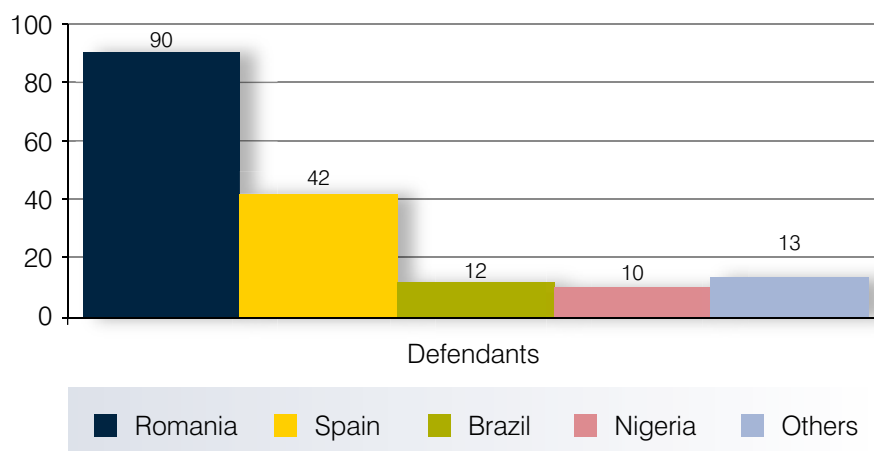
In order to analyze the situation in Spain, it has been necessary to draw on information provided by the Attorney General's Office (as noted in the previous section about trafficking for labor exploitation), as well as on data provided by the Ministry of the Interior through the Spanish Center for Intelligence to Combat Organized Crime (CICO). Direct testimonies have also been taken from several victims. The victims' testimonies and the contributions of specialized entities that work with them, along with the results of investigations conducted by the Ombudsman Institution, have allowed the situation in Spain to be approached from several perspectives.

*Data provided by
the Public
Prosecutor's Office
was used*

The number of people accused was 167, which implies a considerable increase over the previous year (57.54% is 106). By nationality, Romanians are the group most involved in this type of crime, not only because they represent the largest number of defendants (53.89% is 90), but also of victims (44.04% is 74). The Spanish are the second most commonly accused (25.14% is 42), followed by Brazilians (7.18% is 12), and Nigerians (5.99% is 10). After Romanian women (44.04% is 77), the Brazilians were the most affected (23.80% is 40). Seven of the identified victims were minors and, for the first time, we detected two males.

(Attorney General's Office. Annual Report 2011, p. 957.)

Most relevant nationalities charged in indictments for crimes of sexual exploitation of foreign citizens in 2010



Source: Attorney General’s Office Annual Report for 2010. In-house compilation.

The latest data provided by the Office of the Attorney General was from 2010. With regard to trafficking crimes for sexual exploitation, 30 indictments were made (which was 5 more than in 2009).

As noted in the previous section, the Office of the Attorney General’s Memorandum 5/2011, from November 2, 2011 (which references criteria for the specialized action from the Public Prosecutor’s Office with regards to foreigners and immigration), examines the various forms of human trafficking in detail.

Different forms of human trafficking for sexual exploitation

With regards to trafficking for sexual exploitation including pornography, in section II.4.2, paragraph b) of the first article of 177 bis of the Criminal Code, it is stated that the above provision includes not only any sexual activity that could fall under the umbrella of forced prostitution (such as at hostess clubs or the so-called erotic massage), but also any other practice of erotic-sexual nature. This includes participation in exhibitionism, striptease, or porn that is referenced by Article 177 bis of the Criminal Code (CP) and, although it is a fuzzy concept, includes any activity aimed at the production of audiovisual material containing indecent images or situations for the purpose of sexual provocation. However, regarding this matter, standards should be interpreted in accordance with the current social norms, as required by Article 3.1 of the Civil Code.

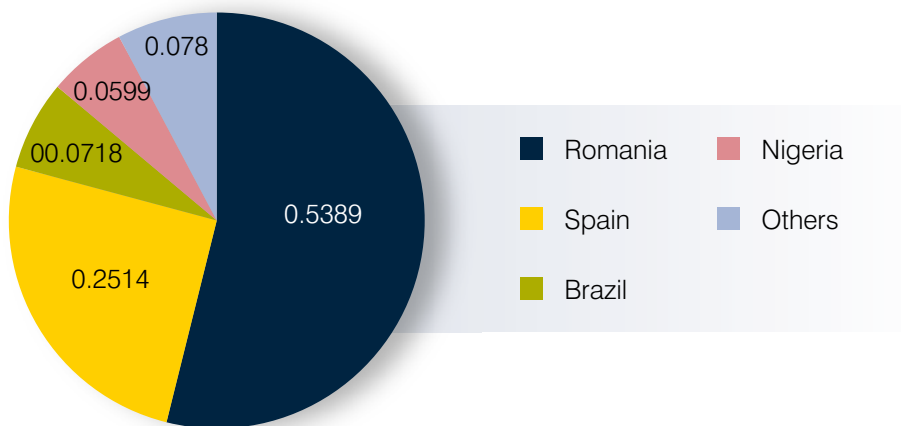
It also refers to profit as being integral to the concept of sexual exploitation, indicating that the economic gain can be fixed, variable or on commission, but must, in any event, be a direct economic benefit. Consequently, if sexual exploitation has been effectively carried out through forced prostitution, the crime of trafficking will be inter-related with the crime of Article 188.1 CP (in the case of individuals of age), or with Article 188.2 and 182.3 CP (if they were under eighteen or thirteen, respectively).

Similarly, if the activity actually carried out with minors or incompetent individuals subjected to trafficking through sexually exploitation—that is to say, for profit—by using them for exhibitionist or pornographic entertainment (either public or private), or to make any kind of pornographic material, the charge will be consolidated with Article 189 of the CP.

Regarding the crime of forced prostitution, it is noted that: “Reality shows that crimes of forced prostitution almost solely affect foreign citizens, who in many cases are not only undocumented in Spain, but also qualify as victims of human trafficking. Thus, they may qualify for the comprehensive system of protection established by Article 59 bis of the Foreign Nationals Act”.

Victims of forced prostitution qualify for a comprehensive system of protection

Most relevant nationalities charged in indictments for crimes of sexual exploitation of foreign citizens in 2010



Source: Attorney General's Office Annual Report for 2010.

The Memorandum also analyzes the concept of prostitution, noting that the State has no legal standard with which to establish the legal concept of prostitution. Rather, “It constitutes a normative element of social value, integrated in Articles 187 CP 188 CP, which references an activity involving sex with other people in exchange for money (Dictionary of Spanish language, of the Royal Spanish Academy).” The jurisprudence of the Second Chamber of the Supreme Court then analyzes the Memorandum, stating that the most important element that characterizes and defines prostitution as sexual activity is its venality (that is, its vendibility or salability).

The State has no legal standard which with to establish the legal concept of prostitution

With regards to the item legally protected by Article 188.1 of the Criminal Code, the Memorandum states that what is protected is the sexual freedom of the affected person as well as his or her self-determination to voluntarily engage in prostitution. It adds that the act of willingly engaging in prostitution is irrelevant to the criminal law. In short, what is subject to punishment is forced prostitution that violates a

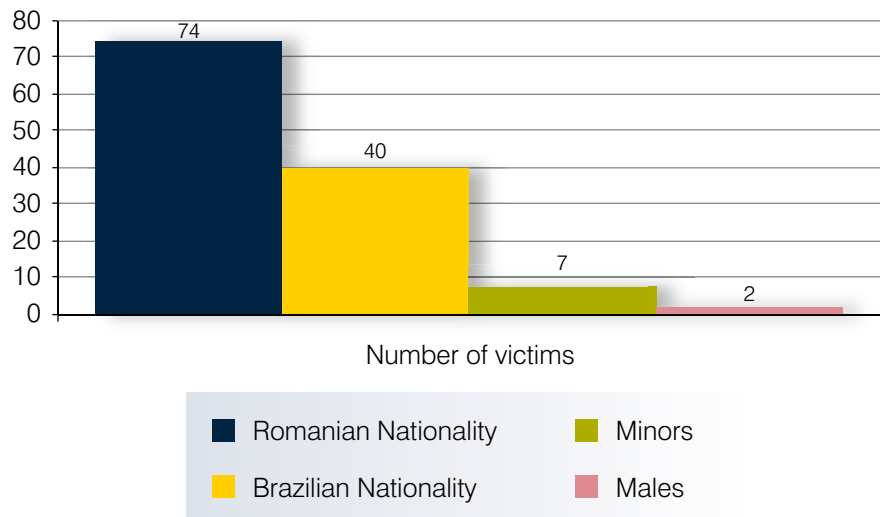
In Spain, voluntary prostitution is not punished

person's freedom to decide or that abuses one's limited cognitive or volitional conditions (minors and incompetent individuals).

Moreover, as noted, for the development of this section, data regarding trends in this type of trafficking from 2009 to 2011 was provided by the Spanish Office of the Secretary of State for Security through the Spanish Center for Intelligence to Combat Organized Crime (CICO). The figures were obtained by:

- Inspections defined as preventive operations by State Security Forces, conducted in areas susceptible to prostitution in order to detect criminal activities related to trafficking and sexual exploitation.
- Reports. Joint proceedings initiated by the State Security Forces in order to clarify criminal activities related to human trafficking and sexual exploitation, in order to determine the concurrent circumstances and responsibilities of those involved.

Characteristics of victims in criminal indictments for crimes of sexual exploitation of foreign nationals in 2010



Source: Attorney General's Office Annual Report 2010.

Victims by location of activity (reported)

Reported by location of activity	Number reported 2010	Number of victims 2010	Number reported 2011	Number of victims 2011
Hostess club	153	1,080	27	110
Private home	76	54	84	224
Street prostitution	29	55	4	8
Hotel-plaza	7	30	77	356
Prostitution in homes and hotel	7	222	2	3
Other type of location	63	200	14	147
TOTAL	335	1,641	208	848

Source: Spanish Center for Intelligence to Combat Organized Crime (CICO). In-house compilation.

Data provided by the CICO also differentiates between at-risk person (a person engaged in prostitution who is detected by an inspection) and victim (a person identified as a result of the State Security Forces taking his/her report against criminal activities related to human trafficking and sexual exploitation).

A conceptual distinction is also made between human trafficking for sexual exploitation and mere sexual exploitation:

- Human Trafficking: The process of recruitment, transportation, transfer, harboring, or receipt of persons by means of violence, intimidation or deception or the abuse of power, or of a position of vulnerability, for the purpose of sexual exploitation.
- Sexual exploitation: Determined by the use of violence, intimidation or deception or the abuse of power, or of a position of vulnerability to engage in prostitution, or to remain engaged in prostitution or to profit from the prostitution of another person.

Firstly, the number of individuals at risk according to authorities is noteworthy. As can be seen, between 2009 and 2010 there was a notable increase that has continued into 2011. In a report submitted, it is noted that the data presented for 2009 and 2010 refers to a time period before the amendment of the Criminal Code went into effect, approved by the Organic Act 5/2010, of June 22nd, which went into force on December 23, 2010. Therefore, when analyzing the figures presented below, this must be taken into account, considering that only the figures from 2011 refer to actions taken while the new terminology of crime of trafficking in Spain was in effect.

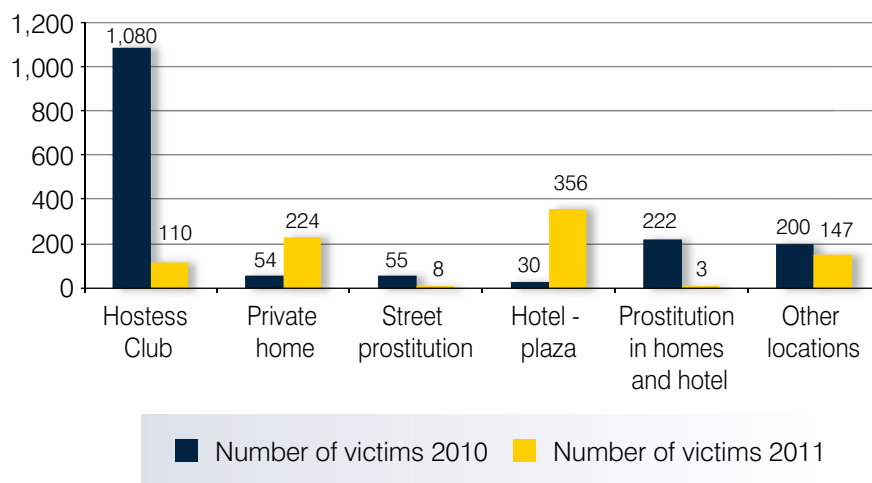
Therefore, it is difficult to draw conclusions by comparing the three years for which data are available (2009-2011), despite the fact that they are from the same source. Even the latest data from 2011 does not yet reflect the potential impact of procedural improvements established for the identification of trafficking victims, since they were adopted in the second half of the year. (They include the Regulation implement-

Between 2009 and 2011 there was a sharp increase in the number of individuals at-risk

Data for 2011 reflects the impact of procedural improvements

ing Organic Act 4/2000, established by Royal Decree 557/2011, of April 20, the reform of Article 59 bis of Organic Act 4/2000, approved by the Organic Act 10/2011 of July 27th, and the passing of the Framework Protocol for the Protection of Victims of Trafficking).

Victims by location of activity (2010-2011)



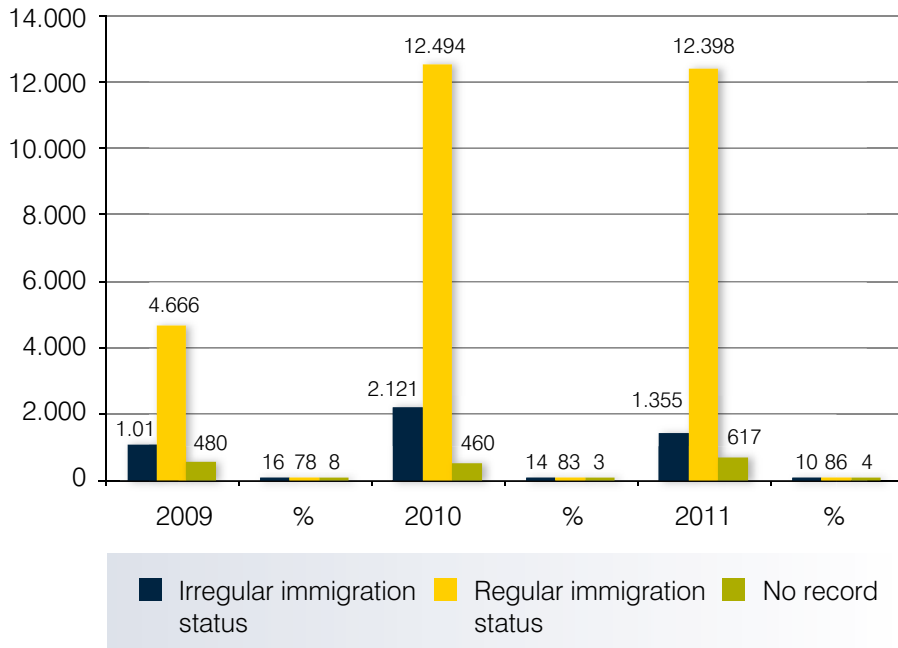
Source: CICO. In-house compilation.

SIGNS OF TRAFFICKING, FROM TESTIMONIALS

- *The individual is not in possession of identity and travel documents, or has no control over them.*
- *The individual cannot communicate freely and privately with others.*
- *The individual does not have freedom of movement.*
- *The individual was told "what" to say if questioned by immigration authorities.*
- *The individual was recruited for something but was forced to perform another type of work or activity.*
- *The individual has been forced to have sex.*
- *The individual is paying off a debt.*
- *The individual has been threatened with assault on her family or herself if she tries to escape.*
- *The individual has been deprived of food, water, sleep, medical attention or other basic necessities.*
- *The individual has been threatened with action on the part of the police, or deportation from the country.*

Source: CICO. In-house compilation.

Immigration status of individuals in an at-risk situation (2009-2011)

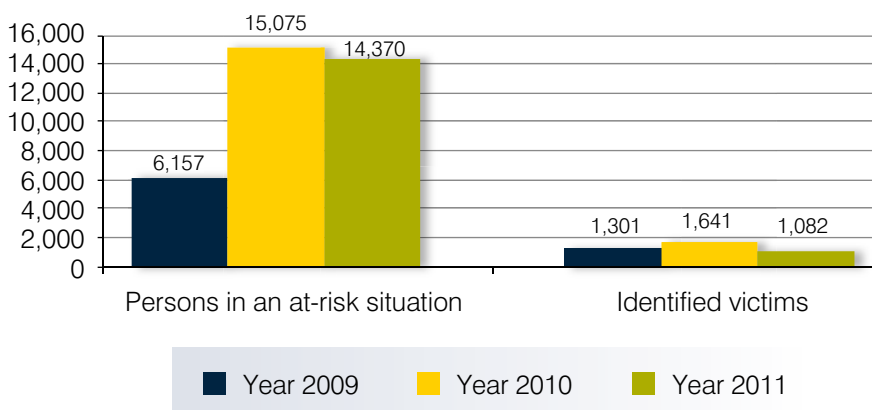


Source: CICO. In-house compilation.

As indicated at the beginning of this section, according to estimations by the United Nations Office on Drugs and Crime in Europe, only one in twenty potential victims of trafficking for the purpose of sexual exploitation is identified. In light of the data provided by the CICO, this trend has been confirmed in Spain. Thus, in 2009, 6,157 individuals were identified as being at risk, of which 1,301 were identified as victims; in 2010, 15,075 people were detected as being at risk, of which 1,641 were eventually identified as victims; in 2011, 14,370 were detected as being at risk, of which 1,082 were eventually identified as victims.

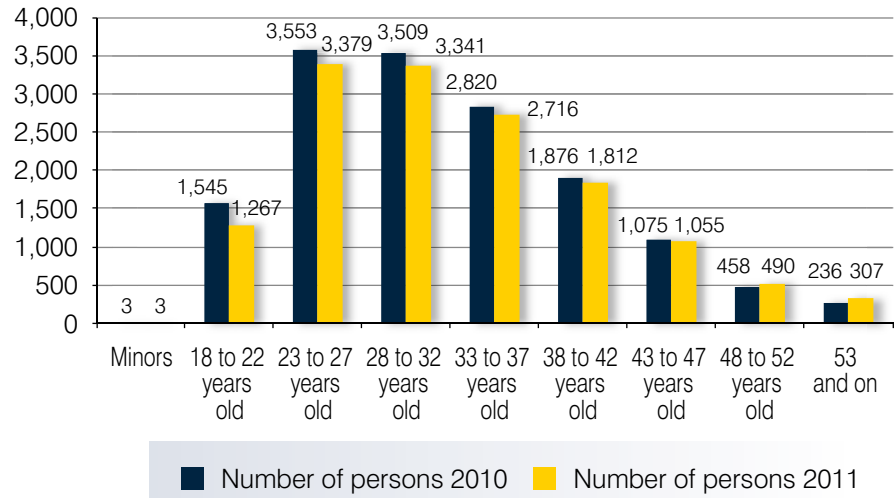
Only 1 out of 20 possible victims of trafficking for sexual exploitation is detected

Victims identified in relation to persons at risk (2009-2011)



Source: CICO. In-house compilation.

Age range of identified persons in an at-risk situation (2010-2011)

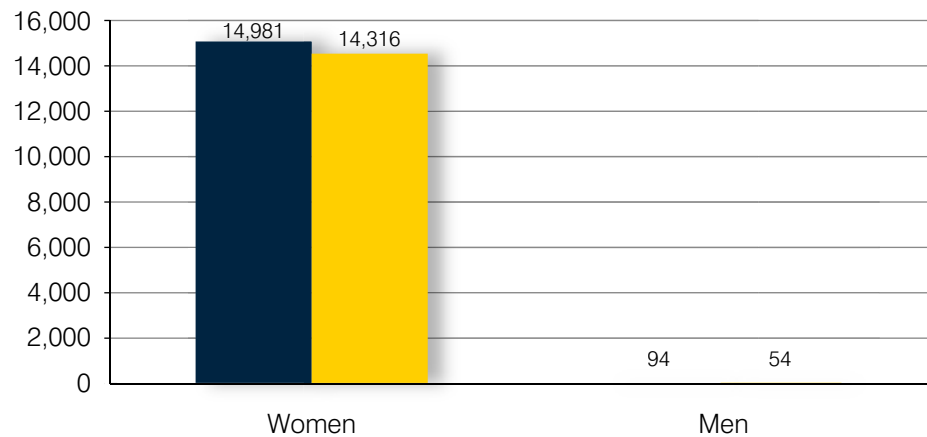


Source: CICO. In-house compilation.

Almost all of the victims of trafficking for sexual exploitation are women

Spain also confirms the trend noted by UNODC in its report on trafficking for sexual exploitation in Europe with regard to the sex of the victims, who are almost entirely women.

Individuals detected in at-risk situations (2010-2011)



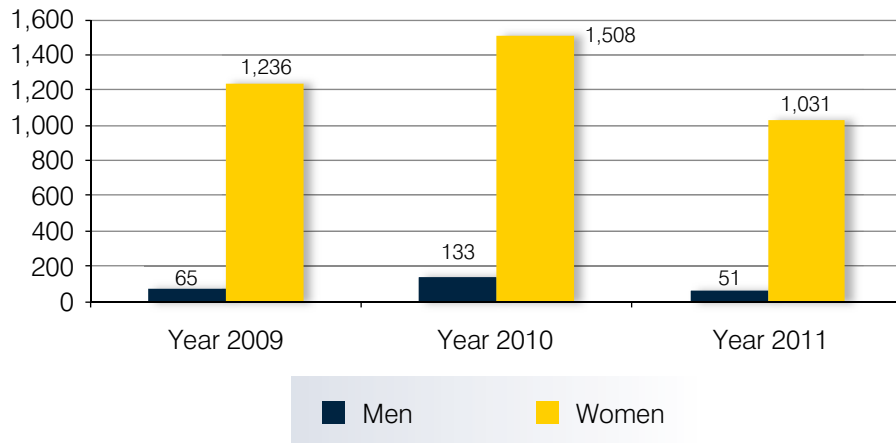
Source: CICO. In-house compilation.

In 2011, 47% of the victims came from America, 45% from Europe and 7% from Africa

With regards to the profile of individuals at risk for becoming victims of trafficking for sexual exploitation in Spain, for 2009 and 2010, the Spanish Center for Intelligence to Combat Organized Crime described the typical profiles as being a Romanian woman between the ages of 18 and 32, and a Brazilian woman between the ages of 33 and 42. The data provided for 2011 was not collected by nationality, but makes reference to Romanian, Brazilian and Paraguayan nationalities. The information

provided by this Institution in 2011 is limited, and notes only that 47% of the victims came from America, 45% came from Europe and 7% came from Africa.

Victims of sexual exploitation and human trafficking by sex (2009-2011)



Source: CICO. In-house compilation.

In the next chapter, in order to analyze victim identification procedures, the number of recovery and reflection periods offered and granted during 2010 and 2011 will be analyzed in detail. The profile of victims prepared by the CICO from the data presented overlooks a group whose numbers are unknown, but that have been approximated in this report: immigrants, mainly women, who are undocumented and who are found trying to enter national territory illegally, or are identified by the police during immigration checks conducted in public places.

The report submitted by the CICO also provides data for the *modus operandi* and routes and itineraries that trafficking victims follow. Regarding the *modus operandi*, various phases of activity are noted. These phases are essentially a process that involves the recruitment, transfer, finance and exploitation, from the country of origin through transit countries, for sexual exploitation in Spain or for forced prostitution.

Recruitment: Victims are often recruited from their countries of origin because of the state of necessity in which they find themselves. Deception also plays a key role when there are offers of legitimate jobs, mainly in domestic service or the food and hotel service industries. In other cases, victims may be aware that they are being taken to engage in prostitution. In these cases, deception generally lies in the conditions of the activities to be performed, or with regards to the amount of compensation they are supposed to receive.

Financing: Criminal organizations often directly fund the travel costs and formalities regarding documentation for the victim. The victim then falls into debt with the criminal organization for those costs. Frequently, a deceptive sum is quoted, as in the form in which the victim is expected to liquefy it.

CICO data do not include undocumented immigrants

Victims are usually recruited from their home countries

Criminal organizations finance the trip and then force victims to pay off a debt

Exploitative conditions vary from mere coercion to semi-slavery

Transfer: The transfer of victims is carried out by various means and through pre-established routes, mainly by air or land. Rings modify their points of entry into the Schengen countries according to the strictness of border controls. Members of the criminal group acting as smugglers, may accompany them. Victims usually enter with a tourist or student visa when such procedures are required; in some cases they enter with false or forged documents.

Exploitation: Once the victims arrive at the establishments or premises in which they will engage in activities, they are informed about the true nature of the situation and the circumstances in which they find themselves—being forced into prostitution by threats, coercion, being made to take drugs, or in some cases, even physical or sexual violence. They are also informed of the amount of the debt owed to the criminal group as well as the conditions for payment. Exploitation in our country consists of forced prostitution on the street or in establishments or private residences, under conditions varying from mere coercion to semi-slavery.

With regards to cases in which the criminal group engages in all of the phases of unlawful activity, internal tasks are managed by assigning different jobs to individuals specialized in a specific type of work. In this sense, they utilize the following roles:

- The “recruiter” is responsible for recruiting victims in their home countries, and will normally be of their same nationality.
- The “smuggler” is responsible for accompanying victims on the journey to their destination country, and for facilitating their passage through border posts.
- Finally, the “controller” is responsible for monitoring and controlling the victims wherever they are exploited, achieving such by imposing coercion and threat.

All this work occurs under the coordination of a skilled leader of the criminal ring. Sometimes, the tasks relating to the recruitment, transfer and exploitation of victims are performed by different criminal groups or by groups that maintain some level of contact and coordination with each other.

Criminal groups have infrastructure in countries of origin, transit and destination

In many cases, organized groups dedicated to this criminal activity have infrastructure that spans victims’ countries of origin, transit and destination. Spanish and foreigners, most of who are middle-aged men, form these groups. Women of the same nationality as the victims frequently belong to the criminal group and are put in a position of control of the victims. In some cases, they are or were previously exploited.

The Spanish are generally involved in the criminal group by merely exploiting the victims, or as owners or individuals in charge of the premises on which the exploitation occurs, or as managers and professionals.

With regards to the nationalities of the identified victims and criminal group members, the existence of national or ethnic determinants are seen among trafficking of

women from countries like Romania, Bulgaria, Russia and Nigeria. Relatively frequently, the nationality of the victims is the same as that of the perpetrators.

Establishments in the food and hotel service industry are used for victim exploitation, as they lend a semblance of legality to criminal activity. Travel, placement, and model agencies in the countries of origin act as fronts to facilitate the recruitment of victims, and also provide the necessary documents for their journeys.

In the cases of food and hotel service establishments, a legitimate activity involving entertainment or alcohol usually coexists with sexual exploitation of victims. In the case of travel agencies, both illegal and legal activities may occur together.

The three main nationalities are referenced ahead.

2.2.1. Main routes: Romania, Nigeria, Brazil and Paraguay

a. ROMANIA

Data provided by the Office of the Secretary of State for Security, through the reports cited by the Spanish Center for Intelligence to Combat Organized Crime, cites Romania as being the first country of origin of victims of trafficking for sexual exploitation in Spain since 2009. In 2010, 366 people of that nationality were identified as victims of trafficking for sexual exploitation.

Romanian women also comprise the majority of women identified as being at risk by State Security Forces during inspections to prevent sexual exploitation and human trafficking. In 2009, 1,753 at-risk Romanian women were detected and in 2010, 4,780 were detected. Data provided by the CICO in 2011 make no reference to the national origin of individuals at risk.

The profile of a person at risk (defined by the CICO as being an individual found through an inspection to be engaged in prostitution) coincides with that of a trafficking victim for the purpose of sexual exploitation: a Romanian woman between the ages of 18 and 32.

Relatively frequently, the nationality of the victims is the same as that of the perpetrators

Romania is the first country of origin of victims of trafficking for sexual exploitation

The profile of a person at risk coincides with that of the victim: a Romanian woman between the ages of 18 and 32

“Victims of the criminal network include two minors”

“National Police dismantle a criminal organization in Girona that sexually exploits women”

Women were captured in Romania with false offers of employment, and were forced into prostitution until they could pay off their debt.

A minor who was exploited reported that she was deceived in her country by fellow Romanians who took her to Spain to work in clubs.

March 30, 2011 - National Police agents broke up an international organization in Girona dedicated to the sexual exploitation of women, mainly Romanians. Twelve people who captured victims in their home country have been arrested. Two of the victims were minors who were provided with fraudulent documentation. They were offered jobs that did not exist, and were eventually forced into prostitution in two clubs in Siurana d'Empordà and Roses (in Girona), where they had to pay off the debt that they had acquired with the criminal organization. Its hierarchical structure, the rigid division of tasks, and the adoption of stricter security measures were aimed at hindering any action on the part of the police.

The investigation began after a complaint was filed by a Romanian minor who claimed to have been captured by a fellow Romanian man, and that she was later taken to Spain where she was sexually exploited in hostess clubs in the province of Girona.

Using Minors

Preliminary investigations revealed the existence of a criminal organization dedicated to the recruitment of women in Romania, including minors, who were offered better living and working conditions in Spain. The criminal organization initially covered the costs of the trip, but the victims later acquired a debt they had not been previously informed of. The women were taken to two hostess clubs in Siurana d'Empordà and Roses where they were forced into prostitution; they were also made to fill in at other clubs run by the criminal ringleaders. In addition, the minors were provided with false documentation.

The degree of control and coercion was such that the criminal organization took responsibility for transporting the victims to the clubs and at the end of their workday, back to the flats where they lived. Daily they were expected to pay the criminal network money in exchange for their housing and meals, which only increased their initial debt.

The first immigration and identification checks conducted at these establishments occurred in September of 2010. As a result, four people were arrested for the crime. It was confirmed that the minor who had filed the complaint had indeed been in the brothels when it was discovered that the mafia had used a photocopy of a false Romanian identify card to hide her real age.

The police operation was completed in March, with warrants issued to two hostess clubs and one private home. Twelve people were arrested; five were Spanish and the others were mostly Romanian. They were charged with alleged human trafficking, prostitution and for belonging to a criminal organization. In addition, two other people were charged for those same crimes.

The operation was conducted by agents from the UCRIF of the Provincial Police Headquarters in Barcelona, in collaboration with the Immigration and Documentation Unit of the La Jonquera police (in Girona), the Central UCRIF, the Provincial Labor and Social Security Inspection Agency of Girona, and the Interior Attaché of the Romanian Embassy in Spain.

(Published on Tuesday, April 5, 2011, on the official website of the DGP. Press releases.)

The most recent data on the human trafficking situation in Romania is found in a report by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), published last May. The report references figures provided by the Romanian authorities from 2010, which reveal that labor exploitation accounted for 43% during that period, resulting in 503 identified victims, of whom 112 were used for forced begging. With regards to minors, 17 victims of labor exploitation in agriculture or construction were identified, as well as another 19 victims of forced begging. The report urges the Romanian authorities to strengthen procedures so as not to penalize trafficking victims, especially minors, who engage in criminal activities.

According to data provided by the Romanian authorities, Romania is essentially a country of origin for victims of trafficking. Virtually all the victims identified so far have been of Romanian nationality, most of who are victims of transnational trafficking. 1,780 victims were identified in 2007, 1,240 in 2008, 780 in 2009 and 1,154 in 2010. Regarding the latter, 74% of the identified victims (849 people) were subjected to transnational trafficking, with the main destinations being Spain (234 victims), Italy (206 victims), the Czech Republic (87 victims), Cyprus (78 victims) and France (68 victims).

The main countries of destination for Romanian trafficking victims were Spain and Italy

Internal trafficking (in Romania) affected 305 victims identified in 2010. The number of foreign victims identified was low: 18 in 2008 (10 men and 8 women victims), one female victim in 2009, and two female victims in 2010. The Romanian authorities have indicated that the number of Romanian victims identified in the first half of 2011 (488) increased by 29% compared with the same period in 2010. Six foreign trafficking victims for sexual and labor exploitation in agriculture were identified during the first half of 2011.

The report goes on to say that, in 2010, the main forms of exploitation were labor (503 victims, which represents 43% of the total) and sexual exploitation (482 victims, which represents 42% of the total). In addition, 112 victims were subjected to forced begging, 6 were subjected to stealing, and 6 were subjected to pornography. Women constituted the majority of identified victims (56%).

The main forms of exploitation were labor and sexual

GRETA notes the significant efforts made by the Romanian authorities together with various NGOs regarding human trafficking prevention. However, in terms of effective assistance and victim protection, the report notes that despite significant progress in their regulations, Romania has a long way to go before these implementations are put into practice. It also highlights the remaining gaps in the repatriation procedure for victims of Romanian nationality. Therefore, the report urges the authorities to take necessary measures to ensure that the return process respects the fundamental rights of the victims, including the best interest of minors.

They created a complex web of companies devoid of activity, in order to launder the abundant profits they reaped

“A Hispanic-Romanian pimp network led by the ‘Cortés Clan’”

They captured their victims in Brazil and Romania and sexually exploited them in hostess clubs of Córdoba, Seville and Málaga.

Upon arrival in Spain, they moved the women to a warehouse in Córdoba, where they hid them until they were provided with false documentation.

The investigation has been particularly challenging due to the extreme violence that the women were threatened with.

13 people were arrested for various offenses, and three others have been charged.

April 27, 2011 - National Police agents have broken up a criminal organization of Hispanic-Romanian pimps led by the ‘Cortés Clan’. The alleged heads of the group are a couple that took numerous trips to Brazil and Romania, where they captured women in situations of need. They took the women to Spain with false offers of decent work. Once in our country, they lived crammed in a warehouse in Córdoba until they were provided with false documentation. Next, they were forced into prostitution in hostess clubs in Málaga, Córdoba and Seville under threats of extreme violence, which has hindered investigations. The operation has resulted in 13 arrests for human trafficking related to prostitution, illegal detention and other related crimes; three others are also being charged for these crimes.

In addition, National Police investigators together with the Tax Agency have uncovered a complex network of companies devoid of activity. Those arrested used them to launder illegal profits, as well to make it seem that the companies had no earnings in order to fraudulently obtain subsidies from the State.

Captured in Brazil and Romania

The investigation began last December following a complaint from several people who claimed to be victims of labor exploitation by a criminal network that sexually exploited foreign women, mainly from Brazil and Romania.

Initial investigations led to a network of several hostess clubs in the Andalusian provinces of Córdoba, Málaga and Seville that were managed solely by a Spanish citizen, where women were coerced into prostitution. The man and his wife led the criminal organization, taking various trips to Brazil and Romania to recruit their victims—women in situations of need—to whom they falsely promised jobs in the service sector. All expenses including travel, food and lodging were covered by the criminal organization—generating the usual debt that the women were forced to pay off through prostitution.

As the investigation progressed, other components of the network were identified, including different roles within the group (those in charge of finance, club managers, doormen, controllers, ‘madams’, etc..).

Once the victims were in Spain, pimps took them to a warehouse in Córdoba, where they lived in overcrowded conditions until they were given false documentation. The women deeply feared their exploiters, who coerced and threatened to cause harm to them or to their families back in their home countries if the women did not pay off their debts. These were debts that could never be paid off, considering the new expenses generated and the penalties for not meeting the standards of the criminal ring.

Concurrently, it was found that the disbanded group had created a complex web of companies devoid of activity that they used to launder illicit profits, and to fraudulently apply for state aid by making it seem that the companies had no earnings.

Arrested and searched

Once the operative data was available, police operations were simultaneously planned in the provinces of Córdoba, Málaga and Seville, where two hostess clubs, three homes of those responsible for the criminal network, and the warehouse in which women lived were registered. Investigators seized an abundance of the company's accounting documents, as well as numerous plane tickets to the countries of origin of the criminal network's victims. Thirteen people have been arrested—9 in the province of Málaga and 4 in Córdoba.

Officers from the Central Brigade against Illegal Immigration Networks of the Central UCRIF and of the Málaga UCRIF, as well as from the Provincial Immigration Brigade of Córdoba and the Tax Agency participated in the operation.

(Published on Wednesday, April 27, 2011, on the official website of the DGP. Press releases.)

In the report by the United Nations Office on Drugs and Crime (cited previously in this chapter), titled *Trafficking in Persons to Europe for Sexual Exploitation*, with regards to recruiting victims from Romania, it is noted that groups based in the Balkans most commonly use the promise of employment. Human trafficking from the Balkans (the former Soviet Union and Central Europe) is characterized by recruitment by people the victims know, who often resort to violence to control victims. The criminal rings controlling these victims are particularly violent, although the report notes that violence against victims normally occurs only in the country of destination.

The most common means of recruitment by groups based in the Balkans is the promise of employment

Four people arrested

“A criminal network that sexually exploited women was dismantled”

A coordinated operation against trafficking in persons has been undertaken in Ibiza and Granada

EDITORIAL. In a joint operation in Granada and Ibiza, National Police have arrested three women and a man who were allegedly involved in the sexual exploitation of two young women from Romania.

The police operation is part of the National Plan against trafficking in persons and sexual exploitation implemented by the National Police Force.

The events date back to 2007, when one of the victims, who was in her twenties and working at a hostess club, filed a complaint at the National Police Station in Eivissa because she was allegedly in a situation of forced sexual exploitation, in addition to having suffered physical abuse by several women and a man of her same nationality.

The complainant claimed that they had withheld her passport, forced her to hand over the money she earned, and that they controlled calls and messages on her mobile phone. An acquaintance of hers was also in the same situation.

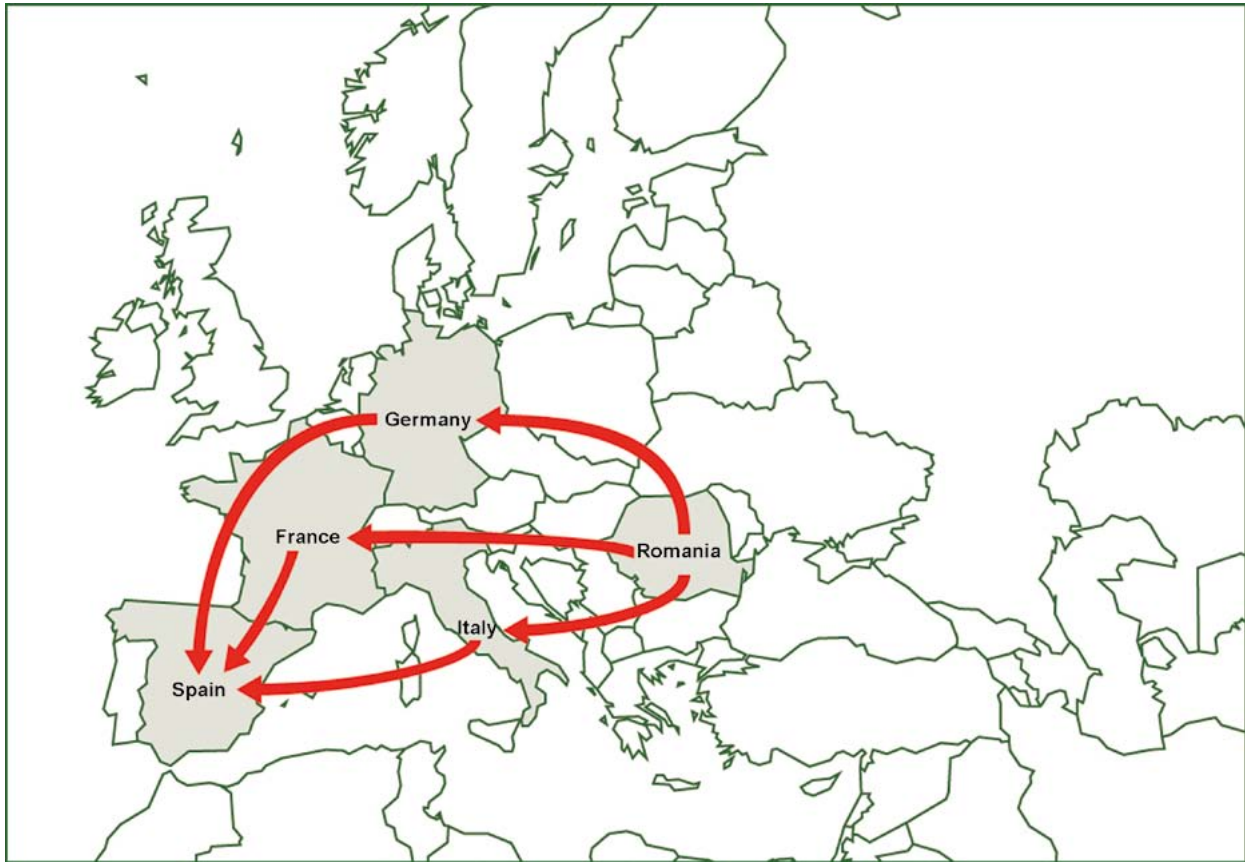
At the beginning of this year, a similar complaint was received at same police station, filed by another Eastern European woman who spoke of events similar to those cited previously. Given the girl's statement, after a series of procedures and investigations, the National Police of Ibiza arrested a man with the same nationality that seemed to have exploited the female complainant.

The UCRIF-I of Granada (an immigration group with competence in investigating such events) in a joint effort with the UCRIF of Eivissa undertook the necessary investigations. Recently, two other women in the city were located and arrested. The owner of a strip club was also charged with allegedly being involved in the aforementioned events, including sexually exploiting, extorting and threatening the two girls.

The detainees have been brought to justice. The National Police said in a statement that investigations remain open, as other individuals in both cities may be involved in the human trafficking network.

(Published on Thursday, March 3, 2011, in "laopiniondegranada.es".)

Europe-Romania itineraries



Source: The Office of the Secretary of State for Security.
In-house compilation



A CRIMINAL GROUP THAT PROSTITUTED A MINOR IN CLUBS IN ZARAGOZA WAS DISMANTLED

Seven people have been arrested for the alleged crime of trafficking women for sexual exploitation. The gang prostituted a minor in various strip clubs of Zaragoza, who turned out to be the girlfriend of one of those arrested. The men were arrested after a dramatic chase.

Zaragoza – National Police have broken up a gang that was engaged in trafficking. Among the trafficked women was a minor who was prostituted in various Zaragoza strip clubs. The seven people arrested are Romanian nationals who ran the prostitution business at various locations in the Aragon capital.

The minor, age 17, who turned out to be the girlfriend of one of the arrested, possessed forged documentation and looked older than she was. It was the partner of another gang member who had introduced the girl to the clubs.

The arrests have occurred through an operation referred to as “Cecilia”, which took place in an establishment along the highway in Logroño. There, the officers witnessed three young men (who were later arrested) accompany the girl to the establishment early in the afternoon. The detainees staged a dramatic chase when they noticed the police presence.

The three gang members, I. M., 25 years old, M. M., 22 years old, and G. R., 31 years old, went so far as to cause a collision with National Police vehicles, and they put up a strong resistance to the agents.

Later inside the club, agents proceeded to detain the 17 year old Romanian minor, who turned out to be the girlfriend of one of the men arrested, and O. D. A., 21 years old. The latter was the girlfriend of one of the other men arrested, and it was she who had introduced the girl to the clubs.

They all lived in a luxury villa in the town of Utebo with the owner, who was implicated in the aforementioned events. A thorough search was conducted that resulted in the seizure of the minor’s counterfeit Romanian identity card, extensive documentation, seven mobile phones, a laptop and money, as well as proof of having sent money to Romania.

Similarly, it was discovered that the minor had engaged in prostitution in another club downtown, which led to the arrest of its owner, who also possessed a counterfeit copy of her documentation.

The detainees have gone to court along with the seized property, while the minor is in the care of Assistance and Protection Services of the Government of Aragon.

(Published on Thursday, November 10, 2011, in “aragondigital.es”.)

The four cases presented in this section reflect *ex officio* investigations conducted by the Ombudsman Institution in 2011, after the media revealed the outcome of police operations to break up criminal groups engaged in sexual exploitation of Romanian victims. In all cases, the brutality used by the suspects to control their victims was recounted. In three of the cases, it was a victim who alerted the authorities about the situation.

Law enforcement opened investigations to ascertain the number of victims and their situations. There were over fifty potential victims identified in these four police operations, all of who were women. None of them sought to exercise their right to the 30-day recovery and reflection period established in Article 59 bis of Organic Act 4/2000. According to police information, they did not agree to be taken in by specialized organizations that protect trafficking victims, or to take advantage of the status of protected witnesses in criminal cases. The minor who was identified in one of the police operations was admitted to a child protection center, which she escaped from.

The Attorney General's Office also opened investigations to gain an understanding of the development of criminal proceedings initiated after the police operations. At the time of preparing this report, two criminal proceedings had been provisionally dismissed. In a third, the Public Prosecutor's Office had requested a dismissal due to insufficient evidence to prove a criminal offense, and the fourth is still under investigation to determine the whereabouts of the victims.

As indicated at the beginning of this section, in 2010 Attorney General's Office issued 30 indictments for crimes of sexual exploitation of foreign nationals, resulting in 167 people being charged, of which 90 were Romanian citizens, while 44% of victims (74 people) were also Romanian.

In 2011, the Ombudsman Institution opened several investigations

These investigations sought to ascertain the number of victims and their situations

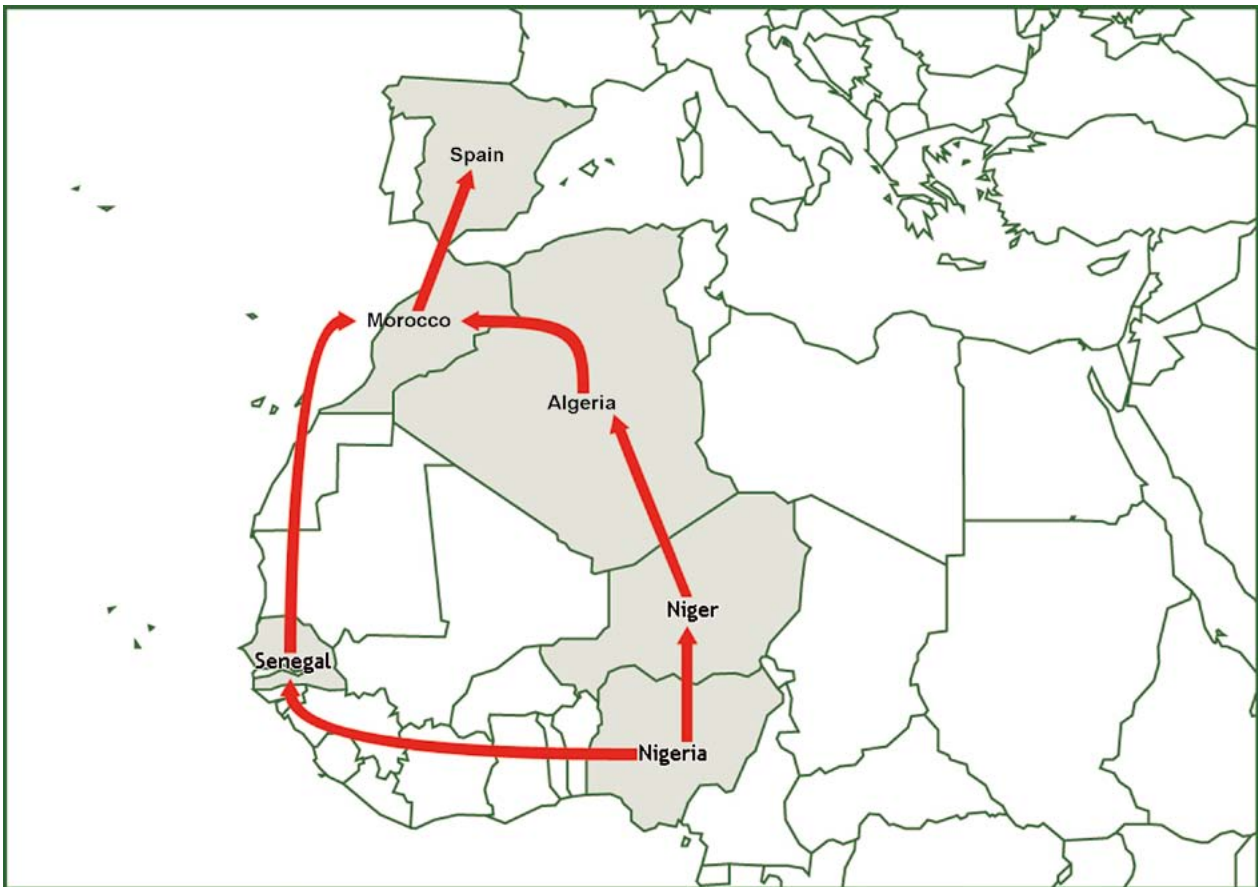


The Attorney General's Office believes new legal framework against trafficking in Spain to be insufficient

To conclude this section, it seems appropriate to cite the reflections of the Attorney General's Office in its 2010 Annual Report. In reference to the new regulatory framework for human trafficking in Spain, the report states: "While the new Articles 177 bis CP and 59 bis of the Organic Act on the Rights and Freedoms of Foreign Citizens in Spain and their Social Integration (LOEX) are essential tools, this is not enough. Indeed, the fight against trafficking in persons may only be effective through a multitude of measures—not necessarily regulatory—to close the circle of crime prevention,⁸¹ concentrated and coherent criminal prosecution,⁸² and comprehensive victim protection,⁸³ in terms that stipulate almost all of the international instruments that directly link us. From this point of view, we are still at the beginning of a long and complicated road".

b. NIGERIA

Itineraries: Africa



Source: The Office of the Secretary of State for Security.
In-house compilation

As noted by the United Nations Office on Drugs and Crime, in the process of recruiting Nigerian victims of human trafficking for sexual exploitation, acquaintances, close friends or family members play an important role, which usually takes place in the home of the victim and resorts to a system of debt bondage. Victims are forced to travel to Europe (including Italy, the Netherlands, Belgium, and Spain, among other countries) and to pay exorbitant sums to the smugglers who transport them, mainly by plane from Lagos or other international airports in West Africa. Transportation may also occur by land or sea across the Mediterranean. The vast majority of women and girls from West Africa are forced into street prostitution.

The vast majority of women and girls in West Africa are subjected to street prostitution

“There are areas where trafficking is endemic, especially around Benin, where mothers negotiate for their daughters to be taken by a human trafficking ring. There are recruiters who take advantage of this situation—especially that of poverty. In some areas, there is an actual human trafficking industry. It is the parents who negotiate for their daughters to leave and bring money back later. There are high levels of illiteracy. The family is involved in the contract, it is a societal problem, traffickers control everything, the girls can only weep and let go.”

(Excerpt from an interview with an NGO staff person in Lagos, Nigeria.)

The presence of Nigerian victims of human trafficking for sexual exploitation in Spain is cited in several major international reports, a reference that is also useful for gaining a deeper understanding of human trafficking in Nigeria.

The numerous complaints filed with the Ombudsman Institution regarding trafficking match those presented by NGOs on behalf of Nigerian women, who attest that claims made by potential victims are not adequately evaluated, further stating that the authorities only take into account the women’s illegal immigration status.

Complaints received report that only the victim’s illegal immigration status is taken into account

The interconnection between Nigerian migrant smuggling, human trafficking and immigration is a recurrent issue cited in other studies that were consulted for this report. Thus, in a report published in 2006 titled *Migration, Human Smuggling and Trafficking from Nigeria to Europe*, the International Organization for Migration stated: “Hundreds of thousands of Nigerians have emigrated to Europe; many have trusted smugglers to do so, and many have become victims of human trafficking. Issues of migration, migrant smuggling and human trafficking overlap. Regarding Nigerian migration in Europe, it is natural to see these two phenomena together. Trafficking in persons and the smuggling of migrants may be part of organized crime, although they need not be.”

In 2010, National Police agents dismantled a criminal network of sexual exploitation and documentation fraud whose activities primarily occurred in a coastal city in southeastern Spain, with branches in other cities along the northeast coast. The investigation was initiated after four Nigerian women filed a complaint with the police. They recounted how fellow Nigerians had deceived them by convincing them to go to Spain under false promises of work. After a long journey to reach the peninsula, they were forced into prostitution; voodoo was utilized to threaten them and keep them there. Following the police operation, 38 Nigerian women were found to be potential victims of the criminal organization; they were offered the recovery and reflection period. However, none of them admitted to having been exploited or engaged in prostitution, claiming instead that their stay in Spain was for the purpose of tourism.

However, the four women who filed the complaint that initiated the police operation were recognized as protected witnesses. The Ombudsman Institution continues to monitor their personal situation and immigration status, and thus has been able to verify that a year after filing the complaint, one of them is missing, another is in the process of obtaining national document registering her identity, and the other two possess an initial residence permit for exceptional circumstances, which are valid for one year.

Due to its geographical location, Spain receives a large number of people from various African countries who seek to access the Spanish coast illegally, using small open boats, such as dinghies or canoes. Thus, unlike other European countries, especially in the recent years, this has been one of the main routes for African immigration into Spain.

However, in the case of Nigerian citizens who enter Europe illegally, several studies point to the prevalence of travel via plane by using forged or stolen documentation.

Most Nigerian women enter Spain by sea, although cases have been detected in Barajas

The number of Nigerian women identified as being at risk of sexual exploitation is low

With regards to the mode of entry for Nigerian women trafficked to Spain for sexual exploitation, the largest number detected arrived in Spain illegally via the sea, mainly through the peninsula's southern coasts. However, after conducting various investigations to prepare this report, several cases of Nigerian women who were potential victims of trafficking have also been detected at the border post of the Madrid-Barajas airport, in transit flights to other European countries or to their final destination in Spain.

This issue is referenced in the report *The Role of Organized Crime in the Smuggling of Migrants from West Africa to the European Union*, prepared by the United Nations Office on Drugs and Crime in 2011, which states: "The majority of the few cases detected by Spanish border control authorities seem to affect Nigerian women trafficked for sexual exploitation."

The figures provided by the CICO, which was referenced at the beginning of this section, focus on inspections conducted in locations where prostitution occurs and where there may be people at risk, mainly in clubs and hotels. Inspections conducted on the street to detect individuals at risk are virtually nonexistent (1.71% of those conducted in 2010, and 2.71% in 2011) resulting in the low number of detections of Nigerian women at risk of sexual exploitation.

A humanitarian organization that takes in foreign women who are pregnant or who have young children received referrals by the police after they found women trying to illegally access the Spanish coast in small boats. The organization brought to the attention of the police their suspicions that several of the women they had taken in had been exploited by a network of trafficking for sexual exploitation.

The police operation conducted several arrests and located two victims of trafficking who agreed to cooperate with the police and who were recognized as protected witnesses. Both were taken to shelters, which they later abandoned, leaving police with no knowledge of their current whereabouts. Given the difficulties in locating the protected witnesses, the Attorney General's Office has ordered the conditional release of the person identified as being allegedly responsible for crimes of prostitution, illegal restraint and coercion, with the obligation to appear *apud acta* and to not leave the country.

According to the CICO, in 2009, 210 Nigerian women were identified during inspections in locations at risk for prostitution, while in 2010 the figure doubled to 436. However, in that same year (2010), only 52 Nigerian women were eventually identified as victims of sexual exploitation, of which almost all (51) were considered to be victims of trafficking for sexual exploitation.

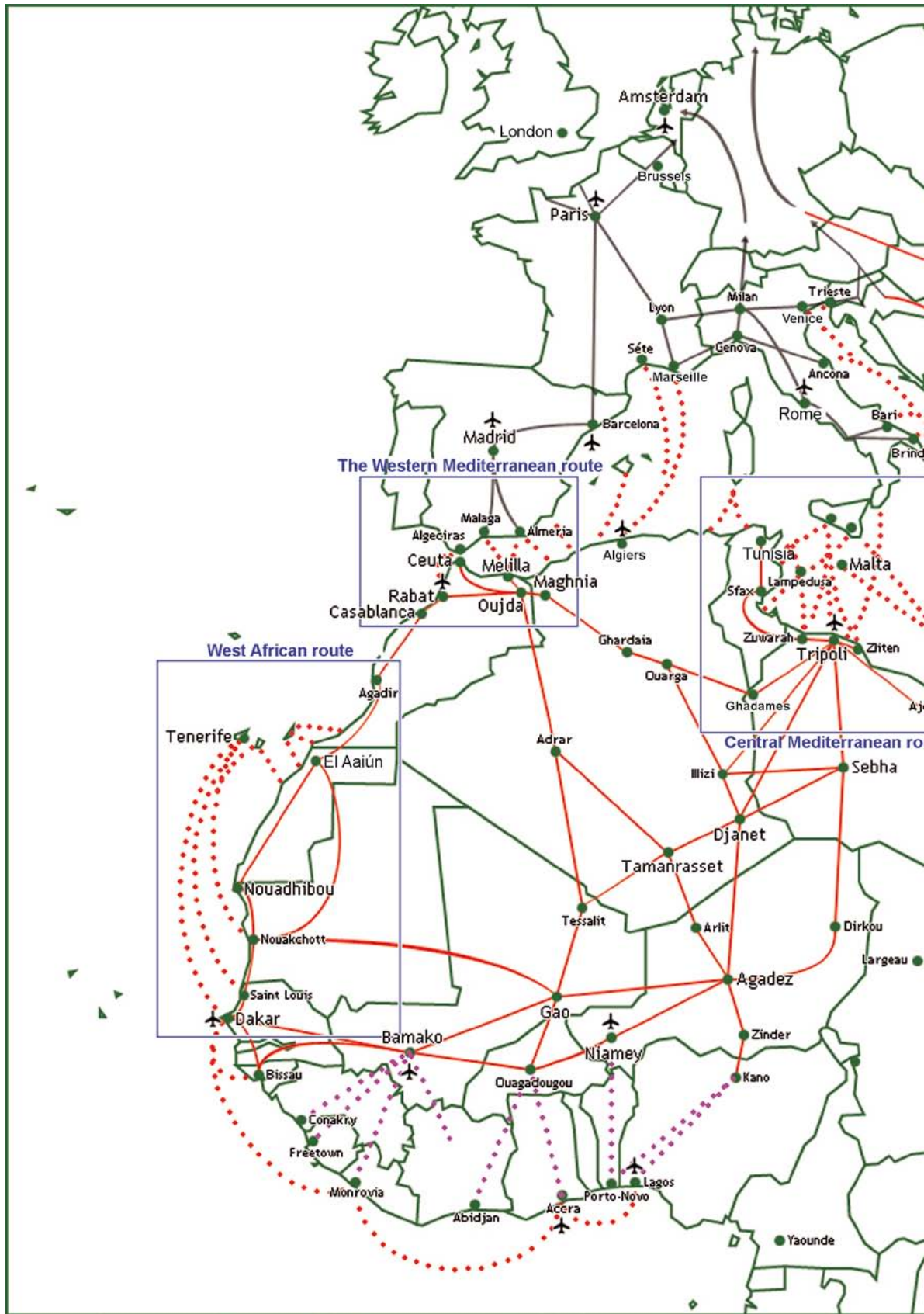
Excluded from these figures are data about Nigerian women who are potential victims of trafficking, who reached the shores of southern Spain, mainly to the town of Motril (in Granada), or to the border control of the Madrid-Barajas airport. This second profile will be addressed in the next chapter, in the section that specifically references trafficking victims in need of international protection.

With regards to a Nigerian women detected aboard small boats trying to illegally access the Spanish coast, the results of an investigation that the Ombudsman Institution launched in July 2011 with Spain's Central Department of Immigration and Border Police are presented below. The investigation deals with the results of the Indalo operation that Frontex (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) conducted at several points along the Spanish coast, which also involves actions taken in relation to potential trafficking cases. Spain's Central Department of Immigration and Border Police stated that the aforementioned investigation aimed

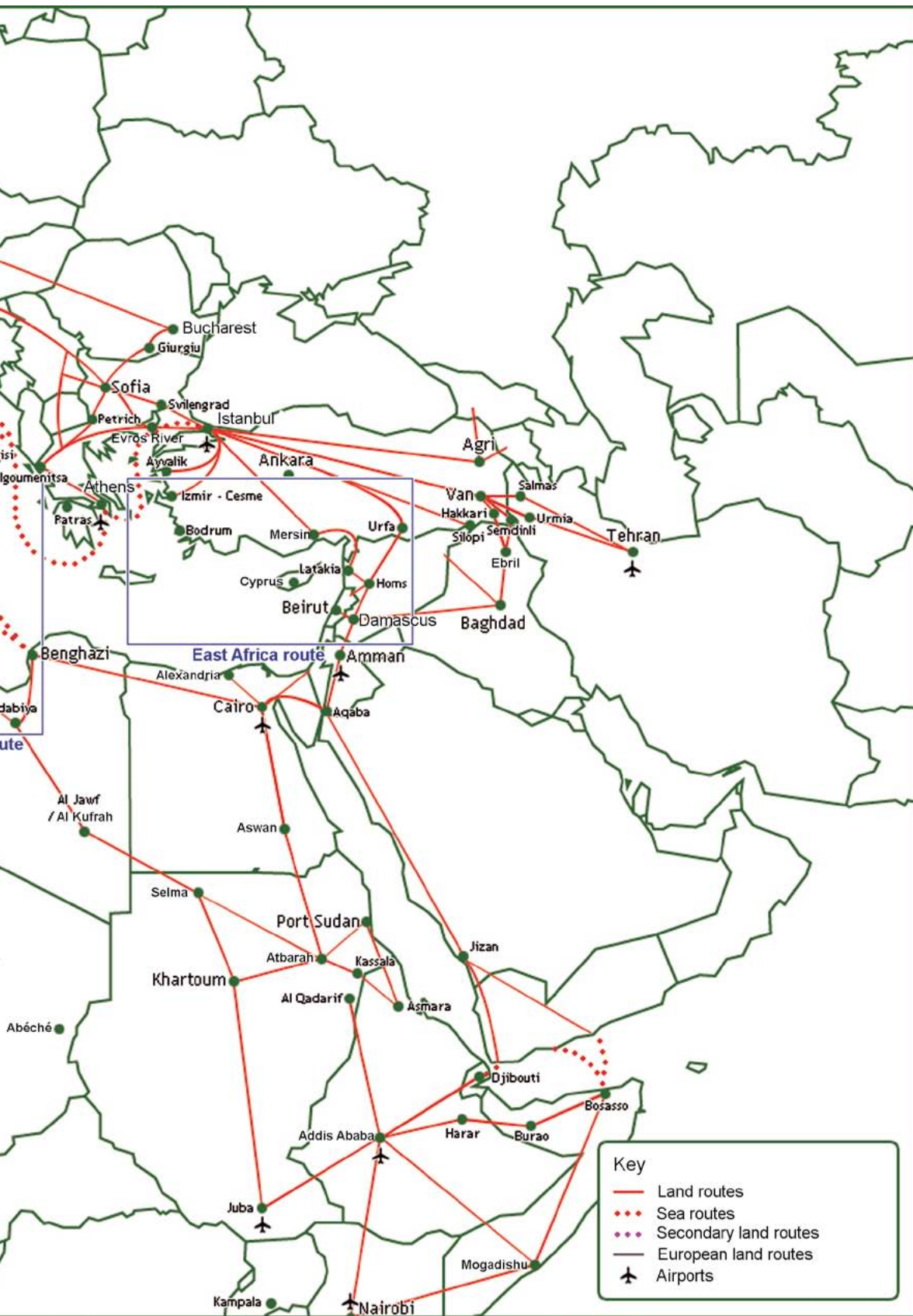
Of the 436 women identified in places of prostitution in 2009, only 51 were considered victims

No official data on potential victims who arrive to the southern shores or to Barajas

Mediterranean and African routes for irregular immigration



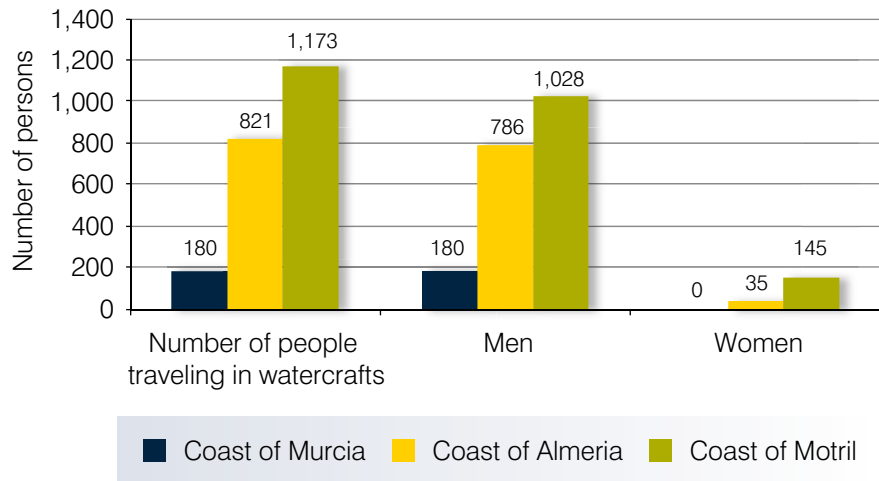
Source: I-Map ICMPD (International Centre for Migrant Policy Development) with collaboration with Europol and Frontex. In house



to unite different States of the European Union and Schengen area in order to effectively control external borders, the sighting and interception of undocumented immigrants in boats, etc. It was begun in May of 2011 and focuses on three working areas: Granada, Almeria and Murcia.

Indalo FRONTEX Operation data

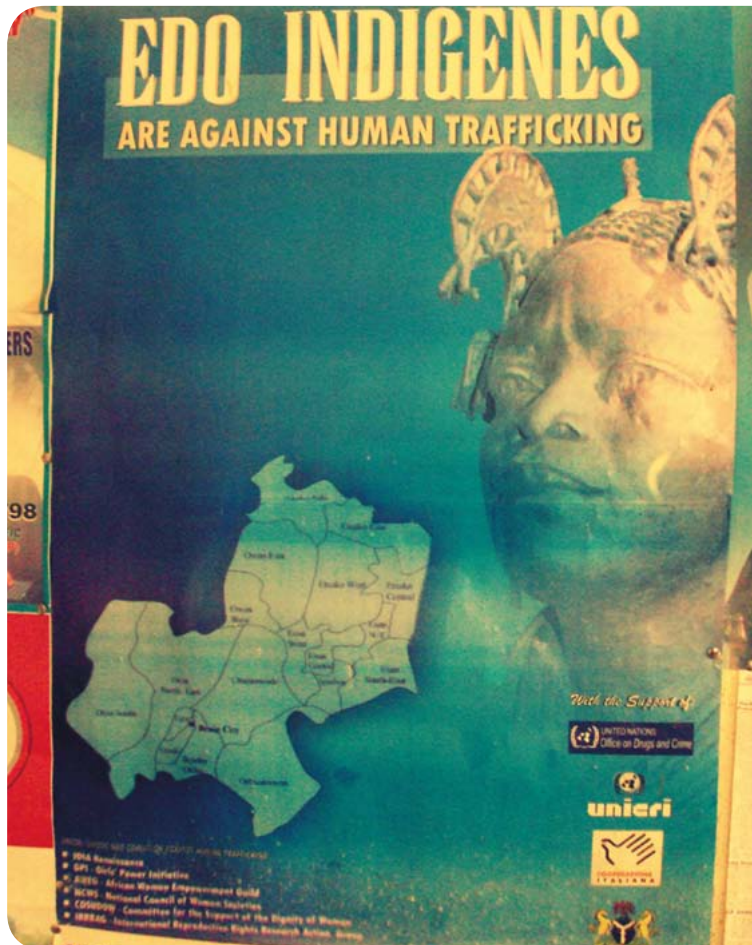
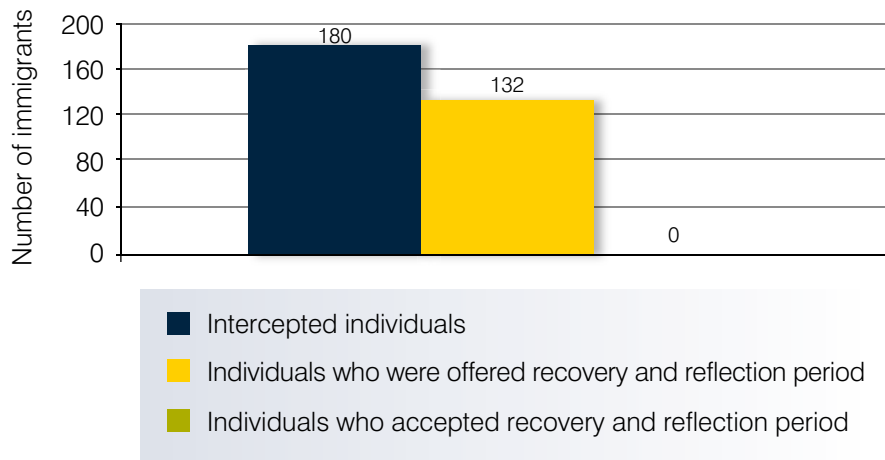
In 2011 an investigation was opened regarding an operation carried out at the Spanish Coast



Source: Spain’s Central Department of Immigration and Border Police. In-house compilation.

Along the same lines, in February of 2012, the aforementioned agency reported that 132 people had been offered the opportunity to take advantage of the provisions outlined in Article 59 bis of Organic Act 4/2000, which they all turned down. It was also noted that in the opinion of the agency, people intercepted trying to reach the coast of Granada, Murcia and Almeria are usually victims of human trafficking, while adding that “the profile of sub-Saharan women and children may be considered more likely to fall victim to human trafficking.” Regarding the latter, it was noted that they arrived to Motril and that they were mainly Nigerian women.

Recovery and reflection period in Indalo operation



In mid 2011, the media informed the Ombudsman Institution of a small open boat carrying thirty women of sub-Saharan origin that had landed on the Spanish coast. Most of the women claimed to be Nigerian; there were nine pregnant women and ten minors. It turned out that one of the women, who claimed to be a minor, had previously been returned to Nigeria after she was intercepted trying to enter Spain illegally via the same route. Hours after being intercepted, all of the women were offered the recovery and reflection period, which they refused. They were informed that they would be sent back for attempting to enter Spain illegally. However, on humanitarian grounds, several of them were not admitted to Immigrant Detention Centers. Mothers were taken with their children to shelters, whereas several pregnant women were released. At various times, the women voluntarily left the shelters with their children. Some claimed to have a friend waiting for them in Madrid, while others simply disappeared from the center and took their children with them, thereafter being declared missing.

A few months later, after a complaint was filed by an NGO, it was discovered that three Nigerian women had been admitted to an Immigrant Detention Center. This was in an effort to enforce the decision to return them to their country, based on their attempts to illegally enter Spanish territory months previous. The police stated that the women had been identified on the street while they were engaged in prostitution, and that following their arrest, they were once again offered the recovery and reflection period that they had previously rejected. The police also began a prosecution based on neglect of their children, as the children of three of the women were found in a home with two adults who claimed not to know their mothers, stating that they only shared housing with them.

The NGO that addressed the Ombudsman Institution requested its intervention, considering that four children of the three women had been taken in by a child protection center. The NGO expressed concern that the women would be deported without their children. The organization also stated that, despite their refusal of the recovery and reflection period, there were clear indications that the women were victims of human trafficking for sexual exploitation. Thus, the NGO requested that they not be deported until the identification procedure was completed with the involvement of specialized organizations that offer support to victims of trafficking.

The police did not grant their request, and requested authorization from the Public Prosecutor's Office to proceed with the deportation of the three women. The Public Prosecutor's Office authorized the deportation, provided that the children accompanied them. However, when the women's period of detention was nearly over, they submitted an application for international protection. Having spent the maximum period of time allowed in detention, they were eventually released before the asylum process was completed.

The regional autonomous child protection center performed a DNA test, and confirmed there was no reason to take protective measures, as the children were in good health and showed no signs of neglect or abuse. Subsequently, the children were returned to their mothers.

The circumstances described in the previous case occur with alarming frequency, as seen by the Ombudsman Institution's monitoring of police operations to identify potential Nigerian victims of trafficking for sexual exploitation.

First is the women's widespread rejection of the recovery and reflection period offered by police hours upon their arrival to Spain. There is also a significant lack of applications for international protection on the part of undocumented individuals who attempt to enter the country and who are detected along the coast, mainly in the south of the peninsula.

Moreover, women who are in late stages of pregnancy or who are accompanied by young children are frequently not admitted to immigrant detention centers, but rather are released or handed over to social organizations with humanitarian aid programs. Data on the adults, such as their photographs and fingerprints, is recorded in the police database for immigrants, together with a resolution ordering deportation for having attempted to access the country illegally. Together with this data, since 2011 this registration process has also included refusals of the recovery and reflection. However, data on minors is not registered in any police database, nor is Child Protection Services made aware of their presence. Thus, once they leave the shelters where they were staying, monitoring and identification becomes very difficult. The mothers may subsequently be identified again by police, often as a result of immigration control operations in public places where prostitution occurs. In these cases, it is impossible to determine whether the minors accompanying them are the same ones with them when they entered Spain

There is a widespread rejection of the recovery and reflection period on the part of women

Data on minors is not recorded or reported to protection services



“10 ARRESTED IN ROQUETAS AFTER A RING OF PIMPS IS DISMANTLED”

Almería police have arrested ten people because of their membership in a ring of sexual exploitation of women, that withheld, mistreated and forced them into prostitution in Yegua Verde, an area devoted to intensive cultivation of fruits and vegetables located in Roquetas de Mar.

One month ago, the organization Women’s Link Worldwide published a report on the proliferation of pimps engaged in the trafficking of women, including minors, in houses and shantytowns located between greenhouses. This operation, which was the result of an investigation initiated in late 2010 by the Unit against Illegal Immigration Networks and fraudulent documentation (UCRIF) of Spain’s Central Department of Immigration and Border Police and the UCRIF of the Almería police, brings this reality to light.

The disbanded criminal ring threatened its victims with alleged practices of voodoo or the abduction of their family members in Nigeria, the country of origin of the ten women who have since been released. They were captured as early as 2005 from various Nigerian towns. The ring even used a fictitious NGO (Nigerian Progressive Women Movement) to catch the interest of their victims, who worked as prostitutes for years to pay off 50,000 Euros of debt to their captors, including four females.

The victims were transported with false documents by land from Nigeria to Morocco. They crossed other African countries including Benin, Niger, Mali and Algeria. Once on the Moroccan coast, the criminal ring was in contact with Moroccans, who sold them a spot on a small open boat to travel to the peninsula, in exchange for large sums of money.

(Published on Wednesday, May 25, 2011, in “elpais.com”)

*When detected by
police intervention,
it is difficult for
women to
collaborate*

The difficulty of identifying these victims and their subsequent collaboration with the authorities is still an issue for situations detected by police intervention within the country. The news reprinted here is an example of such. On the occasion of the investigation, Spain’s Central Department of Immigration and Border Police reported that interviews with potential trafficked women began to be documented in September of 2011. These reports are signed by the woman in question and include explicit reference made to organizations that could offer support. In this case, twelve women were informed by officials of the National Police of the option to take advantage of the recovery and reflection period. They all denied having been victims of crimes of smuggling and trafficking in persons for sexual exploitation, and thus after being informed in writing, they turned down their entitlement to the aforementioned period.

After performing these steps, proceedings began that were established by Organic Act 4/2000 in accordance with the immigration status of each of the detained, after

which, nine of the twelve women were released while three of them were admitted to immigrant detention centers. The latter were eventually released because it was not possible to provide them with legal documentation. Inquiries were made regarding their whereabouts and potential new detentions, and it turned out that one of those three women was identified and arrested again after engaging in prostitution in the same area in Almería. The other two did not appear on the new police data files. With regards to the other nine, one of them was identified as having been engaged in prostitution in the same area where she was arrested the first time; two had been arrested in relation to an offense of theft committed in Palma de Mallorca. As for the others, there is no new data in the police database.

Victims demand international protection when they anticipate imminent deportation

Regarding the legal proceedings, the Attorney General's Office became aware of the dismissal of the case brought by these facts. The judgment states: "Given the proceedings, at present this case does not appear to properly justify that a crime was perpetrated that gave rise to opening this trial. This is because the protected witness said in her statement that her entry into Spanish territory, made by boat in 2004, occurred without the direct or indirect intervention of any of the defendants. Once in Spain, she began to engage in prostitution, but stated repeatedly that she was not coerced or threatened for that purpose, but rather acted freely and voluntarily. While she mentioned that some girls were brought to Spain by one of the accused to engage in prostitution, she did not provide information that could enable the girls to be identified, nor was objective data provided that would corroborate this statement. Similarly, the search and registration proceedings conducted and the conversations intercepted that were incorporated into the intervention are not sufficient criminal evidence against the accused."

It is common that only once they are in detention centers and are facing imminent deportation, are they able to tell part of their story and request international protection, although in the first request they generally do not tell their true story. Regarding requests for the recovery and reflection period by Nigerian victims, it has been seen in nearly all cases that only when the woman is accompanied by a specialized entity, does she make this request.

The recovery period is only requested when accompanied by a specialized entity

The next chapter analyzes the data provided by the Ministry of Security regarding the number of residence permits granted to victims of trafficking in 2011, which are not broken down by nationality. However, the most recent official data, corresponding to March 2012, is on the number of residence permits granted on humanitarian grounds to Nigerian nationals, which amounts to 104 permits. It should be noted that permits on humanitarian grounds are not only granted to victims of trafficking, but are also granted in exceptional circumstances for international protection, cooperation with authorities, national security or public interest, to women who are victims of gender violence and for collaboration against organized criminal networks.

Many Nigerian victims sign a ritual pact, which requires them to pay off the debt of their trip

“The ‘juju’ ceremony implies a contract between the victim and the trafficker. If the victim does not fulfill her part of the bargain, she, her family, or successive generations may die. The girls believe in this, as it is part of their culture, and many go crazy if they do not comply with it. European authorities cannot understand this, as it originates before Christianity. Before, there were other gods and these Nigerian women believe in these gods; they believe so much that it works. In Nigeria, if you are not a Christian or a Muslim you are an animist, which is the traditional religion. There are different gods for different things.”

(Excerpt from an interview with a member of a religious congregation working with victims of trafficking in Nigeria.)

Women are not aware of the extent of the debt

Finally, another characteristic of Nigerian victims of sexual exploitation is the importance throughout the process of the so-called “emigration pact”, which the woman signs and which binds her to return all of the money to a person known as a sponsor. The sponsor is responsible for paying all travel and living expenses abroad, including documentation and the cost of travel to the traffickers.

A study by the International Organization for Migration titled *Migration, Human Smuggling and Trafficking from Nigeria to Europe* (2006) describes in detail the nature of the so-called emigration pact, summarized ahead so that the concept may be properly understood. Women must engage in prostitution for two or three years in Europe in order to pay off the debt. In addition, several studies show that many women are not aware of the extent of the debt contract, as they are unfamiliar with European currency.

Traffickers use local religious traditions as an element of abuse

Once the woman agrees to go to Europe, the migration pact is confirmed and sealed in a shrine, in the presence of a religious leader (ohen) that seals the pact by acting as a judge. The woman and her *madam* or sponsor, visit several shrines together. During these visits, a package is created with various symbolic items. This package becomes a concrete expression of the covenant between the two, and often also functions as a lucky charm for the woman. The package contains human material, possibly from both of them, such as fingernails, hair, and in the case of the women, underwear with traces of menstrual blood. Other common objects in the packages are kola nuts and 13 pieces of bent metal and soap, which symbolize loyalty, the power of the god Ogun (especially important for travel), and beauty.

Visits to the shrines may also include animal sacrifices and other rituals with complex meanings. The woman may have to drink organic material or undergo cuts of a particular manner on their skin. Women undoubtedly perceive these rituals in a manner that is overwhelming but not necessarily oppressive or threatening. They are perceived as being necessary and involved in the spirit world; there is an element of control and inspection, but they do not amount to a loss of the ability to express

one's own wishes or to make one's own decisions. By contrast, this connection to the spiritual world may be understood as a natural part of a woman's desire to travel to Europe.

Later in the process (if something goes wrong from the point of view of the traffickers), local religious traditions may often be evoked as a clear element of abuse. Moreover, if women do not cooperate after arriving to Europe, they may be subjected to a mixture of physical violence and new rituals. In conversations with Dutch investigators, women referred to this as "voodoo", as opposed to the rituals performed in Nigeria. Thus for them, the word voodoo implies a malignant form of magic used to ensure their exploitation, rather than a pact between both parties. The traffickers themselves often possess the same faith in these magical powers that their victims do. Through wiretaps during trafficking investigations, Italian investigators witnessed many examples of "madams" in Italy asking the "madam" in Nigeria to help them perform magical rituals to keep the police away.

If women are uncooperative when they reach Europe, they are subjected to physical violence and new rituals

"You can only cancel out the 'juju' with continuous prayers, asking God to take care of her and her family. Many of these girls cannot fully recover in Europe because only physical and psychological recovery is offered to them, and they need spiritual rehabilitation. Many psychological problems are caused by the 'juju'."

(Extract from an interview with a member of a Nigerian NGO.)



More and more frequently, the woman or her family must commit through a written contract in which the family home becomes the guarantee of debt payment. The pact with the sponsor is very important for the woman. First, she may fear that if she breaks the covenant, her physical and mental health will be affected. In addition, the pact is seen not only as a promise to the other party, but also to her local community in Nigeria; breaking the pact represents an embarrassment to the whole community.

From a subconscious standpoint, breaking the pact is considered unthinkable for these women. A Nigerian woman in Italy expressed this in the following manner: “You are tied to them, you are bound by this oath, you are bound to respect it. And there are those, I cannot explain it, those who give you orders because of this oath. They must give you orders, control you, and you are obliged to respect this”.

“We have even accompanied them to the ‘juju’ site to undo it, as another solution. Return to the site so that the photos, pubic hair and other things used for the ritual are returned to them. This usually occurs once you are out of the debt because above all, you have to pay, you cannot talk, cannot escape, you cannot say anything to the police; you have to pay off this debt and once you finish paying it, then the victim is free. “

(Extract from an interview with a member of a Nigerian NGO.)



c. BRAZIL AND PARAGUAY

American Itineraries: Brazil-Paraguay.



Source: The Office of the Secretary of State for Security. In-house compilation

The UN report cited previously, titled *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010), references Brazil as a country where human trafficking for sexual exploitation appears to be controlled by European and Asian organizations. Around a third (52 of 161) of the “recruiters” sampled in a study were European or Asian. Other studies reported that trafficking of Brazilian women in Spain and Portugal occurs through the coordination of different groups that seem to be dominated by Russian groups. Chinese organized crime groups operate from mafia-style secret societies to street gangs and informal crime networks. Triads are traditionally hierarchical, but not all forms of trafficking in persons occur in this manner. In Europe, these groups are increasingly involved in the business of sexual exploitation.

There have been cases of victims forced to “hire” friends or family members

In the context of trafficking in Latin America, there have been cases of victims forced to “hire” their friends or family members. Traffickers in Latin America also use the entertainment industry, modeling, employment, marriage and travel agencies, as

well as newspaper ads to recruit their victims. Because of the great distances, transport from Latin America to Europe usually occurs by plane to major airports. Sometimes three-month tourist visas are used to cross borders. On occasion, trafficking victims going from Brazil to Europe travel through countries that fall under the European administration in the Caribbean or South America, to reduce their risk of being detected in Europe. Suriname is also a transit country to Europe. Once in Europe, the victims are exploited on the street or in establishments, depending on the destination country.

In the latest annual report on human trafficking by the U.S. State Department, published in June 2012, Brazil is referred to as a country of origin for men, women and children trafficked for sexual exploitation. With respect to Europe as a destination for victims, the report points to Spain, Italy and Portugal, among other European countries as being destinations for sexual exploitation of Brazilian women. It also emphasizes that Spain and Italy are countries of destination for Brazilian transsexuals trafficked for sexual exploitation.

Of the 2,551 women identified in 2010, only 272 were considered victims

In the report *Inhuman Trafficking* (2010), the Ministry of the Interior of Portugal, through the Portuguese Observatory on Human Trafficking, is also noted as being a high-ranking nation for Brazilian women who are victims of trafficking for sexual exploitation. The report also makes an interesting analysis of the difficulties in initially identifying these victims, warning of their invisibility in many occasions. It quotes an excerpt from an interview with a police officer that summarizes the situation: “We see a Brazilian woman, totally free, and the tendency is probably not to see her as



a victim of trafficking. This does not mean that she is not a victim; but that the circumstances that occurred from the beginning, before coming here, cannot define her as a trafficking victim... “.

In 2009, according to the CICO, 1,413 at-risk Brazilian women were identified during inspections that took place in places where prostitution occurs, while in 2010 the figure grew to 2,551. However, in that same year, 2010, 272 Brazilian women alone were eventually identified as victims of sexual exploitation, of which almost all (264) were considered victims of trafficking for sexual exploitation.

The profile of people at risk (as defined by the CICO, a person found as a result of inspections to be engaged in prostitution) coincides with that of victims of trafficking for sexual exploitation. Those profiles correspond to those of a Romanian woman between the ages of 18 and 32, and a Brazilian woman between the ages of 33 and 42.

The presence of Brazilian women who fit this profile is especially relevant in Galicia, as the government of Galicia, together with the governments of Brazil and Portugal, take part in a project called ITINERIS. It is funded by the European Union in order to protect the migrants, who come from Brazil to the European Union, from exploitation. The project, which began in June 2011, has the general objective of protecting the rights of migrants, especially against exploitation and human trafficking. It also seeks to prevent irregular migration through *in situ* information campaigns—in the country of origin, Brazil—to improve the ability of state governments to combat human trafficking, and to strengthen national and international cooperation in the field of human trafficking. The government of Galicia will participate in the program, among other contributions, by conducting a study on the occurrence of trafficking of Brazilian women within our borders, as well as the reasons for migration, the rights of migrants—legal and illegal, the protection of their rights here and the needs of women migrants.

They fit the victim profile of a Romanian woman between 18 and 32, and a Brazilian woman between 33 and 42

Maria is 20 years old and since she was a child, she has suffered sexual violence at home. After an argument with her mother, she leaves home. A friend offers her the possibility to go to Spain to work, and she readily accepts because she feels that there is no future for her at home.

Once in Spain, two men pick her up and take her to a club in a city in the northwest of the peninsula. Upon arriving there, they inform her that she will have to engage in prostitution to pay off “the debt of 5,000 Euros” that she owed them. She also meets a couple of her same nationality that warns her that they know her family, and that if she tries to escape, her family will suffer the consequences.

Maria refuses and tries to escape, but gets a brutal beating. From that moment, she is forced to have sex with different men and to consume drugs that enable her to be available for work at any time. A few months later, in desperation, she tells her story to one of her regular customers, who offers to help pay off her debt. After negotiations with the owner of the club, the client takes her from there and brings her to a hotel where they stay for a few days, until the client confesses that he has no money to support her any longer and suggests he take her to another club where she will be treated better.

The situation at the other club did not improve, and moreover, Maria was terrified because the owners of the previous club threatened to harm her family for having left. This goes on for nearly a year, until a customer gives her another brutal beating for refusing to have sex without condoms. Maria is treated at a hospital for injuries. After the trial, the client was convicted and the judge issued a restraining order so that he could not go near Maria.

Maria did not tell what was going on at the hospital or the Court, and she returned to the club. A few months later, police conducted an inspection and brought her to the police station for residing in Spain without documentation. Maria was terrified; no one asked how she felt and she was only informed that she was not in Spain legally and that she had to sign a paper and leave Spain. The lawyer who assisted her explained that the next time the police found her, she would be deported from Spain.

When she left the police station, Maria had nowhere to go and she returned once again to the club. Three months later, during another police operation she was stopped and, after court approval, was taken to an immigrant detention center to be sent

*back to her country. Maria was desperate, as she could not return home; there was nothing there for her and she had not paid off the debt. She decided to seek asylum, which was not accepted for processing. However, during the proceedings, UNHCR found that Maria was a victim of human trafficking and alerted an organization that specializes in detection and support for trafficked women. They interviewed her in an immigrant detention center. Given the imminence of the deportation, the organization brought Maria's situation to the attention of the Court that had authorized the detention, the Immigrant Task Force of the province where she was detained, and the Ombudsman Institution.

After several steps, the expulsion was suspended and Maria was declared a protected witness in criminal proceedings had been initiated against the owners of the club. In addition, the lawyer requested from the Government Sub-delegation the recovery and reflection period provided for in the Foreign Nationals Act. Maria was released, although the Government Sub-delegation rejected her application because she was considered to be already sufficiently protected by her protected witness status. Maria could not stand the pressure from the members of the criminal gang, and decided to return to her country. Criminal proceedings continue, but an order of dismissal has been issued for one of the accused due to lack of evidence. The deportation order issued against Maria remains effective, with a ban on her entry into Schengen territory for five years. In police records, she has not been identified as a victim of trafficking, as she was denied the recovery and reflection period.

The case presented is a good example of the difficulties in the identification of Brazilian trafficking victims. In light of the complaints received and investigations conducted by the Ombudsman Institution for this report, it is clear, as noted in the report *Inhuman Trafficking* by the Portuguese Observatory on Trafficking in Human Beings (cited above), that the lack of effective identification of these victims is an issue of major concern.

In this case, Maria came into contact three times with various authorities that failed to identify her as a victim of trafficking. Thus from the first moment, even though her attacker was convicted of the injuries he caused her, no thorough investigation was conducted regarding the conditions in which the victim found herself. Later, during the initiation of disciplinary actions due to her illegal immigration status, she was not identified as a victim, but rather as an undocumented immigrant. Finally, the police and courts (with the approval of the Public Prosecutor's Office) proposed her detention, with legal assistance, without anyone detecting any evidence of her status as a trafficking victim. At no point did the victim inform the authorities of her situation until she was in the detention center. However, evidence came to light during the proceedings, such the injury and subsequent criminal conviction of the* aggressor and the criminal proceedings against club owners initiated by the testimony of other victims. In the opinion of the Ombudsman Institution, these facts, together with the origin of the victim and the area in Spain where she was exploited (in that part of Spain, several criminal networks have been dismantled that sexually exploited women of that nationality) are sufficient evidence to conclude that it is necessary to strengthen the protocol for the identification of victims, in cases like the one told here.

In addition, this case is a good example of how the measures taken for the protection of a victim of trafficking may interfere with their rights. The execution of the deportation order against the victim was suspended by order of the Examining Magistrate Court under the provisions of Article 59 of Organic Act 4/2000 (cooperation against organized crime networks) and not according to Article 59 bis (victims of trafficking in persons); that same day she was granted protected witness status in accordance with Organic Act 19/1994, of December 23rd, and it was decided that her detention would be terminated.

Therefore, the protection afforded to the victim depended on criminal proceedings in the instructional phase, in which several people were accused of committing a number of crimes, including human trafficking. However, it may be that through the proceedings, the investigation cannot be continued against one or all of the perpetrators—this is, in fact, what happened to one of the perpetrators. Therefore, the protection granted to the victim failed to take into account, first, that she was a victim of trafficking; rather, her protection was linked to the course of criminal proceedings whose outcome is uncertain. The specialized entity that assisted the victim at the immigrant detention center warned about the importance of ensuring the protection of the victim, regardless of the course of criminal proceedings.

The lack of effective identification of these victims is a major concern

According to the Ombudsman Institution, it is necessary to strengthen the protocol for identifying victims

We must ensure the protection of the victim regardless of the course of criminal proceedings

According to the Ombudsman Institution, the Government Sub-delegation should have continued the proceedings referenced in Article 59 bis and should have immediately given the victim the provisional authorization to reside and work, as well as revoked its decision to deport her. The investigation that was begun could not be completed because, as previously mentioned, the victim left Spain before the end of the criminal proceedings, leaving the entity that addressed the Ombudsman Institution unaware of her current whereabouts.

Finally, regarding the situation of Brazilian trafficking victims, it must be noted that at the time of preparing this report, criminal proceedings remain open before the Examining Magistrate Court in Lugo regarding the existence of a criminal network of exploitation against women, mainly Brazilian, in which a large number of people are involved, including members of the State Security Forces and other officials of various ranks. The Ombudsman Institution is monitoring the status of the criminal proceedings by the Office of the Attorney General, which has reported that 11 witnesses are protected, and that 132 deportation orders were suspended. Furthermore, the Public Prosecutor's Office reported that it has urged competent authorities to issue to some of the victims authorization to reside and work; the Ombudsman Institution is monitoring the status of these official records.

Paraguay is the third most common nationality of victims

With regards to Paraguayan victims of trafficking for sexual exploitation, the CICO data for 2010 placed Paraguay as the third most common nationality of victims, with 144 people identified at risk and 142 identified as victims of trafficking for sexual exploitation. The U.S. State Department, in its Annual Report, points to Spain along with Chile, Argentina and Bolivia as being major destination countries of Paraguayan trafficking victims for sexual exploitation.



IDENTIFICATION AND PROTECTION OF VICTIMS IN SPAIN

*“They said they would give me residency
if I collaborated, which I know is required by law,
but they didn’t give it to me”*

The existence of effective procedures to identify victims and provide them with human and material resources to assist them is necessary in order to respect and protect their rights. However, we cannot forget that anti-trafficking measures may have a negative effect over the rights and freedom of the victims, as well as on other people.

Anti-trafficking measures may have adverse effects.

Examples of anti-trafficking measures that may adversely affect established rights:

- *Detention of trafficked persons in immigration or shelter facilities;*
- *Prosecution of trafficked persons for status-related offences, including illegal entry, illegal stay and illegal work.*
- *Denial of exit or entry visas or permits- whether generally applicable or only in relation to a group of persons identified as being especially vulnerable to trafficking;*
- *Denial of the right of all persons, including those who have been trafficked, to seek asylum from persecution;*
- *Denial of basic rights to migrants, including migrant workers and those not lawfully within the territory of the State;*
- *Raids, rescues and other “crack-downs” that do not include full consideration of and protection for the rights of individuals involved;*
- *Forced repatriation of victims in danger of reprisals and re-trafficking;*
- *Denial of a right to an effective remedy;*
- *Violation of the rights of persons suspected of or convicted for involvement in trafficking and related offences, including unfair trials and inappropriate sentencing; and*
- *Laws and procedures that authorize any of the above.*

(Source: Office of the United Nations High Commissioner for Human Rights. “Recommended Principles and Guidelines on Human Rights and Human Trafficking”. United Nations, 2010.)

Therefore, in this section we will analyze current identification protocols, as well as the existing resources for the protection of victims. We will focus on measures that might interfere with other rights, especially in the case of minors and trafficked persons in need of international protection.

“Sometimes States focus on victims for the information they can provide or their usefulness to the criminal justice system. In their rush to achieve objectives (such as to prosecute traffickers), the victim may be treated as a pawn and not as a human being in need of protection and assistance.”

(Source: United Nations. Office on Drugs and Crime. «Toolkit to Combat Trafficking in Persons». Vienna: United Nations, 2007, page 106.)

1. Identification Protocols

The Council of Europe Convention dedicates Chapter III (Articles 10 to 17) to the protection and assistance of human trafficking victims. This chapter is an essential part of the convention that puts trafficked persons at the center of the fight against human trafficking.

Barriers to an effective protection system for victims of human trafficking:

- *the confusion that surrounds the respective definitions of trafficking and smuggling, as well as the overlap that exists between two phenomena, especially when an individual begins as a willing migrant, seeking better opportunities in another country, but becomes a victim of human trafficking during transit or upon arrival in the destination country;*
- *the time and resource intensive nature of the investigation process required to determine whether a person has been trafficked, as well as the incentive for immigration officials to identify individuals as smuggled migrants rather than as trafficking victims, in view of the weaker responsibilities of states toward the former group;*
- *The mistaken assumption that trafficking victims may have consented to their exploitation, especially when they are engaged in sex work and other activities that meet with the general disapproval of society;*

- *Inadequate training provided to law enforcement and immigration officials with respect to the identification and protection of trafficking victims, coupled with the silence of the Trafficking Protocol in relation to the obligations of states in this area;*
- *a failure to understand that the defensive, uncommunicative and erratic behavior of individuals may be a result of the trauma that they have suffered or the fear of reprisals by those responsible for them being trafficked; and*
- *the frequency with which a failure to accurately identify trafficking victims leads to immediate deportation or detention, sometimes even without due process or legal assistance.*

The Spanish legislation regulating the identification and protection procedure for victims of trafficking has taken into account the obligations stipulated in the aforementioned Convention, as it came into force in our country. Article 59 bis of Organic Act 4/2000 states in its first paragraph that: “According to Article 10 of the Council of Europe Convention of 16 May 2005, on Action against Trafficking in Human Beings, competent authorities shall carry out necessary actions in order to identify victims of human trafficking.” Even so, an effective procedure for the identification and protection of trafficked persons in Spain has not been developed yet. Later on, we will analyze the main flaws of this process, taking into account foresights and comments from the Convention’s explanatory report.

Considerations concerning the identification of victims of the Directive 2011/36/EU have also been taken into account, as well as the general comments made by several United Nations and European Union agencies.

We will then carry out a separate analysis of the situation of underage victims as well as of victims that need international protection.

1.1. TRAINED AND QUALIFIED STAFF

The Council of Europe Convention on the Action against Trafficking in Human Beings states in Article 10.1 that each Party shall provide its competent authorities with people who are trained and qualified in preventing and combating trafficking of human beings, as well as in identifying victims. The call for states to have competent authorities trained and qualified to accurately identify victims of human trafficking, is a basic issue repeated in every international and regional instrument, as well as in diverse strategic plans.

The Convention’s explanatory report points out that national authorities are often insufficiently aware of the problem of trafficking in human beings. Victims frequently have their passports or identity documents taken away from them or destroyed by the traffickers. In such cases they risk being treated primarily as illegal immigrants,

Effective identification and protection procedures have not yet been developed

Competent authorities must be trained and qualified

Competent authorities refer to those public authorities, which may have contact with victims

prostitutes or illegal workers and being punished or returned to their countries without being given any help.

The expression “competent authority” is also analyzed, pointing out that it refers to public authorities, which may have contact with trafficking victims such as the police, the labor inspectorate, customs, the immigration authorities and embassies or consulates. The agreement demands that States have qualified, trained personnel to deal with different aspects of human trafficking.

In 2008, an investigation was initiated in order to determine actions taken during a police operation

In 2008, the Ombudsman Institution initiated an investigation in order to determine actions taken to identify potential victims of trafficking during a police operation meant to dismantle an organized crime ring that operated in different Spanish cities. Information was requested regarding the state of the police investigation and the relevant court as well as the procedural status of the suspects arrested. Likewise, information was requested on the number of women arrested for illegal immigration status, including data on the number of expulsion and repatriation rulings to date and the number of victims that had been offered a reflection period in accordance with Directive 2004/81/EC.

The results of the police operation were widely reported

The results of the police operation were widely reported in the press with headlines such as “the biggest police operation against Russian trafficking rings in Spain”, “the number of detained female victims of sexual exploitation under the crime ring rises to 599” Twenty six out of 82 inspections in 6 provinces took place in strip clubs and 56 in private homes. This information was also used to conclude that “more than 10,000 women could have been victims of trafficking by that crime ring, highlighting evidence that women have been sent to other countries such as Italy, Greece, Japan, and Korea”. Other information included the physical state in which these women were found: “They were treated as merchandise for profit by traffickers, as evidenced by houses of multiple occupancy where the victims were staying [...] The women were further coerced to follow rules with financial penalties.” The press release also emphasized that the evidence found included “several Russian passports belonging to young women of that nationality”.

The police operation was not successful in relation to the treatment of trafficked persons

On one hand, the operation seemed to be successful as potential perpetrators were arrested and accused of crimes against the rights of foreign workers, money laundering, and sexual exploitation; however, according to an NGO that contacted the Ombudsman Institution, the operation did not seem as successful with respect to the status of the detained women, clearly identified as victims of trafficking.

Once the requested information regarding the potential victims was obtained, it was possible to verify that only twenty of them were receiving proper treatment as protected witnesses, despite the fact that the police record stated that all of the victims had been offered that option. All the detained foreigners who had illegal immigration status in Spain were investigated for illegal immigration and the police proposed

their deportation from Spanish territory. Eighteen women did in fact report that they had been victims of trafficking by the dismantled crime ring. Procedures were begun to withdraw the deportation orders of these 18. In the end, only eight of them confirmed their allegations in front of the jury, whilst the other ten were either in the process of confirming or their whereabouts were unknown.

According to the Ombudsman Institution, what the police had considered as “due process in expulsion proceedings” was a police operation that had focused on the illegal status of victims, perhaps hindering their collaboration, and certainly, their identification as trafficking victims. In their defense, police authorities claimed that “it wasn’t demonstrated, after the police operation, that they were victims of trafficking and none of them requested protection under Article 59 on collaboration against organized crime of the Organic Act 4/2000 of January 11th. On the other hand, these individuals, besides having an illegal status in Spain, did not have a home address, which usually implies bonds with our country (family or work). They were working as prostitutes, an activity that is not recognized by the Spanish labor legislation. This could also mean that they did not have access to basic resources, which was a strong argument to propose their deportation from the country.”

However, the police did recognize that there were reasons why the victims did not want to report the crime, which included: “fear of reprisal either on themselves or their family; threats from the traffickers claiming that they would be deported; debt bondage, either with the traffickers or with other people that helped them get to Spain and that they would not be able to pay if they quit prostitution; mistrust of police based on former negative experiences suffered in their own countries, and finally, the belief that sooner or later the traffickers would find out who made the accusations, and the victim would suffer the consequences.”

Based on the aforementioned events, the Ombudsman Institution issued a recommendation to the General Directorate of Police aimed to improve the detection of potential victims, as well as the training on human trafficking for police officers.

Instructions should be issued to the Provincial Immigration and Documentation Brigade so that potential female victims of trafficking are not deported from our country because of their immigration status and before all the necessary procedures have been conducted in order to help them leave the human trafficking ring.

Also, officers from the National Police Force who are in charge of investigating these types of crimes should receive better training on human trafficking, particularly for the trafficking of women for sexual exploitation.

(Recommendation addressed to the General Directorate of Police and the Civil Guard in May 2009.)

The police operation had focused on the fact that the victims were illegal immigrants

There were reasons why the potential victims did not want to report the crime

Recommendations have been made to improve procedures for the detection of potential victims

Recommendations on the training of law enforcement authorities have also been issued

The General Directorate of Police and the Civil Guard accepted the recommendations, committing to improve the training of police officers in issues related to human trafficking as well as procedures to accurately identify potential victims. However, although improvements have been made, it is necessary to continue demanding better training for officers.

Major advances include Article 141.2 from the Regulation of Organic Act 4/2000, which states that: "2. Officers that have specific training in the investigation of human trafficking and in the identification of its victims will be in charge of identifying the victims".

Since this recommendation was taken into account at the end of 2009 up until the publishing of this report (July 2012), the Ombudsman Institution has monitored the impact of the measures announced for improving officer training in victim identification procedures.

In 2011 action was taken regarding the case of an underage female Nigerian citizen who was requesting asylum, and who was a potential trafficking victim

On April 2011, an organization contacted the Ombudsman Institution with regard to a female Nigerian citizen, who was a presumed minor and potential trafficking victim requesting asylum at the Spanish border. Victoria had arrived to Spain in a flight that came from an Eastern European capital. She was carrying with her a Spanish passport with a different name, which had then been stolen. From the start, she told the police officers that the passport was not hers, and that she got it from a Nigerian man who assured her that it would help her to get into Spain. She declared that she was a minor and considering what she stated during the asylum procedure interview, it could be concluded that she could be a victim of trafficking for sexual exploitation. Her claim to international protection was denied six days after she had arrived at the



border crossing, and so was the review of the claim, 48 hours later. The organization appealed this order in the National High Court, achieving a temporary delay on Victoria's deportation until a final resolution came through, taking into account the claim for precautionary measures.

Ombudsman personnel, accompanied by a trafficking victim detection expert, made an inspection visit to the border post without previous notice, according to the visiting protocol of the Ombudsman Institution. During the visit, it was ascertained that, nine days earlier, the Sub-directorate General for Asylum had notified the border post that the aforementioned party could be a trafficking victim and this did not appear in the reports. Under the request of the Ombudsman Institution, a room in the border post was prepared so that the victim detection expert could have a private interview with Victoria. The interview lasted approximately two hours, and the conclusions are listed below. It is important to point out that at the time Victoria had already spent fifteen days in the border control station.

At the end of the interview, the person in charge of the border crossing said that instructions had been sent to initiate the procedure stated in Article 59 bis, Chapter 2 of Organic Act 4/2000, regarding victims of human trafficking.

The interview was carried out in a multifunction room used by officers and people waiting to be interviewed during the asylum procedure, instead of in a room with basic privacy conditions. The officers in charge of the border control stated that this was the first interview to be conducted there, in compliance with Article 59 bis 2 of Organic Act 4/2000.

Personnel from the Ombudsman Institution did not directly take part in the interview, but followed it at a distance. After conducting an initial interview with the aforementioned party, the expert accompanying the Ombudsman Institution, considering the emotional state of the potential victim, suggested that she took part in the police interview and asked if she could explain to the potential victim why that interview had to be conducted. The border patrol officers agreed to this and the Ombudsman Institution delivered strict instructions to the expert to refrain from interfering in any way with the interview: the expert was allowed only to take notes for the report. A female police officer and an English interpreter from Spain interviewed the potential victim. Both of these individuals declared that it was the first time that they had taken part in this type of interview.

The content of the interview was summed up in a document named Information Certificate of Legal Precautions, mentioned in Article 59 bis.2 of Act 4/2000, in which the statement of the person concerned is also included: "She lived with her mother until she passed away five years ago as a result of breast cancer. From that moment on she lived with her aunt and her husband, where she was battered and humiliated by both of them. She was also sexually abused by the husband and became pregnant. When she told her aunt about the situation, the latter did not believe her and, instead, kicked

A room at the border post was prepared so that the trafficking victim detection expert could conduct a private interview

The police interviewed her with the help of an interpreter



her out of the house. She began to live on the street, eating out of garbage cans. During this time, three men raped her, but she did not place charges since she thought that the authorities would not believe her.” She added the following: “during the time she was living on the street, she met a man who helped her and took her into his home so that she could bathe. She does not have much information on this man, except that he was black and that he spoke English. He also took her to a hospital in Nigeria, where an abortion was performed”. The person concerned also stated that “after the abortion took place, he told her that he would take her to Europe, where she would work for him [...] she had to make an oath and during the ceremony, her toenails and fingernails were cut off [...]”.

The Government Delegation and the Spain’s Central Department of Immigration and Border Police carried on with the investigation, in order to keep track of the status of the petition and the time it would take to deal with it. The Central Department of Immigration and Border Police informed that the person concerned had been interviewed a second time five days after the last interview and that once the information was reviewed, it was sent to the Government Delegation proposing that the recovery and reflection period be rejected, based on the following: “after carrying out a proper police investigation and procedure within the current regulation, we can conclude that there are no reasons to believe that (full name of victim) is a victim of human trafficking.”

Considering the events, the Ombudsman Institution sent to the Central Department of Immigration and Border Police, the Government Delegation and the Prosecutor a copy of the report prepared by the expert in detection of human trafficking victims who was present during the inspection visit at the border crossing. The report’s firm conclusion was that the person concerned was in fact a potential victim of trafficking, which is why the first step was to grant her a recovery and reflection period, as mentioned in Article 59 bis of the Foreign Nationals Act and subsequently move her to a safe environment where she would be protected and have access to resources

and facilities in order to fully recover. In addition, it was clearly stated that if this was not the case, there were enough reasons to believe that her life was in danger, whether she stayed in Spain or returned to Nigeria or Romania, the European country where she had began her trip to Spain.

After taking this information into account, the Ombudsman Institution was informed by the Government Delegation that it had decided to grant the aforementioned party a recovery and reflection period. She was therefore authorized to enter the country, after having spent 26 days in the border crossing post. She was moved to specialized residential facilities where she received a visit from the expert that had interviewed her for the first time at the border crossing. These are the most important conclusions from the expert's report:

As a result of the intervention by the Ombudsman Institution, she was granted a recovery and reflection period

→ *Status of the victim since her arrival to Spain*

On a first encounter, Victoria says that she feels scared and confused. She makes a constant reference to the people who have been questioning her since she arrived, and she identifies them as police officers from Spain and from the Eastern European country where she spent several months before coming to Spain.

"Police authorities are not interested in my story, they just want to learn more about X132, have more information on how I got to Spain and about things that I don't know. I'm scared. Why are the Spanish police interviewing me?"

Based on the information provided by the potential victim during the interviews before the inspection visit by the Ombudsman Institution, it is clear that the following principles – stated in documents from different international bodies and organizations specialized in working with trafficking victims – have not been taken into account. The expert's report is based on the assumption that Victoria was a minor, as she had mentioned herself.

Guiding Principles for conducting interviews

1. **Do no harm** (do not carry out an interview that will only worsen the situation): Victoria says that as days go by she feels even more scared and vulnerable.
2. **Adequately select and prepare an interpreter:** Victoria says that she has not been able to understand thoroughly what she has been asked by the individuals that have interviewed her since her arrival to the border post. During the inspection visit by the Ombudsman Institution, the interpreter stated that it was the first time she had taken part in this type of interview. In addition to this, it became clear through conversations held with staff from the Ombudsman Institution and subsequently during the police interview that the interpreter was not aware of basic terms used to identify victims of trafficking from Nigeria. For instance, the interpreter did not know the meaning of "juju".

Do no harm

Adequately select an interpreter

Get informed consent

3. **Get Informed Consent:** Make sure that the minor has provided informed consent (the right to remain silent, to understand thoroughly the content and purpose of the interview, to end it whenever s/he wants and to limit the use of the information provided throughout): Victoria mentioned that she had not been informed about the purpose of the interviews, nor had she agreed to partake in them. In addition to this, she pointed out that the interviews continued despite the fact that she had requested to end them because she wasn't feeling well.

Listen and respect implied risks

4. **Listen and respect each person's assessment of his/her situation and the risks to his/her safety:** Victoria felt that no one was concerned about the risks and dangers that she was exposed to in Spain and Nigeria.

Do not re-traumatize

5. **Do not re-traumatize:** (be prepared to respond to distress and highlight strengths): Victoria said that as days went by she felt more anguished (when the expert interviewed her, she had already spent fifteen days at the border crossing) and that the interviews she had had so far had scared her. She was especially afraid of the interviews she had with what she identified as the police officers from the eastern European country where she spent several months before her arrival to Spain. She asked constantly if she would be sent to jail in that country and she said that she was afraid of being murdered by "the men" when she returned there.

Put collected information to good use

6. **Make sure that all the information collected is used according to the Framework Protocol for the Protection of Victims of Trafficking:** none of the interviews that the aforementioned party describes were documented in the administrative file reviewed by Ombudsman Institution personnel during their inspection visit at the border post. The explanation given by officers in charge of the border crossing was that the content of the aforementioned party's description referred to the first contact she had with officers at the border controls, once they realized that the passport she had was not hers. As for the rest of the interviews, it was mentioned that the questions made by the officers who were taking care of her claim for international protection might have confused her. Finally, the authenticity of the interviews that she mentioned she had with officers in the eastern European country could not be verified.

Do not repeat the same questions

7. **Do not ask the same question more than once, even if you are not satisfied with the response:** Victoria said she was asked several times by different people about how she travelled and arrived to Spain. She insisted on the fact that she did not know how to answer that because the person that travelled with her was the one that handled everything.

«The police are not happy about the fact that I do not know the answers to their repeated questions [...] that makes me feel really bad [...] I do not know what is going to happen to me.»

→ *Summary of the interview the expert held with Victoria*

Victoria left Nigeria between November and December 2010. She says that she cannot remember the exact dates or places since before that she had never left Benin City. She lived alone with her mother who had died five years before with breast cancer and she moved to her aunt's house since she had never met her father, and her grandmother lived in a rural community outside the city. While she was living with her aunt, she did all the housework, thus she was not able to go to school. She took care of her cousins and was physically and verbally abused by her aunt. During the five years she lived there, she suffered sexual abuses by her uncle. She thinks that her aunt wasn't aware of this or chose not to do anything about it. When she became pregnant after being abused by her uncle, her aunt kicked her out in the middle of the night and she was not able to take any of her belongings with her. She spent several nights wandering around the streets with no food and was victim of sexual abuse. It was then when she met John, who seemed to be a nice man who offered to take her to his house, where she showered and ate. She also told him about her pregnancy and he helped her get an abortion, but it did not turn out well, and after excess bleeding he took her to the hospital. Victoria remembers that she was very tired and weak. After a couple of days, John told her that he and other people helped girls by taking them to Europe, so they could have a better life. She decided to accept this offer but John explained to her that first they would have to go to Ekpuma where she would take part in a "juju"¹³⁶ ritual, in front of the oracle.

When she's asked about the "juju", she falls apart and begins to cry, claiming that she is very scared because by talking about this she has broken the deal with the juju, which might kill her now. She adds that the "juju" is very powerful over those who believe in it. She then requests that we pray together because only God can defeat the "juju" and protect her.

During the ceremony her toenails and fingernails were cut off, as well as her hair, including pubic and underarm hair. In addition to this, Victoria participated in a sacrifice where she had to drink blood. She says that she cannot say what type of sacrifice it was but that after the ceremony she was bound to John "with her body and soul" until she was able to pay a 55,000 EUR debt (I try to explain to her how much that is in Nigerian Naira, the local currency, and she falls apart saying that it cannot be possible).

After the ritual, Victoria goes with John to Benin City in Lagos, where she waits for John to tell her that everything is ready to make the trip to Europe. When they get to the Lagos Airport, John handles all the paperwork and goes through the passport controls with her. After that, he tells her they've arrived to a European city but that it is not their final stop. Victoria spends some days locked up in several hotel rooms, where John treats her roughly and forces her to engage in sexual intercourse with him. He leaves her in the hotel rooms under threat, telling her that if she tries to escape, the local police will put her in jail because she is undocumented. She also remembers making a trip in a

taxi and going through a police control post where John shows her documentation to the police and they let them through. John was the one that handled the documents and paperwork at all times, and she only got them from him in the last airport they were at, before travelling to Spain. John explained to her that upon her arrival in Spain, she would be picked up by "his people", who would recognize her because they had her picture and would take her to a "madam". She says that she didn't have more information, that she knew nothing about those individuals or the "madam". She then adds that John or his people will kill her, that she is not safe. She says that she does not want to become a prostitute; she wants to go to school and study. When John mentioned the "madam" she thought he was referring to prostitution, and other Nigerian girls involved in it, but although she does not want to become one of them, she knows that John and the "juju" are very powerful.



This is a summary of the evidence that the expert took into account in order to conclude that the aforementioned party was a victim of human trafficking for sexual exploitation:

- RECRUITING:** There is evidence that the aforementioned party had been recruited by one of the sexual exploitation crime rings in Benin City. The oracle of Ekpoma was involved in her recruitment, as it is common practice in the agreements that the traffickers use with their victims.

The “juju” is one of the strongest resources used in Edo State to recruit victims of trafficking. The victims have a strong belief in their ancient traditions and they end up thinking that they belong to the trafficker until they pay their debt, believing that the “juju” will kill them or their families if they fail to do so. Victoria had not mentioned the oracle until the Ombudsman Institution intervened because she is afraid of it. She even had to pray during her last statement to the police about the ceremony. She will need the help of experts in order to overcome the implications that this type of recruitment brings along with it.
- TRANSFER:** The recruiter transported Victoria both within Nigeria and outside its borders and they crossed at least two border posts illegally. The alleged trafficker was in charge of transportation and the victim seems to have had no economic or personal resources to complete the journey alone. The fact that Victoria was travelling with documents stolen from a Spanish citizen in Madrid, which were then used in Nigeria, is quite significant. Victoria stated that during her journey her freedom of movement was restricted and that she had no access to the documents she was travelling with. The alleged trafficker told her that there would be people waiting for her at the airport in Spain, so that she could be taken somewhere she does not know.
- EXPLOITATION:** Victoria was told that she owed 55,000 EUR to the alleged trafficker and that she would have to work for him in order to be able to pay it back. She was not aware of the real value of this debt, nor did she know what job she had to do in order to pay it back, though she assumed it would be related to prostitution as she heard the alleged trafficker mention a *madam* in Spain.
- ROUTES:** Victoria was sent from Nigeria to a European country so that she could then be moved within the European Union borders. Nigerian trafficking rings for sexual exploitation are known for their wide range of mobility amongst European Union countries.
- PARTIES INVOLVED IN THE MIGRATION PROCESS TO SPAIN:** John: was potentially in charge of recruiting and transporting the victim. He had all the documents necessary to make the journey and was also in control of the potential victim (locking her up, abusing and raping her). “John’s people”: this is how Victoria refers to the group John belongs to and that would be in charge of transporting and controlling her for the remaining route. *Madam*: the person in charge

Signs of human trafficking

Recruitment by trafficking ring

Illegal border post crossing and restricted freedom of movement

She now is in debt bondage

Wide range of mobility amongst European Union countries

Traffickers involved

of controlling her after she was picked up by “John’s people”. Victoria did not want to add any more information regarding other people or potential victims.

Impact Evaluation

- **IMPACT:** A comprehensive physical and psychological exam that focused on the psychological consequences and repeated sexual abuse she was exposed to would be necessary.

Competent authorities at border crossings should be attentive

This case study is not anecdotal but one of many examples that show the significant absence of effective procedures needed to identify trafficked persons at border posts. Once several interventions were made after this one, the Ombudsman Institution alerted relevant authorities about the need to issue specific instructions to those in charge of border posts, so that they could focus specifically on the cases of very young African women arriving from eastern European countries, mainly to Barajas Airport in Madrid. Some of these women are sometimes minors, pregnant, travelling on their own, and have either stolen or forged passports as well as illegally obtained Schengen visas. The stories they tell to justify their journey and the cities they are going to are, for the most part, easy to identify as fake. Therefore, for all of these reasons, if law enforcement authorities were to limit themselves to examining only the legal conditions necessary for entry into Spanish territory, they would be correct in concluding that they could not continue with their journey.

However, once a thorough analysis of the situation of these women – who in several cases end up asking for international protection at the border post - has taken place, it could be concluded that there is a extremely high percentage of potential human trafficking victims in need of international protection, amongst them that are not identified as such by border police authorities.

Spain has an international obligation to prosecute this crime and protect the victims

Cross-border identification of victims and criminal prosecution - regardless of their location - cannot be ignored in the fight against a crime as serious as human trafficking. Having signed all of the international instruments with respect to human trafficking, Spain has the international obligation to prosecute this crime and protect its victims. Therefore, it is urgent, among other issues, that operational objectives designed for border posts are reviewed so that they can include effective victim identification and protection procedures. Moreover, they should also include effective procedures for identifying the need for international protection. Regarding the issue of human trafficking, cross-border control procedures should be as effective as they are on crimes of drug trafficking and international terrorism, and they should not be limited to the control of illegal immigration, however necessary and effective this might be.

1.2. COOPERATION BETWEEN AUTHORITIES AND NGOS

Cooperation between relevant authorities

In addition to the importance of training competent authorities in the victim identification, the first chapter of Article 10 of the Council of Europe Convention determines how necessary it is to “... ensure that the different authorities collaborate with each

other as well as with relevant support organizations”. Likewise, article 11.4 of Directive 2011/36/USE states that: “4. Member states of the European Union will adopt necessary measures in order to establish proper victim identification, support, and assistance mechanisms, and shall cooperate with the relevant support organizations”.

On the other hand, Article 59 bis of Organic Act 4/2000, Chapter 6, states that: “Cooperation with non-profit non-governmental organizations specialized in assisting and protecting trafficking victims shall be regulated”. Despite this reference to regulation, Royal Decree 557/2011, by which the new regulation to this law came into force, does not meet the aforementioned mandate and it actually refers regulation to a protocol. In its Article 140.1 it states that: “The Office of the Secretary General for Immigration and Migration, the Office of the Secretary of State for Security, the Office of the Secretary of State for Social Services and Equality, and the Office of the Secretary of State for Justice will be in charge of promoting a Framework Protocol for the Protection of Victims of Trafficking, which will establish a coordination and action framework for the competent institutions and administrations. The aforementioned protocol will also set guidelines for the participation of NGOs, foundations and other organizations, considering their expertise on protecting and assisting victims of human trafficking, as well as their involvement in victim protection and assistance initiatives developed by the Public Administration.”

For these reasons, the Ombudsman Institution considers that the legal mandate that regulates collaboration between entities that protect and assist victims of human trafficking is not fulfilled, as it should be. The conditions of this collaboration go beyond organizational issues, affecting all parties and not just those within the internal administration. This is why the regulated procedure should be followed.

Specialized NGOs’ formal participation during the identification process is crucial in order to guarantee that the rights and needs of trafficked persons are met. The International Organization for Migration carried out a comparative study on protection possibilities for victims of human trafficking in four countries: the United States, Austria, Belgium, and Italy. The study was named *Rights, Residence, Rehabilitation: A comparative study assessing residence options for trafficked persons* (2010) and it helped determine that NGOs’ formal involvement in victim identification was positive in Belgium, Italy and Austria..

Effective victim identification procedures in Spain are hindered by the lack of regulation implementing Article 59 bis in reference to conditions for the collaboration with NGOs, coupled with the lack of clarity on this subject in the Framework Protocol for the Protection of Victims of Trafficking.

Section VI.B (conducting an interview) of the Framework Protocol for the Protection of Victims of Trafficking determines that organizations and other entities with official expertise in assisting trafficked persons may collaborate throughout the entire iden-

Coordination and participation of non-governmental organizations

Conditions for collaboration must be developed

NGOs have an important role in the process of victim identification

The lack of regulations implementing Article 59 bis of the Foreign Nationals Act and ambiguity in the Framework Protocol

Clear separation of roles and responsibilities between NGOs and authorities

tification process. In practice, this ambiguity results in the participation of NGOs in identification procedures to be dependent on the decision of a given officer in charge of the procedure. Thus, it is urgent to review the procedures that are being carried out, taking into account previous experience and results, as well as procedures designed in neighboring countries and coordinate all of this information with entities that have expertise in victim assistance.

Current identification procedures should be reviewed

Figures stated in the section discussing the recovery and reflection period demonstrate that the number of claims from detected victims does not reach 10% in 2010 (9.3%), or 13% in 2011 (12.8%) of the total number of offerings. Thus this issue must be reviewed as soon as possible, in order to continue developing a more effective strategy that includes the intervention of organizations with expertise in victim detection.

Cooperation between NGOs specialized in victim protection and assistance and public administration entities does not imply duplication of effort. However, in order to avoid any problem, it is important that the role of each organization is specified and regulated by adequate legislation.

There is a lack of coordination amongst different police forces

An additional concern is the ineffective coordination between different police forces responsible for investigating human trafficking crimes. The Attorney General's Office makes reference to this issue in its last Annual Report, by pointing out that: "It will be easier to overcome the real obstacles that prevent an effective prosecution of human trafficking crimes once a comprehensive system to tackle it has been completed. Immigration Department Prosecutors (FDE) report that these obstacles include the lack of cooperation from the victims due to the oppression they suffer by traffickers, the absence of an adequate investigation strategy to deal with the criminological characteristics of this crime and the lack of coordination between competent judicial police forces.

Investigations that have been conducted in order to complete this report have brought to light investigations made by police forces other than the National Police Force which concluded that some operations to fight human trafficking had been compromised when the victims were identified as undocumented.

International organizations emphasize the need of effective cooperation

Different international organizations often emphasize the need to create an effective coordination and cooperation system between competent authorities. The International Organization for Migration, with the support of the United Nations initiative against human trafficking (UN.GIFT), published in 2009 a document that established principles for cooperation between law enforcement agencies and stakeholders. These guiding principles are presented as a practical resource in order to assist state and non-state actors in the development of agreements to combat human trafficking. These actors include competent state agencies and NGOs that assist victims.

The draft Coordination Protocol of the Basque Government Department of the Interior Directorate for Assistance to Victims of Gender Violence and the Anti-trafficking Group is an example of effective coordination between competent government agencies. This protocol regulates coordination on the assistance to victims of trafficking for sexual exploitation during the recovery and reflection.

The work of the Basque Government and the Trafficking Group is an example of a good practice

The aforementioned protocol intends to provide a clear and effective mechanism to be used from the moment of identification and referral through the recovery and reflection period for victims of trafficking for sexual exploitation in the Autonomous Community of the Basque Country. This document describes actions to be taken by relevant institutions and their mechanisms of coordination, as well as the basic standards for victim assistance. It also includes an annex with basic identification guidelines established by specific organizations, as well as recommendations in order to improve training for the assistance and identification of victims and data collecting procedures by institutions included in this protocol. Another matter of interest in the aforementioned document is that female victims of human trafficking for sexual exploitation are considered victims of gender-based violence, from the moment they are identified as potential victims and during the recovery and reflection period.

They have prepared a clear and efficient Protocol

The document also identifies the following: the functions of each institution and entity, guidelines and recommendations by expert organizations that specialize in victim assistance, cooperation principles between institutions, a data collection method from the entrance of the victim in the circuit mentioned in the Protocol, as well as the assistance of the victims, their situation when they leave, and the follow-up process.

The roles and responsibilities of every institution and entity are clearly identified

« CHINESE MAFIA RING DISMANTLED FOR FORCING 100 GIRLS INTO PROSTITUTION, MAKING THEM USE DRUGS AND NO CONDOMS »

Increased publicity on Chinese brothels together with a mother looking for her lost 16-year-old daughter triggered an investigation a year and a half ago, that was conducted by Catalan police forces, Mossos d'Esquadra, against the Chinese mafia. The investigation ended with the arrest of 39 people (33 were put in jail) that were accused of the sexual exploitation of nearly 100 women in Barcelona. Six of them were minors.

The girls were forced to work as prostitutes for more than 8 hours a day without rest and could not use condoms. Some were forced to use the drug Ketamine.

"In surveillance records, we discovered that one of the girls had committed suicide because she had contracted HIV, explained Quim Francés, chief inspector from the Central Unit against Organized Crime of Catalonia. The autonomous police also found several abortifacients when they examined the crime scene.

Although some of the girls went to Barcelona knowing that they would become prostitutes, most of them were deceived by a bogus job offer. "When they found out the truth, it was too late for three fundamental elements had already trapped them: they owed money to their exploiters, they had an illegal immigration status in Spain, and they were away from their homes", said the Catalan chief inspector.

Seven hundred Catalan police officers broke into 33 flats between Monday and Tuesday last week. Of the 33 floors, 17 were brothels. They set 30 women free, who are now under protection of an NGO and the autonomous Catalan government (Generalitat de Catalunya). Currently, only four of them have filed a complaint.

The leader, who was put in jail, lived in Santa Coloma de Gramenet, where he ran several businesses under a bigger crime ring in China. The rest of the mafia also had legal businesses and led an austere lifestyle to go by unnoticed.

The Catalan police force concludes that this mafia was dismantled before it became larger. The arrested suspects were already in the drug and counterfeit document business. In one of the flats, police officers found 400 fraudulent passports that were used for migrant smuggling. Barcelona was a transit location for illegal immigration and sexual exploitation in the United States, Canada and Australia. Moreover, the Triad had begun to extort money from fellow citizens living in the Catalan capital.

(Published on Thursday, October 6, 2011, in "El País".)

The police operation run by the autonomous Catalan government is another example of a good practice

After this news article was published the Ombudsman Institution initiated an investigation on the Department of Internal Affairs of the autonomous Catalan government (*Generalitat de Catalunya*) in order to be aware of the steps taken following the police operation. At the time of completing this report, the Attorney General's Office informed that the prosecution continues with 43 defendants, 16 of them in provisional detention.

Regardless of the suspension of this investigation, and considering that this issue has been submitted to judicial intervention, it seems appropriate to take into account this police operation as a good example of an effective coordination between police authorities and an anti-trafficking NGO, despite the fact that none of the assisted women chose to exercise their rights, provided in Article 59 bis of Act 4/2000.

A specialized organization frequently collaborates with the police action unit

The aforementioned institution included in a report that the Central Unit for Human Trafficking and an organization specialized in assisting victims of human trafficking – that usually collaborates with this police unit – had previous contact in order to develop a procedure to provide assistance to victims. This procedure was put into practice when the police operation took place. As the aforementioned institution informed, the common procedure during a police operation that may involve victims of human trafficking is to alert NGOs and other social entities about the issue, so

that they may come to an agreement as to the best type of intervention during this situation.

Once the victims were identified, they were informed of their legal rights as victims, which included the option of being moved to a residential facilities, with room and board as well as legal, social, and health assistance. This didn't imply any commitment to cooperate with the authorities. Out of the total number of victims who were offered this assistance, seventeen agreed to receive this support. They were transferred to the shelter with all their belongings by non-uniformed police officers. Once they got there, experts from the organization received them. After they had been transferred to the shelter facilities and were told about the facilities and support that they were offered, 24 hours later, only three of them decided to stay.

However, the report mentions that those victims that left the center were previously informed about resources available for them in case they needed further assistance. One of the three remaining victims in the shelter decided to exercise her right to repatriation and this took place only a couple of days later. Another one stayed in the shelter for a month and after testifying before a judicial authority, she decided to move to another city where she said she had acquaintances. The third victim stayed in the residential facilities for nearly two months, until she decided to move to a friend's house.

We can generally conclude that collaboration between members of the autonomous Catalan police, *Mossos d'Esquadra*, and anti-trafficking organizations is considered to be positive by both parties. The report issued by the Central Department of Criminal Investigation of the autonomous Catalan government mentions that in 2008 the autonomous Catalan police force and anti-trafficking organizations came to an agreement in order to create a Catalan network of skill and knowledge sharing aimed at improving the protection and assistance methods for trafficking victims. The autonomous Catalan police force, *Mossos d'Esquadra*, was invited to participate in meetings that were held before the network was created, which enabled contact and knowledge of all agents involved in the fight against human trafficking. Also, since the Catalan Network against Human Trafficking, was established in 2010, the autonomous Catalan police force, *Mossos d'Esquadra*, has been appointed "support member/adviser" and participates in the plenary meeting without voting rights or obligation to sign or appear in official documents of the Network. According to the Central Department of Criminal Investigation, these meetings are useful in order to strengthen relations between its members and representatives, thus encouraging the creation of new dynamics, as well as providing information on decisions made by the Network. Moreover, periodic meetings are held in order to improve aspects or flaws on any issue related to human trafficking victims.

Nevertheless, there is still a need to strengthen coordination mechanisms between the Spanish National Police Force and regional autonomous police. Following two

Once the victims were identified, they were informed of their legal rights

Collaboration between members of the Catalan police force and anti-trafficking organizations is considered to be positive

The Catalan Network was established in 2010

There is still a need to strengthen coordination mechanisms between the National Police Force and autonomous police

Following the Framework Protocol word-for-word might compromise the victim's safety

The Ombudsman Institution has also intervened in cases where a lack of coordination was evident

investigations with the Department of Internal Affairs of the autonomous Catalan government, this agency has informed the Ombudsman Institution about several flaws it detected in the application of the Framework Protocol for the Protection of Victims of Trafficking. These flaws were related to the handling of claims for recovery and reflection periods, particularly with instructions stated in part 3 of Chapter xiii of the Protocol. These instructions demand that police forces that are not responsible for foreign affairs send all information contained in police reports related to victim identification, which the request for the recovery and reflection period is based.

In relation to this, the Catalan Department of Internal Affairs has informed the Attorney General's Office of the problem that a literal enforcement of the aforementioned article brings up, regarding cases in which the information requested is part of a secret investigation as well as cases in which victims – the applicants - are protected witnesses. Both of these circumstances take place in all police investigations managed by the autonomous Catalan police force, Mossos d'Esquadra, with respect to cases of victims of human trafficking. Moreover, the aforementioned agency argues that confidentiality regarding any information related to secret procedures must prevail over the enforcement of administrative procedures that, even though originally intended to help the victims, might end up compromising their safety.

Other flaws in coordination taking place between different groups within the police force have also been noted. The need to intervene became clear after receiving several complaints related to alleged flaws in coordination, such as this one:

In 2009, Precious came to Spain with the help of a Nigerian woman that lived here, and who offered her a job as a hairdresser. This woman told her that she would take care of all the paperwork if she paid her 2,000 EUR. When Precious arrived to Spain, things changed. Those 2,000 EUR were now 40,000 EUR and she was forced into prostitution in order to pay her debt. The police arrested her for illegal immigration and some months after she was issued an expulsion order that was never executed.

She had earned no more than 1,000 EUR after one year of prostitution, so she was brave enough to escape. Not long after she found out that some men had beaten her brother to death. Her family asked her not to go back to Nigeria since the murderers had told them they would kill her if they found her. Some time after that, her relationship with her family ended. She was arrested once again when police performed an immigration check and she was sent to an immigrant detention center for her deportation. It was then that she decided to tell her story and ask for international protection. The Office of Asylum and Refuge notified the Director of the immigrant detention center that Precious was a potential victim of human trafficking. The Director contacted an organization specialized in the

identification of human trafficking victims and after she was interviewed, they notified the Provincial Immigration Brigade of the city where the detention center was located. They interviewed her, and concluded that there was reasonable grounds to believe that Precious was in fact a victim of human trafficking. They notified the Government Delegation and requested a reflection and recovery period for her.

Despite all of these actions, Spain's Central Deportation and Repatriation Unit, responsible for carrying out deportations from immigrant detention centers had not been notified about Precious' request for a recovery and reflection period, so she was deported to Nigeria. When she got there, she contacted the organization that had helped her in Spain. After several negotiations, Spanish authorities decided to bring her back to Spain where she has been living for over a year. When this report was concluded, she still was not a legal resident of Spain.

The Joint UN Commentary on Directive 2011/36/EU emphasizes the importance of cooperation amongst authorities in charge of human trafficking, with those in charge of immigration as well as asylum issues. A crucial point for the adoption of proper mechanisms as mentioned in Article 11.4 of the Directive refers to close cooperation between those authorities involved in the fight against human trafficking, including those located at border crossings, as well as those responsible for granting international protection. This is the way to ensure that measures used to fight human trafficking do not have adverse effects on the rights of those requesting asylum.

1.3. REASONABLE GROUNDS

Article 10.2 of the Council of Europe Convention states that: "...Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of human trafficking, that person shall not be removed from its territory until the identification process as victim of an offence has been completed... and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2..."

The Convention does not ask for absolute certainty - since this is impossible before the completion of the identification process- in order to avoid removing the person from State territory. According to the Convention, when there are reasons to believe that someone may be a victim of human trafficking, that person shall not be removed from its territory until the identification process has been completed. This process will determine whether or not the person is a victim of human trafficking and is does not depend on any criminal procedure against traffickers.

Directive 2011/36/UE (April 5, 2011) also makes reference in Article 11 to the importance of the timely identification of (potential) victims and persons at risk of being trafficked, as it considers that this is crucial in order to prevent and protect the victims

Measures used to fight human trafficking should not have adverse effects on the rights of those requesting asylum

When there are reasons to believe that someone may be a victim of human trafficking, they should not be moved from State territory

The identification process does not depend on any criminal procedure

in the fight against human trafficking. The Joint UN Commentary on the EU Directive denounces the low number of verified victims that are identified by states. Identification of men and children is particularly uncommon, although the number of identified male victims of forced labor has increased.

Complex crime with a multifaceted interaction between the victim and the trafficker

Likewise, due to the complexity of the crime, the Ombudsman Institution warns of the difficulties that can arise during the process of identification of potential victims of trafficking as well as with individuals vulnerable to trafficking. The trafficker and the victim have a multifaceted interaction, since the former is often “protecting” the victims from the authorities because of their illegal immigration status. The victims may also feel that they depend on their traffickers, because they are obliged to repay them. Some members of criminal networks may also have different attitudes towards the victim, which could include a relationship based on control and abuse, or even “protection”. Therefore, severing ties with the criminal circuit often takes the form of a process rather than that of an immediate action.

Moreover, the aforementioned document also refers to the need to develop cooperation mechanisms between different parties, including civil society, in order to identify victims of human trafficking.

Article 59 bis of the Foreign Nationals Act focuses on procedures used to identify foreign victims with illegal immigration status

Meanwhile, both Article 59 bis of Act 4/2000 along with its implementing regulation focuses on procedures used to identify foreign victims with illegal immigration status. However, although the Framework Protocol for the Protection of Victims of Trafficking does include sections that refer to foreign victims with illegal immigration status, it does so in a confusing manner failing to take into account their immigration status and specify services available to them.

The Framework Protocol identifies key indicators

Thus, the Framework Protocol for the Protection of Victims of Trafficking establishes in section VI.C, the procedure – including key indicators identified by several international organizations and specialized institutions that work with victims in Spain - that must be followed in order to determine if there are reasonable grounds to believe that a person is a victim of human trafficking.

There is a first group of general indicators related to the victim’s context, verbal or non-verbal conduct and physical and mental health. Likewise, there’s a second group of specific indicators related to victims of human trafficking for sexual exploitation or forced labor, as well as for child victims of trafficking.

The evaluation made by authorities has been widely criticized

The evaluation made by authorities with regard to reasonable grounds has been widely criticized by organizations that work with victims. They warn against the risk of using these indicators as isolated tests that do not take into account the victim identification process, which cannot rely on a single interview: it must be considered as a process that takes time and calls for specific assistance.

According to Article 10 of the Council of Europe Convention, during the identification process, there is an obligation to provide the potential victim with the same type of

assistance as that of verified victims of human trafficking. Assistance shall be offered to all victims, as long as “competent authorities have reasonable grounds to believe that the person concerned is a victim” of crimes related to human trafficking as well as incitement, aiding and abetting, and attempt to commit a crime of human trafficking.

Assistance shall be offered to all victims

Blessing was born in Nigeria and her parents died as a consequence of inter-religious violence in a region of the country currently dealing with a conflict between Muslims and Christians. She was alone and had no education, thus being an easy prey for Anthony, who told her he was an old friend of her father. He encouraged her to come to Europe and promised that in Europe she would be able to go to school and have a house-cleaning job. He gave her money to make the trip and she took a small open boat to Spain.

When she arrived, Anthony told her by phone the real price of her trip: 20,000 EUR. She would have to pay the debt working as a prostitute, coerced and under continuous death threats. The police arrested her once while practicing prostitution and months after she received an expulsion order but she was not deported. Blessing went back to working as a prostitute in order to pay the debt. She would not use a condom because it was “a quick way to earn more money”. She got pregnant and decided to have the baby, believing that this would protect her from exploitation, despite constant threats from Anthony who pressured her to have an immediate abortion.

Blessing was arrested once more during an immigration control operation, and she was moved to an immigrant detention center in order to be deported. Once there, she realized that she was afraid of going back to her country, where she was sure that Anthony would find her and kill her because she had not paid her debt; so she requested asylum. During the interview, UNHCR determined that there was reasonable grounds to believe that she was a victim of human trafficking and referred her to an anti-trafficking organization, which in turn took care of notifying the police about Blessing’s situation.

Following the Ombudsman Institution inspection, the police delayed the deportation that was meant to take place that same night, and began the investigation in order to verify whether there was in fact reasonable grounds to believe that Blessing was a victim of human trafficking. After the interview, the police concluded that the evidence gathered by UNHCR and the specialized organization was not enough to consider Blessing a victim of trafficking. The Ombudsman Institution submitted a suggestion to the Government Delegation recommending the issuance of a recovery and reflection period, considering her circumstances. The suggestion was rejected and Blessing, expecting a baby, was deported back to Nigeria.

An immigrant with illegal status was deported before completing the identification process

This case helped improve the protocol used to identify victims of human trafficking that request international protection. This will be analyzed in the following section. However, with respect to reasonable grounds, this case is an unfortunate example of varying evaluations.

Once the investigation was complete, the Ombudsman Institution notified intervening entities, Spain's Central Department of Immigration and Border Police and the Government Delegation, about their different conclusions on the issue, since the objective evidence was disregarded and the person concerned was expelled from the country before the time needed to identify a potential victim of human trafficking had passed.

The evaluation by the UNHCR differed from that of competent authorities

As for the police operation, the "affidavit" was analyzed and in it, the person concerned states - without any legal assistance and with intervention of two police officers and an interpreter - that she works freely as a prostitute in Spain but at the same time identifies the person who paid for her trip and gives his phone number. She also recognizes that she owes 20,000 EUR, that she is under constant threats and forced to pay 1,000 EUR every month. She also explains that this person threatens her through phone calls and that once he was aware of her pregnancy, he tried to coerce her to have an abortion. Considering the existence of this statement, it is hard to understand why she was not granted a recovery and reflection period.

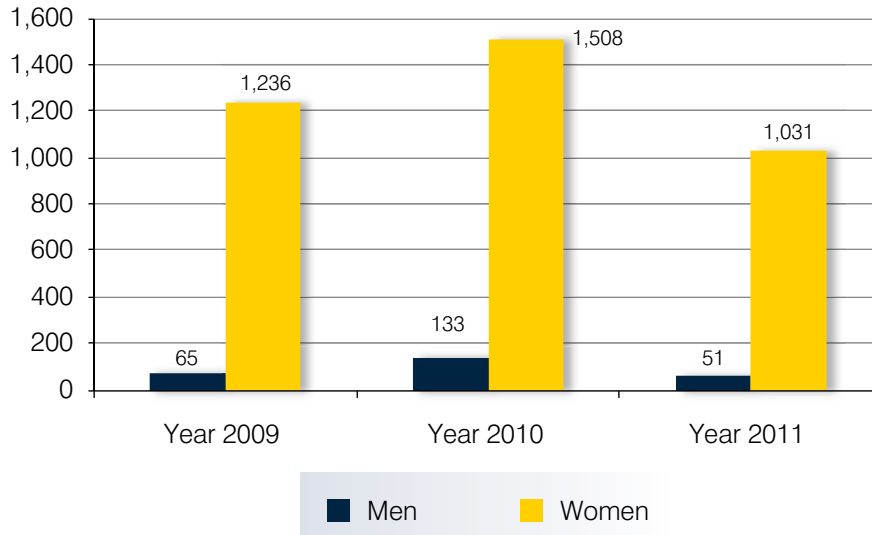
According to the Ombudsman Institution, her personal circumstances should have been considered in the request to revoke the resolution to deport her

On the other hand, the intervention of the Government Delegation was also analyzed, taking into account the resolution to reject the recovery and reflection period, by the following statement: "based on her statement... we can conclude that she is not forced by anyone to work as a prostitute in Spain, she does it voluntarily to earn money and she has complete personal freedom". The Ombudsman Institution considered that, apart from the negative conclusions of the law enforcement authorities regarding her condition as a potential victim of human trafficking, the Government Delegation should have taken into account her personal situation when evaluating the request for the revocation of the deportation order, which was also rejected.

Finally, we should bear in mind that the Office of the United Nations High Commissioner for Refugees and two specialized organizations considered that there were reasonable grounds to believe that the person concerned was in fact a victim of human trafficking. Therefore, the Ombudsman Institution considers that the implementation of the deportation order came too soon and did not include an appropriate evaluation of indicators that should have led to the granting of a recovery and reflection period, according to Article 59 bis of Organic Act 4/2000.

1.4. RECOVERY AND REFLECTION PERIOD AND ASSISTANCE DURING THE PROCEDURE

Victims of sexual exploitation and human trafficking by Sex (2009-2011)



Source: CICO. In-house compilation.

Reference to reflection and recovery periods in documents related to the rights of the victims of human trafficking is quite recent. Therefore, we must analyze the implementation of this concept in all national legislations, as international standards have not yet been developed.

The Council of Europe Convention indicates that: “Each Party shall provide in its national legislation a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim” (Article 13). The objective of the recovery and reflection period is to protect the human rights of trafficked persons. This implies that they are offered enough time, support, and assistance so that they may thoroughly understand their victim status and learn about the rights, legal options and protection measures available to them. They should have sufficient information to enable them to decide whether or not they want to collaborate during criminal proceedings.

During the recovery and reflection period, the potential victim is entitled to the following rights:

- Prohibition of expulsion orders and authorization to stay in national territory during all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned.
- Assistance to ensure their subsistence through measures such as: appropriate and secure accommodation; psychological and material assistance; access to

Lack of well-developed international standards

The objective of the recovery and reflection period is to protect the human rights of trafficking victims

emergency medical treatment; translation and interpretation services, when appropriate; counseling and information, in particular with regards to their legal rights and the services available to them in a language that they can understand; assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; and access to education for children.

According to the Convention, each party shall provide in its national legislation a recovery and reflection period of at least 30 days

According to the Convention, each party shall provide in its national legislation a recovery and reflection period of at least 30 days. However, each country is entitled to determine its recovery and reflection period. Some have a fixed 30-day period, while others may vary from 45 days to 6 months. Finally, countries like Spain do not specify the maximum time. Article 59 bis of Organic Act 4/2000 establishes in its first chapter that: "The aforementioned recovery and reflection period will be of at least 30 days..." and in its Regulation, Article 142.1 establishes that: "...the period of recovery and reflection shall last at least 30 days and should be enough for the victim to decide whether or not to cooperate with the authorities in the investigation of the offence and, where appropriate, in criminal proceedings".

Spain does not specify a maximum time for the reflection period

The Group of Experts on Trafficking in Human Beings of the European Commission recommended on April 16, 2004 that the reflection period should be of at least three months. In any case, the reflection period should be extended according to the circumstances of the potential victim. These circumstances are related to: 1) the personal situation of the potential victim, or 2) the consideration that it may be convenient for the victim to stay in the country to continue with legal proceedings and investigations; demonstration of clear willingness to cooperate, and breaking off of all relations with those suspected of acts that might be included among the offences related to human trafficking.

The period is meant for the victims' recovery and their decision to collaborate with authorities

The recovery and reflection period should be granted regardless of whether the trafficked person is willing or able to cooperate with authorities. The Council of Europe Convention establishes that the purpose of the aforementioned period is twofold: it shall be sufficient for the person concerned to recover from and escape the influence of traffickers and/or to make an informed decision about "cooperating with the competent authorities".

Nevertheless, Article 59 bis of Organic Act 4/2000 states in Chapter two that: "[...] should be sufficient to enable the victim to decide whether or not to cooperate with the authorities in the investigation of the offence and, where appropriate, in criminal proceedings". Meanwhile, its Regulation is limited to procedures for the issuing of the recovery and reflection period in Article 142. Finally, the Framework Protocol for the Protection of Victims of Trafficking also focuses on procedural issues, adding only that when the period is granted, this will not imply that the victim has to provide a declaration, nor collaborate with police or judicial authorities in the crime investigation and prosecution.

Grace arrived to Andalusia leaving behind her country, Nigeria, and her only family, her mother. Her trip lasted more than four years, and she spent three of those years in Morocco. Grace declares that she is a minor, and she undergoes an age assessment test so that the Spanish authorities can verify the truth of this claim. The test determines that she is 18 years old. When she arrived to Spain, she felt both physically and psychologically weak, so she was taken to the hospital, where they found that she was carrying an infectious and contagious disease. They determined that further examination was needed in order to know the extent of the disease, but the examinations were not completed as neither she nor the health care service at the immigrant detention center she was taken to were notified about this circumstance until eleven days later.

While she was at the detention center, she was interviewed by a non-governmental organization that, based on indicators detected, considered that she could be a victim of human trafficking for sexual exploitation. During the interview Grace was speechless and very scared, even bursting into tears on several occasions, demonstrating that she was terrified. All she said was that a man helped her go from Nigeria to Morocco, but she did not want to give any information about him, explaining that he did not ask anything from her in return. The lawyer that carried out the interview issued a claim for a recovery and reflection period from the Government Sub-delegation. Law enforcement authorities carried out a second interview, without notifying the organization that was helping her and that had already interviewed her. Five people took part in the police interview: two male police officers; a female interpreter; a social worker from the detention center and a representative –designated by the police– from another organization that works with victims of human trafficking. Their conclusion was that Grace denied that she was a victim of trafficking because she might have been afraid of retaliation, so they recommended that the recovery and reflection period be granted.

Finally, the Government Sub-delegation granted her the recovery and reflection period and Grace was set free. While efforts were made in order to find a facility specialized in assistance for trafficked persons, she was taken in provisionally by a non-governmental organization located in the same place as the detention center. Grace never entered the specialized facility as she left the a few days after she was moved from the immigrant detention center. Her current location is unknown.

The Ombudsman Institution considers that there is confusion surrounding the true nature of the recovery and reflection period when it is implemented which compromises the effectiveness of the mechanisms used to protect victims. Therefore, it is necessary to understand that in order for this period to be effective it should be implemented in two clearly differentiated phases. First of all, the victim must be fully recovered, safe and both physically and psychologically recuperated from the suf-

The Ombudsman Institution considers that this confusion prevents the effective protection of the victims

The reflection and recovery period should consist of two clearly distinct phases

fering undergone. Only when this is fully achieved, and always with the support and advice of a specialized organization, can the victim face the second phase of the procedure.

In 2009, the Ombudsman Institution visited the temporary immigrant reception and detention facilities at the port of Motril (Granada). The inspection took place on the day after the arrival of a small open boat carrying 45 people, including women, one of them pregnant, five of them very young and six of them whose age was unknown. During the inspection, most of these people were already at the facilities, except for two: one of them had been hospitalized and the other one, being a minor, was under the protection of Child Protective Services. Therefore, during the visit, there were 43 people at the accommodation facilities. The distribution was the following: cell 1: six women, one of them pregnant, and five children; cell 2: 14 women, and cell 3: five women that had undergone age assessment testing that determined they were not minors.

Most of the circumstances analyzed led to the conclusion that the profiles of the women and alleged minors could match the profiles of potential victims of human trafficking. This conclusion was based on the following: the high number of women travelling in the boat accompanied by children, their nationalities, the starting point of their trip, and the content of the interviews that the staff of the Ombudsman Institution carried out with the detainees. Following the visit, police files were examined, as well as the procedure followed for the age assessment of five people (five women and one man).

After examining the record book, the Ombudsman Institution concluded that the average time that these detainees had spent at these facilities was 46 hours, before being transferred after court authorization to an immigrant detention center or being released on humanitarian grounds and put under the care of a government organization. Therefore, according to the Ombudsman Institution, the action protocol used in these facilities is of vital importance in order to effectively determine the need for international protection as well as the existence of potential trafficked persons so they can have access to proper resources.

Competent authorities have improved their procedures

Following such an example of confusion surrounding the nature of the reflection and recovery period, the Ombudsman Institution began to go through all the irregular open boat arrivals in Granada since 2009. At the beginning, most of the irregularities found were related to proceedings and rulings of deportation files, which motivated the Ombudsman Institution to issue a recommendation that was taken into account. Moreover, the Ombudsman Institution verified that a high number of African women accompanied by minors, as well as unaccompanied foreign minors arrived there. For this reason, on August 2009, a few hours after being notified of the arrival of a small open boat carrying a significant number of women and children, the Ombuds-

man carried out an inspection at the temporary immigrant reception and detention facilities at the port of Motril (Granada).

Spain's Central Department of Immigration and Border Police and the Attorney General's Office received the conclusions of the inspection and informed the Ombudsman Institution about actions that were carried out within their competence, to improve shortcomings detected in the procedure.

The Attorney General's Office actions will be analyzed in the section corresponding to child victims of human trafficking. As for the protocol used by the police in order to detect and identify potential victims of trafficking, it should be stated that there have been significant changes since August 2009 (the date of the inspection visit at the facilities located in Motril): Instruction 1/2010 from the Office of the Secretary of State for Security developed the procedure for the detection of victims of trafficking, offering a recovery and reflection period as provided for in Organic Act 4/2000, of January 11th on Rights and Freedoms of Foreign Citizens in Spain and their Social Integration, which was completed with a departmental note, until the regulation implementing the aforementioned Act came into force in June 2011.

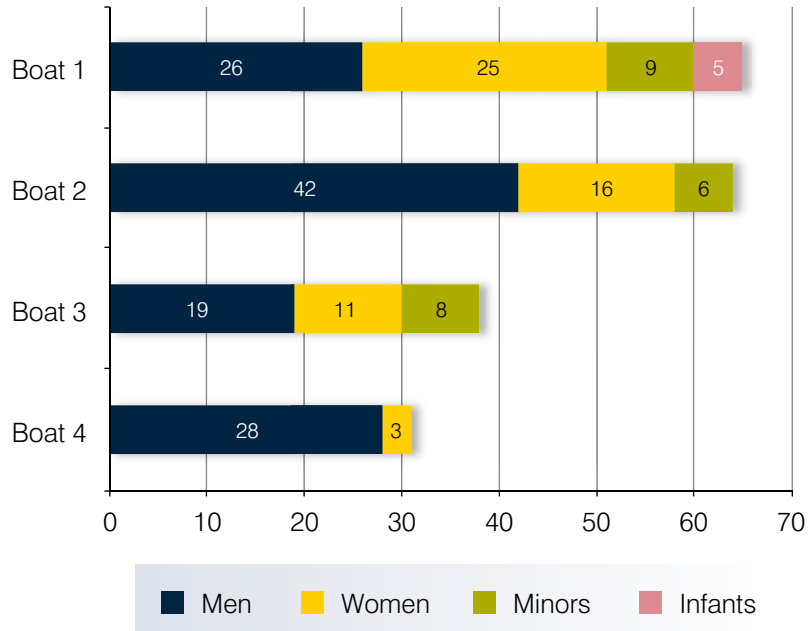
A draft information act was also developed, with respect to the contents of Article 59 bis, as well as a proposed draft for granting of a recovery and reflection period, as well as a residence permit during this period. Moreover, the Central Department of Immigration and Border Police put forth the implementation of a national registry of cases of human trafficking victims since January 1, 2010.

The procedures adopted with respect to four boats that arrived off the coast of Motril (Granada) between December 2010 and June 2011 were also monitored, in order to verify if the flaws identified during the inspection visit from August 2009 had been corrected, as well as to verify the practical impact of the new procedures.

Significant improvement has been made since August 2009

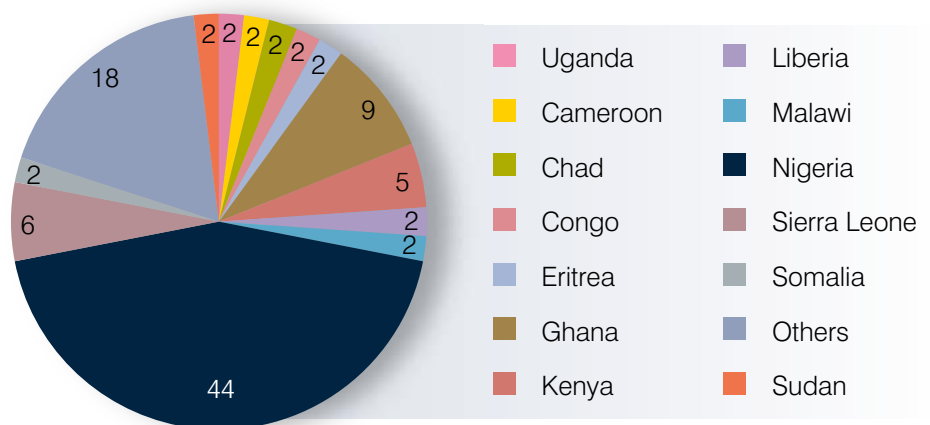
Implementation of a national registry for cases of trafficking victims

Number of people intercepted according to sex and age in ex officio complaints regarding potential victims arriving by boat to the coast of Motril (December 2010 - June 2011)



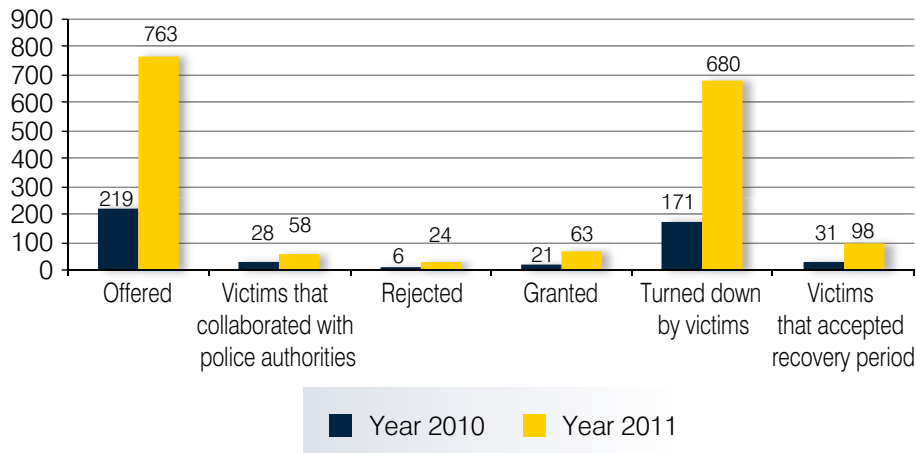
Source: General Directorate of Police. In-house compilation.

Women per country in ex officio complaints regarding potential victims arriving by boat to the coast of Motril (December 2010 - June 2011)



Source: General Directorate of Police. In-house compilation.

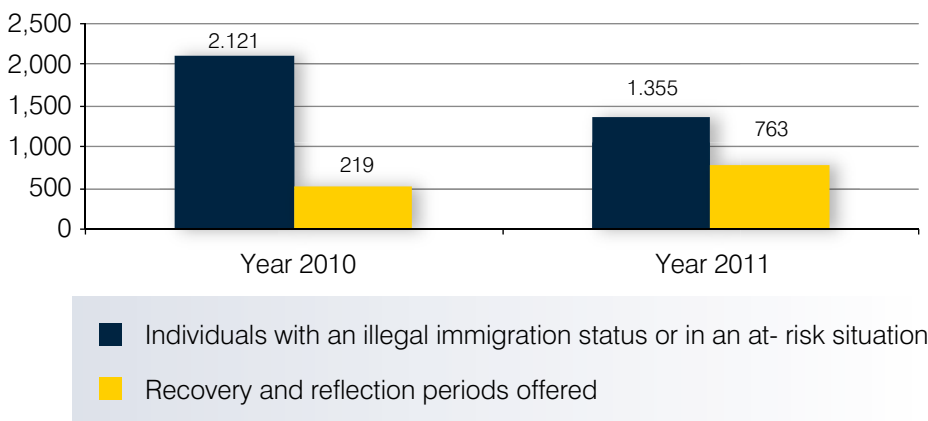
Recovery and Reflection periods (2010-2011)



Source: The Office of the Secretary of State for Security. In-house compilation.

During 2010, according to information provided by the Office of the Secretary of State for Security, police authorities offered 219 reflection periods of which 21 were granted, six were rejected by authorities, and 171 were turned down by the victims. During 2011, the amount of recovery and reflection periods has increased significantly. 763 periods were offered, of which 680 were either rejected by authorities or turned down by the victims, whilst 98 were granted. This information has to be analyzed together with data provided by the CICO on potential trafficking victims with illegal immigration status.

Potential human trafficking victims with illegal immigration status (2010-2011)



Source: the Office of the Secretary of State for Security. In-house compilation.

An automatic approach used when offering recovery and reflection periods

The automatic approach used to offer the recovery and reflection period does not refer only to the cases of illegal arrivals to poorly equipped border control posts as just noted, but this approach was also detected in police operations, as mentioned in the previous sections on forced labor and sexual exploitation. We can conclude, especially in cases of labor exploitation, that the recovery and reflection period, which is often offered to potential victims hours after their identification by law enforcement authorities, is rejected almost every time.

“Victims of trafficking are still being interviewed right after police operations, and quite often they are asked to identify themselves; in many occasions, authorities arrest or deport victims of trafficking that do not identify themselves as such right after being rescued.”

(Source: US Department of State. Trafficking in persons report 2012. Spain.)

The procedure must be reviewed and new mechanisms must be applied for special cases

As indicated at the beginning of this section, despite the progress made in the methods used to offer the recovery and reflection period, the numbers of periods requested and granted remain alarmingly low. Therefore, it is necessary to review this procedure and consider methods that take into account the unique situations of certain groups of potential victims. One example is the women who arrive to the Spanish coast after very dangerous journeys that put their lives and the lives of their children at risk. Often these women have been exposed to the death of people travelling with them. It must also be considered that traffickers often accompany victims during these journeys to control them. It is impossible to detect them upon a first encounter, which is why the first victim identification interview must be delayed, and special facilities must be set up in order to enable a first encounter between potential victims and specialists that generate trust.

Good practices have been detected in some police operations, such as those carried out in Catalonia

However, good practices have been detected in some police operations. In Catalonia, for instance, according to the report issued by the Central Department of Criminal Investigation, the following procedure is used to handle human trafficking accusations: when taking a statement or receiving a police report on a crime related to human trafficking, the Citizens Service Office and the office responsible for reports on crimes must collect minimum information. This information is included in an electronic questionnaire that appears in the corporate software when there is a report of an offence related to human trafficking during police operations. The official taking the police report must inform victims of their rights that correspond to them in each case by filling out predefined information forms. Officials should give special care when taking statements due to the unique nature of the documents from police reports related to human trafficking.

Police software used for statements and police reports include specific fields related to human trafficking

Therefore, police software used for statements and police reports include specific fields that are automatically linked to a standard questionnaire designed for cases of sexual exploitation, forced labor, and trafficking for organ trade. This mechanism helps create a uniform process used to gather statements and filed complaints concerning this type of criminal offence. As for police operations, victims are never transferred to police facilities immediately; they are transferred some days later, once the entity assisting the victim has agreed to it. This increases communication during their statements, as well as their willingness to collaborate, making police procedures more effective.

Victims are never transferred to police facilities immediately

1.5. RESIDENCE PERMIT

The Council of Europe Convention states in Article 14.1 that “each party shall issue a renewable residence permit to victims, in either or both of the following situations: a) the competent authority considers that their stay is necessary owing to their personal situation; and b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigations or criminal proceedings.”

The Council of Europe Convention states that Parties may consider issuing renewable permits according to two criteria

The explanatory report of the Council of Europe Convention states that Parties may consider issuing permits according to the victim’s “personal situation ” or because they consider that their stay is “necessary for the purpose of their co-operation with the authorities”, granting these permits separately or at the same time if both reasons apply. The report considers the following reasons in order to issue a permit owing to the victim’s personal situation: “victim’s safety, their health condition, their family circumstances, and other factors”.

The reasons include their personal situation or the consideration that their stay is necessary for the purpose of their co-operation with the authorities

On the other hand, the EU Directive 2011/36 states in Article 11.3: “3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules”.

Allow victims to have unconditional access to all protection measures

The article *Human trafficking: Joint commentary on the EU Directive* has criticized this precept as well as the approach of the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. This has led to the recommendation that when Member States transpose the Directive to their national legislation, they should remove the last section of article 11.3 and allow victims to have unconditional access to all levels of assistance, support, and protection.

The conclusions of the previously mentioned investigation carried out by the International Organization for Migration, *Rights, Residence, Rehabilitation: A comparative*

Poor victim protection and victim assistance discourage victims from cooperating

study assessing residence options for trafficked persons, point out that: “Some interviewees highlighted that obligatory cooperation is an essential part of the right to residence: abuse of the system and possible inflow of fraudulent applications are often cited as the reasons for not issuing residence permits to trafficked persons. Yet, interviewees in all the countries studied noted that such cases have not been proven and that this fear remains unfounded. The report findings reveal that such conditions are often at the cost of protecting the human rights of trafficked persons. Poor victim protection and victim assistance discourage victims from cooperating with law-enforcement authorities due to fear of mistreatment and deportation, fear for their lives and concern for family members. To ensure that the human rights of trafficked persons are fully respected, efforts to investigate and prosecute traffickers need to be duly balanced against protecting the victim’s human rights and interests”.

Article 59 bis of the Foreign Nationals Act includes both cases stated in Article 14.1 of the Council of Europe Convention

Article 59 bis of Organic Act 4/2000 includes both cases stated in Article 14.1 of the Council of Europe Convention, establishing in Section 4 that: “The competent authority may declare victims exempt from administrative liability and grant them the choice of assisted repatriation or a residence and work permit based on exceptional circumstances, if it considers this necessary in view of their cooperation in investigations or criminal proceedings or their personal situation, and opportunities for their social integration, in accordance with the provisions of this Act. While the proceedings to grant a residence and work permit on grounds of exceptional circumstances are under way, they may be granted a temporary residence permit under the terms of the regulations. In the processing of the permit referred to in the previous paragraph, an exemption may be made for documents whose procurement might entail a risk to the victim”.

Article 144 of the Regulation provides guidelines on the procedure applied in order to obtain a residence and work permit, and it also appoints the organization in charge of the resolution of the claim, as long as its formulated on the basis of cooperation with authorities or the victim’s personal situation. Moreover, it differentiates between two types of residence permits, one being temporary and the other one permanent for a five-year term.

Nevertheless, it is very difficult to obtain residence and work permits based on personal situation

However, specialized organizations that work with victims in Spain complain about the difficulty of obtaining the residence and work permit on the ground of the victim’s personal situation, despite the fact that the law clearly lays out the two cases in which the permit should be granted. According to data provided by the Secretary of State for Security, in 2011, 58 residence permits were granted to victims of trafficking that had cooperated with judicial or police authorities.

A news broadcast informed about a police operation that took place in a northeastern Spanish city, which had dismantled a criminal network that exploited Russian women for the purpose of sexual exploitation. Three women that were identified as potential victims of human trafficking were willing to cooperate in the criminal procedure. Ultimately, one of them went back to her country and the other two were taken in by a specialized facility for the protection of victims of trafficking. They have testified in court every time they have been required to do so. However, their residence permit was delayed for 18 months, which had a negative effect over their recovery and kept them from finding a job.

While this report was being prepared, one year had passed since the Regulation of Act 4/2000, approved by Royal Decree 557/2011, had come into force. According to the information provided by the Secretary of State for Security, only 58 residence and work permits were granted in 2011, so the impact of this new regulation is impossible to determine. For this reason, the Ombudsman Institution will continue to monitor the practical implementation of measures for work and residence permits provided to victims.

The most recent official data regarding legal residence permits, dating back to March 31, 2012, is helpful in order to determine an approximate number of residence permits that were granted to victims of trafficking. The number is only approximate because it is included in the section of residence permits granted for humanitarian circumstances, which include more cases than those concerning victims of trafficking. Despite what is mentioned above, we must highlight some interesting facts. Out of the 2,963 total residence permits that were issued on the basis of the humanitarian circumstances that came into force on March 31, 2012, 104 were issued to Nigerian citizens, 13 to Chinese citizens, 58 to Russian citizens, 177 to Paraguayan citizens, and 227 to Brazilian citizens.

1.6. EXEMPTION FROM LIABILITY AND POSSIBILITY OF ASSISTED RETURN

Article 26 of the Council of Europe Convention establishes that each State party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, in case they have been compelled to do so.

The aforementioned *Toolkit to Combat Trafficking in Persons* from the United Nations, points out that trafficked persons are sometimes treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of irregular migration or labor status. Alternatively, immigration authorities may simply deport them to the State of origin

The Ombudsman Institution will continue to monitor the implementation of measures included in the Regulation

The Council of Europe Convention states that penalties should not be imposed on victims for their involvement in unlawful activities

Trafficked persons are sometimes treated as criminals rather than as victims

if their immigration status is irregular. Trafficked persons returning to their State of origin may also be subject to prosecution for using false documents, having left the State illegally, or for having worked in the sex industry. Criminalization limits the trafficking victims' access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims' concerns for their personal safety and their fear of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance, and justice. As follows, the aforementioned document is centered on the explanation about the need to avoid criminalization of victims of trafficking.

A crucial element of protection of victims must be that States do not prosecute or punish trafficked persons for related offences

An essential element of protection of victims of trafficking and their rights must be that States do not prosecute or punish trafficked persons for trafficking-related offences such as holding false passports or working without authorization, even if they agreed to hold false documents or to work without authorization. Whether prostitution is legal or not, the United Nations suggests that States should not prosecute persons for being trafficked into sexual exploitation, even if the person originally agreed to work in the sex industry. The aforementioned document states that without this approach, victim assistance and support programs are rendered ineffective and meaningless. In spite of this, trafficked people are currently prosecuted for committing crimes during their period of victimization. Therefore the United Nations request that States take on necessary measures to afford victims legal defense of having been subject to psychological coercion, threats, or physical violence when they committed the crime.

Afford victims the legal defense of having been subject to psychological coercion, threats, or physical violence when they committed the crime

Doris spent four years in Morocco before taking a small open boat to the Spanish coast. In Morocco she gave birth to twins, Emmanuel and Lucky. When she left Nigeria she did not know that she would have to become a beggar in order to survive. One day a man proposed to pay for her trip to Spain along with her children under the condition that one of the kids would travel with another woman, Joy, who was taking the same boat. Doris accepted and once the two women got to Spain, each carrying a baby, they were separated and sent to different shelters.

Some days afterwards, Doris received a phone call: it was a woman that claimed to be Joy's sister and she told Doris that she had to pick up Lucky from a southern Spanish city. Shortly afterwards, she received another phone call from the same woman telling her that her child was now in a different city, far away from the previous one. Doris got scared and thought that she would never see her child again so she decided to tell the truth to the organization that was assisting her since her arrival. They helped her present a police report at the Central Police Station.

In her report she included all the information she had on Joy as well as the entire event that had led her to leave Morocco. She also said that her "husband" had all the

documents that proved that Lucky was also her son, twin brother of Emmanuel. In addition to this, she authorized a DNA test in order to confirm all the information. At the same time, someone working in a Moroccan organization visited the shelter Doris was staying at. They immediately recognized each other, as this person had paid for all the expenses during her childbirth. This person went to the Central Police Station to confirm that Doris was in fact the twins' mother. Based on this evidence the police initiated an investigation and arrested Joy, while Lucky was transferred to a child protection center.

The organization that was assisting Doris notified the Ombudsman Institution about the situation and requested their intervention in order for the child protective services to return Lucky to her mother. Several weeks later, the mother and child were reunited. Joy went to jail with a judicial order, charged with trafficking of children. The organization realized that Doris feared retaliation from those who had forced her and her children to go to Spain, as she had given all their names and last names. The organization in Morocco confirmed that this was a founded fear by informing authorities that members of the crime network knew about what had happened.

The United Nations High Commissioner For Human Rights Principles and Guidelines on Human Rights and Trafficking states that trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities as long as such involvement is a direct consequence of their situation as trafficked persons.

However, in the Convention against Transnational Organized Crime or in the Protocol against human trafficking there is no clear obligation establishing that States should not prosecute victims of human trafficking. Nevertheless, there are several non-binding guidelines, such as those recommended by the United Nations High Commissioner For Human Rights as well as action plans (such as the aforementioned Action Plan from the OSCE), that urge States to avoid prosecution on the basis of illegal immigration or residence perpetrated by victims of trafficking. Such provisions are in line with recognized abuses of the human rights of trafficked persons. They are also in line with the identification of these persons as victims of a crime, whether or not the perpetrators of the crime are identified, arrested, charged, indicted, or convicted.

The Spanish Criminal Code mentions in Article 177 bis: "Without prejudice to apply the general rules of this Code, the victims of trafficking of human beings shall be exempt of punishment for the criminal offences that might have been committed while suffering exploitation, as long as participation therein has been a direct consequence of the situation of violence, intimidation, deceit or abuse to which they may have been subjected to and provided there is an adequate proportionality between that situation and the criminal act perpetrated."

They are victims of a crime, whether or not the traffickers are convicted

Article 177 bis of the Criminal Code encompasses non criminalization assumptions

The Regulation provides for the possibility of exempting victims of liability

Likewise, according to Article 143 of the Regulation approved by Royal Decree 557/2011, foreign victims of trafficking have the possibility to be exempt from administrative penalties for illegal entry or residence in the country.

1. The authority that receives collaboration from the victim of human trafficking during the crime investigation or the criminal procedure may issue a proposal to the competent Delegate or Sub-delegate for an exemption of liability due to infringement of article 53.1.a) of Organic Act 4/2000, of January 11th. Without detriment to what was previously mentioned, and considering the victim's personal situation, the Government Delegation or Sub-delegation may determine exemption of liability.
2. If non-exemption of liability is determined, the suspension of disciplinary proceedings or expulsion and deportation orders will be lifted. In cases in which the disciplinary proceedings or the deportation ruling is competence of another Government Delegate or Sub-delegate, these authorities will be informed of the results of the exemption of liability for the purpose of filing the proceeding and deciding whether or not to revoke the expulsion order.
3. Without detriment to the previous section, the monitoring of criminal proceedings will also depend on requests of residence permits based on exceptional circumstances issued by the foreigner, claiming concurrence of an act other than that provided for in Article 59 bis of Act 4/2000, to the ruling of the case.

Their return should ideally be voluntary

As for repatriation of victims of human trafficking, individual cases must be analyzed and the obligations of States must be taken into account. In Article 16 the Council of Europe Convention establishes several demands regarding return of residents to their country of origin when they are identified as victims in another country, as well as for repatriation or deportation from countries in which they are residing and they are not residents or citizens. The victims' return "shall preferably be voluntary". Furthermore, "when a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim...".

Article 59 bis of the Foreign Nationals Act provides the possibility of repatriation

Article 59 bis of Organic Act 4/2000 provides for in Section 4 the possibility of assisting the victim in returning to his/her home country. Guidelines for this procedure are laid out in Article 145 of its Regulation

"We must encourage voluntary return of the victims. When they are deported to Nigeria, the criminal network starts working again so the victims can go back to Europe. So we cannot force them to repatriate; they are the ones that have to request a recovery process because they have large debts to settle with powerful crime rings. Therefore, if they are deported they would be forced to pay their debt and if they have not paid it, they will have to go back."

(Lagos based NGO interview excerpt, Nigeria.)

Lucile was detained by the police along with a group of Brazilian women who performed prostitution in various flats in a major Spanish city. This police operation was described as being part of an effort to dismember a female sexual exploitation criminal network. The police deemed Lucile guilty of prostitution, of harming public health, and of exploiting labor rights. The jury released her on probation upon taking her statement. However, Lucile had already been prohibited from entering Schengen territory due to her illegal status, which she contravened. So the police asked another Jury to authorize her relocation to an immigrant detention center as the final step prior to her deportation.

Once in the detention center, she was interviewed by two lawyers from an organization that was specialized in helping victims of human trafficking. They confirmed that she was confused and scared, and thought that she was trying to hide facts, perhaps so as to protect someone. They decided to return later on to speak with her again and continue the identification process. Her defense attorney had communicated to the Court that her client had been detained by the police and was in an immigrant detention center, and s/he asked for her deportation process to be suspended since she showed signs of being a potential victim of human trafficking. By the next day, when the two specialist lawyers returned to the detention center to continue interviewing her, she had already been deported.

The organization that assisted her in the detention facility filed a complaint before the Ombudsman Institution for the way in which her deportation was handled. The main defect identified was that the police had not informed either the Court or Lucile's lawyer about the execution of her deportation. An investigation was initiated with the Attorney General's Office to find out about the status of the criminal proceedings and the circumstances in which the deportation was carried out. The Attorney General's Office issued a copy of the order of dismissal the proceedings from court in which the following was stated: "From all that precedes this, there is no record that the Immigration Brigade had knowledge of (Lucile) undergoing criminal proceedings, or that any judge had issued a specific order for her not to be deported, for which neither corruption nor disobedience should be considered, since both criminal accounts are eminently fraudulent and that requisite is utterly absent. It follows that we agree to the filing of the current proceedings, given that there is no crime whatsoever, having to notify the complainant and inform her that, with reference to Article 773 of the Criminal Procedure Law, she will be able to re-file the complaint before the corresponding party, if she were to disagree with this decision."

According to the Ombudsman Institution, situations such as these evidence the need to substantially improve the coordination among the competent entities. Immigrant legislation requires that the presumed foreign victim of a crime provide essential information for the investigation; the victims often collaborate, although their statement is not considered sufficient when the fundamental information is not provided,

Flaws have been found in the expulsion process of potential human trafficking victims

Victims that cooperate should not be left unprotected

be it for lack of knowledge or any other circumstance. These instances leave the victim defenseless and under serious risk which can be greater than that prior to collaborating with the authorities. In the case of potential victims of human trafficking, it can be that after filing a police report and telling everything they know about their traffickers, their testimony is considered irrelevant by the judicial authority, after which the victim will continue being regarded as someone with an illegal immigrant status without any additional protection whatsoever.

All women released were granted witness protection status

In this investigation, it was also necessary to inquire about the immigration status and personal situation of other women who belonged to the same sexual exploitation network. Spain's Central Department of Immigration and Border Police informed that all women released in the police operation were granted witness protection status and one of them was given a residence permit for cooperating with the authorities.

During the preparation of this report, the Attorney General's Office has given the Ombudsman Institution the voluntary termination of proceedings and the file of the actions decreed by the Examining Magistrate Court, considering that the reported facts do not represent any crime whatsoever.

The case was dismissed when they testified that they worked as prostitutes voluntarily

"In the case at hand, the operations are a result of the complaint filed by Ms..., in which she explains that her bosses J. and P. have a place on ... Street, in which they offer sexual dating services with undocumented female immigrants. They have no legal permit or authorization for this business. Ms. ... affirms that yesterday she was fired without any explanation for the corresponding grounds, which is the reason this complaint is filed. Whereas it is true that some of the presumed victims that served as prostitutes in the various aforementioned flats had illegal immigrant status in our country, their statements as protected witnesses are equally true ... it can thus be concluded that those voluntarily and freely working as prostitutes, not being forced, nor coerced, nor threatened by any of the co-defendants, with a flexible schedule and with no boss, making their rules and norms about what they wanted to do and just paying for the rooms and advertising provided for by the defendants..., the recording cameras that existed in the homes were not really there to control them, but to monitor their safety, given the occurrence of robberies. No others were in charge of the business, other than the supposed P... who rented the flats on that street ... Along these lines, in the initially filed complaint, which initiated the current operations, false motives can be found, such as an ill will towards the accused, whom, as she alleged, had fired her a few days before for no reason at all. In her complaint she did not say that she was forced into prostitution, nor did she mention any type of event that could be used as evidence of criminal offence.

Victims had not been forced or deceived into prostitution

Therefore, basing ourselves on the facts, we can conclude that the victims were not deceived, intimidated or forced into prostitution as they had been previously informed about the activities that took place in the apartments and they accepted this. Moreover, some of them did not want to engage in prostitution from the start so their

job was to take care of the apartments... On the other hand, the alleged conduct of the co-defendants were not proven, for example, that they obtained economic benefit from prostitution, an offence according to Article 188.1 of the Penal Code that punishes whoever 'makes a profit from the prostitution of another person, even with the latter's consent'.

During one of the many search and entry inspections 0.73 grams of cocaine were seized from co-defendant J... it hasn't been proven that he intended to sell it. Additionally, the co-defendant ... is not available to the Spanish judicial authorities, since he moved to his country for family reasons, and when he tried to get back to Spain he could not enter the country, as he was stopped by authorities at Barajas Airport border control...".

2. Victim Assistance

In the previous section the key points regarding victim identification protocols have been elaborated, as well as the most significant weaknesses in these protocols. Once the victims have been identified, it is necessary that they have enough resources in order to be properly protected. The assistance of victims of human trafficking in Spain is one of the aspects that need to be worked on in order for them to be effectively protected.

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 identifies four fundamental priorities during this time period. The first one consists of identifying, protecting, and assisting victims of trafficking.

This first priority consists of four actions: the first one is meant to establish referral mechanisms for national and transnational victims: "Member States should ensure that formal, functional national referral mechanisms are established. These mechanisms should describe procedures to better identify, refer, protect and assist victims and include all relevant public authorities and civil society. The development of criteria for the identification of victims should be included, to be used by all those involved. Member States have already committed to establishing these mechanisms by the end of 2012 in the context of the EU Policy Cycle to fight serious and organized crime. Under the Directive on trafficking in human beings, victims should receive appropriate protection and assistance on the basis of individual risk and needs assessments. Carrying out the assessments should be part of the remit of the national referral mechanisms. Based on the first implementation of these national referral mechanisms by Member States, the Commission will develop guidelines on how to further develop them by 2015. They should also address issues such as compensation and safe return. The roles and responsibilities of all those involved should be clearly defined.

Assistance of victims and efficient protection mechanisms should be improved

Mechanisms should describe the procedures for identification, referral, protection, and assistance of victims

Individual risk and needs assessment should be carried out

At present, when victims move across borders, problems are generally solved bilaterally on an ad hoc basis. This is often time-consuming and inefficient. In line with a victim-centered approach, by 2015 the Commission will develop a model for an EU Transnational Referral Mechanism which links national referral mechanisms to better identify, refer, protect and assist victims”.

The Commission will provide clear, user-friendly information on the labor and social rights of victims

Action four intends to guarantee proper mechanisms for the protection of victims: correspondence to the Commission over the years illustrates the problems individuals face in contacting the appropriate authorities or organizations in order to receive clear information on their rights to assistance and health care, their right to a residence permit and their labor rights, their rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation. To inform victims of their rights and help them effectively exercise them, in 2013 the Commission will provide clear, user-friendly information on the labor, social, victim and migrant rights that victims of trafficking in human beings have under EU law. The Commission will then help Member States provide and spread similar information at a national level in 2014.

Article 59 bis of Organic Act 4/2000 establishes in Section two that competent authorities shall also be responsible for meeting the subsistence needs of the person concerned and, where necessary, providing security and protection for their minor or disabled children if they are in Spain during the identification process. In relation to this, Article 142.7 of the Regulation that came into force by Royal Decree 557/2011 states that: “During the recovery and reflection period, competent police authorities, according to criteria established in Article 140 of the Protocol, shall provide protection to victims. Likewise, they shall guarantee that victims are aware of the possibility of being transferred to regional or local authorities with competence with regard to social services”.

Security and protection measures should be provided

Moreover, the Framework Protocol for the Protection of Victims of Trafficking includes measures for victims of human trafficking, in Section viii (on protection and security measures for trafficked persons):

«1. Following an assessment of the existing risks, the police unit shall inform the victim of the possible risks and of the protection and security measures which must be adopted. In the event that the victim expressly rejects all or any of the proposed protection and security measures, this refusal must be placed on record in an official document, to be signed by the acting law enforcement authority and by the victim, also recording where applicable if the victim’s signature could be obtained.

2. Protection and security measures may involve providing a permanent contact telephone number for the personnel responsible for the investigation, informing the victim about self-protection measures, including the need to remain in secure accommodation or to move to another Autonomous Region, and advising that any change of address should be notified, along with any other measures deemed ap-

appropriate considering the risk implied by the situation in question. Notwithstanding measures mentioned above, the State Security Forces shall, with regard to protection measures, comply with the terms dictated by the Public Prosecution Office.

3. Protection and security measures shall likewise be applied to under aged or disabled children of victims if they are located in Spain, and also, on an extraordinary basis, to any other persons located in Spain with whom the victim may have family or other ties, when it can be demonstrated that if they were to be left unprotected from the presumed traffickers, this would constitute an insuperable barrier preventing the victim from cooperating”.

The 2012 *Trafficking in persons report* published annually by the U.S. Department of State, mentions that the Spanish government demonstrated some tangible progress in protecting trafficking victims during the last year. The report mentions the Regulation implementing Article 59 bis of Organic Act 4/2000, as well as the protocol for victim identification to guide implementation of Article 59. NGOs report that the adoption of these instruments has increased the number of referrals of potential trafficking victims by law enforcement authorities. The report states that anti-trafficking experts in the country nevertheless continued to note serious concerns about the government’s efforts and ability to identify trafficking victims effectively. It also mentions that NGOs reported cases of victims who, despite assisting authorities with evidence and court testimony, were not provided long-term residency permits.

The U.S. Department of State recognizes Spanish efforts

Some of the victims that collaborated were not provided residence permits

“FOUR PEOPLE ARE ARRESTED FOR PROSTITUTION OF ASIAN WOMEN”

Police arrested four people in Seville and Pamplona. They were all members of a Chinese family that ran several brothels, forcing Asian women into “sexual slavery”24-hours a day, according to information provided yesterday by the Sicilian Police Department.

The ringleader was a male that owned three houses, two of them in Seville and one in Pamplona. In these places, women were treated as real sex slaves. The victim had to be available for client requests 24 hours a day. The exploitation ring compromised their health, as the women had to engage in unprotected sexual intercourse in exchange for ten extra euros.

The girlfriend of the ringleader was also arrested, as she was the person in charge of controlling the women, collecting the money and attending customers. The sister and son of the ringleader were also arrested in Pamplona, and charged with the same offences.

The ring kept over half of the income that the exploited women made.

(Posted on Tuesday, September 13, 2011, in “El País”.)

The victim's whereabouts were unknown

Once the investigation was initiated with the General Directorate of Police, a Chinese female citizen with irregular immigration status was identified. She had previously received an expulsion order that had not been carried out, so as a victim of human trafficking for sexual exploitation, she decided to claim a recovery and reflection period. However, she did not accept the offer to be taken in by residential facilities specialized in assistance to trafficked persons; therefore, when the decision was made on the recovery and reflection period, there was no way to notify her as her whereabouts were unknown. The Attorney General's Office informed that the criminal proceedings, that began after the police operation had been dismissed due to a lack of evidence of the crime.

Section ix of the Framework Protocol for the Protection of Victims of Trafficking, on victim referral to specialized care facilities, establishes that the victim shall be informed of the support resources available, in order to guarantee him or her appropriate and secure accommodation, where necessary, along with material assistance, psychological support, medical support, interpretation services and legal advice. If the victim agrees, s/he shall be provided with a referral to regional or local authorities with competence with regard to social services or to organizations with proven experience in assisting trafficked persons, in particular those which provide comprehensive support services and are involved in public administration programs for victim support and protection.

Resource Map of Care Services for Victims of Human trafficking for Sexual Exploitation or Prostitution

The Ombudsman Institution inspected the former Office of the Secretary of State for Social Services and Equality in order to learn about an investigation this department carried out on the measures adopted in accordance to the framework of the Comprehensive Plan to Combat Human Trafficking for Sexual Exploitation, a document named *Resource Map of Care Services Available for Victims of Human trafficking for Sexual Exploitation or Prostitution (VTES/P)* was found. This investigation addressed three objectives:

1. Develop a resource map of services for VTES/P in different regional autonomous communities and their provinces.
2. Describe and locate the resources.
3. Develop a practical document to be used as a resource guide addressed to public and private institutions, both on a local and regional level, that assist or are able to assist potential victims of trafficking and individuals in prostitution.

Once the aforementioned investigation was analyzed, the conclusion was that the first objective was met, as resources assisting victims were identified. However, the description of the services is too general and the measure does not meet the objective of providing information so that it can be used as a resource guide.

The investigation identifies two kinds of entities that assist trafficked persons: relief entities without accommodation service and relief entities that provide accommodation service. Both categories provide information on the ratio of service provid-

ers per regional autonomous community and province, the service providers in that region, the location of centers per province, the ratio of organizations and the resources they provide as well as the total number of organizations in relation to services they offer. In the case of organizations that provide accommodation facilities, it also includes information on available places per regional autonomous community as well as the maximum average stay in accommodation centers per region.

There are two kinds of relief entities: with or without accommodation service

Available accommodation for victims of human trafficking per regional autonomous community



Identified entities include organizations and associations that have received government grants in order to develop social assistance programs for female victims of trafficking for sexual exploitation. All the regional autonomous communities have at least one association (with or without accommodation service). Most of them are located in Madrid, Andalusia and Catalonia. This information should be completed in order to determine whether there are any institutions that give assistance to victims although they do not receive government grants.

There are not many accommodation centers for children or men

The available resources that have been identified are mostly meant for adult women (victims of human trafficking for sexual exploitation and in prostitution). There is also a small number of accommodation centers for children and men. Spain has 17 centers for children and two for male trafficking victims.

The investigation shows that most of the specialized service providers offer social, psychological, legal, health and labor training services (close to 72% in the case of entities without accommodation service and 80% in entities with accommodation service). On the other hand, the percentage of entities that offer psychiatric services is low (1% in the case of entities without accommodation service and 2% in the case of entities with accommodation service).

Most of the accommodation facilities are found in Madrid and Andalusia

Out of 397 places available for accommodation, 46.85% are located in the regions of Madrid and Andalusia. The percentage of accommodation services located in the regional autonomous communities of Castilla La Mancha, Cantabria, Valencia, Navarra, Extremadura, Asturias and the Basque Country is low (between 1.26 and 3.02%). The other accommodation services are located in Catalonia, Murcia, Aragón, Balearic Islands, Canary Islands, Galicia and Castile y León (between 3.78 and 8.31%).

The maximum time that victims spend in accommodation facilities varies according to the entity with the accommodation services. Some entities do not have a maximum average stay, as this will depend on individual cases of victims of sexual exploitation (7 of the 41 centers). Other entities have accommodation services that go from two days (one center), up to several months (4, 6, 9), or even one or two years.

Moreover, it should be noted that the investigation makes no distinction between service providers assisting victims of trafficking and service providers assisting women engaged in prostitution. This approach may be positive during the first phase of work with women, especially when identifying them as victims (a woman may first be identified as a prostitute and then as a victim of human trafficking). However, it is unclear whether such entities work with both groups of women using the same methods, or if they use different methods (and if this is the case, what would different methods include?)

There is no guiding criteria, nor standard procedures

Beyond a numerical approach to the services these organizations offer, the investigation does not include information on the type, quality and development of the services they offer to victims of trafficking. A profile and the experience of the experts working there is not included either, nor intervention guidelines or criteria for evaluating cases. This information would have been useful as there is no guiding criteria or standard procedures regarding the assistance of victims of trafficking.

In this context, one of the most relevant aspects that have been left out of the investigation is the description of basic criteria by which the entity identifies a person as a victim of human trafficking. This also implies the criteria used to evaluate the needs and the referral of potential victims of human trafficking.

Moreover, the investigation suggests that each entity has its own internal procedure, which implies there is a lack of a standard procedure. There is not enough information in order to evaluate the type of accommodation services, the state of the facilities and criteria regarding periods of stay (centers with accommodation services have different periods of stay). Standard procedures used for victim referral to the facilities identified in the investigation would be beneficial. Additionally, the investigation does not include information on best practices for assisting victims of human trafficking.

All of this is crucial, as the referral process to the entities identified in the investigation can be effective only after the victim or potential victim has been correctly identified. The document does not analyze these critical aspects, fundamental for the referral process and for the proper implementation of the identification process as well as for the type of assistance that the victim shall receive and the period of stay at the facilities. Nor does it address important issues such as staff training and experience in the issue, or the quality of the services provided.

The aforementioned conclusions suggest that guiding principles, best practices and clear standard procedures in terms of assistance to human trafficking victims have not been developed by service providers and the public administration.

The importance of identifying best practices and standard procedures for combating human trafficking is mentioned in several international documents, such as the aforementioned document from the International Organization for Migration and the UN.GIFT regarding cooperation between competent authorities and NGOs. This document mentions guiding principles for key institutions and law enforcement agencies on counter-trafficking cooperation.

The Guiding Principles intend to serve as a practical tool that will help stakeholders while developing counter-trafficking agreements. Stakeholders include government agencies with competence on action against trafficking and non-governmental specialized service providers.

Another important element of the effective assistance to victims is the right to an effective remedy for victims of trafficking. The special rapporteur for victims of trafficking, especially women and children, dedicated a chapter on this matter in her annual report that was presented at the United Nations General Assembly on August 2011.

There are no joint standards or guidelines between NGOs and the Public Administration

The International Organization for Migration has helped in the development of guidelines

“I filed a police report on Friday and they had no place where I could stay. They told me that I should find a hotel and go back on Monday. Then they sent me here and made me go to court several times. All of that was very stressful because I was studying at the time and I could not focus. Every time I had to go to court I had to wait there for a long time. This is not over yet. I am in the witness protection program, but the lawyer they assigned for my case does not have much knowledge on this issue. I did not go to the trial because I was depressed, I have been to court five times in one month”.

Excerpt from an interview held with a victim of human trafficking under the care of a specialized service provider.)

The right to an effective remedy is also a human right for victims of human trafficking

The right to an effective remedy is a fundamental human right for all persons, including trafficked persons, which States must respect, protect and fulfill in accordance with international human rights law. It is also a well-established doctrine of international law that a State has an obligation to provide remedies where an act or omission is attributable to it and constitutes a breach of an international obligation of the State. In the context of trafficking in persons, States are under an obligation to provide remedies for trafficked persons where they fail to exercise due diligence to prevent and combat trafficking in persons or to protect the human rights of trafficked persons.

Discussions on the right to an effective remedy for trafficked persons tend to focus on compensation; compensation is only one aspect of this right. Effective remedy encompasses recovery, restitution, satisfaction and guarantees of non-repetition, as well as a set of ancillary procedural rights that enable trafficked persons to exercise the right to an effective remedy in a meaningful manner. Such procedural rights of access to substantive remedies may include the rights to legal, medical, psychological, social, administrative, and other assistance.

Restitution is aimed at restoring the situation that existed prior to the violation. Measures of restitution in the context of trafficked persons may include, for example: the release of the trafficked person from detention (whether such detention is imposed by traffickers, the State or any other entity); return of property such as identity and travel documents and other personal belongings; recognition of legal identity and citizenship; safe and voluntary repatriation to the country of origin; and assistance and support necessary to facilitate social integration.

Restitution is not simply helping the victim return to their previous situation

As discussed in the report to the Human Rights Council, restitution, as conventionally understood, may not be a suitable form of remedy when simply returning the trafficked person to the pre-existing situation may place him or her at the risk of further human rights violations and of being re-trafficked. From this perspective,

restitution implies States' obligations to undertake broader measures to address root causes of trafficking and to provide necessary reintegration support to trafficked persons, so as to minimize any risk of re-trafficking. For instance, when trafficked women and girls have been subjected to sexual and gender-based violence, they may face discrimination, social stigma, communal and family ostracism upon return to their families and communities, thereby resulting in their re-victimization. In this context, measures to address the root causes of trafficking, such as gender discrimination and inequality, play a crucial role in ensuring effective restitution of trafficked women and girls.

Victims may be subject to discrimination, stigma and social exclusion

"They said they would legalize my immigration status if I helped, and I know its required by law, but they wouldn't do it. Now it's been a year and eight months since I am here and things are starting to get better, but my belongings are still in court, as well as my money and my laptop. The trial already took place, my lawyer told me that she has sent two letters to the court but I didn't get my things back. For them it's not important, but for me it is, it's my stuff ... The police came to pick me up in a car to escort me to court to testify, they were nice to me and made efforts to reassure me, but when I arrived to court I saw them and I'm not sure if they saw me, so I ducked inside the car. I don't understand why the car had no tinted windows."

(Excerpt from an interview held with a human trafficking victim under the care of a specialized service provider).

3. Special reference to victims of human trafficking and international protection

3.1. INTRODUCTION

The 1951 Convention and Protocol relating to the Status of Refugees in its first article applies the term "refugee" to any person that, "Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

The 1951 Convention defines who is a refugee

Several international conventions and agreements refer to trafficked persons' right to seek and enjoy asylum

Several international conventions and agreements refer to the right of asylum of victims of trafficking. The Council of Europe Convention (Article 14.5 and 40.4) and the Palermo Protocol (Article 14.1) include saving clauses affirming that their instruments shall not affect “the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”.

Council of Europe Convention, OSCE action plan...

Likewise, the OSCE action plan to fight human trafficking mentions that States should keep on “ensuring that anti-trafficking laws, policies, programs and interventions do not affect the right of all persons, including victims of trafficking in human beings, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through effective application of the principle of non-refoulement”.

In addition, Directive 2004/81 and 2011/36 also specify that the principle of non-refoulement shall not be affected, as it is based on the full and inclusive application of the Convention relating to the Status of Refugees of 28 July 1951 (Geneva Convention) and Articles 4 and 19, Chapter 2, from the Charter of fundamental rights of the European Union.

“The principle of non-refoulement is basic for international protection of refugees. As provided for in Article 33 from the 1951 Convention, which also links Member States of the 1967 Protocol”. This right is usually considered as a customary international right.

UNHCR has elaborated documents that specify eligibility for asylum

UNHCR has produced several documents that analyze the need for international protection of victims, specifying the terms and circumstances that would give a victim of human trafficking the right to be considered a refugee, and therefore are eligible to seek and enjoy the right for asylum. The aforementioned documents outline guidelines and are meant to be used as a guide of legal interpretation for governments, lawyers, people responsible of making decisions, judges and UNHCR personnel that do fieldwork to determine refugee status.

Individual circumstances of victims are taken into account

Guidelines from 2006 on international protection analyze all the requirements that the Convention demands in order to identify refugee status within the context of victims or potential victims of human trafficking, taking into account particular characteristics that come with this type of human rights violation. These guidelines should be read together with Guidelines from 2002 on gender-related persecution within the context of Article 1A(2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees and the “membership of a Particular Social Group” within the context of Article 1A(2) of the 1951 Convention and/or the Status of Refugees in relation to victims or potential victims of human trafficking.

In the Guidelines, the UNHCR mentions its responsibility to ensure that refugees, asylum-seekers, internally displaced persons, stateless persons and other persons of concern do not fall victim to trafficking. Secondly, this institution has a responsibility to ensure that individuals who have been trafficked and who fear being subjected to persecution upon a return to their country of origin, or individuals who fear being trafficked, whose claim to international protection falls within the refugee definition contained in the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees or the 1951 Convention are recognized as refugees and afforded the corresponding international protection. However, the Guidelines also state that not all victims or potential victims of trafficking fall within the scope of the refugee definition.

UNHCR takes responsibility for preventing individuals under their protection from being trafficked

Some of the points mentioned in Guidelines from 2006 had already been identified as needing further clarification by UNHCR when the Guidelines from 2002 on gender-related persecution were published. In them, the UNHCR stated that it is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status. This approach has been endorsed by the General Assembly, as well as the Executive Committee of UNHCR's Programme. Therefore, the definition of refugee should include, when correctly interpreted, any-gender related claim. Likewise, Guidelines from 2002 state that "gender-related persecution" is a term that has no legal meaning *per se*. Rather, it is used to encompass the range of different claims in which gender is a relevant consideration in the determination of refugee status. In order to understand the nature of gender-related persecution, the Guidelines from 2002 distinguish between the terms "gender" and "sex". Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination. Gender is not static or innate but acquires socially and culturally constructed meaning over time.

The definition of refugee includes any gender-related claim

Common obstacles that victims of human trafficking have to face during their international protection claims include the difficulty to prove a "well-founded fear of persecution" and "membership of a particular social group". Therefore, it is important to analyze where the UNHCR stands with respect to these two issues:

Difficulty to prove a well-founded fear of persecution

1. Well-founded fear of persecution. Guidelines from 2006 state that asylum claims lodged by victims of trafficking or potential victims of trafficking should be examined in detail to establish whether the harm feared as a result of the trafficking experience, or as a result of its anticipation, amounts to persecution in the individual case. Inherent in the trafficking experience are such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labor, removal of

organs, physical beatings, starvation, and the de-privation of medical treatment. Such acts constitute serious violations of human rights, which will generally amount to persecution.²⁰⁸ In cases where the trafficking experience of the asylum applicant is determined to be a one-off past experience, which is not likely to be repeated, it may still be appropriate to recognize the individual concerned as a refugee if there are compelling reasons arising out of previous persecution, provided the other interrelated elements of the refugee definition are fulfilled. It also refers to the fact that they may face reprisals and/or possible re-trafficking should they be returned to the territory from which they have fled or from which they have been trafficked. In addition, the victim may also fear ostracism, discrimination or punishment by the family and/or the local community or, in some instances, by the authorities upon return. Even if the ostracism from, or punishment by, family or community members does not rise to the level of persecution, such rejection by, and isolation from social support networks may in fact heighten the risk of being re-trafficked or of being exposed to retaliation, which could then give rise to a well-founded fear of persecution.²⁰⁹

According to Guidelines from 2002 on gender-related persecution, some trafficked women or minors may have valid claims to refugee status under the 1951 Convention.²¹⁰ The forcible or deceptive recruitment of women or minors for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence or abuse that can even lead to death. It can be considered a form of torture and cruel, inhuman or degrading treatment. It can also impose serious restrictions on a woman's freedom of movement, caused by abduction, incarceration, and/or confiscation of passports or other identifying documents. In addition, trafficked women and minors may face serious repercussions after their escape and/or upon return, such as reprisals or retaliation from trafficking rings or individuals, real possibilities of being re-trafficked, severe community or family ostracism, or severe discrimination. In individual cases, being trafficked for the purposes of forced prostitution or sexual exploitation could therefore be the basis for a refugee claim where the State has been unable or unwilling to provide protection against such harm or threats of harm.

The Guidelines from 2006 state that the forcible or deceptive recruitment of women and children for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence, which may constitute persecution. Trafficked women and children can be particularly susceptible to serious reprisals by traffickers after their escape and/or upon return, as well as to a real possibility of being re-trafficked or of being subjected to severe family or community ostracism and/or severe discrimination.

2. Membership of a particular social group Victims and potential victims of trafficking may qualify as refugees where it can be demonstrated that they fear being persecuted for reasons of their membership of a particular social group. In establishing this ground it is not necessary that the members of a particular group know each other or associate with each other as a group. Membership of a particular social group is one of the five grounds enumerated in Article 1A(2) of the 1951 Convention relating to the

Status of Refugees. It is the ground with the least clarity and it is not defined by the 1951 Convention itself. It is being invoked with increasing frequency in refugee status determinations, with States having recognized women, families, tribes, occupational groups, and homosexuals, as constituting a particular social group for the purposes of the 1951 Convention. In the aforementioned guidelines, UNHCR defines the ground as: "A social group is a group of people that share a common characteristic other than their risk of being persecuted or are perceived as a group by society. The shared characteristic will often be one that is innate, unchangeable or otherwise fundamental to identity, conscience or the exercise of one's human rights".

Guidelines from 2006 establish that women are an example of a social subset of individuals who are defined by innate and immutable characteristics and are frequently treated differently to men. As such, they may constitute a particular social group. Factors that may distinguish women as targets for traffickers are generally connected to their vulnerability in certain social settings; therefore certain social subsets of women may also constitute particular social groups. Men or children or certain social subsets of these groups may also be considered as particular social groups. Examples of social subsets of women or children could, depending on the context, be single women, widows, divorced women, illiterate women, separated or unaccompanied children, orphans or street children. The fact of belonging to such a particular social group may be one of the factors contributing to an individual's fear of being subjected to persecution, for example, to sexual exploitation, as a result of being or of fear of being trafficked.

In the context of trafficking women for the purposes of sexual exploitation, the category of membership of a particular group is often the only option available for victims seeking protection from trafficking-related persecution. It is not possible to define a social group solely based on the persecution feared or suffered by its members; however, the Trafficking Guidelines explain that the historical fact of trafficking serves as a defining characteristic of the social group, distinct from fear of persecution.

Given the complex nature of asylum claims presented by victims or potential victims of human trafficking, their content must be examined through ordinary proceedings. There are also recommendations on interview procedures that should take into account different emotional aspects that arise in these cases, both in women and children. Therefore, UNHCR states that victims or potential victims of trafficking could seek and enjoy international protection and are included in the scope from the 1951 Convention.

In a report redacted under the request of UNHCR on the identification and referral of trafficked persons to procedures for determining international protection needs (2009), ten countries, spanning five regions, were selected. Criteria used in order to choose surveyed countries included: countries known to be affected by the prob-

*May be granted
international
protection*

*Essential elements
of an effective
referral mechanism*

lem of international human trafficking, developed and developing countries thought to have highly articulated and successful identification and referral procedures, etc.

Legislation and existing modalities were analyzed in these countries, in order to determine if there is effective referral of victims of human trafficking to asylum procedures. The three essential elements for an effective referral mechanism are:

1. A functioning domestic procedure for identifying and registering trafficked persons
2. An effective additional system for addressing international protection needs
3. A consistent and competent mechanism for referring trafficked persons from the first to the second procedure.

The aforementioned study concluded that in selected countries these essential elements were not fully operational when the investigation took place. One of the main conclusions pointed out that if a country does not have all three elements, then trafficked persons' access to international protection will most likely not be fully effective.

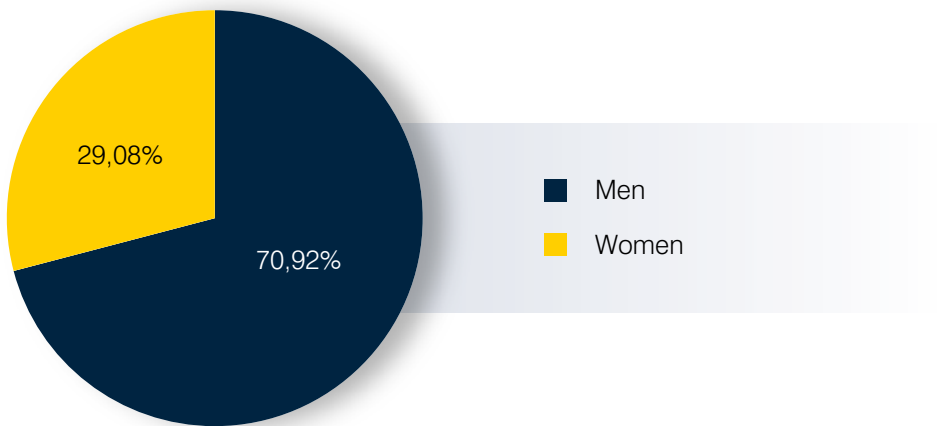
*International
protection
obligations for
victims of human
trafficking are not
met*

Some of the countries seem to lack a clear referral system or staff instructions about how such a referral process might work, despite their fairly developed asylum systems. As a result, trafficked persons in practice have difficulty accessing the asylum system and referral is somewhat unpredictable, *ad hoc* and unsystematic, an improvement over a system with no referral at all but still some way from a satisfactory realization of international protection obligations. In states with large influxes of asylum seekers and established asylum systems, trafficked persons tend to apply for asylum before they are identified or considered for international trafficking protection status. The studies conclude that all countries surveyed except Norway, have established the legal framework for a trafficking protection system, and a system of international protection; but, according to the study's evaluation, these systems are not systematically linked, even though they cater to the same population.

*Our legal system
includes the right to
subsidiary
protection*

As mentioned previously, in the chapter on legal framework, the Asylum Law 12/2009, of October 30, 2009, regulating the Right to Asylum and Subsidiary Protection, lays out in its preliminary title the purpose of this law and the material aim of its regulation, determining the content of international protection in the right to asylum and subsidiary protection. The formally mentioned type of protection is included in Spanish legislation in an explicit way for the first time, as the preamble of this law states, also including details and limits regarding the common definition of refugee: persecution, grounds for persecution y persecutor. Other new gender-related aspects are also included and this reference is important since it means that UNHCR's line of action is being followed.

International protection seekers in Spain by Sex (2010)



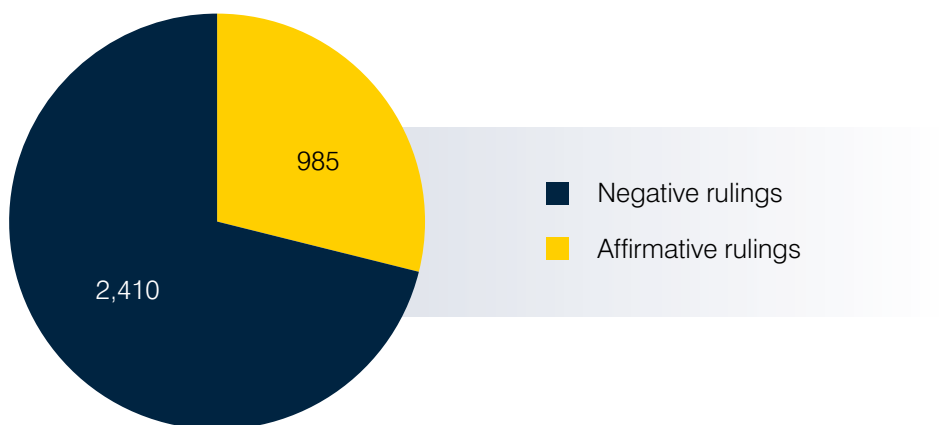
Source: Technical Secretariat of the Ministry of Interior. Asylum figures 2010. In-house compilation.

Preamble of Law 12/2009 states that the subsidiary protection regulation follows the same criteria used in the right to asylum. This means that beyond the grounds that may justify one or the other status, the purpose of both is that people receive protection from risks concerning their life, their physical integrity or their freedom, which they cannot find in their country of origin.

The procedure is the same for the two types of protection, hence both possibilities can be analyzed simultaneously, and eventually on an *ex officio* basis; reviewing applications in this way avoids unnecessary delays and abusive practices.

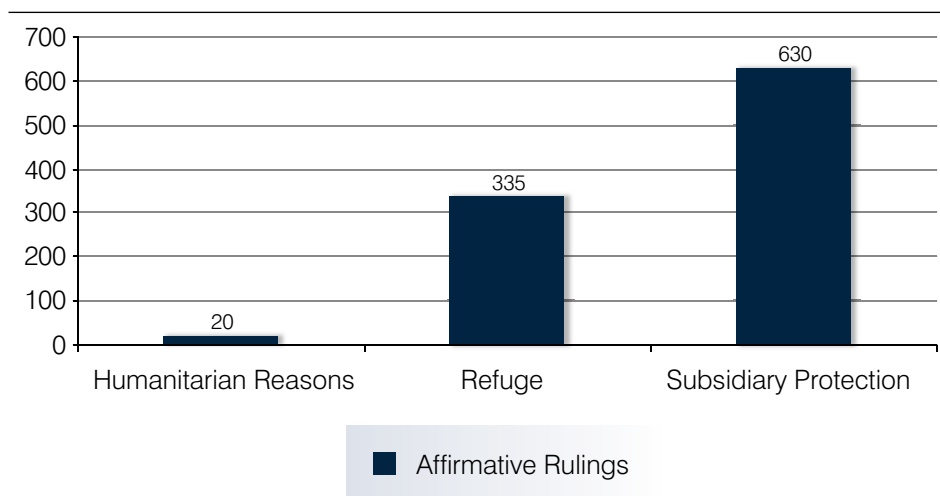
Subsidiary protection follows the criteria laid out in asylum law

International protection rulings in Spain during 2011



Source: Eurostat, 46/2012. In-house compilation.

International protection granted in Spain during 2011



Source: Eurostat, 46/2012. In-house compilation.

This Law also dedicates a chapter to minors and other vulnerable persons

This Law also dedicates a chapter to minors and other vulnerable people in need of either of the two kinds of international protection. As stated in its preamble, this is a new explicit reference specifically to minors and unaccompanied minors, absent in the previous asylum law. Likewise, the significant intervention of the UNHCR in the procedure, in order to reinforce the guarantees in the procedure of asylum requests in Spain, is also highlighted in the preamble.

Sexual identity and age are included amongst grounds for persecution

Article 6.2 states that acts of persecution may include acts of physical or mental violence, as well as of sexual violence. Additionally, Article 7.1 states that when evaluating grounds for persecution, certain elements should be taken into account: “Depending on circumstances in the country of origin, the concept of social group is identified as a group based on a common characteristic of sexual orientation or gender identity and/or age. These isolated aspects cannot lead to the implementation of this article”. It further notes that, in the light of prevailing circumstances in the country of origin, people who leave their home countries due to persecution on the grounds of fear of gender-related and/or age-related persecution are included in this article. Nevertheless these isolated aspects cannot lead to the implementation of this article.

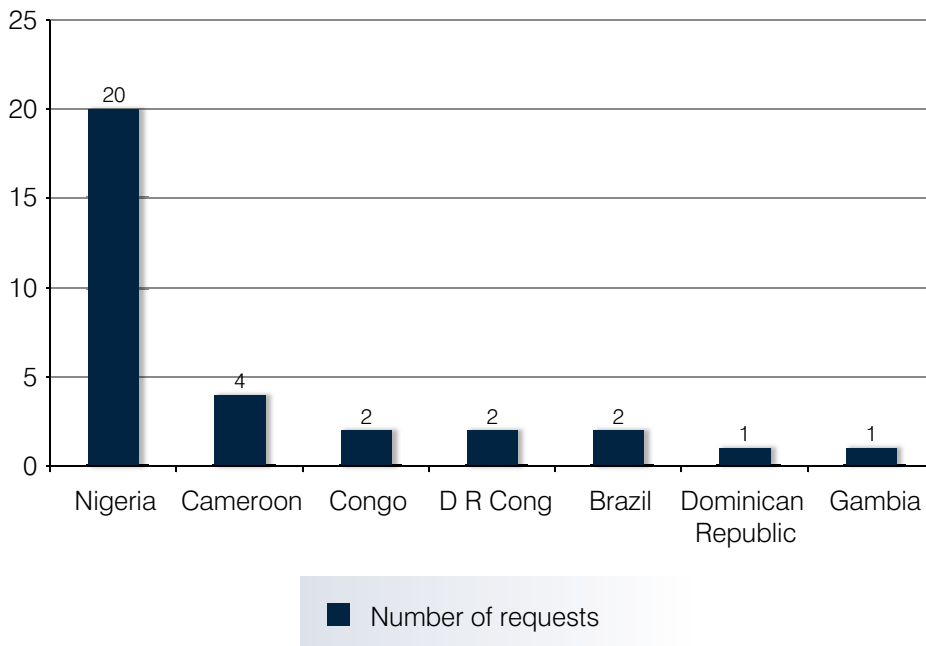
22. ... It also urges that the State party gives full protection to female victims of human trafficking that claim asylum on grounds of gender-related persecution, following the 1951 Geneva Convention on the Status of Refugees. The Committee also demands that the State party continues to gather and analyze data according to age and country of origin, in order to find trends and primary causes of the phenomenon as well as the most important fields of action, and to establish relevant policies on the issue.

(Source: Observations of the Committee on the Elimination of Discrimination against Women in Spain. 44th session period.)

Article 46 includes minors in the category of “vulnerable persons”, as well as persons with disabilities, unaccompanied minors, elders, pregnant women, single parents with children, individuals who have suffered torture, rape or other forms of serious physical, psychological or sexual violence and victims of human trafficking.

Vulnerable persons

Requests for international protection in potential trafficking cases by nationality (January 2009 - May 2012)



Source: UNHCR. In-house compilation.

Section 1 of this article, with respect to the vulnerability of these individuals, states that necessary measures will be taken into account in order to give special treatment, when needed, to these individuals when requesting international protection. Finally, Section 3 of Article 46 provides the possibility to authorize residence to the applicant on the basis of humanitarian reasons other than those included in the statute for subsidiary protection. Therefore, we could consider that current legislation can guarantee the enforcement of the Asylum Law for victims or potential victims of human trafficking.

Jurisprudence from the Judicial Review Division of the Supreme Court, prior to the entry into force of Law 12/2009, had already established that “a situation of vulnerability and social, political and legal marginalization of women in their country of origin, that violates their human rights is grounds for asylum [...] persecution on gender-related grounds is included in social persecution [...] and more specifically, a situation of harassment and threat against a woman in order to force her into marriage is also included in social persecution ..., these requests refer to Nigerian asylum seekers.”

Current legislation guarantees the application of asylum law for victims of human trafficking

Gender-related violence is grounds to grant asylum, when there is no protection in the country of origin

The Judicial Review Division of the High Court had also recognized in 2009 that gender-related violence claimed by a female asylum-seeker should be taken into account. The Division also revoked the ruling by the Office of Asylum and Refuge, granting her the protection she had requested.. Nevertheless, the Attorney General's Office appealed this ruling to the Supreme Court considering the Judicial Review Division's arguments implied an unlawful application of Article 3 of Law 5/1984 of March 26th (in force by then), as it "understands that all battered women have right to asylum in Spain [...] battered women all over the world belong to a social group that is part of a wider legal concept for persons with right of asylum". The Attorney General's Office states that this assumption is not understood as membership to a social group according to reinforcement sources of International Law.

The Third Section of the Judicial Review Division of the Supreme Court dismissed the appeal filed by the Attorney General's Office in a ruling dated June 15, 2011 that stated that "... the Court has carried out a consistent and reasonable interpretation of Article 3.1 of Law 5/1984, of March 26th, regulating the Right of Asylum and Refugee status, in relation to the concept of refugees in Article 1A (2) of the 1951 Geneva Convention relating to the Status of Refugees and its 1967 New York Protocol. The court takes into account the prolonged abuse that Alejandra, the Algerian appellant, has suffered along with her underaged children, Maria del Pilar and Lucas (Algerian nationals as well). The physical and psychological abuse inflicted by her husband is considered – for its severity- inhuman and degrading treatment, as well as recurrent. Thus it can fall under gender-related persecution, which determines that, given the lack of effective protection from authorities in the country of origin, right of asylum will be granted"..

Nevertheless, despite aforementioned case law and the clear evolution in identification of gender-related protection by Article 46 of Law 12/2009, the road ahead is still long and especially difficult for female victims of human trafficking in need for international protection.

It entails the risk that these claims for international protection are dismissed at the border

Considering complaints that have been filed as well as the results of inspections carried out for this report, the Ombudsman Institution is concerned about the line of work of the institution responsible for the examination and ruling of international protection requests. Most often, it dismisses international protection requests filed by victims or potential victims of human trafficking, arguing that the Asylum Law does not provide for these cases, but that these cases should be addressed under the Foreign National's Act. This dismissal entails the risk that these requests for international protection are dismissed both in proceedings at the border crossing as in the ordinary proceedings, without having carried out a profound analysis of the claims, nor having carried out risk assessment in cases in which the victim will be returned to his/her country of origin.

28. ... The State party should also make sure that the Toolkit to Combat Trafficking in Persons considers the possibility that victims of human trafficking may need international protection. On this basis, the State party should:

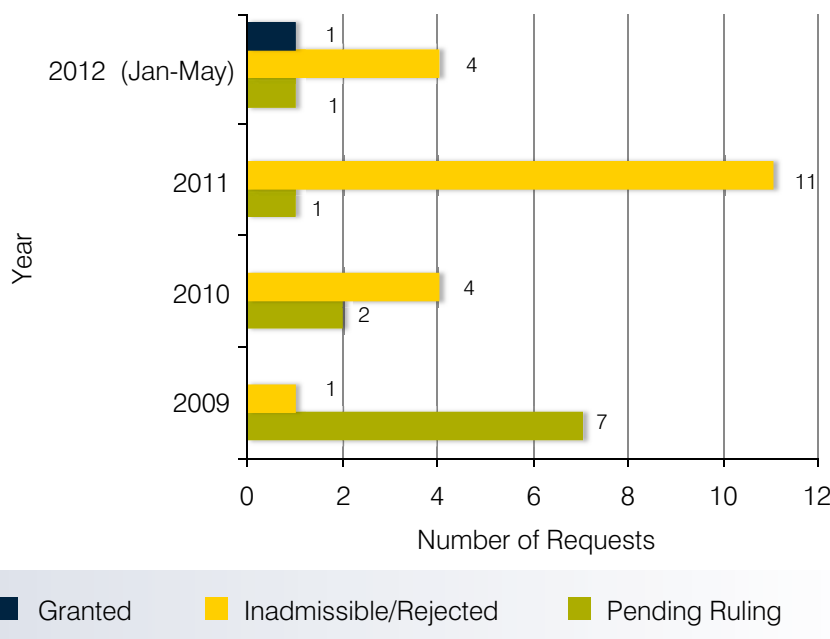
- a. establish a national victim identification mechanism;
- b. adopt necessary measures to ensure access to the asylum procedure for foreign female victims or potential victims of human trafficking that are in the need for international protection.

(Source: Observations from the Committee Against Torture to Spain. Period of sessions, November 2009/231.)

Moreover, under the request of the Ombudsman Institution, the UNHCR office in Spain has provided data on requests for international protection that were filed between 2009 and 2011, as well as during the first five months of 2012. These are cases that, according to UNHCR, suggested evidence that the claim for international protection could come from a potential victim of trafficking. With regard to the profiles of these individuals, the UNHCR Delegation in Spain reports that most women who have claimed international protection were young women of sub-Saharan origin, illiterate and with no children in Spain, with the exception of one of them who requested asylum together with her Spanish-born son.

Most trafficking victims seeking asylum are of sub-Saharan origin

International Protection requests by potential victims of human trafficking



Source: UNHCR. In-house compilation.

UNHCR warns about the lack of defense lawyers with proper training

UNHCR Delegation in Spain has expressed its concern over the lack of specialized training for those who provide legal assistance to potential victims of trafficking that request international protection. It has also warned about the fact that on occasions, assistance for asylum seekers depends on legal services provided by private law firms that also do business with the criminal networks themselves, while it should depend on lawyers with expertise in international protection and that, according to Spanish law, may provide their legal services for free.

The Ombudsman Institution agrees with UNHCR recommendations

The Delegation also calls attention to the presence of sub-Saharan women in immigrant detention centers, who have arrived to Spain in small open boats and are potential victims of human trafficking. Authorities have not analyzed their personal situations nor have they carried out a risk assessment analysis in cases of deportation. Many of these women arrive to Spain with young children and sometimes the women claim to be minors themselves.

The Ombudsman Institution agrees with the recommendations issued by the UNHCR Delegation in Spain, particularly in reference to a lack of efficient methods for potential victim identification. Actions monitored by the Ombudsman Institution in the cases mentioned below show that there are in fact many flaws in the identification of potential victims of human trafficking in the requests for international protection.

There are no proper detection mechanisms for asylum seekers

During the period of time in which an asylum request is processed, the person applying for it is in a situation conducive to carrying out an accurate assessment to determine whether the person is a victim or potential victim. It should be noted that while processing the asylum request, the person is under police custody and away from traffickers, unless the traffickers are also requesting asylum. Regardless, private interviews may encourage better communication between those taking part in the interview. Moreover, identification procedures should aim to apply the specific regulations included in immigration legislation, if the asylum request is rejected.

Procedures and coordination must be improved for accurate identification

Inspections carried out by the Ombudsman Institution in cases of potential human trafficking victims seeking asylum revealed that there are no proper procedures for victim or potential victim detection. Based on inspections up to this date, it can be concluded that there is an urgent need to improve procedures and administrative coordination for the proper identification of trafficking victims or potential victims during international protection proceedings. Likewise, both border control authorities as well as officials in charge of investigating asylum claims should be properly trained so they can evaluate each case thoroughly. This would help them adopt necessary measures for an in-depth study of each case.

Information gathered by competent authorities was requested

Furthermore, the Ombudsman Institution has requested information from the Sub-Directorate General for Asylum regarding the criteria used to evaluate claims for international protection from victims of human trafficking. It has also requested information on the number of claims since Law 12/2009, from October 30 came into force. The response does not clarify which criteria are used, as it only indicates that

the Inter-ministerial Asylum Commission set this criterion forth. There is no data on figures because claims for international protection are not classified by their causes, as some of the claims can be classified under the same article included in the 1951 Geneva Convention and Law 12/2009. The absence of data is justified by the fact that the European Commission receives information that does not include the reasons that lead to a specific claim for international protection. Moreover, this information has not been requested by any organization or institution that provides asylum-related information, such as the UNHCR.

On the other hand, the lack of statements provided by victims or potential victims cannot be a defining factor in determining evidence. However, statements are crucial for a proper identification procedure. Therefore, as mentioned previously in the identification protocol section, it is essential that all personnel that come into contact with individuals who are detained at border posts attempting to enter the country illegally or who have been transferred to a CIE or temporary stay center for immigrants have the necessary skills to be able to identify a potential victim, even if the potential victim refuses to be identified as such.

Below we analyze four situations that reveal that the current protocol prevents an effective identification and protection procedure for international protection seekers that are potential victims of human trafficking. Due to structural reasons, it was considered more appropriate to address the situation of trafficked minors that are international protection seekers in the next section, where deficiencies detected in the protection of child victims of human trafficking will be discussed.

The lack of a statement cannot be a decisive factor in the determination of evidence

Potential victims in international protection procedures are not identified

3.2. ENTRY THROUGH UNAUTHORIZED BORDER CROSSINGS

The Ombudsman Institution has continuously warned different agencies of the Public Administration with competence in this matter about deficiencies that have been identified in the procedure for international protection claims in cases of foreigners caught trying to enter the country illegally.

Therefore, before going into an in-depth analysis of the lack of efficient identification procedures of victims of human trafficking that have claimed international protection, the international protection framework in Spain will be discussed. According to data received from the UNHCR in 2011, Spain does not belong to the ten main industrialized countries that take in refugees (United States, France, Germany, Italy, Sweden, Belgium, UK, Canada, Switzerland and Turkey). If one focuses on European countries, in 2011, 38 countries received: 327,000 asylum claims. 51,190 claims correspond to France; 45,470: Germany, 25,420: the UK, and Italy: 34,120.

Spain is one of the European countries with the lowest number of asylum claims

The amount of asylum claims for Spain is among the lowest in Europe: 3,410 applications in 2011. In comparison to countries with a similar geographical situation, such as Italy, this situation is difficult to understand if one considers the number of illegal entries that our country has experienced over the last years.

Some of the most striking figures were seen in 2006

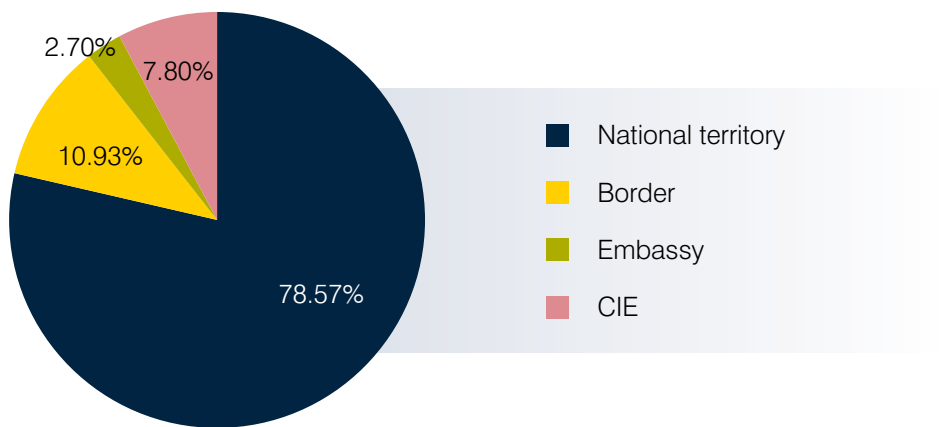
Some of the most striking figures in relation to Spain were seen 2006. During that year, 39,180 people entered the country illegally (especially in the Canary Islands), and out of that number only 5,300 asylum applications were issued. It is interesting to compare the figures of asylum seekers in Italy with the figures in Spain from 2007 to 2011, as over the years both countries have received a high number of irregular arrivals by sea; in the case of Italy 106,140 individuals issued asylum claims from 2007 to 2011. During the same period, Spain received only 21,340-asylum claims.

Massive immigrant arrivals in short periods of time hinder appropriate action

After several inspections were carried out at immigrant detention centers in the Canary Islands between 2007 and 2008, the Ombudsman Institution concluded that the arrival conditions (massive arrivals in short periods of time, some weeks more than one thousand individuals arrived to one island) have a negative influence over the information received in order to issue an asylum claim. This issue was not effectively solved by authorities during the time the immigrants stayed in detention centers. Other deficiencies were identified regarding the quality of legal assistance that they received, as well as the assistance of interpreters. Finally, there were numerous interventions in cases of persons that were particularly vulnerable, especially children who had not been properly identified as such. The amount of boat arrivals has decreased significantly over the last years (5,443 persons in 2011). However, this does not justify the low number of asylum claims in Spain in general, and particularly in cases of alleged irregular entries through unauthorized border crossings.



Places where international protection claims were issued in 2010



Source: The Office of the Technical Secretary General of the Ministry of the Interior. In-house compilation.

Therefore, the Ombudsman Institution is particularly concerned about this situation. During the inspection visits to administrative facilities where it could find people in a situation of international protection, the Institution concluded that proper resources for effective access to the procedure for claiming international protection were met. The lack of proper identification is of particular concern in the case of vulnerable groups such as women and children.

The peculiar geographical situation of the autonomous cities of Ceuta and Melilla has led to special inspections of Temporary Accommodation Facilities for Immigrants (CETI) located in both cities. Facilities belong to the public network of migration centers, established under Article 264 of the Regulation of the Organic Act 4/2000, established by Royal Decree 557/2011. As provided in that article these centers will be in charge of the providing the following aid to foreigners: information, assistance, social intervention, training, identification of potential victims of human trafficking and, when appropriate, referral.

The Ombudsman carried out constant inspection visits to these centers in the cities of Ceuta and Melilla. The Public Administration has been notified by the Ombudsman Institution on deficiencies and complaints regarding the situation of international protection seekers at these centers and the non-efficient identification practices for potential victims of human trafficking. The Ombudsman Institution opened an investigation in 2010 with the regional police headquarters of Melilla and Ceuta, after learning that police officers were preventing the transfer of asylum seekers to the peninsula, although they were properly documented as such. In their defense, the officers argued that they had been instructed to act that way. After the inspection took place, the Public Administration insisted that this behavior should be corrected in accordance to the clause regarding the regional autonomous cities of Ceuta and Melilla that was included in the Schengen Agreement Application Convention.

The Ombudsman Institution has closely monitored Ceuta and Melilla

Freedom of movement throughout the country for accredited asylum seekers cannot be restricted

The Ombudsman Institution disagreed with this action on the grounds that restricting the right to freedom of movement within the national territory of accredited asylum seekers is not warranted as their documentation, issued by the Ministry of the Interior, allows them to stay in the country as long as they have that status. Despite the difference of opinion between the Secretary of State for Security and this Institution, these actions were stopped by court intervention. The Ombudsman Institution is aware of the existence of several rulings issued by the Court of Justice of Andalusia that state that the right to freedom of movement for the aforementioned parties has been illegitimately restricted in this country. Despite this, the restriction remains and the Ombudsman Institution has voiced its recurrent disagreement with actions carried out by Spain's Central Department of Immigration and Border Police. The aforementioned parties have issued judicial remedies so that their right to travel in the peninsula may be recognized.

Obstacles have been identified in the transfer process to asylum centers and shelters located in the peninsula

Simultaneously, this Institution also took action with the former General Directorate for Immigrant Integration in order to inquire about the asylum seekers whose claims were admitted but who were not transferred from the CETI in Ceuta and Melilla to asylum centers and shelters in the peninsula. The aforementioned agency declared that the assistance that these persons received at the CETI was similar to that of asylum centers and shelters. Nevertheless, they also said that they continue to work with the General Directorate of Police and the Civil Guard in order to facilitate transfer to the peninsula, both for international protection seekers as well as for vulnerable groups residing at these centers.

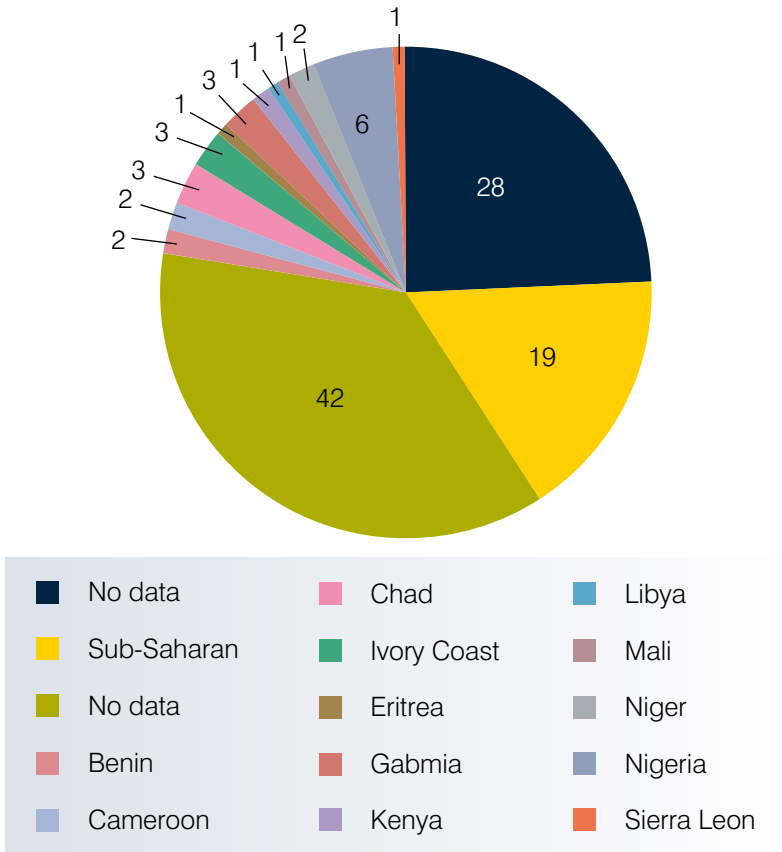
Perception that asylum claims hinder transfer to the peninsula

The Ombudsman Institution considers that these two issues have a crucial influence over the number of asylum claims that come from these centers. Interviews carried out by the Ombudsman Institution during inspection visits reveal that both personnel working there and residents think that international protection claims actually hinder their transfer to the peninsula. This is why in several occasions international protection claims are issued once the foreigner has been transferred to the peninsula through humanitarian aid programs or when they are transferred to an immigrant detention center in the peninsula prior to deportation. Likewise, many international protection seekers withdraw their claims when they issue them at these centers, as they believe that while their claims are being processed, they will not be moved to the peninsula.

It is necessary to improve detection protocols for victims in Temporary Accommodation Facilities for Immigrants (CETI)

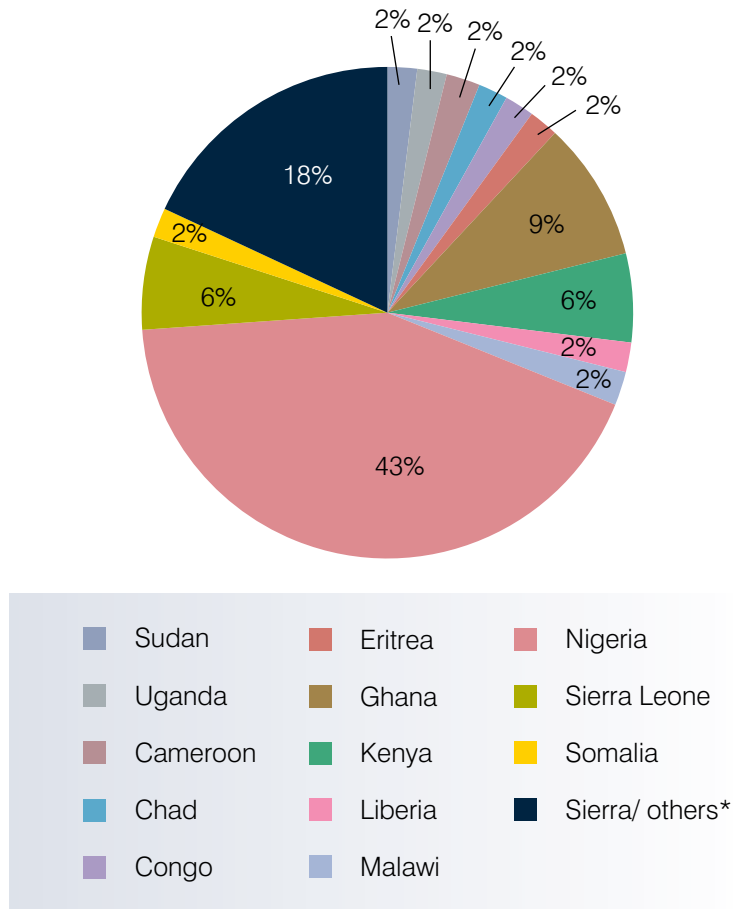
The situation described above has a significant impact on potential victims of human trafficking in the Temporary Accommodation Facilities for Immigrants (CETI) who are not far enough in the process of international protection to feel fully protected. Therefore, it has been reiterated to various administrative agencies with responsibilities in this area that these protocols to detect potential human trafficking victims need to be improved.

Ex officio complaints of possible male victims, organized by country, detected in small open boats in Montril (Granada).
December 2010 – June 2011



Source: the General Directorate of Police (DGP). In house-compilation

Ex officio complaints of possible female victims, organized by country, arriving in small open boats intercepted off the coast of Motril (Granada)



Source: the General Directorate of Police (DGP). In house-compilation

Proper identification in the temporary immigrant reception facilities is necessary

Information on asylum must be provided

Another important concern, regarding the proper identification of potential trafficking victims, are the temporary immigrant reception and detention facilities where foreigners, intercepted trying to enter the Spanish Coast illegally, are transferred. Following a visit to the facilities of the port of Motril (Granada), the following conclusions, related to issues of asylum and the correct identification of trafficking victims, were forwarded to the Public Administration.

- Information on asylum: in the first interview with foreigners, for the purposes of gathering their information, officers of the National Police Force (CNP) assigned to the Provincial Immigration Brigade must provide brochures about the Office of Asylum and Refuge in the foreigner’s language. In addition, the information should be available in several different languages, in good condition and in plain sight in every cell of the facility.
- Specialty training for police officers assigned to the Provincial Immigration Brigade: a timetable with continuous training should be established for all the officers of the Brigade who have direct contact with foreigners arriving by boat, in order

to improve the detection of women who may be potential victims of trafficking for sexual exploitation. For such purpose, it is necessary to stress to the police officers in the Brigade the importance of holding individual and private interviews with potential female trafficking victims.

- It is erroneous to set a fixed age in radiological examination for age assessment without making any reference to age range , as established by the Greulich and Pyle method.

The Identification Protocols section notes the improvements introduced to the procedures after the visit.

Specialty training for police officers assigned to the Provincial Immigration Brigade

Don't set a fixed age based on radiological examinations

Alice's father died when she was 12 years old and her nightmare began. Her mother remarried a man who continuously abused her. At 14, tired of the abuse and the poverty in which her family lived, she saw in Paul an opportunity to leave the nightmare behind. He offered to send her to Europe to work as a domestic employee in order to earn money and help her mother. In exchange, she would incur a debt of 10,000 Euros. She accepted the deal and began her journey with Paul and Jack, another man who joined the trip that took them from Nigeria to Algeria. Alice was travelling with other women, all of whom shared the same dream of a better future. In Algeria, each day, several women were chosen to have sex with different men. Along with sexual abuse, they endured humiliations of all kinds. Alice remembers that many women died during this time. Travelling from Algeria to Morocco the rape and abuse continued. And there, in Morocco, at the age of 16, her daughter was born. After six years since leaving her home and six years of abuse, when her daughter was three years old, they both boarded a boat for Spain. The small open boat capsized and 22 of the 27 people travelling on it were killed, including Alice's daughter. After being rescued at sea, Alice gave a statement to the police recounting the abuse she had suffered and how she lost her daughter during the journey in the small open boat. She was very affected by the loss of her daughter whose body could not be recovered and by the years of rape and physical and psychological abuse she had suffered. She was protected by an organization specialized in the care of trafficking victims and requested international protection. Her psychological recovery is still very slow. She is still under the protection of the organization, but she does not know what will become of her, since her request for international protection has been denied and she has illegal immigration status in Spain.

There are no instructions for a referral to international protection for potential victims

With regard to requests for international protection, in October 2011, the Framework Protocol for the Protection of Victims of Trafficking stated: “When an investigation for a case of international protection indicates that the applicant may be a victim of human trafficking, the Office of Asylum and Refuge will inform the Asylum Department of the Central Department of Immigration and Border Police so that it can be communicated to the proper police unit responsible for identification. This unit may then apply, if appropriate, measures stated in Article 59 bis of Organic Act 4/2000.” It also defines the actions to be taken when a potential trafficking victim is detected in various situations. Specifically cited situations are border detection and detention centers (immigrant detention centers). However, the Protocol does not explicitly layout instructions for a referral to international protection when standards for refugee status or subsidiary protection are met.

Due to a story that appeared in the press, the Ombudsman Institution learned of a small boat that was rescued off the coast of Almeria and of the search for other missing persons. Among those rescued were two women who reported that their children, along with several other minors, had fallen into the sea. It was also learned that three women had applied for a recovery and reflection period in accordance with Article 59 bis of Organic Act 4/2000, of January 11th. Given this background, an *ex officio* investigation was opened in order to examine the actions taken by the Public Administration.



Spain's Central Department of Immigration and Border Police reported recovering several bodies, including those of two young children. With regard to the three women, the aforementioned agency reported that after being issued deportation orders for attempting to enter national territory illegally, they accepted the recovery and reflection period. After police identified the women as trafficking victims they were released and taken in by a non-governmental organization. Subsequently, the three women were accepted into a residential facility specialized in the care for female trafficking victims. Once there, they all made requests for asylum, which were rejected. Following the refusal, they were left with irregular immigration status since their residence permits under Article 59 bis of Organic Act 4/2000 had not yet been processed.

After asylum is rejected, victims find themselves with illegal immigration status



The National Police carried out several positive identification practices

Nevertheless, this case further illustrates the practices generally followed by the National Police Force when identifying potential trafficking victims and highlights several aspects that can be considered best practices. First, the police identified the potential victims, took their statements with the assistance of an interpreter and a lawyer, and after evaluating their statements, they offered them the recovery and reflection period. Also, despite having been intercepted in an attempt to illegally enter national territory, officials did not request that judicial authorities place them in an immigrant detention center, but instead, referred them to a non-governmental organization that took them in and then brought them to a residential facility specialized in the care of trafficking victims.

In practice, requesting asylum puts victims in a more vulnerable state

However, several key issues have been highlighted with regard to the victims' requests for international protection, as well as their immigration status at the time of drafting this report. First, once the victim makes a request for international protection, it stalls the proceedings begun after the recovery and reflection period. As noted in the section on identification protocols, referring to the situation of trafficking victims who decide to declare in criminal proceedings, those victims who choose to apply for international protection should receive extra protection as witnesses; however, they actually become more vulnerable since protection measures established in Article 59 bis of Organic Act 4/2000 are considered, in practice, not applicable to trafficking victims seeking international protection.

Their status as victims prevents them from enjoying international protection

Another issue relevant to the victims is that, paradoxically, it is their status as victims of human trafficking, which prevents them from benefitting from international protection. In the opinion of the authorities who carry out the proceedings, the proper course for their protection in Spain is not international protection, but of Article 59 bis of Organic Act 4/2000, as stated above.

The above practice implies that, once applicants for international protection are rejected, the victims are undocumented, and in such cases of illegal entry, an administrative resolution ordering their deportation can be issued at any time.

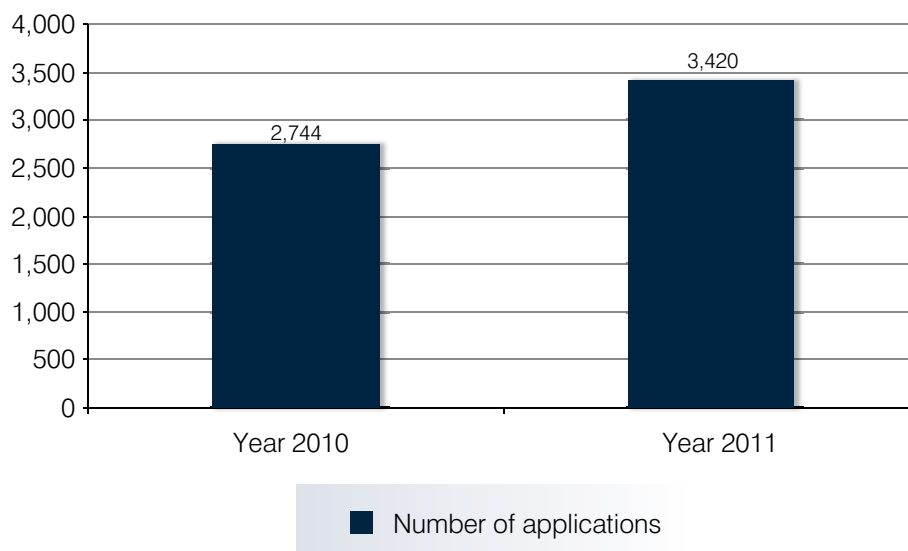
Faith, 20 years old, left aboard a small open boat sailing from Morocco to Spain. She was not alone. She was travelling with her one year old baby and 50 other people, when the vessel got a hole. Her daughter, another three year old child and a number of other people travelling with her, drowned before they could be rescued. Two days later, Faith recognized the body of her baby in the morgue. Faith had left Nigeria two years before, and after meeting a person who said she would have a chance to work in Spain, she decided to try her luck, later learning she would have to pay 15,000 euros. During a journey in a Jeep to Morocco, she was continuously abused and rarely fed. Once in Morocco, she spent several months in a city, where she was handed over to another man, in charge of controlling other victims like her. Shortly after, she was moved to another city in the north of the country, where she lived under the control of another trafficker in a shanty settlement with other women. There, she learned she was pregnant. Faith remained in that city for about two years, while she was subjected to all kinds of abuse. During this period, with the help of other women, she gave birth to a girl. Forced to beg, they were only able to eat when they were given money. If she came back empty-handed or with an insufficient amount of money, she was beaten. Until one day it was announced she would travel to Europe. She was given a mobile phone with numbers to call when she arrived and she was forced into a boat. Destroyed by the death of her daughter and the abuses she suffered, she was taken in by an organization in Spain. Nine days after losing her baby, Faith formally requested a reflection period provided by law for victims of trafficking. She was referred to an organization specializing in human trafficking victims. Her application for international protection has been denied, and she now has illegal immigration status.

3.3. IN AIRPORTS

The number of refusals of entry (individuals attempting to cross the border without meeting the requirements) decreased significantly in 2011. Compared to the 24,355 people who were refused entry in 2007, 11,092 people were refused in 2011. With regard to the number of asylum applications made at Spanish border crossings:

The number of refusals of entry decreased significantly in 2011

Number of applications for international protection in Spain (2010-2011)



Source: Eurostat news release 46/2012 and Sub-Directorate General for Asylum. In-house compilation.

Asylum applications made at Spanish border crossings	
Year 2004	645
Year 2005	1,445
Year 2006	2,140
Year 2007	2,644
Year 2008	1,067
Year 2009	454
Year 2010	300

Source: The Office of the Technical Secretary General of the Ministry of the Interior (There is no data for 2011, as there had not been any published at the time of this report.)

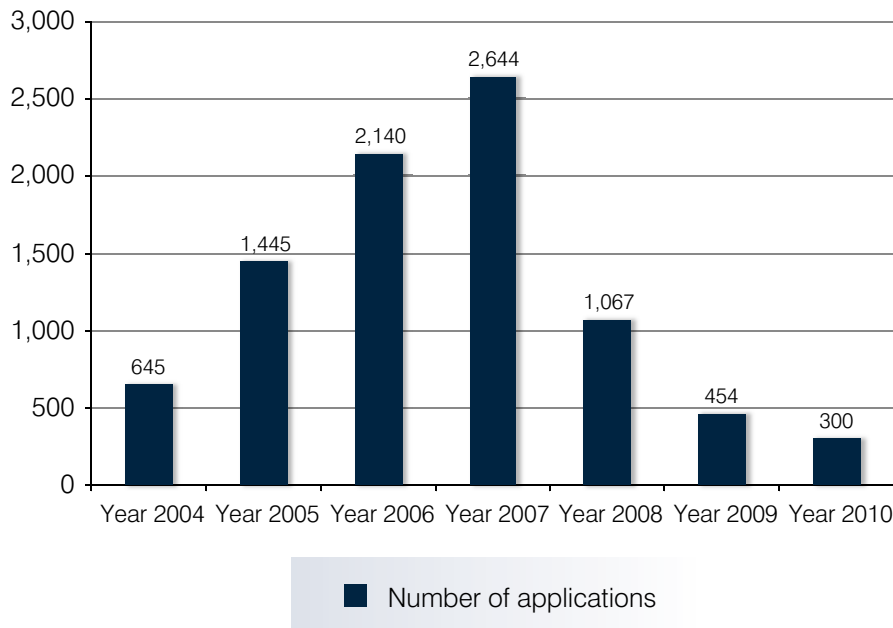
Confusion at the border over who has the authority to process the request for a recovery period

A non-governmental organization filed a complaint in 2011 on the behalf of a Nigerian citizen, an applicant for international protection and a potential trafficking victim, who arrived with a stolen Spanish passport at Barajas airport from an Eastern European country. Inquiring about this complaint, it was uncovered that there was some confusion about who was the competent authority for processing the application for the recovery and reflection period made by the trafficking victim at the border, eventually even leading to questioning the merits of the nature of the request. Following the investigation, it was uncovered that the request for a recovery and reflection period, finally granted by the Government Delegation despite an unfavorable police report, was the first application of this type processed at the border crossing of Madrid-Barajas. The significant shortcomings of that investigation were analyzed in the previous chapter, in section 2.2.2: Forms of Trafficking for the Purposes of Sexual Exploitation in Spain. However, with regard to international protection, it was

found that, although the Office of Asylum and Refuge had informed the police of the applicant whose file requesting international protection demonstrated evidence of human trafficking, the protocol provided in the Office of the Secretary of State for Security Memorandum 1/2010 was not followed.

Irregularities were detected at the Madrid-Barajas border crossing

Applications for asylum made at Spanish border crossings (2004-2010)



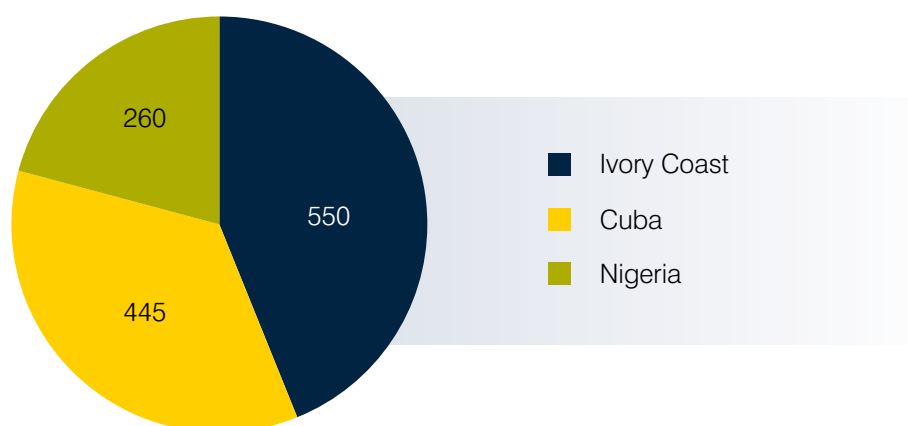
Source: The Office of the Technical Secretary General of the Ministry of the Interior. In-house compilation.



Substantial improvements in international protection procedures have been made

It was considered necessary to monitor these cases of potential trafficking victims, which were detected during international protection procedures at the border, having found that requests made by African women who were potential victims of trafficking were deemed inadmissible, and that referrals to the procedure provided for in Article 59 bis of Organic Act 4/2000 were seriously flawed. In 2012, several other similar cases at the border crossing at Madrid-Barajas have been revealed, proving the urgent need to improve the process, both for the identification of potential human trafficking victims and assessments performed on applicants as part of the international protection procedure.

Majority of nationalities seeking asylum in 2011



Source: Eurostat, 46/2012. In-house compilation.

A request for international protection was rejected despite a favorable report from UNHCR

In early 2012, a non-governmental organization made a complaint on behalf of a citizen who arrived at Bajaras Airport, from an African airport. In this case, after being rejected at the border, she applied for international protection, recounting the kidnapping, sexual abuse, threats and beatings to which she was subjected by the trafficking network that had captured and kidnapped her four months before they sent her to Europe to be sexually exploited. The Office of Asylum and Refuge refused the request for international protection, as well as the review, despite the existence of a favorable report by UNHCR. The allegations were reported to law enforcement authorities, who sent two male agents to carry out a new interview with the claimant as a potential trafficking victim. Law enforcement authorities sent an unfavorable report to the Government Delegation in Madrid who denied the recovery and reflection period due to a lack of evidence of human trafficking. Subsequently, a contentious administrative appeal challenging the rejection of review was filed. The appeal requested suspension of the return proceedings and relief measures allowing entry into the country. In this case, the intervention of the Ombudsman Institution was requested because, despite the decision of the European Court of Human Rights to suspend the return of the applicant to her country of origin, issued four days before

the filing of the complaint, the person concerned still remained in facilities for rejected asylum seekers in Barajas. Through a letter sent by Spain's Central Department of Immigration and Border Police it was learned that, after consulting with the State Attorney, she was finally allowed entry into the country.

In the second semester of the year, a lawyer requested the intervention of the Ombudsman Institution in the situation of his/her client, a 21 year old from a sub-Saharan African country, who was to be returned to the airport of the Central Asian city from which she had departed. Among the documents sent by the lawyer was a medical report certifying that the traveler was 37 weeks pregnant, as well as two judicial rulings. In the first of these, an acting examining magistrate court on duty had ordered the suspension of return as a preventative measure and in the second, dated a day later, an administrative contentious administrative court had agreed to lift the suspension. In addition, it uncovered that the final destination of the person concerned was a South American country and that she had managed to board the flight to Madrid by showing a false residence permit of another European country.

In this case, the court ruled that the intervention of the Ombudsman Institution intending to suspend the return was not possible. However, analyzing the circumstances of the case, it was concluded that there was evidence of human trafficking for the purposes of sexual exploitation. This led to a fax being sent to the Central Department of Immigration and Border Police requesting information about the proceedings that had taken place to dismiss the applicant as a potential trafficking victim. Also sent was a report by UNHCR that states, "The person concerned claimed to have left her country of origin while pregnant, with a destination of . . . , and that the purpose

The Ombudsman Institution had to intervene despite the existence of a decision by the European Court of Human Rights

When the suspension of the return order wasn't possible, humanitarian reasons were claimed



of the departure was fear of threats and harassment by creditors of her partner, as well as the desire to reunite with him. She was picked up from the airport when she arrived to her destination and from that moment until her arrival at Barajas Airport she had been sexually exploited against her will.” The report continues, “Once the applicant’s pregnancy was clearly visible, causing problems with customers, they ordered her to undertake a new job which consisted of transporting packages of drugs. For this reason, the applicant was shipped on a plane coming to Madrid and was detained by the police at Barajas.”

After the urgent intervention of this Institution, the Central Department of Immigration and Border Police permitted her entry into the country on humanitarian grounds, transferring her to a hospital where she gave birth hours later.

These two cases represent the apparent reluctance to admit applications for international protection from those exhibiting signs of human trafficking. The Office of Asylum and Refuge tend to base their decision to declare claims inadmissible on Article 21.2.a in relation to Article 25.1.c of Law 12/2009 regulating the Right to Asylum and Subsidiary protection, on the grounds that the allegations made by the applicants raise issues that do not meet the criteria for granting refugee status or subsidiary protection.

*There is an
apparent reluctance
to admit claims for
international
protection*

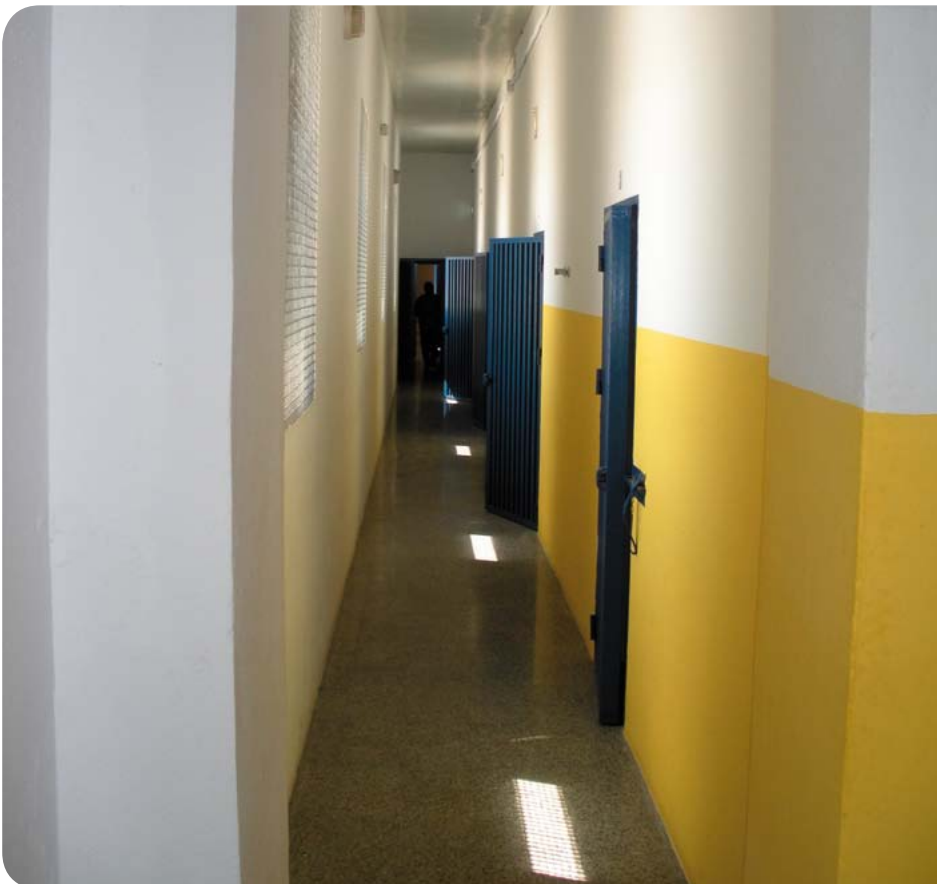


3.4. IN IMMIGRANT DETENTION CENTERS

The Ombudsman Institution constantly monitors the conditions of immigration detention centers, both through visits and by complaints filed with the Institution. With regard to inmates' access to the application procedure for international protection, the need for substantial improvements regarding the information provided to these persons has been voiced to the Ministry of the Interior.

Investigations report that there are two profiles; the first being female victims of sexual exploitation in Spain, who are arrested due to their illegal status after spending time in the country in which the criminal network operates, and once in the immigrant detention center, are identified as trafficking victims in the context of international protection status by one of the non-governmental organizations that visit these centers. In these cases, it has been shown that a significant number of these women, upon their illegal entry into Spain, had filed a claim for international protection, which was declared inadmissible. The second profile corresponds to African women who are admitted to detention centers after being detained in an attempt to enter the country illegally.

Two different victim profiles have been observed



Those who are arrested after residing illegally in Spain

The first profile corresponds to a woman, of African or Latin American descent, who has been in Spain for over three years, with an expulsion or return order pending and was arrested during an immigration control operation. In the case of Latin American women (mainly Brazilians), frequently they are in Spain after violating a refusal of entry order which resulted from a previous deportation. This infringement is the grounds on which they end up in an immigrant detention center pending the execution of their deportation order due to their violation of the previous refusal of entry.

Those that are detained attempting to enter the country

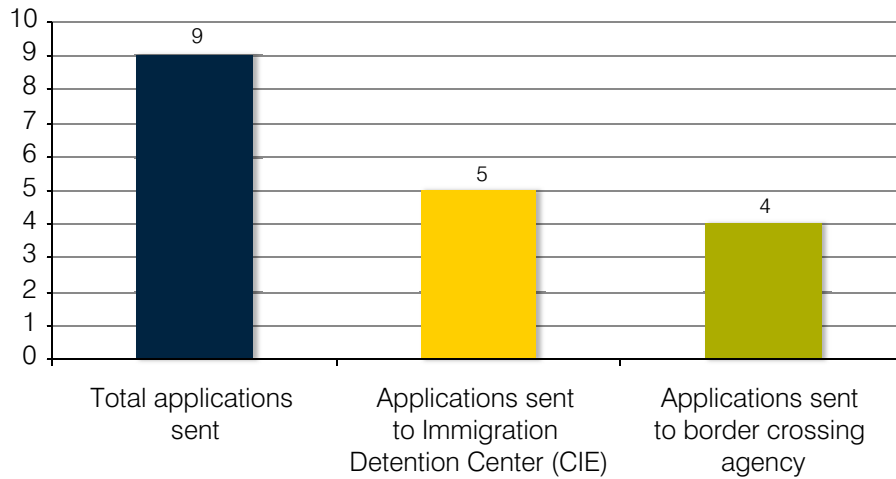
For African women, we can distinguish two types of situations: one are those who, after being detained trying to illegally enter the country and end up in detention centers while their deportation order is processed. In these cases, the women often request international protection, advised by members of the criminal network. Their testimonies do not respond to their personal situation but are based on guidelines from the network to avoid being deported. The second type of situation is that of African women who, after having spent months or years being sexually exploited by a criminal network in Spain, are identified as illegal immigrants during immigration control operations. In these cases, virtually all accounts have a pending expulsion or return order, and in a number of cases, a claim for international protection was filed at the time of entry into the country.

Extreme difficulty for rapid and efficient detection in these cases

The difficulty for rapid and efficient detection of these cases is extremely alarming. The collaboration of organizations specialized in the detection of human trafficking victims and in international protection is essential, however, the maximum period of stay in these centers is 60 days. In addition, the uncertainty of when they will be deported to their countries greatly hinders the in-depth interview process during which the victim's trust can be gained, and at the same time, information can be obtained that allows the police to consider that there are reasonable grounds to suspend deportation.

Collaboration between specialized organizations is essential

Identified potential trafficking victims reported to the Central Department of Immigration and Border Police by the Office of Refugees and Asylum (2011)



Source: Sub-Directorate General for Asylum

Note: These reports have been recorded since March 2011

Relationship between general claims for international protection and applications for international protection based on indicators of trafficking (2009)

Type of application	Men	Women	Total
Applications for international protection	2,128	879	3,007
Applications for international protection regarding possible trafficking victims	0	8	8

Source: UNHCR and The Office of the Technical Secretary General of the Ministry of the Interior.
In-house compilation.

Relationship between general claims and claims based on trafficking indicators and periods offered in 2010

Type of application and period offered	Men	Women	Total
Applications for international protection	1,946	798	2,744
Applications for international protection regarding possible trafficking victims	0	6	6
Periods of recovery and reflection offered			219

Source: UNHCR and The Office of the Technical Secretary General of the Ministry of the Interior.
In-house compilation. (Data for recovery and reflection periods by sex was not available).

Relationship between general claims and claims based on trafficking and periods offered in 2011

Type of application and period offered	Men	Women	Total
Applications for international protection			3.420
Applications for international protection regarding possible trafficking victims			12
Periods of recovery and reflection offered			763

Source: UNHCR and The Office of the Technical Secretary General of the Ministry of the Interior. In-house compilation. (2011 data for recovery and reflection periods by sex was not available).



Furthermore, in accordance with the provisions of Article 25 of Law 12/2009 regulating the Right to Asylum and Subsidiary Protection, the requests made by foreign detention centers will be processed through the emergency procedure. The second paragraph of the article states that their procedures will be adapted for applications filed at the border according to the provisions of the law (Article 21). The acceleration of processing times is the main feature followed for applications filed at border crossings. As indicated in the beginning of this section, UNHCR’s guidelines warn of the complexity of asylum applica-

tions filed by potential trafficking victims and that their contents need to be examined through normal non-accelerated procedures.

Non-competence within Spanish territory is also a reason applications are deemed inadmissible

3.5. IMPACT ON TRAFFICKING VICTIMS OF THE APPLICATION OF COUNCIL REGULATORY PROVISIONS, (EC) NO. 343/2003, 18 FEBRUARY 2003, “DUBLIN II”

Article 20.1 of Law 12/2009 states that there are two situations in which “non-competence” is grounds to declare an application submitted on Spanish territory inadmissible:

- a. When the examination does not correspond to Spain under Council Regulation (EC) No. 343/2003 of 18 February, establishing the criteria and mechanisms for

determining the Member State responsible for investigating an asylum application lodged in a member State by a third country national.

- b. When the examination does not correspond to Spain in accordance with the international conventions to which Spain is party. In the ruling declaring a claim inadmissible, it will be indicated to the applicant which country is responsible for the examination of their claim. In this case the State will explicitly accept responsibility and will guarantee sufficient protection for life, liberty and the physical integrity of the persons concerned, as well as respect for the other principles set out in the Geneva Convention, in the territory of the given State.

Upon receiving a complaint requesting the intervention of the Ombudsman Institution to prevent the deportation of a Nigerian citizen, confined at that time to an immigration detention center and potential victim of trafficking, an investigation was opened. During the course of the investigation it was learned that the person concerned had applied for asylum in 2009, and that the resolution was to declare the claim inadmissible, on the grounds that Italy was the State responsible for reviewing the application. The request to assume responsibility was sent to Italy, as required by Council Regulation (EC) No. 343/2003 of 18 February 2003. However, the Italian authorities did not respond within the period established by law, which implies the acceptance of the application and the obligation to take responsibility for the asylum seeker, as provided in Articles 18.7 and 20.1.c) of the aforementioned regulation. In such cases, it states that the asylum seeker be transferred to the State responsible as soon as possible, and no later than six months from the date of acceptance, though this period can be extended up to one year in cases in which the request cannot be carried out due to the imprisonment of the asylum seeker or up to eighteen months in cases of the asylum seeker absconding (arts. 20.1.d) and 20.2).

After consulting police records, it was found that disciplinary proceedings for illegal residence had begun four days after the decision to reject asylum was made, and that the following year new disciplinary proceedings were opened during which a sentence of expulsion with a ban of three years was ordered. The deportation order was given to the immigrant detention center (CIE), to carry out, but was eventually suspended, once police officials were made aware of the interest to seek asylum.

During the investigation, the Sub-Directorate General for Asylum reported that in such cases the Office of Asylum and Refuge would transfer the information to the Central Department of Immigration and Border Police, given that the request to transfer the asylum seekers is coordinated by this Central Department. It was also uncovered that assistance is not offered to asylum seekers in these situations. The Central Department informed the Ombudsman Institution that, after receiving notification, the Sub-Directorate General for Asylum had tried to locate the applicant for transfer to Italy, but was not able to. However, the presence of the asylum seeker at the police facilities, the rulings for deportation, and the admission to an immigrant detention center highlighted the lack of coordination between the agencies involved. It not only proved

Council Regulation (EC) No. 343/2003 establishes the criteria for determining the competent State

When a claim is deemed inadmissible the State responsible for the examination will be indicated

The period in which the asylum seeker will be transferred to the responsible State is established

Assistance is not offered to asylum seekers waiting to be transferred

to be detrimental to the interests of the asylum seeker, but also could have resulted in deportation, thereby breaking the non-refoulement principle, which is one of the most important guarantees in the process of international protection.

A reminder was sent to the Central Department of Immigration and Border police regarding their legal duties

The Ombudsman Institution, in light of everything in the situation presented in previous section, reminded the Central Department of Immigration and Border Police of their duties to detect flaws in policing, and was concerned to see that the protection of those seeking asylum in these situations is not sufficiently guaranteed. It also urged this agency to include in police records the reasons for deeming an asylum application inadmissible. The agency responded by accepting the reminder of their legal duties.

Furthermore, this Institution considers that while processing the transfer to the country responsible for examining the application, the asylum seeker is in an undesirable, unprotected situation. It should be noted that until the transfer occurs, the application has not yet been examined in-depth, however, the applicant is in a situation waiting for the review to be conducted. This situation goes against the victim protection-approach that should prevail in asylum procedures as well as the guarantee that States will assume their responsibilities in receiving asylum seekers. In these cases, even though the application is not examined in depth, the asylum seeker has no protection until the transfer is made, which means that in many cases these individuals could become marginalized due to lack of support, and may be arrested and admitted to detention centers, as occurred in this case.

The possibility of entering a Temporary Accommodation Center for Refugees (CAR) should be considered

As a result, the Office of the Secretary General of Immigration and Migration was asked to consider that these individuals might need to enter Temporary Accommodation Centers for Refugees (CAR) until the move could be made. In addition to offering the asylum seeker the basic necessities for their subsistence and welfare, this would make it easier to locate them for the purpose of the transfer itself. It would also ensure that their application would be seriously considered. In addition, living in a Temporary Accommodation Center for Refugees (CAR) would help ensure that the applicant would not be, even by mistake, subject to arrests or disciplinary action for violating immigration laws which would imply the risk that they would eventually be deported to the country from which they claim to have fled out of fear for their life. The Office of the Secretary General of Immigration and Migration responded with social services and shelter for applicants that lack sufficient financial resources to meet their basic needs. However, they stated that the duration of shelter in the Immigration Centers or in subsidized facilities would be offered until one month after the date of a notification of rejection of the proceedings for the aforementioned reason, although this window of time could be extended until the transfer to the country that accepted the asylum application.

It has not been verified if written information is provided

Despite this response, at the closing date of this report it was not able to be confirmed whether in cases such as the one described above the Social Services Unit of the Asylum Office provided written information to the applicants about the pos-

sibility of receiving the protections afforded to them by the Spanish Public Administration while their transfer was being processed.

This case highlighted the particular concern of the Ombudsman Institution that the protections offered to asylum seekers, and in particular, the guarantee of non-refoulement, can be easily ignored. As a consequence, the need to be zealous in the recording of all asylum seekers' circumstances must be stressed in order to guarantee their protection and to coordinate later actions.

Another case that shows the need for better coordination between different institutions on the protections offered to trafficking victims in need of international protection was brought to the attention of the Ombudsman Institution by an entity that specializes in the protection of trafficking victims. According to the entity, a Norwegian non-governmental organization contacted them directly in order to alert them of the imminent arrival from Norway to Spain of Glory, a Nigerian trafficking victim with her baby. After spending nearly three years in Norway, she was being transferred to Spain in accordance with the Dublin Convention.

After alerting the social services that worked in the Asylum-Seekers Office in the Barajas Airport, the entity learned that Glory's arrival was not expected until the next day. The Norwegian authorities who arranged her return to Spain contacted the Office of Asylum and Refuge, whose personnel affirmed that they did not know any information about her particularly vulnerable situation or status as a trafficking victim. When the Spanish organization that specializes in assisting trafficking victims arrived at Barajas airport they found Glory disoriented and alone. She told them that on the flight from Norway she had been accompanied by an officer from that country and a social worker and that they had given her a copy of all the documentation of her file translated into Spanish. In the documentation that she carried they found a copy of the report made against the criminal network that brought her from Nigeria, with Spanish addresses and telephone numbers. Finally, Glory was offered shelter in Spain. Months later, after giving birth, she left the shelter with her two children without informing anyone as to her current whereabouts. There is no information on file in the police database in Spain about the offer of a recovery and reflection period or about filing for a residence permit on account of exceptional circumstances for either her or her children.

During the preparation of this report, various interviews were conducted with the personnel of the Spanish organization specializing in assisting trafficking victims who had taken responsibility for Glory when she arrived in Spain. Interviews were also conducted with the staff of various non-governmental organizations that worked with her in Oslo as well as civil servants from that country. Additionally, access was given to the documentation that Glory carried that had been prepared and translated to Spanish by Norwegian authorities. In light of all the details, various shortcomings were noted in the assistance that Glory received. It is important to detail them so that they can be improved upon in subsequent cases.

The guarantee of non-refoulement can be easily broken

The Ombudsman Institution investigated the case of a trafficking victim who arrived in Spain in accordance with the Dublin Convention

Throughout the investigation various shortcomings in the assistance to the victim were identified

Failures in coordination between Spanish authorities and the country that sent the victim

In regards to the coordination between Norwegian and Spanish authorities, it should be noted that Spanish authorities were informed about the content of the report that Glory made. In the report she identified the potential trafficking perpetrators that she may have been a victim of, giving information about their addresses and Spanish telephone numbers. The location of that report, which Norwegian authorities confirm that they had given to Spanish authorities, could not be found. It was also determined that in the documentation they examined was a copy of an email. The email had been translated to Spanish and seemingly directed to a Spanish police official whose identity was not confirmed. In the email, the Norwegian immigration authorities alerted to the particularly vulnerable situation of the victim and the need to offer her protection when she returned to Spain, expressly indicating that she had been recognized in Norway as a victim of trafficking.

In the documentation examined by the Ombudsman Institution no response by any Spanish authority in respect to these two issues was found. The only response that was included in the file carried by the applicant referred to a document dated one year before the actual arrival of Glory in Barajas airport. In the document the Sub-Directorate for Asylum informed Norwegian authorities of the acceptance of the examination of the asylum application, in accordance with the provisions of Article 16.1 of Regulation 343/2003 of the Convention of the 18th of February. It also put them in contact with the Central Department of Immigration and Border Police, indicating that they would be the organization to whom they should communicate Glory's arrival date in Spain.

Another issue that should be addressed is the recognition of Glory as a trafficking victim. This was learned only upon her arrival to Spain, and only thanks to informal contact made between a Norwegian non-governmental organization, who were the ones that alerted a Spanish organization of the arrival date of her and her son to Barajas. Once in the shelter facility in Spain, the Spanish entity made the background of the case known to the various agencies with competence in these matters, such as the Ombudsman Institution. After that, Glory was interviewed on various occasions by Spanish police.

The victim must move to the country that is responsible for examining his/her application for international protection

During the preparation of this report it was verified that the only information about the applicant that was found in the archives of Spanish police were those that referred to her first asylum application and its denial, as well as the expulsion order for illegal residence. Therefore, there was no evidence that after the return of the applicant to Spain she was offered a recovery and reflection period as per Article 59 bis of Organic Act 4/2000, nor were steps taken toward obtaining a residence permit on account of exceptional circumstances based on the personal situation of the victim. For all of these reasons, the victim's presence in Spain is illegal in every regard and, without any reference in police archives to her condition as a trafficking victim, she could be deported for illegal residence.

An alarm was raised during interviews conducted with various people in Oslo who participated in this case about the consequences for victims of trafficking seeking international protection, which could result from applying Dublin Convention provisions. Under these provisions, the victim should leave the country where the process of comprehensive recovery is being undertaken to move to the country that is responsible for examining their application for international protection. They stressed the need to always evaluate the best interest of the victim, as to avoid the re-victimization that is implied by their return in the middle of the rehabilitation process.

Nevertheless, it is always necessary to evaluate the best interests of the victim

“In Glory’s case there was not an official system that worked; it was only a network of unofficial contacts, a friend of a friend. Glory did not want to return to Madrid because the traffickers were there and she was very afraid. The authorities did not seem to understand the power of the mafias because if they did, she would not have been left there. This is a fear that we have, we don’t know what assistance the victims are going to receive when they return to Spain or Italy, especially in cases like this in which she is not able to take care of herself or her baby, and that the network operates in Spain. Because the contact with the center in Spain was through friends, not the Spanish authorities involved in her protection. And in this particular case we knew something through informal contacts but in many cases we don’t know what happened to the victims.”

(Excerpt of an interview with a Norwegian lawyer)

Another issue raised in the interviews was the motives for which the Norwegian authorities did not evaluate the possibility that Glory stay in that country. According to the Norwegian authorities, it was due to the fact that the reports always referred to people living in Spain and it could not be demonstrated that there was a part of the criminal network in Norway. In any case, the Norwegian police confirmed that the information they asked for from the Spanish police about the investigations related to the report had not been received by the day they conducted the interview. They also indicated that this lack of response was not specific to this case but was a problem that had arisen in other similar cases as well.

“The problem is that the information passes through many hands and gets lost in the bureaucracy. If there had been information that stated that part of the network was here in Norway, the victim would have stayed in Norway. This is a country with many Dublin Convention cases and the majority of those cases come from Spain and Italy. Many of the victims work in prostitution; it is the “madams” who decide to move them to other places where they can make more money.”

(Fragment of an interview with a civil servant in Oslo.)

4. Special Reference to the Identification and Protection of Child Trafficking Victims

The international legal definition of trafficking of children is different from that of trafficking adults

The international legal definition of child trafficking is different that of adult trafficking in that it requires only one act (transfer, sale, or receiving, among others) done with the intent of submitting the child to exploitation. It is not necessary to demonstrate any means, such as deception, coercion, or abuse of power or vulnerable situation.

Basic Element	Basic Elements of the International Legal Definition of Child Trafficking
Act	Recruitment, transport, transfer, harboring, or receipt of persons
Means	Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or vulnerability or giving or receiving of payments or benefits to obtain the agreement of a person who has authority over another.
Purpose	Exploitation (which includes, at minimum, the exploitation of prostitution of others and other forms of sexual exploitation, forced labor or service, slavery or practices similar to slavery, servitude, or the removal of organs.

Source: *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. United Nations, Office of the High Commissioner for Human Rights (2010). Chart 5, page 37.

Los menores víctimas deben recibir un tratamiento diferenciado

The United Nations Office of the High Commissioner for Human Rights, in its *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, reiterates that “international human rights law is applicable to all people without distinction, and children are included in the norms and rules of general application.”



Nevertheless, in reference to child trafficking victims it is reiterated that “the physical, psychological, and psychosocial damage that child trafficking victims suffer and their greater vulnerability to exploitation make it necessary to provide different treatment than that prescribed for adult trafficking victims in law, norms, and programs.”

In turn, the Council of Europe Convention on Action against Trafficking in Human Beings establishes in Article 10.4 that when a child is identified as a victim and is unaccompanied, the Parties: a) will ensure the legal representation of the child; b) will establish their identity and nationality; and c) will make all the necessary efforts to find their family, when it is in the child’s best interest.

Directive 2011/36 establishes in Article 13 a general framework on the measures of assistance, support, and protection of child victims of human trafficking, which includes: “1. Child victims of human trafficking will receive assistance, support, and protection. In the application of this Directive the child’s best interests must be a primary consideration. 2. The member States guarantee that, when the age of the person who is a victim of human trafficking is uncertain and reasons exist to believe they are a minor, they will be considered as such so that they can receive immediate assistance, support, and protection in accordance with Articles 14 and 15.”

“A study done in 2010 by the International Organization for Migration (IOM) shows that of the 79 sample re- trafficking cases, 84 per cent involved children or young adults under 25 years old. Furthermore, in 18 per cent of these cases the minor was re-trafficked when (s)he became an adult. This shows that trafficked minors are at risk of being re-trafficked during their adult lives. EU legislation provides for the protection of child victims and assistance and support to such victims. Comprehensive child-sensitive protection systems that ensure interagency and multidisciplinary coordination are crucial in catering to diverse needs of diverse groups of children, including victims of trafficking. To better protect children, in 2014 the Commission will fund the development of guidelines on child protection systems. Member States should strengthen child protection systems for trafficking situations and ensure, when return is deemed to be the child’s best interest, the safe and sustainable return of children to the country of origin, in and outside the EU, and prevent them from being re- trafficked. In addition, in respect to child trafficking, there is at present no uniform definition of a guardian and/or representative across the Member States and their roles, qualifications and understanding of competences vary from one Member State to another. In 2014, together with the European Union Agency for Fundamental Rights, the Commission intends to develop a best practice model on the role of guardians and/or representatives of child victims of trafficking”.

As noted in the paragraph on the analysis of a transnational phenomenon, the lack of statistics or reliable data on trafficking is a shortcoming common to all types of human trafficking. The European Union Agency for Fundamental Rights (AFR), in its report on the trafficking of minors in the European Union *Child Trafficking in the*

Child trafficking victims run the risk of becoming trafficking victims as adults

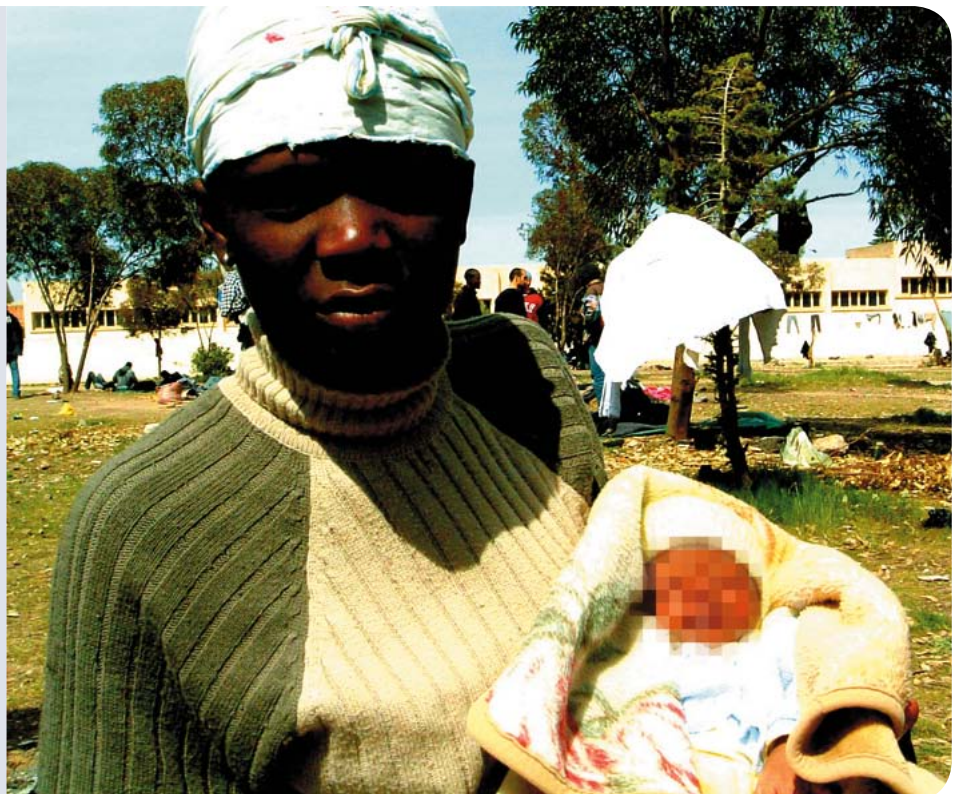
EU legislation stipulates the protection, assistance, and support of child victims

The lack of statistics is a common shortcoming across all forms of human trafficking

European Union – Challenges, perspectives, and good practices -alerted to the lack of statistics or reliable data in the European Union. Because of this, the report concluded that the lack of homogeneous methods of collecting data on trafficking victims makes it very difficult to make comparisons between States and to discover the extent of trafficking of minors in determined regions. Given the lack of reliable data, it is not possible to conduct a quantitative analysis with respect to the age or sex of child trafficking victims, their countries of origin or destination, or the forms of exploitation they are submitted to.

17. While recognizing the importance of the role that the Child Rights Observatory plays in the areas of research, collection, and analysis of data, the Committee is preoccupied by its fragmented approach to data collection, which does not cover all fields included in the Convention and does not take place equally at the regional and national levels.

18. In accordance with previous recommendations (CRC/C/15/Add.185), the Committee recommends that the party States reinforce their mechanisms for data collection and the systematic analysis of the disaggregated data by, among other fields, the age, sex and ethnic origin of all persons under the age of 18 and for all fields included in the Convention. Special emphasis should be placed on Roma, migrant, and unaccompanied foreign children and those that come from economically and socially disadvantaged households.



UNICEF, on the occasion of publishing *An analytical review: 10 years on from the adoption of the UN Trafficking in Persons Protocol (2010)*, called attention to the lack of statistics, recommending to the States that they establish adequate mechanisms to collect quantitative and qualitative data in a systematic manner. These data should be disaggregated by sex, age, country of origin, nature of the transfer, and form of exploitation.

UNICEF has recommended to the States that they systematically collect quantitative and qualitative data

Trafficking of Children

At any given time, nearly 2.5 million people are subject to forced labor as a result of trafficking – 22 to 50 per cent of them children.

60. Child trafficking is frequently hidden, denied or ignored, making comprehensive data difficult to obtain. Some forms of trafficking take place mainly in urban areas: trafficking for sex work, for example, and trafficking that targets children who live or work in city streets. Many children are trafficked from rural to urban areas. A 2001 study of sexually exploited girls aged 9–17 in major cities of the United Republic of Tanzania found that many had been trafficked from the country's interior. Some had been recruited as domestic workers and abused within their employers' homes; others were trafficked directly into prostitution or recruited into it by peers.

61. One study indicates that most trafficked girls are put to work as sex workers, for example, in the major Indian cities of Mumbai, Delhi and Kolkata. In Bangladeshi cities, large numbers of girls and boys are exploited in street sex markets and brothels.

62. In Eastern Europe, children aged 13–18 are particularly at risk of being trafficked.

63. Evidence suggests that poverty, alcoholism, family dysfunction, drug abuse, sexual abuse and domestic violence increase the children's vulnerability, and that those out of school, on the streets, or in institutions are also at greater risk.

64. Children lacking birth certificates or official registration documents, including refugee and internally displaced children, can be at particular risk of trafficking and are among those most difficult for authorities to trace, much less protect. Many countries have adopted national plans of action to combat child trafficking, but the lack of reliable statistical information remains a significant obstacle – most data focus only on the cross-border trafficking of girls and women for sexual exploitation.

(Source: UNICEF. The State of the World's Children 2012: Children in an Urban World, page 31.)

Two other documents essential in the prevention and protection of child trafficking victims are the Training manual for combating trafficking of children and women presented by the ILO, UNICEF, and the UN.GIFT (The United Nations Global Initiative to Fight Human Trafficking) in 2009 and the UNICEF document *Guidelines on*

Unicef has also warned about the importance of age assessment

the Protection of Child Victims of Trafficking (2006). This second document gives directives for the protection of child trafficking victims that are based on international human rights instruments and is focused on their protection, from the identification process to recuperation and integration. Regarding identification, it alerts about the importance of age assessment and the necessity of the States to adopt proactive identification measures. These measures include strengthening procedures for birth registration and the database of missing and exploited children.

In light of these directives, several situations are analyzed below in which serious shortcomings have been detected in the effective identification and protection of child victims of human trafficking in Spain. In this regard, improvements are necessary.

Foreign minors who are victims of human trafficking:

1. *In the case that the victim of human trafficking is confirmed to be a minor, the actions carried out under the provisions of this chapter shall at all times preserve the child's best interests.*
2. *The public institution responsible for the legal guardianship of the child victim or the Public Prosecutor's Office can propose the referral of the minor to specialized facilities for victims of human trafficking for reasons of protection or specialized assistance.*
3. *In all cases, specialized residences for victims of human trafficking should guarantee the separation of minors and those over the age of 18.*

Article 146. Regulation approved by Royal Decree 557/2011

4.1. AGE ASSESSMENT PRACTICES

If there are reasons to believe the victim is a minor, they will be presumed to be a minor

Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings establishes in Section four: "In the event that the age of the victim is uncertain and reasons exist to believe that they are a minor, they will be considered as such and measures of protection will be offered to them until their age can be confirmed."

The UNICEF guidelines on the protection of child trafficking victims indicate that if the age is unknown and there are reasons to believe the victim is a minor, they will be presumed to be a minor throughout the age assessment process and, in accordance with all special protection measures stipulated in these directives, they cannot be deported from national territory until the identification process is complete. UNICEF also indicates that age assessment should take into account the victim's physical appearance, psychological maturity, statements, available documentation,

and checks done with embassies or other relevant authorities. They also warn about the necessity to closely consider the use of technical instruments such as X-rays. As they are potentially harmful, they should be performed only with a medical prescription.

Article 35.3 of Organic Act 4/2000 establishes: "In the event that the State Security Forces locate an undocumented foreigner for whom it cannot be firmly established that they are a minor, they will give them, by way of social services trained in the protection of minors, the immediate attention they need, in accordance with the established legislation on the legal protection of minors. They will immediately alert the Public Prosecutor's Office, who will provide age assessment, for which appropriate health institutions will conduct any necessary tests with priority."

On the occasion of presenting to the Spanish Parliament the monographic report *Children or Adults? Age Assessment Practices*, the Ombudsman Institution specifically raised important warnings in the conclusions, which are reproduced below, about the special vulnerability of trafficking victims whose age cannot be determined with certainty at the moment they are detected.

1. The high global rate of not immediately registering births at the time of the event results in a higher margin of error in the subsequent registration. In fact, the recognition of the immediate and rigorous registration of births as a basic right, beginning with the right to an identity, has achieved extended recognition in the theoretical field. However, far-reaching practical difficulties still exist in many parts of the world. The attempts to combat this reality by assigning an exact date of birth using scientific techniques are not viable given the current state of the science.
2. In cases where there is doubt about age, the first measure to adopt in order to protect a minor who is unaccompanied or separated from his/her family is age assessment. The Committee on the Rights of the Child (2005) has stated that the methods for assessing age should not only take into account the physical aspect of the individual, but also their psychological maturity. The procedure for assessing age should be done according to scientific criteria, with safety and impartiality, attending to the interests of the minor and gender considerations, avoiding all risk of violating their physical integrity, duly respecting their human dignity, and, in case of uncertainty, giving the individual the benefit of the doubt. In any supposition, the person concerned should have access to an effective remedy to challenge the decision taken on their age.
3. The presumption of being a minor in case of doubt acquires special relevance in cases in which there exists evidence of the need for international protection. Given that minors in this situation normally have serious difficulties in leaving their countries, they might have been obligated to use false documentation or to resort to human smuggling networks.

UNICEF has also warned of the importance of age assessment

The Ombudsman Institution already raised an alarm about the acute vulnerability of victims for whom it is uncertain if they are over 18 years of age

Conclusions of the Ombudsman Institutions report "Children or Adults? Age Assessment Practices"

Age assessment is the first measure to be adopted in cases in which age is uncertain

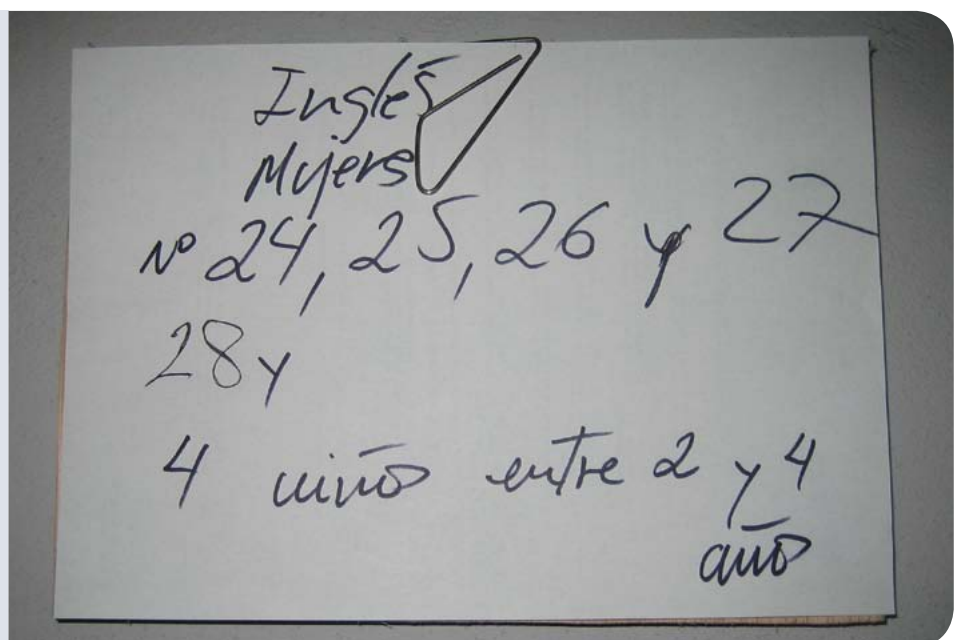
In case of doubt, they should be presumed to be a minor

In addition, it should be noted that in the event there is evidence of human trafficking, the Article 10.3 of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005) establishes that, in the case that the age of the victim is uncertain and reasons exist to believe that they are a minor, they should be considered as such and they should be given specific protection measures as they wait for their age to be determined.

Medical age assessment techniques yield large margins of error

Age assessment is the first measure to be adopted in cases in which age is uncertain

4. There is a consensus in the scientific community on the need to make known the large margins of error inherent in techniques for estimating age by measuring bone maturity and dental mineralization. Furthermore, experts call attention to the inadequacy of using certain techniques which can imply an overexposure to X-rays or radiation in sensitive areas for non-medical uses. A growing interest has been noted in the international field in identifying alternative testing methods to performing X-rays, although the debate is open and the responses differ notably in function of the country examined.
5. The scientific community insists upon the necessity to take into account the influence that specific pathological factors, nutrition, hygiene, and physical activity have on the chronology of morphological change sequences during the realization of any age assessment study. However, the relevance of ethic factors continues to be an issue of debate.
6. The margins of error in medical techniques, which have been mentioned previously, have raised the proposition of advancing toward a so-called comprehensive approach. Nevertheless, there is no consensus about the elements that should be included in this comprehensive method. Although they note that the importance of psychosocial examinations should be favored over medical examinations.



7. The fact that the Unaccompanied Minors Registry - a fundamental tool for as-
suring the identity of minors- is not operating in Spain gravely compromises the
control of the age assessment practices already completed, the personalization
of the interested parties, and the monitoring of their situation and mobility. It also
compromises the adoption of coordinated measures, which, in light of the num-
ber of organizations with competences in this field, are essential. Additionally,
this situation prevents the collection of reliable statistics about unaccompanied
foreign minors in Spain, which affects decision making.
8. The generality of the terms with which Article 35.3 of Organic Act 4/2000, on the
Rights and Freedoms of Foreign Citizens in Spain and their Social Integration,
which mentions the collaboration of healthcare institutions and the necessary
tests in order to assess age, has provoked a great inconsistencies in practices
across the country. The Attorney General's Office has addressed this issue in
various documents. This situation, in addition to relevant issues that fall under
the authority of the Attorney General's Office, which has a unique role in these
procedures, cannot be considered resolved. The necessary coordination of all
affected institutions and administrations, which the Regulation implementing the
Organic Act 4/2000, established by the Royal Decree 557/2011 defining a frame-
work protocol, cannot substitute nor condition the leading role of the Public
Prosecutor's Office in this field.
9. The law establishes: "In the case that the State Security Forces locate an un-
documented foreigner for whom it cannot be determined with certainty if they
are a minor, they will give them the immediate support they require by relevant
protection services for minors.... alerting the Public Prosecutor's Office about
the incident, who will provide the age assessment..." In legal terms, the provision
of immediate assistance has to occur at the same time as the age assessment
procedure is begun, which implicates that they are presumed to be a minor.

*There is no reliable
data on
unaccompanied
foreign minors in
Spain*

*Immediate support
must be offered
during the age
assessment
procedure*

The current situation, with a relatively low number of undocumented foreigners
whose age is uncertain, should favor the analysis of accumulated experience
on the shortcomings of the system. This will allow the establishment of a proto-
col that is respectful to the will of the legislator and which does not make the
provision of assistance conditional on prior age assessment. In practice, this
decreases the urgency in which the tests and their analyses are performed,
which results in more complete and rigorous criteria than those that are cur-
rently observed in the majority of cases.

*The potential minor
has the right to
express his/her
views in all matters
affecting them*

10. The necessary agility that should govern the age assessment procedure cannot
ignore the rights that all people, and in this case a presumed minor, have to be
heard on any issue that affects them. The investigations conducted show that
the person concerned is not informed by law enforcement about the beginning
of the procedure, its scope, or about the nature of the tests s/he will be sub-

jected to. Nor has it been established at this time that they receive the person's consent for these tests.

The lack of legal assistance during the age assessment procedure seriously infringes upon the right to participation and its corresponding guarantees.

The typology and sequence of tests to be conducted are not legal issues, but medical issues

11. An elevated number of cases have been detected in which it is the prosecutor who directly refers the child concerned to a health center for concrete medical tests. The typology and sequence of the tests to be conducted are not legal issues; they should be done under adequate medical supervision that is sufficient in scientific terms. Finally, the comprehensive evaluation of the results of age assessment tests that have been performed should be coordinated by a forensic physician or a physician who specializes in legal and forensic medicine with specific training in comprehensive interpretation of methods of the recommended complementary studies.

The Age Assessment process should be the result of collaboration between various specialists

12. The lack of intervention by experts in forensic medicine in the interpretation of diagnostic tests assessing age allows for age assessment based on the results of isolated tests, (for example, only radiological examinations), which lack the necessary scientific rigor. The appendix of this report contains a series of recommendations formulated by physicians who attended workshops, which included the full battery of tests that are considered necessary to conduct technically accurate age assessment. In particular, these recommendations indicate that



the assessment process should be the result of the collaboration of various medical specialists.

13. Several studies have detected testing at the request of law enforcement authorities or child protection services without the prior authorization of the prosecutor. Cases have even been found in which a medical exam for therapeutic purposes has been conducted in order to annul the declaration of a minor given in a previous procedure. In these cases it is unknown the degree of responsibility the Public Prosecutor has on this matter.
14. Expert reports should specify that forensic age assessments based on medical criteria are subject to a statistically significant margin of error. The medical reports analyzed by and large indicate neither this circumstance nor the precautions that should be applied in order to be able to extract legal implications from the report. Medical reports have been examined that do not reference the margin of error that should be considered when interpreting the results of these tests.
15. The previously stated problems with the Unaccompanied Minors Registry, in addition to other circumstances, have given rise to the frequent repetition of medical exams on the same individuals. Given the margins of error of these tests, their repetition does not offer greater certainty but indeed increases uncertainty, particularly in individuals around the age of 18, in which it is very common that the results allow for competing interpretations.
16. The prosecuting attorney's decree determining age, of a presumptive nature, marks an end to a procedure in which no provision has been made for holding a hearing for the interested party prior to the resolution being adopted. This hearing has solely been provided for in those cases in which the child concerned refuses to undergo the medical tests. It should be necessary that this hearing occur in any case.
17. The December 2010 enactment of the Criminal Code reform, approved by Organic Act 5/2010 of June 22nd, affects the detection of a foreign person who is carrying a passport or other identity document that declares s/he is underage but in which the authenticity or ownership of the document is uncertain. The administrative measures provided for in Article 35 of Organic Act 4/2000 cannot be applied in these cases because there is evidence that the person concerned has committed a criminal offence. In these cases it is the judicial authority, within the framework of the criminal procedure, who orders the necessary exams to determine whether or not the alleged perpetrator is a minor or if they have committed a crime.

Given the margin of error of the tests, their repetition increases uncertainty

The recommendations have had a high acceptance rate

After the release of these conclusions, recommendations were made to various agencies of the Spanish Public Administration with competences in this matter. At

the time of preparing this report, there are still several open cases which still contain several of the formulated recommendations. However, in general, it must be recognized that the high acceptance rate of these recommendations suggest that the shortcomings detected by the Ombudsman Institution are on their way to be solved.

Recommendations

“1. That, in the scope of their competences, a specialized service for age assessment is established, which is able to perform the tests and examinations necessary in an efficient and centralized manner and based on common protocols.

2. That the execution of an interagency protocol is promoted which permits the exchange of tests and forensic reports conducted to assess age by any institution of legal medicine or forensic medical services in the nation, with the goal of facilitating the necessary background information that may exist about the person on whom they wish to conduct an age assessment study.”

“Organic Act 4/2000, on the Rights and Freedoms of Foreign Citizens in Spain and their Social Integration should be modified to ensure the right to free legal assistance during the age assessment process for undocumented foreigners whose status as a minor cannot be determined with certainty.”

“1. Instructions for action by the Public Prosecutor’s Office on age assessment procedures will be written, as per Article 35 of Organic Act 4/2000. These instructions should include, among other aspects:

a) In cases in which law enforcement notify the Public Prosecutor’s Office about an undocumented foreigner whose status as a minor is in doubt, they will refer the individual to forensic medical services or to a specialist trained in forensic medicine. These professionals then may evaluate the appropriateness of conducting medical examinations to assess their biological age and indicate the diagnostic methods to be used in each case.

b) Information and results of available tests should be facilitated via police registries to the designated forensic medical services or specialists in forensic medicine in order to conduct an age assessment study. Grounds for the need for additional tests should also be included.

c) Medical professionals should be instructed on their obligation to inform the person concerned, in a manner that is comprehensible to them, about the scope and consequences of tests to be conducted, as well as the necessity to receive the person’s consent for the exams.

d) A request for an examination for evidence of any form of violence or abuse should be included in requests for a report from the forensic medical service or forensic medicine specialist.

e) Once the forensic medical report has been collected and before issuing the decree determining age, a hearing should be held with the minor concerned, with any necessary assistance and in the presence of an interpreter if necessary. The results of the assessment will be stated, indicating the tests used, so that minor concerned may formulate any rebuttals deemed necessary.

f) With the exception of judicial action, any medical test assessing age will only be performed if it has been agreed upon by the Public Prosecutor's Office.

g) The needs for adequate immediate protection should be provided for in each case. Instructions should be given to acting law enforcement authorities to coordinate their actions with the competent protection services during the age assessment process.

h) In its responsibility for the coordination of the Unaccompanied Foreign Minors Registry the Attorney General's Office should establish methods to ensure that all noteworthy data and circumstances are made accessible in the Registry. This information should be made accessible regardless of the branch of law enforcement or child protection agency that is responsible for the minor concerned.

2. The indications offered in Advisory 1/2009 on aspects relating to age assessments records on unaccompanied foreign minors should be revised in light of the modification of Article 392 of the Criminal Code amended by Organic Act 5/2010."

"Effective criteria for the coordination between the General Directorate of Police and the Civil Guard should be established so that when autonomous police locate an undocumented foreigner whose status of a minor is uncertain, it is immediately reported in the Unaccompanied Foreign Minors Registry. They should include or provide access to data and descriptions that allow authorities to verify if past records of this presumed minor exist in the Registry. If no records are found the minor concerned should be registered."

"1. In order to comply with the provisions of Article 35.3 of Organic Act 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, resources should be designated in order to offer appropriate shelter to the minor concerned during age assessment.

2. Instructions should be given to service providers assisting minors indicating that they should make immediate contact with the Public Prosecutor's Office and the National Police Force regarding the admission of any foreigner whose status of a minor is not affirmed via documentation or has not been determined by a prosecutor's decree."

"The Office of the Secretary General for Immigration and Migration should promote the adoption of the framework protocol for unaccompanied foreign minors taking into account the conclusions drawn during working meetings on forensic age assessments of unaccompanied foreign minors as well as the document containing the consensus on best practices from the Institutes of Legal Medicine of Spain, located in the appendix of this report."

“1. When law enforcement learns of an undocumented foreigner whose status as a minor cannot be determined with certainty, they should immediately proceed to verify their age by comparing all ten fingerprints against any background information that might exist in the Unaccompanied Foreign Minors Registry. In the event that no information is found, they should proceed to register the minors concerned in the Registry as well as record any tests performed and rulings made.

2. In accordance to the provisions of Article 213.1.w) of the Regulation approved by Royal Decree 557/2011, it should be noted in the Central Registry of Foreigners any decree issued by the prosecutor which determines that an undocumented foreigner is of legal age. They should record any tests performed and the names of the health institutions that conducted them. Necessary technical measures should be adopted so that this data can be included in searches done in the Unaccompanied Foreign Minors Registry.

3. A hearing should be guaranteed at the beginning of the procedure in which necessary tests for age assessment are agreed upon. In this initial procedure the minor concerned should be informed of the procedure’s objective and the rights s/he is afforded, especially regarding the possibility of formulating rebuttals and the possibility of appealing the prosecutor’s ruling that will determine his/her age.

4. Necessary coordination protocols should be established with the autonomous police in order to provide for the immediate consultation and, if necessary, registration in the Unaccompanied Foreign Minors Registry, regardless of the branch of law enforcement that may have initially taken responsibility of the undocumented foreigner whose status of a minor is uncertain.”

“1. Licensed attorneys should be reminded that diagnostic exams conducted for age assessment and not for health purposes should only be performed by order of a judicial authority or the Public Prosecutor’s Office.

2. Licensed attorneys should be reminded that when medical examinations or tests for health purposes are performed, they should not issue reports or give opinions about the probable age of a subject.”

(Source: “Children or Adults? Age Assessment Practices.” Ombudsman Institution, 2011.)

Differences detected in age assessment practices

The section on identification protocols outlines the main shortcomings detected in the identification of Victoria, a trafficking victim, who arrived at Madrid Barajas airport claiming she was a minor. In turn, this section addresses the main shortcomings detected in the procedure for assessing her status as a minor. The forensic medical report on age assessment concluded that the alleged minor was 18 years old, with a margin of error of two years. Compared with the date of birth declared by the person concerned, the result indicated in the report was compatible with the margin of error. Thus, her statement that she was 17 years old, not 18, could be true. Ac-

cordingly, the Ombudsman Institution communicated this to the Public Prosecutor's Office, stating that, in light of the circumstances, the person concerned could be a trafficking victim. As a result, they initiated the procedures under Article 10.4 of the Warsaw Convention.

In its response, the Public Prosecutor's Office reported on the actions it took in this case and indicated that the prosecutor who issued the decree of age requested that the forensic doctor clarify the conclusions. Additionally, it indicated that it issued a formal request for all personnel of the Public Prosecutor's Office for Minors to attend a meeting with the objective of unifying criteria for age assessment. They also called a meeting with the forensic doctors affiliated with the Public Prosecutor's Office for this same purpose.

Despite efforts made, complaints about this issue continue to be received. Described below are the contents of a complaint made at the end of 2011 by a non-governmental organization on behalf of Mary, who arrived at the Madrid Barajas airport with a passport from the Democratic Republic of Congo that indicated that she was a minor.

In spite of this, the Public Prosecutor's Office stated that she was of legal age by a decree issued after a forensic medical exam. The non-governmental organization that made the complaint to the Ombudsman Institution stated their disagreement with the decision of the Public Prosecutor's Office. They considered that, given the terms of the forensic medical report, it was not possible to conclude that she was of legal age.

On evaluating the documentation submitted, it was learned that they performed an X-ray of the carpus and left hand. They also studied dentition and secondary sexual characteristics. The X-ray report indicated that "the X-ray of the left hand shows a bone maturity index that corresponds with a classic image of 18 years and 0 months on the Atlas of Bone Maturity by Greulich and Pyle" and clarified that "with this type of maturity we can find, under normal conditions and in absence of growth disorders, subjects who are between 16.5 and 19.5 years." This variability is determined, according to what was indicated, "by taking two standard deviations above and below the median age that is represented in the example image."

However, the forensic medical report stated that "the X-ray of the carpus and left hand demonstrate an age of 20 years with a margin of error of ± 2 years." The study of dentition to assess age indicated: "Second molar erupted in the four quadrants, reaching the height of the rest of the molar spaces and third molar erupted in the four quadrants," without an explicit appraisal on the matter included in the report. Finally, the study of secondary sex characteristics indicated that she presented development corresponding to an age of between 16 and 20 years, adding, that "the statistical significance of this approach is insufficient."

Based on the information, the forensic medical report concluded that the analysis of tests conducted permitted them to determine an age of maturity greater than 18

Mary arrived at Barajas airport with a passport that indicated she was a minor

The Public Prosecutor's Office declared her of legal age in a decree issued after a forensic medical examination

The prosecutor decided not to conduct any supplementary tests

years. Nevertheless, it was indicated that “this study should be more complete and could avoid possible margins of error with a full-mouth X-ray study. This should be conducted in all cases where carpus X-rays indicate the person concerned is 18 years of age.”

However, the acting prosecutor decided not to conduct any supplementary test and declared the person concerned to be 18 years of age.

The Ombudsman Institution informed the Public Prosecutor’s Office about their difference of opinion

The Ombudsman Institution informed the Public Prosecutor’s Office of their difference of opinion on the prosecutor’s actions in this case, based on the following arguments:

1. At no time were reasons given for questioning the legality of the documentation that the person concerned carried with her upon her arrival to Barajas Airport.
2. In this case the acting prosecutor declared the person concerned to be of age based on a forensic medical report that did not establish an age range. Indeed, it advised that supplementary tests should be conducted in order to avoid margins of error, which makes it alarming that the prosecutor declared her to be of age without ordering the medical tests recommended by the forensic doctor.
3. The Ombudsman Institution considers that the issue of age assessment must be analyzed in a specialized manner when a person presents evidence of being a victim of trafficking for purposes of sexual exploitation, in accordance with the provisions of Article 10.3 of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005). From the data present on file it appears that the acting prosecutor dispensed with the application of the Convention despite the fact that, according to information received by the Ombudsman Institution, the UNHCR submitted a report on the situation of the person concerned to the Public Prosecutor’s Office. In its report, it was expressly indicated that the potential minor’s very vulnerable profile could include a situation of trafficking or child smuggling. In the opinion of the Ombudsman Institution, even if the acting prosecutor did not have access to this information at the time of declaring her of legal age, the report submitted by the UNHCR should have motivated the Public Prosecutor’s Office to order additional medical tests. In particular, they should have ordered the tests suggested by the forensic doctor in order to ensure greater accuracy on the age of potential minor.

The investigation remains open

For these reasons, the Ombudsman Institution requested that the Public Prosecutor’s Office submit a report on this case. In particular, they were requested information specifying the reasons for which the acting prosecutor declared the potential minor to be of legal age without conducting the supplementary tests that were referred to in the forensic medical report. In their response, the Public Prosecutor’s

Office stated: “The Public Prosecutor’s Office for Minors adopted a decision on the age assessment considering the facts sufficiently accredited on the basis of current data.” Furthermore, information was requested on the status and the handlings of criminal proceedings, if any, that were initiated after the documents that she carried with her that indicated her status as a minor were deemed fraudulent. At the time of the release of this report, a response to this request has still not been received.

Among the recommendations formulated by the Ombudsman Institution in the monographic report *Children or Adults? Age Assessment Practices*, which are transcribed above, the Attorney General’s Office was asked to issue instructions about age assessment practices. Among other aspects, these instructions would state that in the request for a report from the forensic medical service or specialist in forensic medicine, their expertise would also be utilized for an examination of any existing evidence of any form of violence or abuse. Moreover, it was requested that once the medical forensic report was compiled and before the issuing of a decree declaring age, they meet with the minor concerned with any necessary assistance and with an interpreter, if needed, in order to communicate the results of the report and indicate the tests used so that s/he may develop any necessary rebuttals.

The necessity of adopting these guarantees in age assessment practices are especially pertinent in cases such as this one, in which the person concerned was ultimately recognized as a victim of human trafficking. Additionally, the adult who accompanied her was returned to their country of origin without any type of inquiry about the relationship he had with the victim. As a result, authorities were unable to clarify if, as the person concerned stated in an interview with the non-governmental organization that filed the complaint, she was gravely threatened by this individual who had provided her with the fraudulent documentation to gain entry into Spain and who had given her instructions on the responses she was to give to authorities on her relationship to him and the purpose of the trip. In reference to the forensic medical examinations performed, it was limited to tests for the purpose of age assessment, without the presence of an interpreter and without conducting a personal interview with the person concerned as part of the exam. Given the above, it is urgent to adopt a protocol that permits, in cases such as this one, a compilation of evidence that help authorities collect proof that, together with the testimony of the victim, can be useful for the prosecution of the perpetrators of the crime.

This forensic examination should be performed not only in those cases in which the potential victim declare they are a minor, but also in those cases in which there is a victim who states they are of legal age, but evidence exists that indicates they may be a minor.

It is recommended that safeguards be adopted in age assessment practices

A protocol that provides for the compilation of useful evidence should be adopted

The forensic examination should also be performed when it is suspected that s/he is a minor

Margaret is Nigerian and arrived on Spanish coasts three years ago, at 14 years of age. After being identified as a minor she was directed to immediate shelter. However, she only remained there a few days; a woman of her same nationality came to pick her up at the center. Margaret had the phone number of this woman because it had been given to her in Morocco. She was transferred to a large city in the North-east of Spain where she began to work as a prostitute, together with other girls. Months later, she was transferred to a Spanish island where they continued to exploit her. Police detained her once during an immigration control operation, but Margaret showed a fraudulent passport and stated that she was of legal age. Thus, after initiating expulsion proceedings, she was released. A few months later she was again taken to the large city where she had previously been exploited. There, Margaret became friends with a client and confessed to him that she was a minor. He tried to help her, putting her in contact with an organization. When the members of the criminal network found out, they quickly transferred her to another city, this time to a small capital city of a province, where they obligated her to work as a prostitute in a club. One day, tired of the abuses she was submitted to, she decided to abandon the club with a friend. They arrived to a city in the south of Spain, where they again began to work as prostitutes, this time under the control of the friend's boyfriend. In this last city they were identified as trafficking victims by an organization that works with women working as prostitutes on the street. This organization again registered Margaret in child protection facilities, where she was transferred to immediate shelter. After two months, she was transferred to the same center she had fled upon her arrival in Spain. Police verified, after taking her fingerprints, that she had been identified and detained on two occasions for breaking immigration law and that her information was registered in the police database of foreigners. They found no reference to her entry to national territory as an undocumented minor.

The lack of effective identification of a trafficked minor was reported

In the interviews conducted during the preparation of this report, both Margaret and the various professionals who assisted her noted how the lack of effective identification of a trafficked minor allowed her to be exploited in different cities in Spain for nearly two years without being detected. Additionally, the dearth of resources and specific protocols for child trafficking victims in the regional autonomous community responsible for Margaret made it easy for the criminal network to rapidly locate and take her from the control of child protection services. Lastly, the lack of functionality of the Central Registry of Unaccompanied Minors allowed Margaret to find herself in a situation of extreme vulnerability and even detained on two occasions without it being detected that she was a child victim of trafficking.

4.2. THE SPECIFIC CASE OF MINORS WHO REQUEST INTERNATIONAL PROTECTION

UNICEF's directives for the protection and identification of child victims of trafficking, previously mentioned in this section, reiterate that the identification of a minor as a trafficking victim does not reduce or restrict their right to request asylum and be recognized as a refugee.

The aforementioned directives also reiterate that determining the need for international protection is more than an assessment of the state's non-refoulement obligations. A child victim may need international protection, including subsidiary forms of protection. While not all trafficking victims fall under the scope of the refugee definition given in Article 1 of the Convention of 1951, there are situations in which it is necessary to determine whether their experience of trafficking constitutes persecution for reasons of race, religion, nationality, or for membership of a specific social group or political opinion. In such situations, no decision on a durable solution can be taken before the refugee status determination has been completed.

In Spain, the judicial system for minors who request international protection is regulated under Article 46 of Law 2/2009, of the 30th of October. This Article is included under Title V, regarding minors and other vulnerable persons. It states that the specific situation of these persons should be taken into account. In Section 2) it states that necessary measures should be taken to give special treatment, when needed, to requests for international protection.

The literal wording of the provision requires a review in order to give requests special treatment because it includes the vague legal concept of "when needed." In practice, this implies that administrative bodies determine whether or not it is considered necessary that the minor file an individual request.

Indeed, in one of the inspections of the Ombudsman Institution, it was discovered that two minors who traveled with their grandmother were not permitted to file individual requests for asylum. The Office of Asylum and Refuge decided to include the minors in their grandmother's application. In this specific case it was shown that when the adult and minors declared their desire to request asylum at the border post, the mother of the children had already applied for international protection and her application was admitted for processing. In the opinion of the Ombudsman Institution, the circumstances that existed would have required special treatment for the minors' applications. For this reason, the Sub-Directorate General for Asylum was informed that this special treatment allowed the children's best interest to be more clearly established. It also expressed that the applications of minors and persons in vulnerable situations should be treated differently than all other requests for international protection, taking into account the nature of the international protection institution and the recipients referred to in Article 46 of the Law that regulates the Right to Asylum and Subsidiary protections.

The identification of a minor as a victim does not take away from their right to seek asylum

The legal framework for minors seeking international protection is regulated

The public agencies determine when a minor should file an individual application

It is considered that all applications for international protection should be given special treatment

Along these same lines, UNHCR has stated in their 2009 International Protection Directives, which sets minimum standards for the treatment of children during asylum proceedings, that “the child’s own account of his/her experience is often essential for the identification of needs in terms of individual protection and, in many cases, the child is the only source of this information.”

UNHCR has developed minimum standards

An examination of these directives allows for the understanding of the reasons for the creation of these minimum standards. There, it is stated, that “Each trafficked child is entitled to have his or her case individually assessed on the basis of his or her best interests to determine the appropriate solution whether or not s/he is accompanied”. These directives also affirm that all persons under the age of 18 who are the principal applicant for asylum have the right to procedural safeguards sensitive to children. It is also stated that either reducing the age of childhood or applying a restrictive focus on the age assessment in order to treat children as adults during asylum proceedings could result in a violation of their rights under international human rights law. This should be followed even if the asylum seeker is 18 years old or slightly older.

The UNHCR declares, that “although children can face similar or identical forms of harm as adults, they may experience it in a different way. The actions and threats that do not reach the threshold of persecution in the case of an adult may amount to persecution in the case of a child for the simple fact that s/he is a child. Immaturity, vulnerability, lack of developed coping mechanisms, dependence, as well as the different stages of development and the difficulty in abilities can be directly related to the way in which a child experiences or feels fear.”

It is recommended that the applications of minors be considered on an individual basis

It can be concluded, in light of what was previously described, that the approach applied for applications for international protection filed by minors is absolutely different from that of an adult’s application. Consequently, the only way to thoroughly evaluate, with sufficient safeguards, whether or not to grant protection is to afford special treatment to minors’ applications. In the opinion of the Ombudsman Institution, it is not possible to assess a minor’s need for international protection without listening to him or her, using adequate methods, which should take into account not only their statements but also their non-verbal expression and their maturity.

The need to process the cases of minors in an individualized manner has been a constant concern of the Ombudsman Institution. It is necessary to take into consideration, also, that there may exist situations in which the adult that the minor is traveling with might pose a threat rather than protection to them, regardless of the family ties between them.

Adequate measures should be adopted in order to guarantee special treatment via the establishment of a specific procedure to be used during international protection requests filed by persons referred to in Article 46 of Law 2/2009, of 30 October, regulating the Right to Asylum and Subsidiary Protection.

Evaluate the appropriateness of including in the Asylum Law a provision that expressly defines the rights of persons included in the aforementioned Article, and in particular of minors, to make independent asylum applications, establishing a specific procedure for this that takes into consideration the minor's level of maturity.

(Recommendations made to the Sub-Directorate General for Asylum.)

The Sub-Directorate General of Asylum has communicated to the Ombudsman Institution that it will take into account the aforementioned recommendations in preparing regulations implementing Law 2/2009. However, at the time of this report, the preparations are still on-going and an estimated date of completion has not been released. In light of the complaints that are still being received in relation to the treatment of requests for international protection by minors, this Institution has repeatedly stressed to the Spanish Public Administration the need to take into account the contents of the recommendations. In regards to the specific issue of child trafficking victims in need of international protection, it must be reiterated that the special treatment of the applications supposes a stronger guarantee of minors' needs for protection. It also allows for effective investigation for indicators of human trafficking, given that the procedural framework of asylum allows for private interviews with the minor that could facilitate their identification as a trafficking victim.

In light of the complaints that continue to be received, the recommendations were reiterated

At the end of 2011 a non-governmental organization alerted the Ombudsman Institution to the situation of Mary, a possible minor, who showed signs of being a trafficking victim. She had arrived to Barajas accompanied by an adult who initially declared that he was her uncle and that they had arrived for tourism. After denial of entry, the adult requested asylum for both of them, stating in this part of the procedure that Mary was his daughter. The Office of Asylum and Refuge decided to include her in the petition of the adult, despite the fact that there was doubt as to the family ties between them (Mary did not know the name of the man who initially said he was her uncle and later her father). The joint processing of the applications prevented the minor from being interviewed individually. The Ombudsman Institution reminded the Sub-Directorate General of Asylum of the previously cited recommendation (individual processing of minors' applications for international protection) and suggested they separate the minor's application for international protection. In that statement it was indicated that if the minor's request for asylum were processed individually, it would be possible to conduct an

interview with her without the presence of the adult, which could be crucial for clarifying the relationship between the two. It was warned that the minor could be a possible victim of trafficking. UNHCR also requested the individual case assessment. Nevertheless, that decision was not adopted. Ultimately, Mary presented an individual application, although not as a result of the suggestions made by the Ombudsman Institution or similar suggestions made by UNHCR, but due to age assessment procedures performed. The Public Prosecutor's Office declared her to be of legal age. The application of the adult that accompanied her was denied and he was deported.

In regards to the applicant's request for international protection, the UNHCR asked that her file to be admitted for processing and issued the same report in the re-examination, expressing their disagreement with the prosecutor's decree that she was of legal age. Finally, UNHCR insisted that the Sub-Directorate General apply the Framework Protocol for the Protection of Victims of Trafficking as soon as possible and also proposed that they apply Section 3 of Article 36 of the Asylum Act. UNHCR concluded that the applicant's request should be admitted for processing because an adequate examination of the case was not possible due to the established procedures for applications made at the border. It indicated that it was necessary to conduct a more in-depth study of the case in optimal conditions that would allow the correct assessment of the applicant's need for international protection. In the report issued for the re-examination of the application, UNHCR maintained this same opinion, in favor of admission for processing, and also indicated that, according to the report from the Red Cross, Mary was in an emotionally disturbed state that made it difficult to establish real communication with her and which prevented her from accurately recounting the events that had occurred prior to her arrival to Spain. The statement concluded by reiterating the necessity of applying the Protocol and indicated the risk that the applicant runs of suffering grave harm if she were returned to her country of origin. Despite these findings, the decision made by the Sub-Directorate General was to deny the re-examination and not apply the Protocol, as they did not find sufficient evidence of trafficking.

The organization which made the complaint, in light of the immediate deportation of Mary to her country of origin, requested that Spain's Central Department of Immigration and Border Police begin the (potential) trafficking victim identification process, according to Article 59 bis of Organic Act 4/2000. The aforementioned Department communicated to the Ombudsman Institution that it had proposed to the Government Delegation the concession of a recovery and reflection period and facilitated her entrance to national territory.

Despite all of the above, the Sub-Directorate General for Asylum considered that it acted correctly and, in light of the report issued by the investigating officer of Mary's application for international protection, it did not consider it necessary to apply the protocols prescribed for cases in which there is evidence of human trafficking.

i) Provide training on asylum and the specific needs of children, including the situation of unaccompanied and separated minors, issues relating to the trafficking of persons, and the trafficking of traumatized children to personnel who attend to unaccompanied minors. These first responders are officers in charge of asylum applications or law enforcement authorities and civil servants who work on the border. They might be among the first to have contact with children who need protection.

Committee on the Rights of the Child

Before concluding the present section it is necessary to also mention another type of situation which organizations specializing in the legal assistance to applicants of international protection at the border have made known. While it does not match the profile of the situations described above, it refers to the situation of male minors who are possible victims of human trafficking and are not being detected in an efficient manner. The complaints refer to possible minors who travel alone carrying a passport that indicates they are of legal age. The document is issued by a country in the South of Africa and includes a visa granted by a Consulate of the European Union. Upon arrival at the border post of Madrid-Barajas they request international protection, stating they are minors and are nationals of another African country.

In none of the cases analyzed was an age assessment exam conducted, as the Public Prosecutor's Office considered the passports to be authentic and not tampered with. However, in the opinion of the Ombudsman Institution, the statements of the applicants and the repetition of identical cases should alarm the law enforcement authorities at the border and asylum investigators, given that these cases at least merit deeper analysis before making decisions for immediate deportation or denial of admission to processing of asylum applications. It is necessary to confirm whether these individuals could be victims of human trafficking or perhaps immigrant smuggling.

In one of the investigations conducted by the Ombudsman Institution with the goal of making a formal complaint, the Central Department of Border Police sent a fax to the Public Prosecutor's Office for Minors of Madrid, attaching a report which indicated that a passport that had been studied was not tampered with, but that the fingerprint of the right index finger was covered and it could not be confirmed if it corresponded to the carrier. The Department indicated that they reported to the Public Prosecutor's Office that a lofoscopic comparison of the fingerprint should be made by the Forensic Police Unit located in the airport and that it should occur the next day. However it is certain that they did not do as such. The Public Prosecutor's Office did not consider the age assessment procedures necessary, stating that the applicant was of legal age by virtue of the contents of their passport. The file also

There are other cases of potential victims, possibly minors, who are not being detected

Minors who travel alone with passports that state they are of legal age

did not verify that they performed the proposed fingerprint comparison. However, the UNCHR issued a report directed to the Sub-Directorate General for Asylum alerting them to the uncertainty regarding the identity and age of the applicant. It indicated that the applicant should be considered an unaccompanied minor and should receive the treatment accorded to his situation of special vulnerability. This petition was disregarded and the applicant was returned to the country of his flight's origin.

It has been recommended to issue instructions detailing the actions to be followed

Uncertainties regarding the applicant's status as a minor in cases where they are both applicants for international protection and under the guardianship of child protection agencies have also been a subject of concern for the Ombudsman Institution. As they are minors, these asylum seekers are placed in child protection centers. However, complaints have been received in which, after performing age assessment tests, the child protection center has ceased their guardianship. Then, without reporting it to the Office of Asylum and Refuge where their application for international protection as a minor was being processed, protection agencies remove the applicant from the protection system. This means they are immediately in a situation of total lack of protection, as they are not able to continue in the residential facilities they had been assigned to. In light of this situation, the asylum seekers find themselves obligated to renounce the processing of their application for international protection as minors so that they are able to access residential facilities that exist for adult applicants. In this regard the following recommendation was made.

"That Ministry should give instructions detailing the actions to follow for cases of asylum seekers in which cessation of protection of minors is agreed upon as a consequence of supervening evidence of any type. The aim is to assure that the individuals are not left unprotected by leaving the protection facility."

4.3. THE CASE OF YOUNG CHILDREN WHO ILLEGALLY ACCESS NATIONAL TERRITORY ACCOMPANIED BY ADULTS WHO CLAIM TO BE THEIR PARENTS

UNICEF directives apply to minors conceived and born of victims

UNICEF's directives on the protection of child trafficking victims apply to those minors who are conceived and born of trafficking victims.

The director of a shelter contacted the Ombudsman Institution asking for its intervention in the situation of Queen, a Nigerian woman who had entered the shelter with three minors after being intercepted trying to access national territory on a small open boat.

As the submitted statement indicated, after monitoring Queen and the minors, they concluded that there was evidence that she could be a victim of trafficking and that she maintained constant telephone communication with people who urged her to leave the center. The report also shows concern about the situation of the minors, given that the family ties were not proven and Queen did not show any attachment to them, especially towards the oldest of the three, who had psychological and health problems that required special treatment and monitoring.

Given the above situation, they asked for the intervention of the child protection agency of the regional autonomous community in order to guarantee the rights of the children, providing a complete report of the circumstances described. The response issued six weeks later confirmed the children were “at-risk”, indicating: “...we cannot conclude that it is a helpless situation which requires the separation of the minor from their parent and siblings (with whom the report indicated there was a healthy bond) but a situation of risk that should be addressed as it has been until now, arbitrating assistance programs designed to mitigate and compensate for deficiencies in their environment.”

Likewise, the community social services of the district where the center was located conducted an interview with Queen after which they concluded that, since she expressed her desire to leave the district and did not give information about where she would reside, it was not possible for these social services to intervene, as their work was restricted to that district.

During the preparation of this report, the whereabouts of Queen and the three minors, who abandoned the center, is unknown. The investigation continues open with the child protection service of the autonomous community and the Attorney General’s Office.

Meanwhile, Organic Act 1/1996, of January 15th, on the Legal Protection of Minors, establishes the obligation of all individuals who detect a situation of risk or possible abandonment of a minor to provide them immediate aid and report the event to the closest authority or agency (Article 13.1).

The distinction, with the assumption of social vulnerability of the minor, between situations of risk and of abandonment that give rise to differing levels of intervention by the public agency was introduced in Spanish legislation on the legal protections for minors through the aforementioned Organic Act 1/1996.

The recognition of a situation of risk requires the intervention of the public agency in an attempt to eliminate risk factors caused by the family environment that represent a threat to the minor but are not sufficiently grave to warrant the separation of the minor from the family.

Nevertheless, in the 17 years since the enactment of Organic Act 1/1996 and despite the fact that practically all of the regional autonomous communities have defined a

Act 1/1996 on legal protections for minors distinguishes between abandonment and situations of risk

*Absence of action
protocols for
situations of risk*

situation of risk for a minor in their legislation, the intended impact of this regulation has not been produced. Public child protection agencies' continued use of declarations of abandonment and residential sheltering of minors as an intervention method is still found in a large number of cases. An analysis of the reasons why the complete implementation of all the measures described in Organic Act 1/1996 for the identification and prevention of situations of risk was not achieved goes beyond the scope of this monographic report.

Therefore, this context of a lack of widespread implementation of action protocols directed towards public child protection agencies when faced with minors with situations of risk frames the situation discussed in this section.

Through media reports, the Ombudsman Institution learned of the dismantling of a criminal ring of pimps who sexually exploited Nigerian women and forced them into prostitution. According to the police operation, a two-year-old child was rescued. He was harbored by the criminal organization while his mother was obligated to work as a prostitute in Italy. The minor was sheltered by child protection agencies while his mother, after being identified as a victim of trafficking, exercised her right to a recovery and reflection period and was referred to a shelter. However, the law enforcement authorities had previously requested that the Government sub-Delegation annul the granting of this measure, given that they did not consider her a victim of trafficking but a member of the criminal network, highlighting her poor behavior in the shelter as well as her attitude towards her peers. Her current whereabouts are unknown. Her son has been matched with a family in a pre-adoptive placement. Since the mother's whereabouts are unknown, the relationship between the two was legally dissolved. This action was published in the Official Bulletin of the Regional Autonomous Community.

*A lack of early
detection of minors
who arrive on the
coasts
accompanied by an
adult*

The lack of early detection by authorities of minors who arrive on Spanish coasts accompanied by adults or women who are in advanced stages of pregnancy trying to illegally enter national territory has prompted the legal intervention of the Provincial Court of Cadiz in various cases. The following paragraph highlights one of the cited rulings: Sentence number 183/2004, of the 22 of December, of the First Section of the Provincial Court of Cádiz. It summarizes that the situation created "could also require special diligence on behalf of the Public Administration in their knowledge, specifically of the area of Cádiz, in regards to a wide-reaching distribution of information on the arrival of immigrants and small open boats that carry children, minors, and pregnant women, among others, to the Spanish coast. The subsequent births are well-known and publicized, echoed profusely in the news; not only in written media, but in photos of the exit from the hospital. Hence, it should be required that the Spanish Public Administration, given the era and place we live in, be particularly diligent in identifying situations where there are pregnant women and/or new-

borns, as they can quickly lead to situations of abandonment, helplessness, or a lack of protection. These situations deserve a rapid administrative response to avoid prolonged needs of private social assistance. Perhaps, for this reason, this Court questions the lack of coordination between the different competent bodies of the Spanish Public Administration: agencies of the Central Government Administration, of the Regional Autonomous Government Administration, and other Local Bodies, on the detection of these types of situations, locating of minors, and the verification of information and data, etc. particularly in the Campo de Gibraltar area and in other areas common for small open boat landings. How does there not exist, particularly in modern day with an overabundance of institutional publicity campaigns and especially in our province, a broad and sustained dissemination of information to the public about the entire process of public assistance to minors and the obligations of citizens in this respect? Questions also arise about the almost certain lack of open cases on omissions and infractions of the relevant legal regulation.”

The obligation of all authorities and public services to give the immediate attention that any minor might need, to take action in their area of competences, or to make referrals to the competent body is expressly covered in Article 14 of Organic Act 1/1996. In addition, this Article establishes the obligation to make these actions known to the legal representatives of the minor or, when necessary, to the Public Prosecutor’s Office. Furthermore, Article 16 of the cited law states that state agencies with competence in matters of child protection are obligated to verify the reported situation and take necessary measures to resolve it according to the outcomes of the those actions.

Lack of coordination between the different competent authorities

All authorities and state services are obligated to give immediate attention

Situations of risk should be reported to the Public Prosecutor’s Office

Through media reports, the Ombudsman Institution learned of the arrival at the port of Motril (Granada) of a small open boat on which thirty women from sub-Saharan Africa traveled. Nine of the women were pregnant and there were ten minors on board. The Ombudsman Institution opened an ex-officio investigation on the Government Sub-delegation in Granada to determine the actions taken by the competent agencies. The Government Sub-delegation indicated that the women and children, all undocumented, were received by a non-governmental organization which referred them to various shelters. Another group of women, all in advanced stages of pregnancy, were sheltered by a different organization. A few weeks later, all the women abandoned the residential facilities together with their children. The police do not know their current whereabouts. After examining the complete documentation on the actions taken and the identifying data of each of the women, it was determined that they had been identified by the police as potential trafficking victims and had been offered a recovery and reflection period, which they all turned down. Likewise, it was indicated that no information was gathered on the minors that accompanied them and thus, when they abandoned the center, they lost all trace of them. The investigation was continued with the Central

Department of Immigration and Border Police in order to learn if the adults had been detained again for breaking immigration law, as all of them had pending deportation orders. It was learned that three of the women had been identified while they worked at prostitutes on the street and that they were placed in an immigrant detention center. They were again offered a recovery and reflection period and again they turned it down. Meanwhile, their children, four undocumented minors, had been sheltered by child protection services. Finally, the three women were released after requesting international protection. Child protection services returned their children, who were still undocumented. It is not reported whether the minors were monitored by child protection services after being returned to their mothers.

The illegal arrival of small open watercraft constitutes a situation of risk in and of itself

Thus, in the opinion of the Ombudsman Institution, it is indubitable that the arrival of any minor, whether or not accompanied by an adult, who is intercepted by State Security Forces attempting to illegally access national territory in a small watercraft with clear physical risk to themselves, constitutes in and of itself a situation of risk that must be immediately reported to the Public Prosecutor's Office and child protection agencies of the territory where they land.

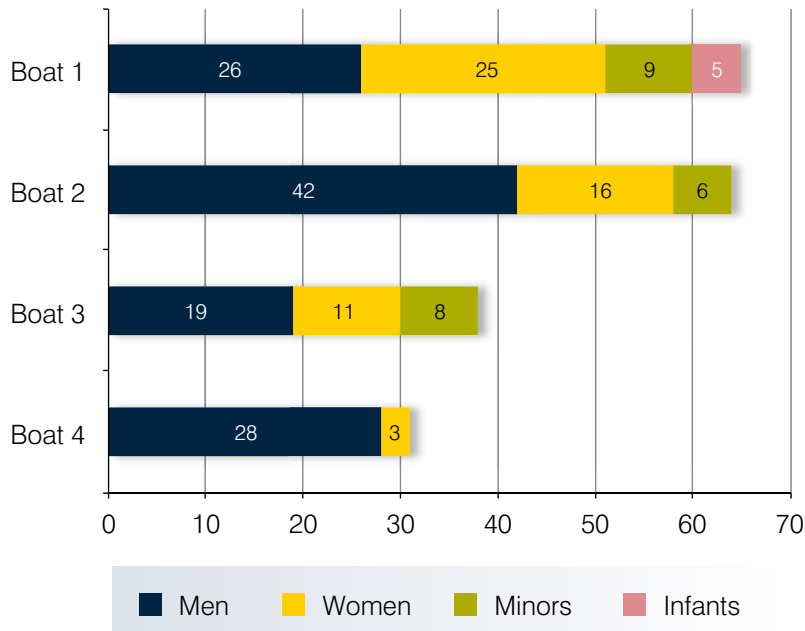
However, the previous opinion should not be interpreted to mean that informing the Public Prosecutor's Office and child protection agencies of the situation also means in all cases that the minor must be separated from the accompanying adult and admitted into a protection center. By its nature, this decision must involve the existence of an objective element (the minor is abandoned) and a subjective element (those who have guardianship of the minor completely abandon their duty to provide material and emotional assistance). It must be reserved for those cases in which, before procedures begin, it is confirmed to be in the best interest of the child.

If a situation of risk is detected, public powers should act to reduce risk

In the rest of the cases, more commonly found in practice, the procedures prescribed for situations of risk in Article 17 of Organic Act 1/1996 should be applied. It establishes: "In any kind of situation of risk that might harm the personal or social development of the minor which does not require guardianship by a legal entity, the actions of the public powers should guarantee the preservation of their rights in all cases and will be oriented towards reducing the factors of risk and social difficulty which are implied in their social and personal situation, and promote the protection of the minor and their family.

Once the risk assessment is carried out, the public agency with competence in matters of child protection will begin pertinent actions to reduce the risk and will monitor the progress of the minor in the family."

Number of persons intercepted according to sex and age in *ex officio* complaints on potential victims who arrived in watercrafts at the Motril coast (December 2010 – June 2011)



Source: In-house compilation

Since 2008 the Ombudsman Institution has warned about the absence of protocols that permit competent public agencies to be made aware of the arrival of these minors in their jurisdiction and, consequently, the absence of measures that permit them to monitor the development of the minor.

A complaint was made by a non-governmental organization regarding the procedures followed upon the arrival of a small open watercraft containing several children and pregnant women to the coast of Motril (Granada). It was determined that the Public Prosecutor's Office was not notified of the arrival because authorities considered the adults' statements that they were the biological parents of the minors sufficient to believe the children were not at risk.

In light of this, different competent agencies were notified of the necessity to inform the Public Prosecutor's Office when young children are detected arriving in small watercrafts accompanied by adults who claim to be their parents. Appropriate recommendations were made given that, in the opinion of this Institution, it is unquestionable that children of that age who enter national territory illegally accompanied by adults with no proof of family ties are, in the very least, at risk, according to Organic Act 1/1996 on the Legal Protections of Minors. It is vital that they take necessary measures in order to verify the truth of the adult's statements about family ties

It has been alerted that competent authorities are unaware of the arrival of minors on national territory

It is necessary to notify the Public Prosecutor's Office of the arrival of undocumented, accompanied children

The biological ties between minors and the adults who accompany them must be verified

to the minors and, in any case, that the Public Prosecutor's Office is immediately notified of the arrival of these undocumented minors on national territory.

“Necessary instructions should be given so that all deportation orders are issued on an individual basis, sufficiently promoting the option of an entry ban under Article 58.6 of Organic Act 4/2000.

When minors are found during the interception of an embarkation intending to illegally enter national territory and biological ties cannot be confirmed, the Public Prosecutor's Office must be immediately notified, regardless of fact that the minors may be accompanied by adults.”

(Recommendation 78/2009, of the 26 of June.)

Nevertheless, after monitoring actions that continued to be taken with minors found on embarkations, principally on the coasts of Motril (Granada), it was verified that the shortcomings detected in relation to this issue remain unaddressed.

Regulation 2/2012 of the Prosecutor of the Supervising Court for Minors summarizes the recommendation made

Nevertheless, the Ombudsman Institution has learned of Resolution 2/2012, on the treatment of unaccompanied foreign minors whose family ties are not verified, from the prosecutor of The Supervising Court's Division for Minors, which contains a response to the consultation made by Public Prosecutor's Office on the treatment that should be given to minors. The resolution substantially summarizes the arguments of the Ombudsman Institution, which motivated the recommendation made in 2009. It indicated, “It must be assumed that two important circumstances occur in these cases: the first is that if there is not credible documentation of the biological family ties, the Spanish authorities cannot assume *sic et simpliciter* that the circumstance is accredited based solely on the statement of the adults who travel with minor concerned. The second is that the act of illegally entering Spain, using dangerous routes or methods, without documentation, without following the legal channels and without any social ties in Spain, can be objectively considered as a situation of risk for the minor, which requires the public powers to address the situation of the minor and guarantee their security and wellbeing (Article 17 LO 1/1996, of the 15 of January, on the Legal Protection of Minors – from here on out LOPJM.) In this context, the individuals, authorities, and officers who intervene when a minor is detected who has illegally entered Spain without prior authorization, should, in accordance with the obligations ascribed to them in Articles 13 and 14 LOPJM, alert the prosecutor and the competent state child protection agency.”

Despite the undeniable improvements that the application of the criteria stated in the previous document would mean for the procedures that have been adopted until now, it is unknown during the preparation of this report if these instructions have

been given so that in all of the cases in which a minor is identified in the interception of a small open boat, the agents of the State Security Forces report the situation to the Public Prosecutor's Office and the regional autonomous child protection agency.

Independently of the urgent need to put in practice an action protocol that regulates the above situation, it is equally crucial to adopt necessary techniques that permit the immediate registration of each minor in a database. This database should be separate from the police database that is used for adult foreigners. This issue is of particular importance in order to avoid cases such as the one described in Section III.1.6 of this report: the case of two twin babies who arrived in a small open boat and entered national territory, one in the arms of the mother and the other in the arms of a woman who pretended to be her mother.

UNICEF directives on the protection of child victims of trafficking establish the need for authorities to perform the necessary procedures in order to add the minor to the registry. They must also immediately open an individual file on the minor, which summarizes all the information that will facilitate legal proceedings and the assessment of the best interest of the minor. The directives indicate that the minor's file should accompany them during the entire procedure and that each State designates a competent authority to store the information. They should also establish procedures for its access and use that should ensure confidentiality of the data.

It is crucial to create an electronic registry of foreign minors

UNICEF directives establish the need to open an individual file

4.4. CHILD VICTIMS OF TRAFFICKING UNDER THE GUARDIANSHIP OF CHILD PROTECTION AGENCIES

The Committee on the Rights of the Child, motivated by the observations directed to Spain during the 55th period of sessions, summarized various aspects of interest in regards to this section. In Section 9 it indicates that: "While welcoming the party State's effort to harmonize their legislation with the principles and dispositions of the Convention, the Committee observes that the laws and regulations applied in the regional autonomous communities differ from those of the Convention. Standards are not always consistent with the Convention in important respects, such as the protection of at-risk, neglected, or fostered children, or in respect to treatment given to unaccompanied foreign minors."

Below, in Section 10, the Committee recommends that Spain adopt all measures necessary to ensure that the legislation and administrative regulations of all regional autonomous communities are brought into line with the principles and provisions of the Convention and the two optional protocols. It continues, commending the measures adopted by different autonomous communities to promote and protect the rights of children, and notes the information provided by the State on existing mechanisms of cooperation and collaboration between the central government and regional autonomous communities. But, it shows concern about the lack of a national coordination mechanism on the rights of children.

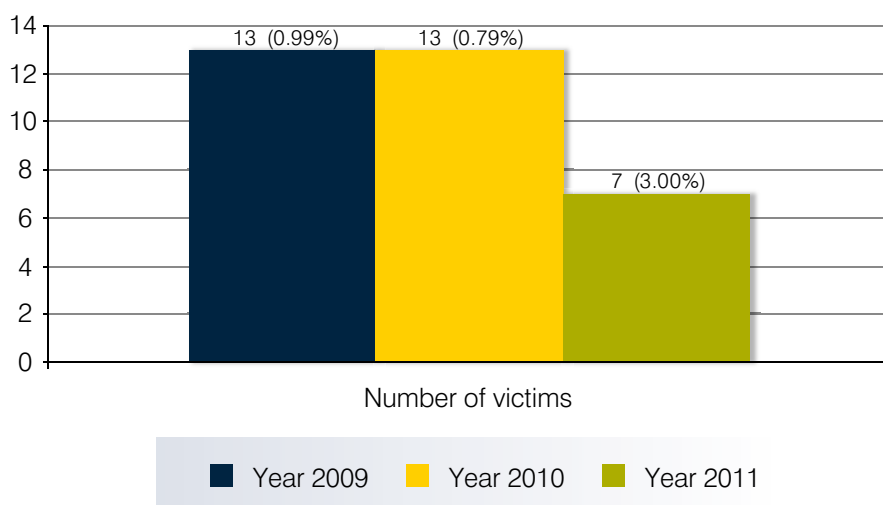
The law and regulations applied differ from those of the Convention on the Rights of the Child

Absence of a national coordination mechanism on the rights of children

Little data exist on the trafficking of minors in Spain

Action Plan III against the Sexual Exploitation of Children and Adolescents, referring to the lack of data on the trafficking of minors in Spain, indicates “the clandestine nature of this crime results in the scarcity of data, or in that the data that does exist, as is the case of Spain, corresponds to police reports filed with State Security Forces. The number of reports filed is much fewer than the reality indicated by service providers which offer direct assistance to the victims.”

Percentage of trafficked minors in relation to the total number of victims (2009-2011)



Source: the Office of the Secretary of State for Security. In-house compilation.

An investigation was initiated in 2011 to find out the number of child trafficking victims in guardianship

In April 2011 investigations were initiated with each of the child protection agencies in the regional autonomous communities, as well as the autonomous cities of Ceuta and Melilla, with the objective of finding the total number of trafficked minors that were, at that time, under the guardianship of different child protection agencies of the autonomous communities. Information was requested about specific protocols for the prevention, detection, and protection of child trafficking victims, as well as information regarding whether or not there were specialized residential facilities and the number of shelters.

“I cannot be with other girls because they are not prostitutes, but first they sent me to a center with them and later they told me that I could not be there. I don’t understand anything, and the translator didn’t do his job. He was from my country and he started to ask about my surname; why would he want to know my surname? I felt really bad, I was nervous thinking that he might know my family. Later everyone started saying I wasn’t a minor, that I couldn’t be the age I said I was.”

(Fragment of an interview with a minor in a shelter.)

Eight of the regional autonomous communities and the two autonomous cities of Ceuta and Melilla indicated that they did not have any child trafficking victim under their protection. None of the autonomous child protection agencies have specialized residential facilities for child trafficking victims. It is important to reiterate that previously-stated UNICEF directives on the protection of child trafficking victims states the need to take into account the particular vulnerability of these minors. This requires that specific action protocols should be established among protection personnel and members of agencies specializing in the support of trafficking victims.

The three autonomous communities that have the greatest number of child trafficking victims under their protection are Andalusia, Valencia, and Galicia. It is important to highlight the comprehensive information submitted by Galicia as an example of a good practice. The information was broken down in function of form of exploitation and is reproduced below as an example of interest. In the response, the Minister of Labor and Well-Being indicated “the information system and management of services to minors in Galicia does not consider trafficking as a separate category among grounds for intervention in cases of child vulnerability. Grounds for intervention could be begging, exploitation (labor/sexual) and corruption. Likewise, sexual abuse itself, although on occasion it also carries traces of sexual exploitation, is the determining factor in the provision of protection services (assessment process, psychological help...). Thus, the information analysis systems classifies it as sexual abuse and therefore, is not included in this analysis. Likewise, unaccompanied foreign minors (MENA) are also excluded from this analysis, given that in the majority of cases it is not stated or proven that the minor was abducted or illegally transported. Also among the most pertinent reasons for their protection is their condition as minors and the absence of an adult. In this manner, we can say that the potential trafficked minors in Galicia are those that the information system has categorized under corruption, exploitation, and begging.” However, the Galician child protection agency recognizes that in the cases assessed, some of the categories of analysis are ambiguous. This is attributed to various reasons:

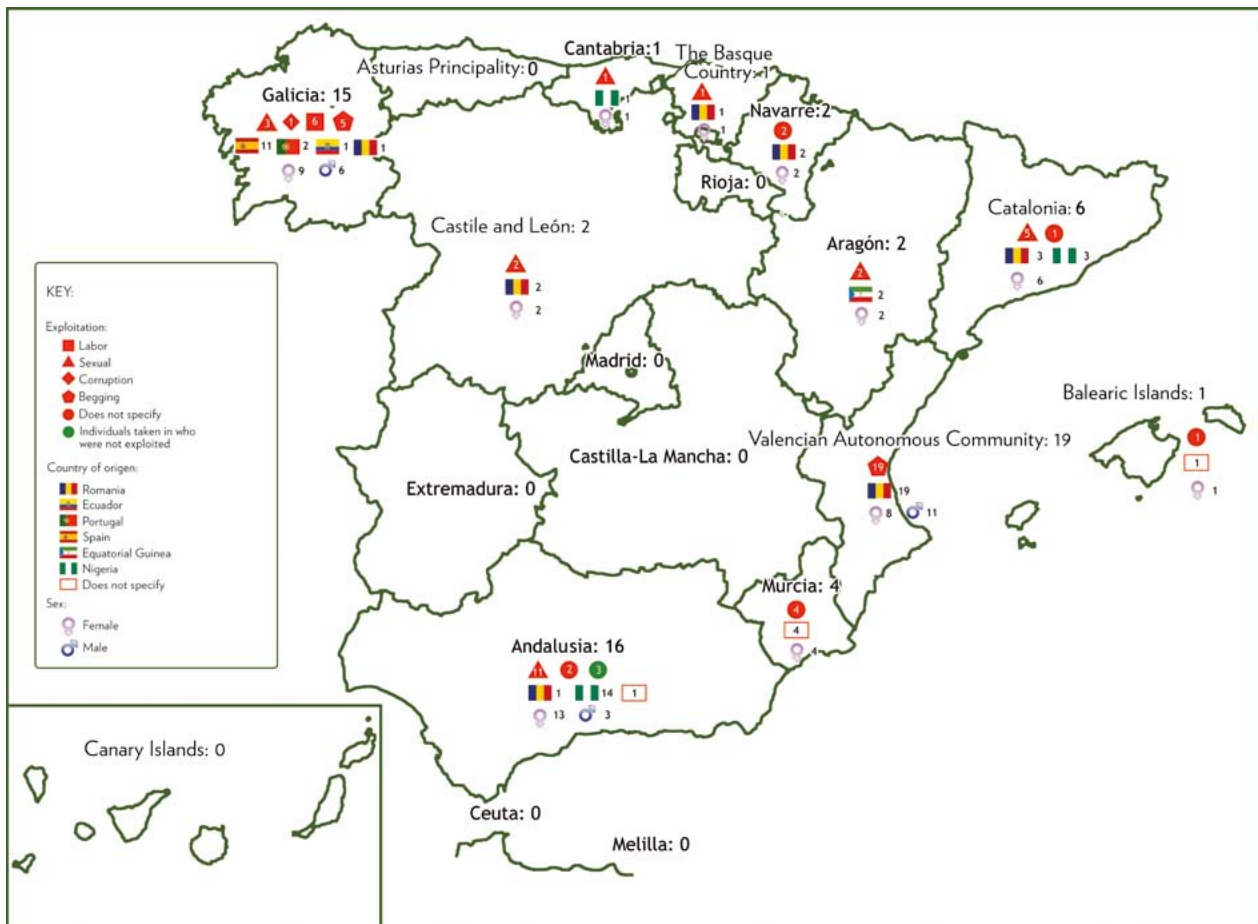
- Some cases are noted in one category and in reality belong to a different one (for example, they are categorized as labor exploitation and in reality they should be classified under forced begging).
- In one case of vulnerability there could be various causes and risks, which means they could fall in two different categories at the same time. This implies the classification by the primary cause.
- It is difficult to establish the boundaries between one category and another, given the lack of clear and homogeneous definitions in legislation, manuals, and treaties on child protection. This leads to different nomenclatures used throughout the history of the Galician child protection system. (For example, prior to 2000 the category of forced begging did not exist in our databases, which lead to the files

The comprehensive information provided by Galicia is an example of a good practice

Authorities recognize that certain categories of analysis are ambiguous

being classified under labor exploitation regardless if this action was done with adults in the company of children, by children forced by adults, or by the child's own initiative.)

Child trafficking victims attended by State Protection System



Source: In-house compilation.

Only the Valencian Autonomous Community gave detailed information regarding the status of the criminal proceedings and sentences

Additional information was later requested from all regional autonomous communities that had sent data on child trafficking victims to determine legal procedures that could be applied to these minors. Only the Valencian Autonomous Community gave detailed information on the criminal proceedings and sentences, which were handed down to several parents for exploiting their children through forced begging, among other crimes. The common denominator of the responses of the child protection agencies was the lack of knowledge they had about the existence or processing status of the criminal proceedings that had been initiated in which, in some cases, the minors in child protection services were victims or witnesses.

“I did not feel protected. I was very close to the suspect (there was only a screen). I am a child and I should be protected, but the protection measures were not well prepared. I was stuck in a room in the court for three hours while they prepared the trial. In the trial I felt like everyone thought I was a liar, it was my word against the boy’s. And of course since they did not take care of defending me in the trial, now the boy is in the street. They declared him innocent and now they say they don’t want to appeal. Who is going to protect me now? The fact that he made me prostitute myself and that I was a minor, that is not a lie.”

(Fragment of an interview with a minor in a shelter.)

The lack of coordination between the Public Prosecutor’s Office and child protection agencies that had guardianship of the child trafficking victims make the recovery process and the work of the specialized agencies that shelter them very difficult. It also causes re-victimization of the minors, as they were submitted to the same procedures several times.

A lack of coordination between the Public Prosecutor’s Office and protection agencies has been reported

Only specially trained members of the law enforcement authorities shall question child victims. Child victims shall be questioned by officers of the same sex, except when there is cultural evidence that this would not be in the best interests of the child. The law enforcement authorities shall avoid questioning a child victim in the place where the child has been exploited and/or in the presence or physical proximity to any suspected trafficker. Initial questioning shall be carried out in a place where the child feels secure. Initial questioning of a child victim of trafficking shall seek to collect biographical data and social history information (such as name, age, nationality, parents’ names and contacts, country or place of origin, former and current address). Other information regarding the experience of the child while trafficked, and any knowledge he or she may have acquired may not be sought at this point. Interviews with the child should assess if the child is in need of international (refugee) protection. When necessary, referral to the competent asylum authorities and appointment of a legal representative shall be ensured

(Source: UNICEF. Guidelines on the protection of child victims of trafficking.)

It is imperative that trafficked children have effective access to authorities to be able to report their situation and, once they do so, that the procedures carried out, take into account their special circumstances. As indicated in the chapter on identification protocols for adult victims, the testimony of the victim cannot become the only element on which the criminal proceedings are based. The authorities responsible for the prosecution of the crime should carry out the investigation without placing all of the weight of

It is important that the prosecution of a crime does not rest solely on the testimony of the minor victim

the proceedings on the victim. This issue, in the case of minors, is particularly relevant as in most cases, because of their own circumstances it will be other evidence and not their testimony which initially allows them to be identified as a trafficking victims. However, this does not mean that their testimony is irrelevant or that proceedings should be managed in a way that allows the minors the participation that they are entitled to, not only in the criminal proceedings against the perpetrators of the crime but also in protection measures that should be adopted to protect their best interests.

According to data from the Romanian authorities, the principle destination for Romanian victims is the European Union

As indicated in this section, the data available on the number of child trafficking victims in Spain is incomplete, which makes it impossible to determine the real scope of the problem in our country. However, from the investigations carried out in the preparation of this report, two risk groups seem to stand out from others; though, this data does not mean that they are the most important in terms of numbers. The following examines the situation of Romanian and Nigerian girls detected during police operations to dismantle sexual exploitation networks.

In reference to child trafficking in Romania, The Group of Experts on Action against Trafficking in Human Beings (GRETA)'s report, which has been mentioned previously, indicate that according to data from the Romanian authorities, "307 child victims were identified in 2010, 88% of whom were female. The vast majority of child victims (239) were sexually exploited. The other children identified had been trafficked for the purposes of labor exploitation in agriculture and construction (17 victims), forced begging (19 victims), pornography (5 victims), or theft (3 victims). Whereas adults are mostly victims of transnational trafficking, the Romanian authorities have indicated that 71% of the minor victims of trafficking (217 victims) were trafficked domestically. For the other minor victims, the destination countries were mainly European Union countries, particularly Italy (45 victims), Spain (20 victims) and Germany (9 victims)."

According to data from that country, there were 20 cases detected in Spain in 2010

The number of Romanian child trafficking victims in Spain detected by Romanian authorities is 20. However, as indicated in the beginning of this section, the number of child trafficking victims published by the CICO that year (2010) was 13. It should be restated that these statistics only refer to victims trafficked for purposes of sexual exploitation and do not include other forms of exploitation, such as labor exploitation.

The number of dismissals of criminal proceedings for these crimes is very high

The approach taken by members of the State Security Forces with Romanian child trafficking victims differs notably from the approach used for Nigerian minors, which is addressed below. For example, in the case of two Romanian sisters who were subjected to sexual exploitation by their own mother in various clubs on the Spanish Mediterranean coast; it was the children themselves who went to a police station to report their situation. At the time of this report, the minors were in a child protection center and the mother, together with another adult who had collaborated with her in the exploitation of the minors, was in prison.

Unfortunately, this first step taken by a minor does not always culminate in the dismantling of the criminal network that exploits them and later the sentencing of the

criminals. As indicated in the section on trafficking for purposes of sexual exploitation, the number of dismissals of criminal proceedings for these crimes is very high. For example, after the detention of three Romanian citizens accused of exploiting a minor of their same nationality in a city in North-eastern Spain, the minor was admitted to a protection center until a few months after she turned 18. Her current whereabouts are unknown. The alleged perpetrators were freed with the obligation to appear before the Court. At the time of this report, the Attorney General's Office has informed that they are attempting to locate the victim in order to conduct measures for judicial proceedings.

It is necessary to reinforce the mechanisms of cooperation with Romanian authorities in order to prevent children in the custody of Spanish child protection services from again falling into the hands of their exploiters when they return to Romania.

In regards to the monitoring of cases of Nigerian children, the common denominator is the serious shortcomings in their early identification. As previously indicated, the illegal status of almost all Nigerian child trafficking victims makes their identification extremely difficult. Meanwhile, the use of age assessment practices, with their aforementioned significant margins of error and their restricted application to only those cases in which the applicant declares him/herself to be a minor, makes it harder for child trafficking victims who are found trying to illegally enter national territory to be identified in a timely manner.

It is necessary to reinforce the mechanisms of cooperation with Romanian authorities

Corina arrived on Spanish coasts on a small open boat in August 2009. After age assessment tests to determine her age, the prosecutor declared that she was a minor and she was transferred to a child protection center. She left after a few weeks. Fifteen months later, she was detained in a police raid in the same South-eastern province as the child protection center she left, together with 33 others. Ten were detained for crimes and 23 for illegal status in Spanish territory. Among these 23, there were 13 women working as prostitutes in extremely unhealthy conditions. Corina was one of them. After checking fingerprints, police realized that she was the same person who had been identified as a minor in August of 2009 and referred to child protection services. She was again referred to this agency.

After investigating, they determined that the police database only indicated that age assessment tests had been done in the past, as well as information on Corina's family. Neither the date she abandoned the child protection center nor the report filed for her disappearance appeared on file.

Corina was in custody of child protection services until she reached legal age. She then was referred to an organization specializing in the protection of trafficking victims. The criminal procedures initiated following the police operation had been dismissed due to lack of evidence.

Through a police operation that investigated the dismantling of a criminal network that sexually exploited Nigerian citizens, law enforcement authorities became aware of Joy's situation. The police discovered that Joy, fifteen years old, was five months pregnant and that her exploiters had tried to abort the baby on two occasions using rudimentary means, which failed. Once authorities were aware of these circumstances, a vigilance control device was used in a bus station until they found Joy, who was then referred to child protection agencies. The police operation identified 50 women who were potential trafficking victims. Only one of them exercised her right to the recovery and reflection period and was directed to specialized shelter facilities.

Before being found by police, Joy was forced to work as a prostitute and commit petty theft for months in one of the most well-known streets in a large city in North-eastern Spain.

*Absence of
specialized
resources*

These two cases serve to illustrate the situation described by organizations that work in the street with these children and who describe the difficulties faced in effectively detecting them. On one hand is the difficulty of knowing the chronological age of these minors, because in many cases they do not know their exact date of birth.³⁰⁸ On the other hand, once detected, it is impossible for the professionals working in these organizations, with whom the minor has established a bond of confidence, to monitor them. As there are no specialized shelters for trafficked children, they are referred to protection centers where members of the criminal organizations can gain access, claiming to be family members.

IV CONCLUSIONS



Concerning general aspects:

1. Human trafficking, in accordance with advanced interpretation of the international instruments, is the framework that covers all forms of so-called 'new' slavery. It includes labor exploitation and other forms of new slavery such as the organ trade, forced begging, forced crime, as well as various forms of trafficking for sexual exploitation.

2. Human trafficking is not only a criminal activity, but also constitutes a grave violation of human rights. The only way to maintain the focus on the victims is to guarantee that actions taken to combat human trafficking are not reduced merely to a problem of migration, public order, or the fight against organized crime.

3. 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.

4. Sexual exploitation is noted as by far the most commonly identified form of human trafficking followed by forced labor. This may be the result of statistical bias. By and large, the exploitation of women tends to be visible. Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking, in aggregate statistics. In comparison, other forms of exploitation are under-reported. Therefore, for cases of labor exploitation, committed action is required from all competent labor authorities. They must take an increased role in addressing this matter, which until now has been mainly handled by police and immigration authorities.

5. The lack of data regarding the true extent of human trafficking seriously compromises the capacity of potential measures to combat this crime, especially consider-

ing the transnational dimension of human trafficking. The lack of data also hinders the realistic evaluation of the impact of any future plan for intervention.

6. Globally, the majority of human trafficking crimes occurs on a national or regional level and are committed by individuals who have the same nationality as their victims. This is not the case in Europe, which is considered the destination for victims coming from very diverse points of origin.

7. It is common for authorities to incorrectly identify trafficked persons as immigrants illegally attempting to cross the border. Clearly, there is a lack of reliable victim identification procedures. While many trafficking victims consent to be illegally smuggled from one country to another when they embark on their journey, in the course of their journey, they may be tricked or forced to endure situations of exploitation and thus become victims of human trafficking.

8. Effective action against forced labor requires authorities to go beyond the criminal or punitive approach at the administrative level. This is important to guarantee financial compensation for workers under laws against forced labor and human trafficking. This is especially relevant for exploited workers who may not be entitled to compensation under criminal law.

9. Human trafficking is a very lucrative criminal activity, generating billions of Euros. The low number of convictions is due in part to the fact that trafficking cases are too often prosecuted as other crimes, instead of being prosecuted as human trafficking.

10. Judicial proceedings that charge traffickers continue to rely almost exclusively on victims' statements. However, effective financial research is an important tool for obtaining evidence and for risk assessment. This research also allows for a better understanding of the modus operandi of traffickers and helps to perfect methods of detection.

11. To guarantee the rights of trafficking victims, States must rely on organisms that have the expertise to develop the legal framework and comprehensive policies against trafficking.

12. There is a general consensus regarding the need to establish formal channels for the participatory role of social organizations that are specialized in detection procedures and in offering assistance to trafficking victims.

13. There are no international standards regarding the nature, duration, and purpose of the recovery and reflection period for human trafficking victims. This lack of clear standards causes significant variation in national practices and a high degree of confusion regarding the necessary requirements for offering and obtaining this measure.

14. 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.

15. In order to appropriately protect trafficking victims, it is essential that the State does not take criminal action against them for offenses related to their trafficking situation, such as carrying false passports or working without authorization. This includes cases in which the victim consented to possessing these documents or working under these conditions.

16. Identifying and sharing best practices among national authorities is a very effective and practical tool to progressively improve detection and victim assistance standards.

17. The right to an effective remedy is a fundamental human right of all individuals, including victims of trafficking, who must be respected, protected and satisfied by the State in accordance with international human rights standards. The United Nations Special Rapporteur on trafficking in persons, especially women and children, declares that the right of compensation for victims is nothing more than one element of their right to recovery, restitution, satisfaction and the guarantee of non-repetition, as well as their right to a number of related matters that allow them to truly exercise their right to an effective remedy under free and secure conditions.

18. States have the responsibility to deem refugee status to individuals who have been trafficked and fear persecution upon return to their home country or who fear being trafficked, so that they may receive the corresponding international protection. This guarantee is to be applied to individuals who meet the criteria for refugee status according to the 1951 Convention or the 1967 Protocol relating to the Status of Refugees. The UNHCR draws attention to the most common obstacles human trafficking victims face in their attempts to receive international protection. The obstacles lie in the difficulty of establishing a well-founded fear of persecution and the membership of a particular social group.

19. 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.

20. Given the lack of reliable data, it is not possible to perform a quantitative analysis regarding the age or sex of child trafficking victims, their countries of origin or destination, or the types of exploitation they may be subjected to. Regarding identification, it is essential for States to carry out age determination and adopt proactive identification measures, such as strengthening the procedures for the registration of births as well as the registration of missing and exploited children.

21. Methods and procedures used for identifying trafficked minors should require institutions and agencies to swiftly and adequately refer them to appropriate ser-

vices. UNICEF directives intended to protect minors are extended to children born to trafficking victims.

22. It is essential that trafficked minors have adequate access to the authorities in order to report their situation. Subsequently, procedures should evaluate the minor's individual circumstances. Moreover, criminal proceedings cannot rely solely on testimony of the victim. This is particularly relevant in the case of minors, since identification should be based on additional evidence. However, this is not to say that a minor's testimony is not relevant or that the appropriate procedures should not be undertaken to obtain the effective participation of the child in all proceedings affecting him or her.

Concerning the situation in Spain

23. Based on an analysis carried out by the Attorney General's office, debt bondage is an important element of trafficking in Spain. A victim enslaved under debt bondage is subjected to an oppressive situation as a means of repayment for a loan with the trafficker.

24. There has been significant progress in the new legal framework against human trafficking in Spain (Article 177 bis of the Criminal Code and Article 59 bis of the Organic Act 4/2000). However, confusion persists among the competent authorities regarding the definitions of human trafficking and migrant smuggling, especially when the individual embarks on his or her journey voluntarily and later becomes a victim of trafficking in transit or at their destination.

25. The capacity for victim identification is impeded by the lack of regulations implementing Article 59 bis of Organic Act 4/2000, which guarantees the participation of nongovernmental organizations 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 in Spain. Focusing on experience and impact, authorities should carry out an evaluation of the methods and operations carried out thus far. This evaluation should also incorporate effective procedures utilized in other countries, and should be carried out in coordination with organizations specialized in assisting victims.

26. According to the estimation of the United Nations Office on Drugs and Crime, in Europe only one out of 20 potential victims of human trafficking for the purpose of sexual exploitation is detected. The trend in Spain seems to follow this pattern with only slight variations. In 2010, authorities detected 15,075 persons to be at-risk, of which 1,641 were identified as victims. In 2011, of the 14,370 individuals detected to be at-risk, only 1,082 were identified as victims.

27. Organizations working with victims submitted a number of complaints regarding the manner in which authorities evaluate what constitutes reasonable indicators of trafficking. These organizations express concern over the use of these indicators as an isolated checklist as well as the lack of understanding that identification requires time and specialized assistance.

28. It has also been determined that victims commonly go unidentified due to lack of understanding on behalf of authorities that victims' defensive, withdrawn, and erratic behavior may often be rooted in trauma or fear of reprisals.

29. The effective implementation of the recovery and reflection period will depend on the establishment of a clear action protocol, which lays out instructions for every step in which an official is in contact with the victim. There must be a clear distinction between the two phases. First, the victim should reestablish herself, feel safe and recover physically and psychologically. 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 competent authorities.

30. Despite the progress made in the methods used to offer the recovery and reflection period, the numbers of periods requested and granted remain very low. Therefore, it is necessary to review this procedure and consider methods that take into account the unique situations of certain groups of potential victims. One example is the women who arrive at the main airports or to the Spanish coast after very dangerous journeys that put their lives and the lives of their children at risk.

31. The Ombudsman Institution investigated cases in which applicants for international protection fit the profile for a potential trafficking victim. They reveal that the existing measures for detection of victims or potential victims of trafficking are not working properly. Deficiencies have been detected in international protection procedures and in the coordination between the different agencies of the Public Administration responsible for the correct identification during these procedures. It has been noted that authorities routinely refuse international protection requests based on the grounds that the applicant is or previously has been a trafficking victim. Competent authorities allege that the Asylum Law and its subsidiary protection do not legally cover these cases, and that these cases must be redirected to the measures provided under Article 59 bis of the Foreign Nationals Act. Consequently, there is a risk that in practice applications for international protection based on these grounds are denied without an in-depth examination of the claims or a risk assessment for those individuals who are returned to their country of origin.

32. A lack of training was also detected, especially with regards to officials at border crossings as well as during international protection procedures. During these procedures, it is necessary to closely examine the circumstances of each individual

case. This individualized examination is especially important for applicants who are minors, as it would improve the possibilities of identification by processing the accompanying adult's application, who in some cases may be the child's exploiter.

33. Granting a residence authorization as laid out in Article 59 bis of the Organic Act 4/2000 and its implementing regulations adequately meet standards set by the main international instruments. In 2011, Spanish authorities granted 58 of these authorizations. However, difficulties have been detected regarding 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.

34. 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.

35. The fight against such a serious crime like human trafficking, as well as the international obligation to prosecute perpetrators and protect victims, must include victim detection at the border and the prosecution of offenders regardless of whether they are in Spain.

36. Significant gaps are still detected in the methods used to determine age, despite the progress made following the recommendations made in the monographic report "Children or Adults?: Age Assessment Practices." The need to adopt the safeguards proposed in this report are particularly relevant to cases in which the minor is a potential trafficking victim. Recommendations include further guidance from the District Attorney's Office. Specifically, reports requested from forensic medical services or a legal medical specialist must also include an expert opinion to examine signs of any form of violence or abuse. A forensic examination should be conducted for cases in which the alleged victim claims to be a minor, as well as for cases in which there are reasons to believe that he or she may be a minor (despite whether the victim claims to be of legal age).

37. Cases in which State Security Forces detect any minor, accompanied or unaccompanied, trying to illegally access Spanish territory in small boats risking their physical wellbeing, constitute a risk and must be immediately brought to the attention of the Public Prosecutor's Office and the appropriate regional child protection agency.

38. The lack of action protocols involving all of the responsible departments of the Public Administration 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 to effectively identify minors exacerbates this situation.

39. Weaknesses have also been identified in the monitoring of trafficked minors born in Spain to human trafficking victims. Victims were detected trying to illegally access Spanish territory while in advanced stages of pregnancy. It has been demonstrated that merely registering these children is not enough to monitor the situation.

40. The Ombudsman Institution expresses its concern over the lack of common action protocols between the regional child protection agencies regarding the detection of trafficked minors. Under the framework of the respective competencies of the autonomous communities, there is a lack of protocols that permit effective detection of child trafficking victims within specific regions. In addition, there is no network of specialized residential facilities to allow the victims to be transferred within national territory according to their individual protection needs.

41. Deficiencies have been detected in coordinating mechanisms between child protection agencies and provincial prosecutors. Therefore, those in custody of a given minor may not be aware of the status of the criminal proceedings in which the victim is involved. Subsequently, it cannot be guaranteed that all necessary measures are taken to prevent re-victimization during the criminal procedure.

V

RECOMMENDATIONS



1. To the Ministry of Labor and Social Security

Amend Article 140 of the Regulation implementing the Organic Act 4/2000, approved by the Royal Decree 557/2011, in order to comply with the legal mandate of paragraph 6 of Article 59 bis. This paragraph sets the conditions to allow for collaboration with nongovernmental organizations, which are non-profit and work to assist and protect trafficking victims.

— To the Office of the Undersecretary for Labor and Social Security

Expedite work on the publication of the Plan to Combat Human Trafficking for the Purpose of Labor Exploitation and its joint instruction from the Office of the Secretary of State for Security and its undersecretary. This instruction should lay out guidelines for collaboration between the Labor and Social Security Inspection Agency, and State Security Forces, in their monitoring of labor, immigration and Social Security.

— To the Office of the Secretary General for Immigration and Migration

Issue instructions to regulate the procedures to process and grant residence and work authorizations for exceptional circumstances based on the personal situation of the victim. These instructions should provide clear guidelines on the participation of organizations specialized in assistance to trafficking victims. Participation should be by means of issuance of a report on the personal situation of the victim.

Nota: En la edición electrónica del informe se puede consultar el texto completo de cada una de las recomendaciones formuladas (<http://www.defensordelpueblo.es>).

2. To the Ministry of the Interior

— To the Office of the Undersecretary of the Interior

a) Revise procedural criteria followed by the Asylum and Refugee Office for international protection requests in which the applicant alleges to be suffering from conditions of human trafficking or the UNHCR expresses that the applicant shows signs of human trafficking.

b) Issue joint instructions together with the Office of the Secretary of State for Security designed to fill gaps in the coordination of two aspects: Cases in which human trafficking indicators are detected during the processing of an international protection application, and cases in which an asylum seeker and potential trafficking victim is transferred to Spain under the application of the Council Regulation (EC) 343/2003.

— To the Office of the Secretary of State for Security

a) Set up a specific database that registers all undocumented minors detected by the police when attempting to illegally access national territory. Adopt, when appropriate and with authorization by the Public Prosecutor's Office, the necessary measures to verify the legal relationship between the minor and the adult(s) with whom they travel.

b) Dictar instrucciones conjuntas con la Subsecretaría del Ministerio del Interior destinadas a subsanar las deficiencias de coordinación apreciadas en dos supuestos: aquellos en los que durante la tramitación de una solicitud de protección internacional se aprecien indicios razonables de trata de personas; y en los casos en los que, en aplicación del Reglamento (CE) 343/2003, se traslade a España a un solicitante de protección internacional potencial víctima de trata.

c) State Security Forces responsible for boarder control should increase efforts for the persecution of the crime of human trafficking. These increased efforts should pay special attention to potential victims that are detected at the national boarder and to the persecution of offenders of this crime regardless of whether they were located in Spanish territory. International cooperation among police is essential for these efforts.

d) Review the procedure set up to offer the recovery and reflection period, in light of the results obtained, and evaluate the need to include the legitimate participation of organizations specialized in identifying victims. Likewise, authorities should consider distinguishing this procedure in two distinct phases:

the first of which focuses on providing the necessary measures to allow the victim to recover. Only when the objective of this first phase has been met can the second phase be addressed. In the second phase, the victim should decide whether to cooperate with authorities.

e) Increase training modules on human trafficking for officials of State Security Forces, incorporating a multidisciplinary approach.

f) Set up mechanisms to improve the quality of human trafficking victim data provided by the Center for Intelligence to Combat Organized Crime (CICO).

g) Strengthen coordinating protocols between the General Directorates of Police and the Civil Guard as well as between the autonomous police responsible for the investigation of human trafficking crimes. These improvements should address deficiencies identified in cases that involve undocumented third country nationals who are victims of trafficking.

3. To others

— To the Office of the Secretary of State for Social Services and Equality and to the competent authorities in the regional autonomous communities and cities

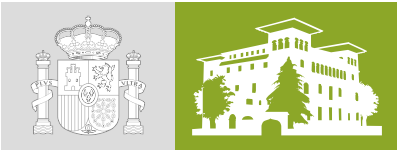
Promote the development of a national protocol for the detection and protection of child trafficking victims under the existing coordinating bodies of the autonomous communities and the General State Administration. This protocol should include among other elements, a list of indicators of human trafficking tailored to the specific circumstances of minors. Also, there should be effective procedures that allow identified minors to be transferred, for security reasons, within national territory to residential facilities that best suit their needs.

— To the Attorney General's Office and to the competent authorities in the regional autonomous communities and cities

Promote 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, prevent re-victimization and introduce any measure in the interest of the minor.

— **To the Attorney General’s Office and the Ministry of the Interior’s Directorate General of Police and the Autonomous Community of Andalusia Government Department of Health and Welfare**

When authorities detect any minor, accompanied or unaccompanied, attempting to illegally access Spanish territory in small boats through either of the two ports on the Andalusian coast, they should activate an identification protocol. This protocol should include immediate measures for police identification of each of the minors, as well as indications regarding the need to verify the legal relationship between minors and the adult(s) with whom they are traveling. In addition, data for both the minor and the adult (including information regarding where they will be transferred) must be immediately brought to the attention of the Public Prosecutor’s Office and the appropriate regional child protection agency. Once they are referred to a humanitarian care center, the regional child protection agency, under the supervision of the public prosecutor, should initiate a risk assessment of the minor until the legal relationship with the adult who is accompanying them is confirmed. The birth of the minor should be registered, together with all necessary measures taken in the interest of the minor.



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