

THEY'RE CHILDREN, THEY'RE VICTIMS

SITUATION IN RELATION TO CHILD
VICTIMS OF HUMAN TRAFFICKING IN
SPAIN

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INDEX

INTRODUCTION	6
1. THE PHENOMENON OF HUMAN TRAFFICKING AND ITS CHILD VICTIMS.	8
1. 1. Concept. Instruments of Struggle.....	8
1. 2. Data and Trends.....	9
2. HUMAN TRAFFICKING IN SPAIN.	11
2. 1. What Data Do We Have?.....	11
2. 2. Established Procedure.....	13
3. CHILDREN AS VICTIMS OF HUMAN TRAFFICKING IN SPAIN	16
3. 1. Direct Victims	16
3. 2. The Children of Victims	34
4. CONCLUSIONS	45

INTRODUCTION

We are conscious of the difficulty in approaching an issue as complex and difficult as this one, which is also an extremely painful reality. In spite of this, our experience working alongside organizations committed to fighting for the rights of these victims made the need to approach this question in a systematic and rigorous way even more pressing.

"Two Nigerian child prostitutes in an Andalusian farmhouse." "Children disappear from primary reception centres with their mothers, who show signs they have been victims of human trafficking." We have been confronted with these and other news stories in the media and on expert forums on human trafficking for some time.

Why, if it is so evident that children are very much present in this business of exploitation, do stiffer penalties not form part of the statistics or plans to fight against trafficking?

It is true that the crime of trafficking has been included in the Spanish legal system since the year 2010. And it is undeniable that great efforts have made at the public level by different organizations to put this issue on the political and social agenda. Among other advances made, Spain now has a National Plan to Combat Human Trafficking, a Framework Protocol to Assist Victims of Trafficking for Sexual Exploitation and has assigned economic and human resources to this area.

But the specialized organizations that tend to women who are victims are often found with children who live in the environment of trafficking and it is evident that neither the gaze nor resources nor attention have been extended their way.

With this publication we also wish to encourage reflection on the necessary inclusion of the focus on childhood when it comes to working on human trafficking. A focus that takes into account their special needs, their specific rights and which considers all those children who, in one way or another, are embroiled in this criminal enterprise to be victims.

We asked three postgraduate students from the University Institute of Studies on Migration at Comillas Pontifical University (Madrid) to help us with the task of shedding light on this phenomenon. All three were enthusiastic in taking on the task and prepared their Master's Dissertations on the subject. Thus, part of this document reflects the work and analysis of Sandra García López and Andrea Andreu Corrales, students of the Official Master's Degree in International Development Cooperation, and of Daniel Martínez Díaz of the Official Master's Degree in International Migration.

Moreover, this publication would not have been possible without the testimony and support of the experts and organizations that work in this country to put victims at the centre of decision-making and policy. We wanted to listen to those who know the subject in depth, have supported victims, achieved improvements and won recognition. In particular we would like to acknowledge APRAMP, Marta González (Proyecto Esperanza), Pilar Casas (Fundación Amaranta), Milagrosa Núñez (Red Cross), Pilar Sánchez (Cáritas Española), Gema Fernández (Women's Link Worldwide), Patricia Fernández (Fundación La Merced Migraciones), Ramón Esteso, Carlos Igual (Head of the Crimes Against Women and Children Unit - EMUME Central - of the Technical Unit of the Judicial Police of the Guardia Civil), Patricia García (Head

of the Human Trafficking Crimes Area of the Technical Unit of the Judicial Police, Guardia Civil), M^a Auxiliadora Solís (Policía Nacional and representative of the General Secretariat of Immigration and Borders in the Immigration Prosecutor's office), Gerardo Carballo and the General Directorate for Services for the Family and the Children of the Ministry of Health, Social Services and Equality. We also appreciate the guidance received on the part of the Political Advocacy and Studies Area of the Spanish Committee for UNICEF throughout the entire process.

As you will see, in the process of preparing this publication, we have encountered few but significant difficulties, such as the lack of definition of the phenomenon of human trafficking, lack of data and the poor quality of existing data and the lack of access to victims. Nevertheless, these difficulties have only served to reaffirm our conviction that further research is required in this area. Only rigorous analysis of the reality and the transfer of these results between the different agents involved can lead to better decisions.

In addition, the publication of important works such as this, that allow for the voice of organizations that defend human rights and stand back from our daily reality for these children who live trapped in the trafficking trade.

1. THE PHENOMENON OF HUMAN TRAFFICKING AND ITS CHILD VICTIMS

“While working on this project, what became clear to me was that human trafficking and modern slavery were primarily issues that affected children, the vast majority of victims.

What kind of society cannibalizes its own children? This multi-million industry is built on the backs and in the beds of the youth of our planet. We have no idea what we're dealing with; except that it occurs in every country in the world in one way or another. And this is the part that terrorizes me.”

Robert Bilheimer, director and producer of *Not My Life*, a documentary on human trafficking.

1.1. CONCEPT. INSTRUMENTS OF STRUGGLE

The United Nations refers to human trafficking as a form of modern slavery, connecting this historical thread of exploitation with the legal, social and political context of the 21st century.

The most widely accepted definition is that of the Palermo Protocol, an instrument approved by the United Nations in the year 2000, to “Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.”¹ Its Article 3 defines human trafficking as follows: “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

A European Union directive² broadens the types of exploitation to “*forced begging or exploitation of a person to commit, inter alia, pick-pocketing,*

1 Resolution A/RES/55/25 of the General Assembly of the United Nations approving the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organised Crime, of 15 November 2000. Instrument of ratification of the Spanish Government published in the Official State Gazette of 11 December 2003.

2 Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA of the Council of 5 April 2011.

shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain and "other behaviour such as illegal adoption or forced marriage."

With regard to **minors**, it is important to point out that the Palermo Protocol considers trafficking *"recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the methods set forth above."* **That is, the consent of any person under the age of 18 to be exploited is irrelevant and children do not have to prove that fraud or coercion occurred in order to be considered victims of trafficking.**

Human trafficking may be confused with the **illegal smuggling of immigrants** but there are three important differences between these concepts.³ On the one hand, there is consent: in the case of the illegal migrant smuggling, migrants consent to being smuggled. On the other hand, the victims of trafficking have never consented, or, if they did so, were coerced, deceived or abused on the part of the traffickers. With regard to exploitation, illegal trafficking ends upon the arrival of the migrants at their destination. However, trafficking involves persistent exploitation in order to generate illegal gains on the part of traffickers. Finally, illegal smuggling is always transnational, whereas human trafficking may or may not be.

The international instruments to combat trafficking which must be put in place as part of the struggle in against this are strengthened - in the case of child victims - by others aimed at protecting children. Among these, the United Nations Convention on the Rights of the Child of 1989 and its Optional Protocols, the European Charter of Children's Rights, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, or Directive 2011/93/EU combating the sexual abuse and sexual exploitation of children and child pornography.

1.2. DATA AND TRENDS

Human trafficking is a highly complex reality. The definitions, both at national and international level must be broad enough to encompass the different forms of trafficking, but specific enough to differentiate it from other crimes.

One of the problems we find when studying the phenomenon of human trafficking is the absence of data, which makes it difficult to gain knowledge of the situation. It is true that this occurs with all criminal activities, but trafficking also faces further complications. As explained in the UNODC document on the Multiples Systems of Indicators⁴ an estimation tool that may be used in these cases: *"key concepts for trafficking as "deception",*

3 APRAMP (2011): *"La trata con fines de explotación sexual"*, Ed. APRAMP, Madrid, p. 33. (Available online at: <http://apramp.org/download/la-trata-con-fines-de-explotacion-sexual/>).

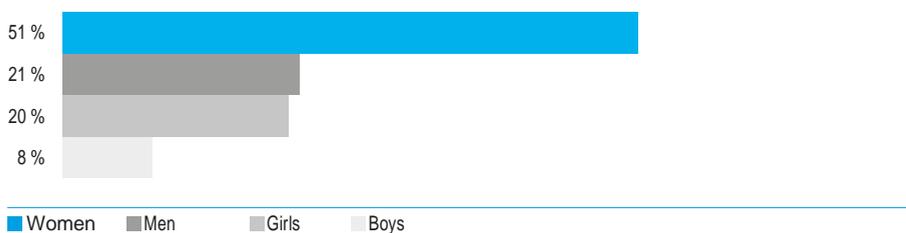
4 UNODC (2016): *"Multiple Systems Estimation for estimating the number of victims of human trafficking across the world"*. (Available at: <https://www.unodc.org/documents/data-and-analysis/tip/TiPMSE.pdf>).

“coercion” and “exploitation,” may be difficult to interpret. Moreover, traffickers target vulnerable populations (undocumented immigrants or sex workers) who don’t usually want to step into the light. Finally, in some cases extreme exploitation has even come to be considered normal (the non-recognition of oneself as a victim of a crime). For all that, one might argue that in the case of human trafficking the relationship between victims detected and the reality must be some way off that for many other types of crime.”

These problems are accentuated in the case of child victims, Traffickers attempt to conceal them, and must we must sharpen our focus if we wish to bring the reality to light.

WORLD AMBIT

The United Nations Office on Drugs and Crime publishes regular reports on this phenomenon. In the last of these,⁵ children represented a third of all human trafficking around the world (20% girls and 8% boys), while in 2004 the figure was 13% of the total (10% girls and 3% boys). But if we analyse the data by regions, in Sub-Saharan Africa and Central America and the Caribbean, children represent over 60% of all victims. Women and girls are mainly exploited through forced marriages and sexual slavery, while men and boys are captured mainly for forced labour in different sectors.



IN EUROPE

According to data from EUROSTAT (the European Statistics Office) between 2010 and 2012, **30,146 victims were registered in 28 Member States**, of which 16% were children (13% girls, 3% boys). Over 1,000 of these children were victims of trafficking for purposes of sexual exploitation and 65% of all victims were EU citizens.⁶



5 UNODC (2016); Global Report on Trafficking in Persons, Ed. United Nations, Vienna (Available at: http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf).

6 EUROSTAT (2015): Trafficking in Human Beings in Europe 2015 Edition, Ed. European Union, Luxembourg, p. 11, (Available online at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf).

The European Commission⁷ has attempted to analyse the factors that make a child vulnerable to trafficking. Analysing the profiles of the children that have been rescued, the **main risk groups** identified would be children who have been victims of domestic violence or abuse; children that are travelling, subject of a migration project; so-called "home-alone children" or "orphans of labour migration;" those who have been victims of war or crisis or natural disasters, those who engage in risk behaviour on the internet; children with physical, learning or development disabilities and children from disadvantaged communities or areas.

2. HUMAN TRAFFICKING IN SPAIN.

"Human trafficking knows no borders and affects all regions of the world. Even if the political will is there, the adoption of a comprehensive and collective strategy to combat this problem is still a challenge."

Joy Ngozi Ezeilo, United Nations Special Rapporteur on Trafficking of Persons

As established in the report published every year by United States State Department.⁸ Spain is a country of origin, transit and destination for men, women and children who are victims of trafficking.

2.1. WHAT DATA DO WE HAVE?

We have already alluded to the difficulties in estimating a real number of victims. At official level, there exist two sources of data: the Ministry of the Interior and the General State Prosecutor. The former⁹ publishes the number of official victims at state level, data which is then reported to the European Union, and which forms part of official statistics. The latter annually presents the number of cases opened in relation to this crime (police investigations which the Prosecutor believes reveal possible crimes of human trafficking). This data, therefore, broadens the filter somewhat, as they are not limited to sentences handed down.

7 European Commission (2015): Study on high-risk groups for trafficking in human beings, Ed. European Union, Luxembourg. (Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_children_as_high_risk_groups_of_trafficking_in_human_beings_0.pdf).

8 Department of State, United States of America (2016): Trafficking in persons. June 2016, p. 345. (Available online at: <https://www.state.gov/documents/organization/258876.pdf>).

9 Ministry of the Interior (2015): "*Balanza de prevención y lucha contra la trata de seres humanos en España y avance del Informe 2015 sobre delitos de odio*", España. (Available at: http://www.interior.gob.es/documents/10180/5559091/bal_TSH_sexual_laboral_delitos_odio_2015.pdf/bb67e5cc-a51a-4ce5-ae7a-0dcd396ec70d).

According to the data provided by the Ministry of the Interior, victims of trafficking for the purposes of sexual exploitation accounted for 50% 2015 (133 victims identified) and the other 50% were victims of trafficking for the purposes of labour exploitation (134).

This distribution changes in the information published by the General State Prosecutor. Of the 96 Investigations for crimes of trafficking open in 2015, there were 978 possible victims of trafficking for the purposes of sexual exploitation, at least 92 possible victims of labour exploitation, 22 of exploitation for forced begging and 3 for forced marriages. The majority of victims in the case of sexual exploitation are women (96.11%) and foreign (91.53%), originating from countries such as Romania, Nigeria, Paraguay and the Dominican Republic. On the contrary, in the case of labour exploitation, which primarily affects foreign nationals (mainly countries such as Romania, Pakistan, Portugal) the majority of victims are men (85.18%). All possible victims of trafficking for the purposes of forced marriages were women aged under 18 and all victims of trafficking for the purposes of forced begging came from Romania.¹⁰

These figures fall far short of the estimates made by organizations that work with this reality, who, for example, have calculated that between 40,000 and 50,000¹¹ women are victims of trafficking for sexual exploitation in this country. The fact that official-level data is derived exclusively from criminal procedures means that many victims identified by specialized organizations, whose cases for various reasons do not result in criminal prosecutions, remain outside these figures. On the other hand, not all organizations that work with victims record data systematically, even less so in the case of children.

Looking at the data we can conclude that in Spain trafficking for the purpose of sexual exploitation accounts for the largest number of victims, with women and girls primarily affected. The majority of these are foreign nationals. It is therefore necessary to understand trafficking from a gender perspective. Nevertheless, recognition that this is the predominant form of trafficking cannot leave us blind to the others.

“We have children coming from Uganda who are also victims of trafficking, but they usually enter through Barcelona Airport. Here, there is the difficulty that some have not yet been exploited and don't realise the situation they're in.

Key informant

10 General State Prosecutor (2016): *“Memoria de la Fiscalía General del Estado”*, Spain. (Available online at: https://www.fiscal.es/memorias/memoria2016/FISCALIA_SITE/index.html).

11 BEDOYA, J. (21 January 2014): *“La trata de personas trae a unas 40.000 personas a España al año”*, El País. (Recovered from: http://sociedad.elpais.com/sociedad/2014/01/21/actualidad/1390311478_789233.html); EL ECONOMISTA (21 September 2014): *“Anesvad alerta de que más de 40.000 personas entran en España cada año con fines de explotación sexual”*, El Economista. (Recovered from: <http://www.eleconomista.es/sociedad/noticias/6094859/09/14/Anesvad-alerta-de-que-mas-de-40000-personas-entran-en-espana-cada-ano-con-fines-de-explotacion-sexual.html>); EUROPA PRESS (6 March 2015): *“La trata somete a unas 50.000 mujeres en España”*, Europa Press. (Recovered from: <http://www.europapress.es/epsocial/ong-y-asociaciones/noticia-40000-50000-mujeres-son-explotadas-sexualmente-espana-victimas-redes-trata-20150306150657.html>); APRAMP (2015): *A pie de calle, actuaciones con menores víctimas de trata*, Ed. APRAMP. (Available online at: <http://apramp.org/documentos/>).

Men and boys who are victims for the purpose of sexual exploitation and men, women and boys who are victims of trafficking for labour exploitation, begging, petty theft, forced marriage or servitude must not be made invisible. The fact that different subventions and plants to combat trafficking depend on the Government Delegation for Domestic Violence or on different Directorate Generals for Women of each Autonomous Community can limit the focus with which we approach this reality.

This has also been highlighted by the Group of Experts on Action against Trafficking in Human Beings (GRETA) in the report corresponding to Spain.¹² They affirm that one of the consequences of focussing the fight against trafficking of human beings exclusively on the trafficking of women and girls for the purposes of sexual exploitation is the lack of institutional leadership to tackle the challenge of protection of, and provision of services to, all victims, regardless of the type of exploitation.

2.2. ESTABLISHED PROCEDURE

The Spanish legal system recognizes the crime of trafficking in human beings in Article 177 bis of the Criminal Code. It also deals with trafficking through the Immigration Law and its corresponding Regulation and with respect to victims, the Law of the Statute of the Victim of Crime applies.

Due to the complexity of tackling this crime, the approval of a number of protocols was required to regulate the activities of those persons involved in the fight against this scourge, from civil society, specialized organizations, state security forces and agencies, the legal system and authorities, etc. Providing services to victims of trafficking is a procedure regulated by the **Framework Protocol for the Protection of Victims of Trafficking in Human Beings (of 2011)**. The Protocol provides the basis for the coordination and actions of the different institutions, administrations and entities that may be involved in some of the phases of the procedure and that may have different objectives, approaches and responsibilities.

From the first contact with a suspected victim, up to their effective protection, a series of steps must be taken. Here we look in detail at three of them: detection, identification and referral.

DETECTION

Detection, understood as having knowledge of the existence of a suspected victim, or detecting signs of human trafficking on a person, may occur in a variety of ways.

The majority of victims are detected through investigations carried out by the State Security Forces and Agencies. Nevertheless, they may also be highlighted as a result of workplace inspections, upon entry to the country or when a suspected victim enters into contact with an organization after accessing a health, social or educational service. Important detection work is carried out by information services

¹² GRETA (2013): "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain", Strasbourg. (Available online at: <http://www.coe.int/en/web/anti-human-trafficking/spain>).

of entities that specialize in trafficking, whether through mobile units that travel to major centres of prostitution or telephone assistance services.¹³

There may be cases where the victim lodges a report or where the client of a prostitute does so on their behalf, realising the system of slavery in which they are trapped.

IDENTIFICATION

This is the formal recognition of this person as a victim of human trafficking. Article 10 of the Warsaw Convention¹⁴ envisages a system of identification that is a process of collaboration between the authorities and specialized organizations. In Spain, this formal identification can only be carried out by police units with specific training in combating trafficking and in the identification of, and provision of assistance to, victims, although they may be supported by qualified experts and specialized organizations.¹⁵ These units will conduct an interview with the suspected victim, assess different elements and determine the existence of reasonable evidence or motives to consider that person a victim of human trafficking.

The dedication and training work of these groups in better understanding and combating human trafficking must be highlighted. Nevertheless, there are certain reservations in relation to the focus of police actions in the fight against this crime.

“As much as they have specialized in trafficking and have received a lot of training, I think the very nature of the police force does not allow it to do the job of detecting victims of human rights abuses.”

Key informant

Until relatively recently, the collaboration of the State Security Forces and Agencies with specialized organisations and entities that work in the sector depended on the best practice of each Autonomous Community. Although the Immigration Law expressly establishes that “*the conditions of collaboration with not-for-profit NGOs dedicated to shelter and protection of victims of human trafficking*,”¹⁶ the reality is that this Regulation only mentions the contribution of relevant information which these entities

13 Directorate General for Women, Comunidad de Madrid (2016): “*Estrategia Madrileña contra la trata de seres humanos con fines de explotación sexual 2016-2021*”, (Available online at: http://www.madrid.org/cs/Satellite?c=CM_Publicaciones_FA&cid=1354602397831&language=es&pagename=ComunidadMadrid%2FEstructura).

14 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw 16.V.2005.

15 SPAIN (2011): Royal Decree 557/2011, of 20 April, approving the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, in light of reform of Organic Law 2/2009, Officials State Gazette (BOE) No. 103 of 30 April 2011, Article 14 (2) “*The identification of the victim shall be made by police authorities with specific training in investigating human trafficking and in the identification of its victims.*”

16 SPAIN (2000): Organic Law 4/2000, of 11 January, on the rights and freedoms of foreign nationals in Spain and their social integration Official State Gazette (BOE) No. 10, of 12 January 2000, Article 59 bis 6.

"may" provide. The support of these organizations is considered essential as they may promote action from the human rights perspective. In June 2016, an instruction of the Secretary of State of Security was approved, which regulates the collaboration of these entities with State Security Forces and Agencies. Although the formalization of this work is commendable, the identification of victims remains the exclusive domain of the State Security Forces and Agencies, which can lead to the almost exclusive focus on the prosecution of the crime and poses a difficulty in effectively protecting the victim.

This point was also highlighted by GRETA in their report on Spain¹⁷. It warned that one consequence of the Spanish system was that the first contact possible victims had was with the police and that this could be an impediment for victims in an irregular situation or who have little confidence in the authorities, to speak about their situation. GRETA believes that specialized NGOs can contribute substantially to the process of identification of victims and that they must be involved in a multidisciplinary way, to ensure that no victim of trafficking remains unidentified.

It must also be pointed out that judges also have an important role to play in the effective identification of victims of trafficking through their legal judgements in applying Article 177 bis of the Criminal Code.

REFERRAL

As part of the measures of protection and security which must be provided for a victim of trafficking is that of referral to the assistance services of the Autonomous or local administrations or organizations of entities with accredited experience in assisting victims of human trafficking. Thus, the available resources shall be mobilized to guarantee suitable accommodation and security, material assistance, psychological assistance, medical assistance, interpreting services and legal advice.

Although this phase is recognized by the Framework Protocol it is true that a regulated procedure is required so that victims of human trafficking are referred to specialized resources by the Police or Guardia Civil to specialized entities or among the organizations themselves.

The Spanish Network against Human Trafficking has called for the setting up of a **National Referral Mechanism** to coordinate between the different agents and whose focus would be on assistance for and protection of the victim. This Mechanism, which is already in place in many countries in our region, was defined by the OSCE as a specialized multi-disciplinary team to manage unified criteria where cases of human trafficking arrive and assume responsibility for their referral and driving and managing the recovery process.¹⁹

17 GRETA (2013): *Report concerning the.... Op. cit.*

18 Red Española Contra la Trata de Personas (2015): "Informe de la Red Española contra la Trata de Personas para la Coordinadora europea de lucha contra la trata. Visita Oficial a España. 26 y 27 de Febrero de 2015", page 19. (Available online at: <http://www.ecpat-spain.org/imagenes/tablaContenidos05sub/Informe%20de%20RECTP%20%20para%20Coordinadora%20Europea%20Marzo%202015.pdf>).

19 OSCE (2007): *Mecanismos Nacionales de Derivación. Aunando esfuerzos para proteger los derechos de las víctimas de trata de personas. Manual práctico*, Ed. ODIHR, Poland. (Available online at: <http://www.osce.org/es/odihr/13973?download=true>).

“Spain has no national referral mechanism (...). It depends on the Autonomous Community. There are certain mechanics of referral and contact with these specialized resources we do have for victims of trafficking in the Police and the Guardia Civil. In some Autonomous Communities it's more systematic and there are agreements in place. But in others there's nothing.

Key informant

3. CHILDREN AS VICTIMS OF TRAFFICKING IN SPAIN

3.1. DIRECT VICTIMS

“It's five o'clock in the evening at Gare du Nord Station in Paris. There are hurried people and tourists everywhere. At one of doors to the square, a group of teenagers chat, laugh, smoke and listen to music on their mobile phones. A man approaches them and after exchanging looks he heads for an adjacent street with one of the boys. In a kebab shop they drink together, before entering a sex shop next door. There the man receives a sexual service from the boy.

Back to the station. Close to the taxi rank, six young girls have surrounded an Asian tourist couple and urge them to read a piece of paper attached to a folder. With a rather crude imitation of sign language they try to convince them to make a donation to a deaf-mute organization. Their instances finally forces the man to take a ten-Euro note from his wallet and hand it to the girls, to then escape with his wife through the nearest Metro entrance. On the megaphone there are warnings of the presence of pick-pockets.

These situations raise certain questions. Who are these children? Are they exploited? If so, who's pulling the strings? Their parents? Criminal networks? Are these tricks part of the work of a criminal organization or a survival strategy developed by families in need?

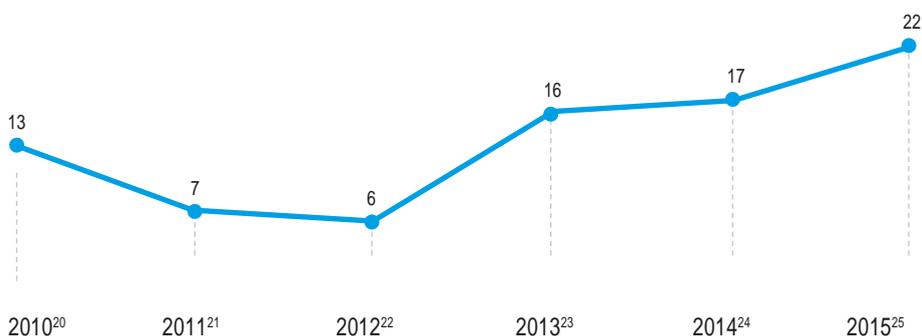
Olivier Peyroux, *“Fantasies and Realities Fuelling Child Trafficking in Europe”*, Ecpat France 2015

These scenes are familiar to us and raise the same questions. What's more, should a child victim of trafficking not conform more to our notion of a victim? On the contrary, some of these children's attitudes are brazen, even defiant, and clash with our concept of a child in need of protection.

3. 1. 1 What We Know About Them

In Spain, as occurs at a global level, one of the greatest problems when it comes to focussing policies and actions on eradicating this phenomenon and protecting victims is the absence of real data. In the case of children, there are certain factors that keep them even more hidden. On the one hand, the express prohibition of the prostitution of minors in our legal system and the police prosecution of those who abuse minors turns these teenagers into a very precious but dangerous commodity. Victims of trafficking for sexual exploitation are confined to places that are difficult to access (flats, clubs) until they are of legal age when they may begin to be employed also as street prostitutes. Moreover, the problems that arise when it comes to the authorities determining the age of foreign nationals mean that victims with no documentation who require special protection are considered to be of legal age, with the consequence that this implies. Something similar occurs with child victims for begging or petty theft: they can be registered as juvenile offenders rather than as victims.

In relation to the data provided by the **Ministry of the Interior** in its Annual Report, the number of victims of trafficking of children to be the following:



A number of elements are lacking in the compiling and processing of these data. Firstly, many of the cases are focussed on trafficking for the purposes of sexual exploitation, ignoring other realities such as trafficking for the purposes of begging. Secondly, not all of the cases specify the victim's sex. Finally, nor do they include nationalities.

20 EUROSTAT (2015): "Trafficking in Human...op. cit.

21 Ibid

22 Ibid

23 Ministerio del Interior (2014): "Balance año 2013. Prevención y lucha contra la trata de seres humanos con fines de explotación sexual", España. (Available online at: <http://www.interior.gob.es/documents/10180/2170430/Presentaci%C3%B3n+del+Balance+2013+de+la+lucha+contra+la+trata+de+seres+humanos+con+fines+de+explotaci%C3%B3n+sexual.pdf/520ce677-37cb-4219-85f6-535ee51ee9b>).

24 Ministerio del Interior (2014): "Balance de la lucha contra el crimen organizado en España", España. (Available online at: <http://www.interior.gob.es/documents/10180/1643559/BALANCE+2014+CRIMEN+ORGANIZADO+CITCO.pdf/acd7c633-02ed-4963-a464-742ba9b01da6>).

25 Ministerio del Interior (2015): "Balance de prevención y lucha contra...op. cit.

The data published by the Immigration **Section of the General State Prosecutor's office** on the investigations into human trafficking in Spain are more complete.

In the year 2013,²⁶ the number of possible child victims of trafficking rose to a total of 35, divided according to nationality and purpose of the trafficking as follows:

PURPOSE	NATIONALITY					
	ROMANIA	NIGERIA SUBSAHARA	CHINA	PARAGUAY	DOMINICAN REPUBLIC	SPAIN
SEXUAL EXPLOITATION	17 girls	4 girls	2 girls	7 girls	1 girl	3 girls
BEGGING	1 girl					

In the year 2014,²⁷ following the same scheme, the number of possible victims child victims of human trafficking was 29, broken down as follows:

PURPOSE	NATIONALITY					
	ROMANIA	NIGERIA SUBSAHARA	PARAGUAY	SPAIN	BULGARIA	RUSSIA
SEXUAL EXPLOITATION	10 girls	3 girls	1 girl	4 girls	1 girl	1 girl
BEGGING	8 (Sex not recorded)					

Finally, in the year 2015,²⁸ the number of possible child victims of human trafficking reached 48, broken down as follows:

PURPOSE	NATIONALITY				
	EUROPE	AFRICA	AMERICA	ASIA	UNIDENTIFIED NATIONALITY
SEXUAL EXPLOITATION	19 girls	7 girls / 1 boy	5 girls / 1 boy	0	12
FORCED MARRIAGE	2 girls	1 girl			

The data provide din the last year show an increase in the number of victims. Also, for the first time, two male victims appear in the figures of trafficking for the purposes of sexual exploitation, a situation which had already been detected by specialized organizations.

26 Sección de Extranjería de la Fiscalía General del Estado (2014): "Diligencias de seguimiento de Trata de Seres Humanos", España. (Available online at: https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/2014_09_09_Diligencias%20de%20Seguimiento%20del%20delito%20de%20trata%20de%20seres%20humanos.pdf?idFile=3652df84-37d1-49aa-b354-be7503558ebd).

27 Sección de Extranjería de la Fiscalía General del Estado (2015): "Diligencias de seguimiento de Trata de Seres Humanos", España. (Available online at: https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/Diligencias%20de%20Seguimiento%20del%20delito%20de%20trata%20de%20seres%20humanos.%20Fiscal%20C3%ADa%20de%20Extranjer%20C3%ADa%202014?idFile=56ca6812-b8bf-4341-b06c-8cbbd9a8d3fe).

28 Sección de Extranjería de la Fiscalía General del Estado (2016): "Notas Informativas y Diligencias de Seguimiento. Año 2015", Spain (Available online at: https://www.fiscal.es/fiscal/publico/ciudadano/fiscal_especialista/extranjeria/documentos_normativa/ut/p/a/1/04_Sj9CPyKssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFzcDBzdPYOdTD08jL3dzYAKlOEKDHAARwN8-oNjaD68SJAo9_fzwy_fosgE3z6TdzN8esHWUDA_-H6UfiUgF0AVoAviA5siA3NDQ0wiDT01FREQAuDFrX/dl5/d5/L2dBISEvZ0FBIS9nQSEh/).

“We have assisted boys of 15-16 who came from Brazil with a false job offer, or because their supposed boyfriend (an adult) had brought them. In some cities, we have also seen very young boys belonging to Romanian gypsy gangs. The problem is that there are no specific resources to detect them, nor to offer comprehensive assistance.”

Key informant

Within specialized organizations, the Association for the Prevention, Reintegration and Care of Prostituted Women (APRAMP) recently published “*A pie de calle. Actuaciones con menores víctimas de trata*”. The report was based on a questionnaire carried out by their Mobile Rescue Unit in different areas where prostitution is exercised.

807 women, of which 388 confirmed they were minors when they began working as prostitutes, which represents 52% of the total.

The reality is that organizations, especially those detecting ever-increasing numbers of young women arriving in Spain as victims of trafficking and whose appearance alerted them to the possibility that they were minors.

“Our colleagues in Paris have identified very young girls working as prostitutes who have been in Spain while still minors.”

Key informant

We don't want to be reckless in extrapolating percentages to estimate the approximate number of child victims of trafficking in our country. But in light of these data, it appears that the official figures (220 victims in 2015 according to the Ministry of the Interior and 49 according to the Prosecutor's data) are far short of the mark.

AND IN THE MEDIA?

To accompany this work, we have analysed news stories on minors published by the major media outlets. With a greater budget provision assigned for combating trafficking, the issue has become a greater political and social priority, which has generated greater visibility of cases and news stories. The vital work performed by associations and activists to raise awareness among the public of the serious nature of this violation of human rights has also contributed to this change.

However, today human trafficking is an issue that is treated superficially in the media. Many national and local media outlets select news stories related to child trafficking for the purposes of sexual exploitation without analysing in-depth the causes and without making any attempt to access other sources of information beyond reproducing other stories and statements from institutions and officials. The stories contain no focus from the perspective of defending the human rights of women or children, groups

of the population that are especially vulnerable, nor even from a perspective that touches on the social and structural problem of trafficking in Spain.

The majority of the stories analysed are confined to reproducing police operations and governmental legislative initiatives without exploring in any depth the structural problems of the lack of protocols for the detection, prevention and protection of victims of trafficking and other social aspects that greatly influence the phenomenon. There are exceptions, however, with rigorous treatment and that seek to understand these situations.

On the occasions when children are the victims, they appear in larger headlines to emphasise the gravity of the news, although they don't always appear in the first lines of the story. What is required, therefore, is a news focus from the perspective of the defence of the rights of the child, or at least one that touches on the structural and social problem of trafficking in Spain.

3. 1. 2 How They're Exploited

Children in our country are victims of human trafficking for the purposes of sexual exploitation (in the majority of cases), for begging, for petty theft and, in some cases, for the purposes of forced marriage. On occasion, these forms of trafficking overlap and children can be victims of different types of trafficking.

Two Romanian Girls Sold for 1,700 euros Freed in Seville.

> They were forced to marry members of another clan and transferred to Seville, where they were found by the Policía Nacional.

> The girls, aged 13 and 15, were forced to work collecting scrap metal and to live by begging. One of the two had suffered domestic abuse.

Source: El Mundo²⁹

29 EL MUNDO (16 May 2016): "Liberadas en Sevilla dos niñas rumanas vendidas por 1.700 euros", El Mundo. (Recovered from: <http://www.elmundo.es/andalucia/sevilla/2016/05/16/573985a1e2704e20678b4606.html>).

A) SEXUAL EXPLOITATION

As has been pointed out, the vast majority of child victims of trafficking are trafficked for the purposes of sexual exploitation. This type of exploitation is defined as "prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials."³⁰

The profile of the majority of these victims is that of **teenagers from Eastern Europe, aged between 14 and 17**, and who come from environments of violence and neglect. One of the methods used for their capture is that of *Lover boy*, young men who charm the victims and take advantage of their vulnerability to take them to another country and exploit them. These girls have not crossed any border irregularly nor have they attempted dangerous crossings and it is very difficult to detect them entering Spain. It is likely they not even they realised at this time that they would become slaves in our country.

Some years ago, alarmed by the increase in children becoming victims of trafficking in their country, the Government of Romania strengthened the protection of children and established, in new legislation on protecting the minor, the need for a document signed by their parent or guardian in order to be able to leave the country. Although conceived of as a method of control, often this signature is another issue in the negotiation between the mafias and the parents.

Another profile of victim is **children coming from Sub-Saharan Africa**. The method of capture is often the same as it is for adults, the offer of a better life in Spain and the ceremony of commitment (Voodoo or other religions) that ties them to the traffickers until their debt is paid. A debt that never ceases to grow during their travel through the countries of Europe where they are sent. Some of these victims travel by plane but it is more common for them to cross the Sahel Desert until they arrive in Morocco or crossing Libya. Both during and after this journey and in the weeks and months that follow, they wait in hope of boarding a boat in order to be exploited and used as sexual slaves. Once the trafficker decides, they embark on open boats or launches towards the Canary Islands or the Andalusian coasts.³¹

The European Commission's report on the progress made in the fight against human trafficking (May 2016), already drew attention to the migration crisis currently being used by traffickers to capture vulnerable individuals, especially women and children. It also echoes the drastic increase in numbers of Nigerian women and children who have been identified in Libya, of which the International Organisation for Migration in Italy estimated over 80% were victims of trafficking.³²

30 UNODC (2009): "*Análisis de algunos importantes conceptos del Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños, que complementa la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional*", Vienna. (Available online at: https://www.unodc.org/documents/treaties/organized_crime/CTOC_COP_WG_4_2010_2_S.pdf).

31 LOPEZ FRIAS, D. (8 de mayo 2016): "*Esclavizadas bajo amenaza de vudú con su vello público*", El Español. (Recovered from: http://www.elespanol.com/reportajes/20160507/122987743_0.html).

32 European Commission (2016): "*Report on the progress made in the fight against trafficking in human beings*", Brussels. (Available online at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/commission_report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016_en.pdf).

The third group is that of **teenagers from Latin America**. They usually travel with plans of studying in Spain or working in the hospitality sector. They have been captured by friends or family members, who refer them to specialized travel agents who form part of the network of exploitation. Minors travel with invitation letters from family members in the destination country or with the express authorization of their parents.³³

Although, in the majority of cases the victims are foreign nationals, **domestic victims** have begun to be detected. The crime of trafficking is easier to understand when there are borders between the place of origin and the place of exploitation, as the concepts of "capture," "transfer" and "retention" are easier to visualize. However, as investigations into this crime have developed, the Police and organizations that work in the field have begun to find cases of young girls captured in Spain and, through deception, coercion, force or other methods, have transferred them to other places within the national territory where they have been sexually exploited.

Child Exploitation Network Taken Down in Huelva

The Guardia Civil arrested nine members of an organized for human trafficking for the purposes of sexual exploitation and corruption of minors.

Source: ABC³⁴

Organizations and experts have alerted us to this trend. The networks use minors who capture other children (mostly girls) in school, discos or through social media. These are teenagers who live in Spain and for whatever reason find themselves in a vulnerable situation (weak family ties, troubled relationships, drug addictions, economic difficulty, etc.) Traffickers take advantage of such situations so that, as in the case of foreign nationals, to initiate the process of deception and capture.

“Another issue which should concern us is the issue of children, especially girls, who are victims of domestic trafficking. Children from the protection system or from excluded social sectors who are trafficked using the lover boy method and others.”

Key informant

³³ APRAMP (2015): *A pie de calle...op. cit.*

³⁴ M.R.F (3 August 2016): “Desarticulada una red de explotación de menores que captaba a las víctimas en Huelva”, ABC. (Recovered from: http://sevilla.abc.es/andalucia/huelva/sevi-desarticulada-explotacion-menores-captaba-victimas-huelva-201608031055_noticia.html).

B) BEGGING AND PETTY CRIME

While awareness is slowly being raised of the phenomenon of trafficking for sexual exploitation, the same is true in the case of trafficking for the purposes of begging and petty crime. It is starting to appear in international reports and statistics and even in the news, and in European Union countries, among them Spain, reports have been emerging on this form of trafficking for some years.

Europol warn of an increase in Romanian gangs using minors for crime.
Europe (sic) pays 20,000 euros per child beggar.
 > Europol says that mafias can earn up to 160,000 euros for each minor they "buy" to commit petty theft and beg. These networks recruit children as young as five years old.
 > The Public Prosecutor stated in a 2013 report that two cases of minors recruited by a Romanian gang.

Source: Teinteresa.es³⁵

Our country is the destination of children who are victims of human trafficking for the purposes of begging, the majority of whom come from **Romania, Bulgaria and Morocco**. Spain is also used as a transit country on route to other destinations such as Germany, France and Portugal.³⁶

The Public Prosecutor, recording the number of such case, detected 1 minor in the year 2013 and 8 in 2014, all Romanian nationals.

As indicated in the report "*Study on high-risk groups for trafficking in human beings*"³⁷, the methods of capture of these children are not known exactly, but the collaboration in some way of their family (nuclear or extended) has been claimed, either by exploiting them directly or by surrendering them to mafias. The fact that in many cases children come from the same city or region leads one to think that a network is operating to control their movements.

36 RIVERA, R (21 January 2014): "*Europa paga 20.000 euros por cada niño mendigo*", Te Interesa. (Recovered from: http://www.teinteresa.es/mundo/trata-Europa-paga-20-000-euros-nino-mendigo-hurtos_0_1070294685.html).

36 European Commission (2012): "*Report for the Study on Typology and Policy Responses to Child Begging in the EU*", Luxembourg, p. 256. (Available online at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_for_the_study_on_typology_and_policy_responses_to_child_begging_in_the_eu_0.pdf).

37 European Commission (2015): *Study on high-risk groups*...op. cit.

It is normal that these children are also victims of trafficking for several forms of exploitation: sexual, labour or for forced marriage, whether at the same time, or when they have reached an age at which begging is no longer profitable.

Five Minors Forced to Beg in Ferrol Freed

Three of the girls had recently given birth. After deceiving their families in Romania, they were controlled and lived in slavery

Source: El País³⁸

BETWEEN PROTECTION AND REFORM

Our system for the protection of children considers "inducing to beg, commit crime or prostitution or any other exploitation of a minor of a similar or serious nature" to be a helpless situation. If the public authorities stated that a minor is in such a situation, their guardianship would be assumed under Article 18 of the Legal Protection of Minors Act.

It is true that the previous legislation, in place until August 2015 was not so specific in relation to defining situations of risk and helplessness. Thus, if a minor is detected engaged in begging on the street, the police forces shall attempt to locate their guardians in order for them to take custody of the, resulting in them being delivered to their exploiters. If the situation was serious and no guardians were located to take custody of them, the Department of Public Prosecution was informed and where necessary the competent Judicial Authority and the corresponding protection services of the Autonomous Community. The minor was put in a protection centre, from which they would soon escape whether on their own initiative or by being reclaimed by the criminal network.

On the other hand, if any of them had committed a crime, our criminal system would only recognize them as attributable if they were aged 14 or older. In the case of minors under this age, the procedure would be the same as for a minor in a risk situation, with it deemed that the primary responsibility is their parents' or guardian's. If the child were aged over 14, a police report would be filed. As they are not usually serious crimes, while the facts are being investigated the child is handed over to their parents or guardians.³⁹

38 DUVA, J (10 April 2014): "Liberadas cinco menores que eran obligadas a mendigar en Ferrol", El País. (Recovered from: http://sociedad.elpais.com/sociedad/2014/04/10/actualidad/1397124915_564040.html).

39 Spain (2000): Organic Law 5/2000, of 12 January, on the criminal responsibility of minors, Official State Gazette (BOE), No. 11, of 13 January 2000, art. 17.4: "The arrest of a minor by the police may not exceed the time strictly necessary to conduct the enquires to clarify the facts and, in all case, within the maximum period of twenty four hours the minor must be released or placed in the custody of the Department of Public Prosecution."

These minors have learned what to tell the State Security Forces and Agencies where they live, what age they are and with whom they live. Thus, they can escape the hands of the authorities and return to the street to continue to be exploited.

“They call me from Legal Aid for Minors to assist Romanian girls who have been arrested. They look for donations as deaf-mutes and suddenly a woman accused them of trying to rob her. Sometimes it's true and sometimes it isn't. And you ask the girl, "Where do you live?" and they say, "In the *Gallinero*." "You're lying, you don't live there (...). The criminal gangs have given the girls instructions to say that they live in the shanty towns in Valdemingómez. They never call any family member. You ask them, "Who do you live with?" and they say, "With my uncle," who always has the same name. (...) Behind that there's a criminal network.”

Key informant

As you can see, these children are shunted back and forth between the protection system and the reform system and neither has proven to be suitable for their special situation. The new Legal Protection of Minors Act has attempted to strengthen protection of these minors, considering their situation of helplessness both in the exercise of begging and in committing petty crimes, but it is necessary to identify them as victims of trafficking and initiate mechanisms designed for same.

An example of this new focus is the creation, from the Agency for the Re-Insertion and Re-Education of the Juvenile Offender of the Autonomous Community of Madrid, of a Protocol for the identification of these victims among the minors they assist.

The OSCE remind us that the victims of trafficking should not be arrested, accused or processed as author of crimes provided these crimes are a direct consequence of their trafficking, as occurs with other children. They also remind us that States must take the necessary measures to establish efficient procedures for the rapid identification of the child victims of trafficking and their subsequent protection. This implies that the authorities must not deliver the children to an adult who claims to be their parent or guardian without first verifying said relation or, even where they are their parent or guardian, without first ensuring that they are not being exploited by such person.⁴⁰

“Sometimes I've asked them a lot of questions so that it's clear in the report how they came, if they were procured to come. Then it would be relatively easy for us to find out if a person has guardianship of 20 minors. An investigation would be relatively simple.”

Key informant

40 OSCE (2011): “*An Agenda for prevention: trafficking for labour exploitation, 2011 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings*”, Austria, pág. 25. (Available online at: <http://www.osce.org/secretariat/86294?download=true>).

C) FORCED MARRIAGE

We have begun to encounter this form of trafficking in Spain in recent years. In accordance with the definition of UNODC⁴¹, cases identified in our country correspond to minors who: “*without the right to object, are promised or given in marriage in exchange for payment in money or in kind to their parents, their guardian, their family or any other person or group of persons.*”

Prosecution first detected three cases of victims of trafficking for the purposes of forced marriage in cases opened in the year 2015⁴²: two Romanian girls and one Moroccan girl.

Two arrested in Castellón for human trafficking and forced marriage.

Source: EFE⁴³

The detection of these cases may arise through a prior police investigation, reporting on the part of the victim or reporting on the part of a third party, alerted by the victim. After the investigation, if it is considered that the minors are in a situation lacking in protection, the protection measures envisioned in child protection legislation shall be deployed.

As in the case of trafficking for the purposes of begging, this phenomenon is not widely known and in many cases overlaps with other forms of trafficking. For example, in one of the cases investigated by the Prosecution, a "minor aged eleven of Romanian origin who had been delivered with a promise of marriage had been raped and obliged to work for the "new family." This case come under the heading of trafficking for the purpose of sexual forced marriage but also with characteristics of trafficking for the purpose of sexual exploitation and forced labour. In another case included below, a key informant tells us the story of a victim of trafficking who went through a forced labour experience and was to be sold for marriage, had the victim herself not reported it.

41 UNODC (2009): “*Análisis de algunos...op. cit.*”

42 Sección de Extranjería de la Fiscalía General del Estado (2016): “*Notas Informativas y Diligencias de Seguimiento. Año 2015...op. cit.*”

43 EFE (6 July 2016): “*Dos detenidos en Castellón por trata de seres humanos y matrimonio forzado*”, Agencia EFE. (Recovered from: <http://www.efe.com/efe/comunitat-valenciana/tribunales-y-sucesos/dos-detenidos-en-castellon-por-trata-de-seres-humanos-y-matrimonio-forzado/50000881-2977726>).

44 España (1996): Organic Law 1/1996, of 15 January, on the legal protection of minors, on the partial amendment of the Civil Code and the Law of Civil Procedure, Official State Gazette (BOE) No. 15, of 17 January 1996, Title II.

"We had the case of a girl who came to Spain to a Moroccan family so that she would have the opportunity to study. The Moroccan family, who were friends of the original family, used her and exploited her like a slave for domestic services. She was enrolled at school but practically never went to school. She looked after the young children in the house, the cleaning, cooking, etc. When she was about to turn 18 she overheard a conversation in which the lady of the house said she was going to be married against her will with this man in Belgium."

Key Informant

**70 year old man arrested
for buying a minor for marriage.
The Police accuse the suspect of paying
10,000 euros to the parents of the child, who fled.**

Source: El País⁴⁵

We must also be attentive to minors coming from countries where there is conflict, such as Syria. During the journey to Europe, or while staying with their families in migrant and refugee camps, they may be subjected to forced marriage. The NGOs that attend to refugees are beginning to detect situations such as these, although no case has yet been registered in this country.

**Germany detects hundreds of marriages with
minors among refugees arriving in the country.**

Source: El Mundo⁴⁶

Desperate families offer their daughters in exchange for a dowry, sometimes only for a number of months. On other occasions, marriage is forced to cover up a rape as a way of "protecting" girls from sexual harassment.

"The main reasons for these marriages are poverty and the intention of protecting daughters from sexual harassment or the exploitation they may be subject to." Lama Naja, coordinator of the Emergency Response programme of the Abaad Gender Equality Resource Centre (Lebanon)

45 EL PAÍS (23 June 2016): "Detenido un hombre de 70 años por comprar a una menor para casarse", El País. (Recovered from: http://politica.elpais.com/politica/2016/06/23/actualidad/1466705146_392743.html).

46 VALERO, C. (11 June 2016): "Alemania detecta centenares de matrimonios con menores entre los refugiados que llegan al país", El Mundo. (Recovered from: <http://www.elmundo.es/internacional/2016/06/11/575c3e58468aebc13e8b458a.html>).

3. 1. 3 Challenges for the Established Procedure

In addition to the legislation that covers trafficking; when we speak of children it is necessary to take into account the child protection legislation. Thus, the Organic Law for the legal protection of children⁴⁷ and the Protocol for Unaccompanied Foreign National Minors applies for these children.

We have seen in Chapter II the procedure established in the **Framework Protocol for the Protection of Victims of Human Trafficking**. When these victims are minors, the procedure becomes complicated and each of the phases presents added difficulties, which we shall look at below.

DETECTION

While the Framework Protocol establishes the duty to report of citizens when they have knowledge of a situation of trafficking,⁴⁸ this becomes a legal obligation in cases where the victims are minors.⁴⁹

There are various reasons why the detection of girls who are victims of human trafficking for the purposes of sexual exploitation is very difficult. As we have seen, they are usually in places and are difficult to access and highly controlled until they reach the legal age of 18.⁵⁰ On the other hand, it is more complicated for them to report the situation due to family and personal ties with members of the network and feelings of loyalty towards them, lack of autonomy or "Stockholm Syndrome" which develops in some cases, whereby they perceive the trafficker as protector.

Two Nigerian minors liberated from forced prostitution in a club.

Source: Europa Press⁵¹

IDENTIFICATION

The children we find in these situations are covered by double protection as victims of trafficking and as minors. When we find minors in situations of

47 Organic Law 1/1996, of 15 January, on the legal protection of the minor, amending the Civil Code and the Law of Civil Procedure, amended by Organic Law 8/2015, of 22 July and Law 26/2015, of 28 July amending the system of protection for infants and adolescents.

48 Apartado V.A.4 del Protocolo Marco de Protección de las víctimas de Trata de Seres Humanos.

49 Section eleven of Article 1 of Law 26/2015, de 28 July, amending the protection system for children and adolescents, amending Article 13 (4) of Organic Law 1/1996, of 15 January, on the legal protection of minors, on the partial amendment of the Civil Code and the Law of Civil Procedure.

50 Save the Children (2007): *Metodología para la identificación y atención de niños, niñas y adolescentes víctimas de trata, Ed. Save the Children*. (Available online at: https://www.savethechildren.es/sites/default/files/imce/docs/metodologia_victimas_trata.pdf).

51 EUROPA PRESS (27 March 2015): *"Liberadas dos menores nigerianas obligadas a prostituirse en un cortijo"*, Europa Press. (Recovered from: <http://www.europapress.es/andalucia/almeria-00350/noticia-liberadas-dos-menores-nigerianas-obligas-ejercer-prostitucion-cortijo-20150327115839.html>).

with no protection, the protection measures provided for in Spanish law must be deployed.⁵² In fact, one of the situations in which⁵³ it is understood that a minor is in distress is "when the child is identified as a victim of human trafficking and there is a conflict of interest with their parents or guardians."⁵³

But to activate these protection measures it is necessary to recognize that minors under the age of 18. Therefore, **two processes of identification** are necessary in such cases, as victims of trafficking and as minors.

The victims, in many cases, carry false documentation stating that they are of legal age. If they do not carry documentation, they are instructed by the criminal gangs to lie about their age and to say that they have already turned 18.⁵⁴ So states the United Nations High Commissioner for Human Rights "It is possible that their passports have been destroyed or that they have been seized. It is possible for them to carry false identification showing an incorrect age. It may be the case that children who are victims of human trafficking lie about their age because their exploiters have asked them to do so.⁵⁵ Specialized organizations and entities indicate that "when we propose medical tests to remove any doubts, they do not turn up or disappear,"⁵⁶ a clear sign of the coercion they suffer to prevent them from being detected as minors:

Article 35 (3) of the Immigration Law states: «In the event that the State Security Forces and Agencies locate an undocumented foreign national whose **status as a minor cannot be established with certainty**, shall be provided, by the competent child protection services, the immediate attention required, in accordance with that established in child protection legislation, informing the Department of Public Prosecutions of same, who shall arrange for the determination of age, for which the relevant health authorities shall collaborate on priority basis and carry out the relevant tests.

Therefore, if a person that appears to be a minor is detected at border posts, coasts, places of prostitution and other locations, but no documentation is furnished, the police forces shall inform the Department of Public Prosecution and the **tests** normally carried out to determine age shall be carried out (almost exclusively c-ray tests). We shall collate all the complaints of organizations that work with unaccompanied foreign national

52 Title II of Organic Law 1/1996, of 15 January, on the legal protection of minors, on the partial amendment of the Civil Code and the Law of Civil Procedure.

53 Section eleven of the first article of Law 26/2015, de 28 July, amending the protection system for children and adolescents, amending Article 18 of Organic Law 1/1996, of 15 January, on the legal protection of minors, on the partial amendment of the Civil Code and the Law of Civil Procedure.

54 APRAMP (2015): *A pie de calle...op. cit.*

55 Alto Comisionado de Naciones Unidas para los Derechos Humanos (2010): *Principios y directrices recomendados sobre derechos humanos y trata de personas*. Comentarios, Nueva York y Ginebra, p. 171. (Available online at: http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_sp.pdf).

56 PUEBLA, P. (9 June 2016): "Zaragoza detecta un aumento de la llegada de mujeres "muy jóvenes" para ejercer la prostitución", *Heraldo*. (Recovered from: <http://www.heraldo.es/noticias/aragon/zaragoza-provincial/zaragoza/2016/06/08/zaragoza-detecta-aumento-llegada-mujeres-muy-jovenes-para-ejercer-prostitucion-900896-301.html>).

minors and institutions such as the Defensor del Pueblo (Spanish Ombudsman)⁵⁷, lodged in relation to the validity and accuracy of these tests. **It does not appear that the language and medical estimates can be extrapolated to the legal certainty required in these cases.** Incorrect identification may lead to effectively placing minors and risk, which is accentuated in cases of human trafficking.⁵⁸ Key informants have told how they have received in their homes victims of trafficking whose age has been established by this procedure and who, despite having been declared of legal age, argue that they remain minors.

As established in the Warsaw Convention, where there is indication of trafficking, although the status as a minor is in question, they shall be considered a minor and afforded protection accordingly.⁵⁹ For its part, the Protocol for Unaccompanied Foreign National Minors also establishes that, in the event that an unaccompanied foreign national minor refuses to provide their consent for the medical tests to determine their age to be carried out to determine their age and where there are signs that they might be a victim of trafficking: “the presumption of minor status shall prevail, with immediate protection measures to be taken, communicating simultaneously with the corresponding immigration unity of the CNP to assess the application of Article 59 bis of the LOEX IN in accordance with the rules established for the Protocol for the Protection of Victims of Human Trafficking and the acting police force for the purposes of investigation.”⁶⁰

In this sense, the information provided by the bodies interviewed contrasted with the scant numbers of girls registered with the Immigration Prosecutor in the Unaccompanied **Foreign National Minors Register**, where, of the 3,341 minors registered only **452 are girls**. The data provided for the year 2015 only serve to corroborate this trend: of the 414 unaccompanied minors identified by the Spanish authorities only **13 were girls**, only 3% of the total. Knowing that the victims of trafficking are primarily girls, we fear that they are not being recognised as minors or not being detected when they arrive in this country.

REFERRAL

The **Referral Mechanism** to which we have previously referred is particularly important in the case of victims who are minors. GRETA⁶¹ has already warned of the need to create a specific referral mechanism in the case of victims who are minors that takes into account their special needs and that is designed by experts in child protection and specialized police.

57 Defensor del Pueblo (2012): ¿Menores o adultos? Procedimientos para la determinación de la edad, España. (Disponible online en: <https://www.defensordelpueblo.es/informe-monografico/menores-o-adultos-procedimientos-para-la-determinacion-de-la-edad-enero-2012/>).

58 Defensor del Pueblo (2012): La trata de seres humanos en España: víctimas invisibles, España, pp. 236 and on. (Available online at: <https://www.defensordelpueblo.es/informe-monografico/la-trata-de-seres-humanos-en-espana-victimas-invisibles-septiembre-2012/>).

59 “In cases where there is no certainty regarding the age of the victim and where there is reason to believe that they are a minor, they shall be considered such and afforded the specific protection measures pending confirmation of age.”

60 Capítulo V, apartado 5º.2.c) b del Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados.

61 GRETA (2013): “Report concerning...op. cit.

and members of the Juvenile Immigration Prosecution Service. If there is no **effective coordination** between local, autonomous and state authorities, the mobility of the minor within the country becomes more difficult. That can represent a risk (of being located by the criminal gang, or recognized by a client), while also posing an obstacle to their referral to the best possible resources.

Child protection comes under the responsibility of the Autonomous Community, and the Organic Law for the legal protection of children considers two options in cases of the transfer of minors between Autonomous Communities.⁶² If the transfer is to be a temporary one, the Autonomous Community of origin may retain guardianship. If the transfer is to be definitive, there must be a change of file and the public body of the destination must assume guardianship and costs. As stated in the law, with a victim of trafficking, it cannot be determined a priori if the trafficking is definitive or temporary, as normally this is carried out for security reasons.

"If the victim is at a shelter Madrid and I want to transfer her to another shelter in Asturias, if Asturias doesn't want to assume guardianship, the Comunidad de Madrid can agree to the transfer and retain guardianship. The system should be flexible, because the law has mechanisms for you to be sheltered under transfer of guardianship or transfer of address.

Where does this issue get held up? I don't know. I don't know why, with these mechanisms in place, they're not executed.

Key informant

The Delegate Commission of the Territorial Council of Social Services and the System for Autonomy and Dependence Assistance recently approved the "**Protocol for the coordination of actions of public bodies in the area of child protection, in the transfer of children.**"⁶³ However, this protocol is focussed on cases of the transfer of minors who come under the protection system and does not seem to apply to the victims of human trafficking.

PROTECTION

As established in the Protocol for Unaccompanied Foreign National Minors, when a unaccompanied foreign national child showing signs that they may be a victim of human trafficking is detected they shall be referred to a "*child protection centre or, if is better suited to the requirements of the minor, at the protection centres of an association, foundation or non-profit non-governmental organization with the necessary resources to ensure their safety, physical and psychological recovery*

62 Art. 18.4 of Organic Law 1/1996, de 15 January, on the legal protection of minors, on the partial amendment of the Civil Code and the Law of Civil Procedure.

63 Dirección General de Servicios para la Familia y la Infancia (2015): "*Protocolo para la coordinación de actuaciones de las entidades públicas competentes en materia de protección de personas menores de edad, en supuestos de traslados*", España. (Available online at: <http://www.observatoriodelainfancia.mssi.gob.es/productos/pdf/protocolo25032015.pdf>).

and the all-encompassing assistance they require.”⁶⁴ Meanwhile, the Framework Protocol for the Protection of Victims of Human Trafficking established that minors must be referred to specialized resources not child protection services. The principal reason is that these child protection centres are not equipped to receive victims of trafficking, who have specific peculiarities and needs. There, children are free to come and go as they please, making separation from the criminal gang difficult. Many victims who enter such centres disappear after a few days.

“One of the issues that must concern us is how criminal gangs are infiltrating to such an extent that there are now children sheltered in these protection centres who act as controllers. Children who act as pawns are not conscious. The mafia has a very hierarchical and very vertical structure but it also has a very permeable structure, in such a way that the minor is housed in a protection centre and associates within the Nigerian community or the Cameroonian community will provide information without being conscious of the importance of what they are telling.”

Key informant

Such centres do not appear to offer the best protection solution either for the treatment or support required by child victims of human trafficking.

If there is unanimous agreement in that child victims of human trafficking must be referred to specialized services, there are other opinions when it comes to understanding how such resources should be. Thus, there are those who believe that there should be specific centres exclusively for child victims of human trafficking, allowing them to conserve a focus on childhood and attend to the particular needs of this group.

“The focus of protection on childhood and the specific needs in terms of access to rights, training, health and education of minors, compared to those of legal age- I don't know if it would be feasible that minors in other circumstances (who are victims of trafficking) were to reside in centres mixed with adults. I don't know why in the case of victims of trafficking we allow them to be together. I don't see the benefit, beyond the fact that it is a temporary response to the lack of specific resources for child victims of trafficking.”

Key informant

64 Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados, capítulo III apartado tercero.

65 Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos, apartado XIV.A.

Others believe that the centres of NGOs are sufficient for victims of trafficking, regardless of age. Otherwise, the continuity that can be offered to minors would be lost when they are transferred from the centre upon turning 18. On the other hand, some opine that the coexistence in the same centre of other young victims of trafficking, for example aged 19 or 20, could help minors in their rehabilitation.

“I believe that it is better to have children's units in centres specialized in victims of trafficking rather than specialized resources only for minors. It seems more fruitful to me and the other option may even have an impoverishing effect. It seems to me that when we call for specific children's centres, we're making a mistake when we say that the child must be operated from the adult. I would advocate specialized centres of minors and young people and programmes that contain specific elements but that we approach it more along these lines, which allows for continuity. Moreover, our perspective on childhood may be different from that of the girl who is a victim of trafficking. In this sense, they will feel better supported. Use the community element as a rehabilitative element.

Key informant

At present, despite the fact that there are a large number of organizations who provide shelter to victims of trafficking (Adoratrices, Fundación Amaranta, APRAMP, Fundación Cruz Blanca, Oblatas, Hijas de la Caridad, Nueva Vida, Fundación Apip Acam, Villa Teresita, ACCEM, among others), only the Fundación Amaranta and APRAMP offer places in their centres for victims who are minors. Moreover, the places subsidised by public bodies for assistance to women (at state or autonomous level) cannot be occupied by children, in accordance with the criteria required and the origin of the funds that finance them.

“When a minor arrives, it's a problem. We can't take them in one of the places paid by the Directorate for Women.”

Key informant

Nevertheless, in the Madrid Strategy against Human Trafficking for the purposes of human trafficking 2016-2021⁶⁶ contains a measure that foresees the creation of a protection centres for victims of trafficking which will be the first such specific resource for them:

In any case, whether through specialized centres for minors or through specialized places for victims of trafficking, it is important to understand the challenges of these kinds of

66 Dirección General de la Mujer, Comunidad de Madrid (2016): “Estrategia Madrileña...op. cit.

victims. As key informants have stated, if the recovery process of a victim of trafficking that does not want to return to their country of origin has as its objective that that woman recover physically and emotionally and become independent (for this, finding work is essential), with young victims a new model is proposed that would, among other things, contribute to continuing her studies.

3.2. THE CHILDREN OF VICTIMS

Only a number of months ago, the story of Selene emerged, a young Romanian woman of 22 who had been captured in her village using the "lover boy" method where young men charm their victims and take them to another country to exploit them. Once in Spain, she was forced to work as a prostitute in a roadside club in the Alto Ampurdán area north of Girona, where she managed to escape thanks to an alert to the Police which said the following:

I'm Romanian and I live in Figueras, I have an 8-month old daughter and my boyfriend forces me to work as a prostitute. He doesn't let me spend time with my daughter he hits me, he is violent physically and psychologically. I can't take it anymore. I have nowhere to go because he won't let me leave the house. Please, from the bottom of my heart, help me.

Text of the mail Selene sent to the Policía Nacional requesting help.

Selene's daughter had been conceived in the environment of a couple that she thought she and her trafficker would form. Selene and her baby managed to escape this situation and she was identified by the UCRIF, the central unit in Spain dedicated to investigating immigration and counterfeit documents, as a victim of trafficking. In the year 2011 the Immigration Law was reformed, extending to the children of victims the protection given to women who are the victims of human trafficking and decide to report their exploiter. Thus, both can be referred to a resource where they will receive assistance and protection, specifically the Fundación Apip-Acam.

However, not all sons and daughters who are born or are raised in the trafficking environment have the same luck. In the first place, because their identification and protection as the victims of trafficking which they are can only occur when their mother is formally identified so. We have explained this process, which begins with the authorities detecting clear signs of trafficking. If, once detected, the woman is not identified as a victim, the protection process is interrupted and adds to the number of women working as prostitutes.

Little or nothing is known of the situation of these children, who in the best of outcomes will stay with family members or friends of the mother and in the worst of cases, with traffickers from the gang. Others, as we shall see, end in the child protection system. Many of these are undocumented and live a parallel life to other children, they go to school, go to the doctor and play in the part with the situation of extreme vulnerability which they are in being detected.

WHO ARE THEY? WHERE DO THEY COME FROM?

In the majority of cases, they are children of foreign nationality or origin in itinerant situations along with their mothers, victims of trafficking for sexual exploitation.

Many have arrived in Spain on board on open boats or launches which reach the coasts of Motril, Almería or Tarifa or through the Autonomous Cities of Ceuta and Melilla. It was in 2008 when there began to be detected arrivals on the Spanish coast of undocumented Sub-Saharan women showing signs of being victim of human trafficking, pregnant and/or with very small children with them. If at the beginning there were doubts regarding the women's parentage of the children, when DNA tests began to be carried out, the cases where there was no parentage dropped. At present, the majority are biological mothers of the children at their charge.

The majority of these mothers are from Nigeria and other countries in the region (Cameroon, Ghana, etc.). There with the intention of emigrating, they make a voodoo contract (in most cases) and acquire a debt that ranges from 20,000 to 60,000 euros, a sum which they ignore until they reach this country. Here they also discover that they are obliged to work as prostitutes, whether in Spanish cities or in the greenhouses of Andalusia or in other countries to which they are sent such as Germany, France, Denmark or Iceland. Until they pay of the debt in full they are not "clean" and shall not be free. These women have already been exploited during the journey. Their pregnancies and births are not decided by them but by the gang, who sees these children as a way of preventing the deportation of the mothers and an efficient way of coercing the women.

“Once we have documented that the strategy of the Nigerian gangs is to enter with women who are heavily pregnant or who have children, we must follow the tracks of their movement through Europe, because many of these women are late found in France, Germany or Denmark, where the authorities know nothing of their children.”

Key informant

The bodies that provide services to victims of trafficking have also identified cases of children of victims from Eastern Europe, such as in the case of Salene. In these cases, the children have not been used as a means to enter Spain, but were born in this country, which also serves as a means to coerce the mothers.

The first official data which corroborate the existence of these babies or young children accompanied by adults who claim to be their parents were published in the **Public Prosecution's report of 2015**, which specified clearly that situation of risk and extreme vulnerability faced by the **145 children** detected.

“For these minors, many kinds of risks remain which can be hidden in different ways: on occasion, children are controlled by the gang as a means of pressuring the mother they are exploiting. In other cases, they are placed in the care and supervision of a member of the organization, increasing the victim's debt with the organization in the form of maintenance for the minor; the gang threaten the mother with placing the child up for adoption if the income generated from her sexual exploitation falls; sometimes they are abused (tied up, assaulted or even killed in some cases), while their mothers work as prostitutes elsewhere.

Report of the Spanish General Prosecutor, 2015.

WHAT HAPPENS TO THESE CHILDREN? THEY LIVE A PARALLEL EXISTENCE AND OTHERS DISAPPEAR

These children can be detected by professionals of the organization that intervene with migrant populations and those responsible for social action programmes for women (specifically those involved in prostitution), and by the police forced through an operation.

Young children of sub-Saharan origin who arrived with their mothers to Andalusian coasts are transferred to the **Humanitarian Assistance for Immigrants Programmes (PAHI)**, designed for immigrants in vulnerable situations. At all times, they are controlled by the gangs, within barely a week the mothers receive a passport and instructions as to when they should leave the centre.

“Once they stop breastfeeding the baby, it is soon time to leave and hand the baby over to the gang. On occasion, the women have offered the child to the volunteers at the centre to look after until they return.”

Key informant

Red Cross is the organization responsible for managing the reception centres where these situations began to be detected: mothers with small children and who showed signs of trafficking abandoned their centre only days later and they were lost. According to the reports from the managers of these programmes, of the 97 per cent of minors who arrived at this organization's reception centres in 2014, specifically 126, accompanied by women who showed signs of being victims of trafficking (149 women, 47 of them pregnant) are classified as whereabouts unknown and none of them has been identified as a victim of human trafficking. All were offered the recovery and resettlement period provided for in the Immigration Law

when signs of trafficking were detected but the majority of them rejected it.⁶⁷ During 2015, Red Cross documented a total of 654 cases which showed signs of human trafficking: “of these, **141 corresponded to children, of whom 133 are classified as whereabouts and situation unknown.**”⁶⁸

The Defensor del Pueblo (Spanish Ombudsman) has also alerted to this situation in its 2012 report on “Human Trafficking in Spain: Invisible Victims”, and its revised version in 2013. Subsequent to the publication of both reports, the Ombudsman has signalled that since the year 2013, “between 130 and 180 women and children in this situation have disappeared.” Similarly, the Ombudsman of Andalusia has echoed the circumstances of these children in Andalusia.⁶⁹

In the social action programmes dedicated to women, they have also located some of these minors who in no small number of cases lack identification and are therefore undocumented.

“The girl lived with a Romanian woman as if she were her mother. Now the woman has gone and the supposed father says that that woman is the mother, but there are no documents to prove it.”

Key informant

On other occasions, small children have been detected by the Police in apartments where they are retained by senior gang figures while the mother is forced to work as a prostitute herself in Spain or another country.⁷⁰ If the gang receives a security threat before this occurs, they dismantle the operation at the apartment where the children are, who are then handed over to the protection system.

“Suddenly, a Nigerian woman or a Cameroonian woman appears at the local police station in Alcorcón saying that they have her child, that it is the child of a friend who has disappeared, then you hand over the child and the child enters the protection system.

Key informant

67 Red Española Contra la Trata de Personas (2015): “Informe de la Red Española contra la Trata de Personas para la Coordinadora europea...op. cit.

68 Vida Nueva (2016): A fondo. Niños robados e invisibles, In No. 2.978 of Vida Nueva. (Available online at: <http://www.vidanueva.es/2016/02/26/ninos-robados-e-invisibles-tambien-en-espana-desaparecidos-113-menores-migrantes-o-refugiados/>).

69 Defensor del Menor de Andalucía (2014): “El fenómeno de trata de menores: la esclavitud de nuestro tiempo”. (Available online at: <http://www.defensordelmenordeandalucia.es/node/8960>).

70 Dirección General de la Policía (29 March 2011): “La Policía Nacional libera a un bebé de dos años retenido por una red de proxenetas para coaccionar a su madre a ejercer la prostitución”, press release.

The problem is that for the protection system it is an abandoned child, not the child of a person in a situation of human trafficking. Therefore, the need does not arise to look for the mother and the procedure begins to look for a family for adoption, and then this child lost from the protection services.

For example, Fundación Amaranta, which has three apartments for protection of women who are victims of human trafficking with minors, has recently stated that they are "aware of 60 minor stolen throughout 2015 in this country. From their own centres, three babies and two mothers disappeared."⁷¹

Faced with this reality, the Spanish Network against Human Trafficking proposes the need to transfer this to the authorities who can intervene directly: The General State Prosecutor, State Security Forces and Agencies and y local and autonomous level administration.⁷²

IDENTIFICATION

To be able to locate, follow their tracks and protect these children, the first thing that must be done is to document them. From approximately March 2013, the police write up a police report for each minor that had surreptitiously crossed the border, accompanied or otherwise. This **police report** consisted of fingerprints (only for administrative, not judicial purposes), and the photographing of the child and the place of origin.

As a baby's fingerprints change as they grow, their footprints are taken instead, and the fingerprint for other minors. Thus, the system can identify using the common features. Five or six common features results in a margin of identification of one in 7 billion people, making fingerprints a valid tool for identification of the child.

In addition, if it is detected that this minor is in a situation of risk a **test will be carried out to determine the parentage relationship between the child and accompanying adult**. This test is established in the Framework Protocol for Unaccompanied Foreign National Minors (MENAS) in the specific section dedicated to the prevention of human trafficking and against the use of these minors.

In the **airports** of Madrid, Barcelona or Bilbao, potential victims of trafficking are usually detected by police authorities. The signs of this include the route they have taken and their profile- for example, young women coming from Nigeria, etc. - and where there is suspicion, the person does not proceed to admissions but is referred to the UCRIF who take over. The **absence of any mechanisms aimed at identifying minors in situations of risk** is particularly worrying, as they remain detained in the airport with their families or guardians who are deported, normally within a term of 72 hours (the

71 Vida Nueva (2016): "A fondo. Niños robados e invisibles...op. cit.

72 Red Española contra la Trata de Personas (2015): "Informe de la Red Española contra la Trata...op cit.

maximum period stipulated by law).⁷³ In these transit areas, neither the police report nor DNA tests are conducted.

Once the police carry out the review, the child received a **Foreign National Identification Number (NIE)** and they are registered on the foreign national database **ADEXTRA**⁷⁴ and/or the **Registry of Unaccompanied Foreign National Minors**. Both databases are linked so that by accessing the registry entry of the father/mother or guardian of the minor, information can be obtained on said minor. This is particularly interesting in the case of young children in trafficking contexts, as ADEXTRA collects information on the location of the minor and their mother in such a way that if the mother and their daughter leave the reception centre, it remains registered provided the organization informs the relevant police authorities.

“This allows for parentage to be established, because this parentage is linked to a name and a NIE number which is linked to fingerprint identifying the mother and therefore parentage is perfectly identified.”

Key informant

Moreover, there is a best practice for centres and reception organizations thanks to the fact that the parents or guardians receive a Decree of Parentage from the State Prosecutor, which officially certifies the parentage established as a result of DNA tests and which, in and of itself, can only be used as a certificate.

DOCUMENTATION

However, the practise of conducting the police report and DNA test does not resolve the problem of the lack of documentation for these children. This is why entry on the civil registration is required, both for those born in Spain although their mother is undocumented, and those undocumented foreign children for whom we do not know if they are registered in the country where they were born.

In the case of **foreign children born in hospitals** in Spain, there is a clear obligation that Article 12 of the Civil Registry Law must be applied, which establishes the obligation of the

73 The International Detention Coalition (2015): “*NGO monitoring of immigration detention: Tips, examples and positive practices*”, Brussels. (Available online at: <http://idcoalition.org/publication/ngo-monitoring-immigration-detention/>).

74 Fichero 3. ADEXTRA (see also GRUME, menores edad interés policial) Orden INT/1202/2011, de 4 de mayo, por la que se regulan los ficheros de datos de carácter personal del Ministerio del Interior. «BOE» núm. 114, de 13 de mayo de 2011. Available on line: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2011-8382; Orden INT/2287/2014, de 25 de noviembre, por la que se modifica la Orden INT/1202/2011, de 4 de mayo, por la que se regulan los ficheros de datos de carácter personal del Ministerio del Interior. «BOE» núm. 294, de 5 de diciembre de 2014, pp 100297 a 100322. Available on line: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-12684.

health centres to register babies in the Register⁷⁵, regardless of whether they have the mother's documentation. Outside the hospital the baby may also be entered onto the competent Civil Registry of the habitual residence of the mother using the data recorded in the file for the humanitarian reception file. Moreover, when a person is undocumented, Law 20/2011m of 21 July of the Civil Registry⁷⁶ foresees two witnesses that declare on the identity of the person for the purposes of identification.

In the case of those undocumented foreign national children and where do not know if they are registered in the country where they are born, we can apply the Civil Registry Law,⁷⁷ as in addition to establishing that "the facts in relation to identification, civil status and other personal circumstances cannot be registered," circumstances which affect foreign nationals who are to be found in Spanish territory, it adds something important: *"Nevertheless, those facts that have taken place outside of Spain shall be entered, where relevant entries are required by Spanish law."*

We can also contrast this with to the right to identification of the child (Article 8 of the Convention on the Rights of the Child), the right to a name and to be entered (Article 11 of the Civil Registry) and the duty to protect on the part of public powers (Article 12 of the Organic Law on the Protection on the Legal Protection of Minors).

"It is an article that must be used in a positive way, I imagine then that the judges of the Registry will say no because the requirements aren't met but I think that the Prosecutors must insist that children are entered *ad cautelam*. It's a basic protection mechanism."

Key informant

In light of all the above, it would appear that we have enough weapons for the identification of these children.

However, once identified and documented, their recognition as victims of trafficking remains pending, regardless of the situation of their parents. The organizations have stressed these points and the obligations if the Spanish in relation to victims of trafficking require this also.

75 On 14 July 2015, the Official State Gazette (BOE) published Law 19/12015, of 13 July, on administrative reform measures in the ambit of the Administration of Justice and the Civil Registry, with Article Two-Three considering the possibility that citizens communicate the birth of their children electronically from health centres. The Website of the Ministry of Justice clearly explains the obligation of centres to enter on the Civil Registry, <http://www.mjusticia.gob.es/cs/Satellite/Portal/es/servicios-ciudadano/tramites-gestiones-personales/inscripcion-nacimiento>.

76 Spain (2011): Law 20/2011, of 21 July, on the Civil Registry, Official State Gazette (BOE) No. 175, of 22 July 2011.

77 Law 20/2011, of 21 July, on the Civil Registry.

A recent sentence of the Spanish Supreme Court is worth highlighting,⁷⁸ in which traffickers were tried not only for trafficking but for the damage inflicted on the children of the victims, retained in order to exercise pressure on the mothers. The sentence traced the journey of these two mothers and their children and is a clear example of the modus operandi of these gangs, and what we have analysed throughout this section.

"The baby (...) remained, until August of the year 2013, at the residence of the accused, who failed to provide the most basic standards of care, using coercive means constituting an attack on his dignity such as tying him to the bed, locking him in the room, leaving him home alone, administering him tablets to sedate him, not feeding him appropriately nor taking responsibility for the appropriate development and evolution of a child his age. He was rescued on 30-07-2013 by the Brigada Central de Extranjería, who found him in a room on said dwelling, extremely thin, lying on a bed and wearing a nappy, displaying an attitude of apathy and indifference to his environment, tied to one of the bars of the bed with a children's coat which the accused had used to immobilize him, tied in a knot to his arm.

Supreme Court Judgement No. 420/2016 (Second Chamber for Criminal Cases) of 18 May 2016

The official recognition of these children as victims of trafficking represents a confirmation of their history and suffering at the hands of the exploiters as another victim. It would not depend on the process of the mother, which may be interrupted, as we have seen, for many reasons. Moreover, they would also appear in the registries and in the statistics, for all purposes, serving to make them more visible and steer the necessary action.

PROTECTION

Are they protected? Let's talk about their supervision...

Children who have come to Spain irregularly and on small boats are found in a situation which could be classified as at risk, which means (as pointed out by the Ombudsman) the Department of Public Prosecutions must be informed of this situation and the organizations for the protection in the territory in which they have arrived.⁷⁹

78 Supreme Court Judgement No. 420/2016, Second Chamber for Criminal Cases, 18 May 2016 (STS nº 420/2016, Sala 2ª, de lo Penal, 18 de Mayo de 2016).

79 Articles 13 and 14 of the Organic Law for the legal protection of children; Section 5, Chapter IV, MENAS Protocol.

Moreover, in the specific section on human trafficking in the MENAS Protocol, the possibility of separating the minor from the accompanying adult is established, if a situation of imminent threat to them is perceived. *In all cases, the Department of Public Prosecutions shall take the necessary action before the competent Duty Court or Court of First Instance to ensure that while the situation of risk is being assessed, that the minor does not abandon the centre in the company of the adult without judicial authorization.*"

Furthermore, the protocol adds another protection measure: *"If there is knowledge that the minor and the adult are to imminently abandon the centre and there is no time for the Department of Public Prosecution to engage the necessary legal actions, where, through the declarations of the adult or any other sign suggests a situation of imminent risk to the person of the minor, the responding State Security Forces and Agencies shall proceed to separate the minor from the adult, immediately informing the public child protection body so that they assume responsibility for the minor to their immediate care and that the Prosecutor is informed for the appropriate legal actions."*

However, despite the efforts of organizations that work on the front line of initial reception of these minors (principally in Andalusia), and having informed the public Prosecutor and the protection agency of the Autonomous Community, they have been able to do little to prevent their disappearance.

Some professionals in the area of protection are in favour of insisting upon the declaration of risk to this minor and of limiting the freedom of movement of their mothers, provided this restriction a fundamental right is worth it. These cautionary measures can be foreseen in Article 158 of the Civil Code⁸⁰ for the protection of minors. Others are not in favour of this restriction of rights, arguing that it creates a polarizing effect between the rights of the minor and the rights of the woman.

"What institutional actions cannot do is deny other rights. It would be interesting if there were family units provided with protection for mothers with babies."

Key informant

What is undeniable is that these children face a threat that must be identified and confronted.

Therefore, in relation to children who are living in our country under the guardianship and in the custody of their mothers, their supervision and protection corresponds to the **Municipal Social Services**.

However, the experience of organizations shows that this supervision is not sufficient nor does it respond to the specific needs of these young children or their mothers. As happens in the case of children recently arrived in our country, the **declaration of risk**⁸¹-prior to distress-

80 Article 158 of the Civil Code on cautionary measures: *"The Judge, of his own volition or at the request of the child, any relation or the DPP, shall dictate: (...) 6. In general, other disposition considered appropriate for the purposes of separating the minor from danger or preventing danger in the family environment or from third parties."*

81 Based on the reform of the child protection system, the declaration of risk must be made through an administrative resolution of the Autonomous Community and include measures to correct this situation, including those concerning the duties of parents or guardians. Organic Law 1/1996, of 15 January, on the legal protection of minors, on the partial amendment of the Civil Code and the Law of Civil Procedure, Official State Gazette (BOE) No. 15, of 17/01/1996, Title II.

is presented as an ideal solution provided it works as a measure to support the family unit formed by the mother and child, while the mother initiates the process to separate herself from the criminal gang. Here the overlap of competencies between local and autonomous levels arises as a challenge or, on the contrary the "no man's land" gaps that remain. The result is children that are found in this situation pass undetected through the services and protection system.

“I believe it is better to form alliances with the mothers and I believe that, used well, the declaration of risk can provide a good solution.”

Key informant

It is important to point out here the importance of respecting this maternal links and committing to transnational and transcultural psychological support that takes into account the different care models.

“Maternity is a very cultural thing. In every culture, the child is cared for and loved in some way. This is essential, and there are reports [from organizations and authorities] that contain many value judgements: “This woman is a bad mother because she doesn't love the child. She doesn't give him kisses.”

Key informant

On this point, organizations agree on the need to construct a system for the protection of the child who is a victim of trafficking that is not separated and warn of the need for specific resources to support these mothers with children.

“Of course the mother's situation is terrible! But as terrible as it is, it's in a process, she's getting support, she's escaping that situation; we're going to look for the instruments that can help her and we're going to see how this child can develop a better relationship with the mother.”

Key informant

The recognition of the right to a private and family life of persons involved in trafficking processes must also be underlined here.

According to the Council of Europe, there is an over-representation of vulnerable population groups in the child protection services for minors from European countries, as the general trend seems to be the declaration of distress and the separation of the family.

If guardianship is withdrawn from the mother and the children are transferred to the guardianship of the administration,⁸² temporary accommodation is arranged with a system of visits that depends on the social services of each Autonomous Community. There are social services that facilitate it and that work in such a way to ensure that this period is as short as possible and that the child receives increasing numbers of visits with the mother, with the ultimate objective that they live together. However, they don't always work with this objective and the Autonomous Community organization responsible for these minors can impose a very restrictive and rigid visits regime without having to provide and reasons to justify such a situation. On other occasions, sometimes due to ignorance of the particular reality of these children, they go from a situation of permanent shelter or pre-adoption with accommodating families with expectations of adoption.

"The baby had travelled alone and was found as part of a police operation. The mother is in Morocco with her other child and she wants to join her daughter. The girl was in the children's centre for some time but had been given to a family because she was very young. The mother has attempted to cross several times but has not been able and remains in Morocco from where he tries to maintain contact (...) Well the child no longer speaks English and - in the words of the officer - "is super integrated." But they haven't maintained her English, and the mother spoke to her daughter in English."

Key informant

In this sense, the professionals interviewed agree in stating that the administration's guardianship of these minors be temporary and that the permanent location of the child in the protection system only be used as a last resource.

Some of the reasons behind this position have been noted - such as the right to a private and family life of these minors and their mother or how the rupture of this link can lead the mother into the grasp of the gangs; nevertheless, intervention professionals also agree on the absence of indicators to evaluate the level of protection and integration reached by children who have passed through protection system. In this sense, they ask if the protection system is capable of compensation inequalities.

Moreover, the experience of these organizations seems to demonstrate that the child will look for the mother sooner or later.

82 Articles 239 and 303 of the Civil Code

"It was some time ago, and the Autonomous Community decided that the child should return to the mother. They had been separated for a year and a half, having been separated when the child was six months old, and it was very difficult because the foster family sued and we had to wait for the court judgement and we travelled with the girl so she could find her mother. You can't imagine how this girl ran through the airport to her mother she had left with 6 months. It made me think. Because you wouldn't think she'd remember."

Key informant

It seems evident everything stated up to now, that in situations such as these it is necessary to initiate a protection procedure, in which the **greater interest of each and every child** involved must be paramount and must guide all actions taken.

4. CONCLUSIONS

As we have seen, children are very much involved in the crime of human trafficking, both at the international and domestic level.

In our country, minors are above all used for the sex industry, but we must not forget other realities such as children used for begging and the children of women who are victims of trafficking.

Our main request is that the approach to services for victims of trafficking in this country also includes a focus on children. This would allow for the children present at all times, in both the detection and identification of victims and in the registration and effective protection. This focus should cover the following points:

THAT THE CHILDREN OF VICTIMS OF HUMAN TRAFFICKING ARE ALSO CONSIDERED VICTIMS

These children are an important part of the exploitation plan, not accidental companions of the women. Their conception, integrity and destiny are decided by the traffickers, to whom they belong from the first moment.

They must, therefore, be fully recognised as victims of human trafficking for all intents and purposes, registered as such and receive the protection and services provided for victims of this crime.

In this section, we also wish to reiterate that it must be obligatory for these children, if born in Spain,

to be registered on the Civil Registry, even if their mother lacks identification documents. Similarly, following the international guidelines on the right of the child to identification, we request that, if the child is detected and said identification is not registered it may be registered "ad cautelam," as established in our Civil Code.

THE NEED FOR CHILDREN OF VICTIMS OF HUMAN TRAFFICKING TO ALSO BE REGISTERED AS MINORS

The children we find in these situations are susceptible to many forms of double protection as both victims of trafficking and as minors.

As child victims of trafficking, the legal definition of the crime of trafficking of a person under eighteen years of age is different than that of trafficking an adult and provides greater guarantees as it is only required that one act (transfer, sale or reception, etc.) be committed with the intention of submitting these to exploitation and it is not necessary to demonstrate any method such as deception, coercion or abuse of power or of a situation of vulnerability. This makes it a much easier crime to prove before the courts.

Therefore, in respect of the protection of minors, this responsibility falls to the State and specifically the child protection body of the Autonomous Community in which the minor is located. When the minors are under the guardianship and custody of their parents, their supervision and protection corresponds to the Municipal Social Services.

THE CREATION IN SPAIN OF A MECHANISM FOR THE REGISTRATION, COORDINATION AND REFERRAL OF VICTIMS OF TRAFFICKING

This is a position recommended by the OSCE (Organization for Security and Co-operation in Europe) and one which is in place in several other countries (Poland, United Kingdom, Albania). This Mechanism would be responsible for the registration of the cases, standardizing the collation of information, and the body responsible for providing notification of data which will form part of international reports and statistics.

Moreover, it would be responsible for coordinating all actions relating to victims of trafficking, including the children of victims, and would facilitate the transfer between Autonomous Communities of minors, something which remains a very complex issue today, as we have seen.

SPECIFIC RESOURCES FOR MINORS WHO ARE VICTIMS OF TRAFFICKING

As established by the Framework Protocol for the Protection of Victims of Human Trafficking, and in accordance with all international recommendations, children should be referred to specialized resources.

Special attention must be paid to the case of minors whose mothers are victims of trafficking, so that the services and protection measures for the children do not contravene their right to family or to relate with their mother. If we put the focus on the greater interest of the minor, on a case-by-case basis and guaranteeing the child's right to be heard, we can find the

most appropriate solution in each case.

SPECIFIC TRAINING FOR PROFESSIONALS WHO WILL HAVE CONTACT WITH MINORS WHO ARE VICTIMS OF TRAFFICKING

As we have seen, the identification of a child victim is very complex, both due to the special nature of the crime and the efforts taken to conceal it. Similarly, it had been argued that our protection system is not responding appropriately for these children, who present added difficulties.

It is fundamental, therefore to have trained professionals throughout the process, capable of detecting these incidents and providing the appropriate due protection for these children.

The principal of the greater interest of the child should always serve as a guide for all those involved who take decisions affecting the life of these children. The Committee on the Rights of the Child, the premier interpretation body of the Convention on the Rights of the Child has recently pronounced upon how to evaluate and determine this interest.

Following the recommendations, decisions that so deeply affect a child in a trafficking environment must follow a procedure that legally guarantees the appropriate application of the right. Specifically, decisions must consider issues such as ensuring their welfare and development in a safe environment, their situation of vulnerability, the preservation of the family environment and the maintenance of relations, the right of the child to health and an education and the fostering of their participation in society.

