

SPAIN¹

The phenomenon

Spain is a destination and transit country for men, women, and children subjected to trafficking in persons, specifically forced labour and forced prostitution.² Victims originate from Eastern Europe, Latin America, East Asia and sub-Saharan Africa. The more frequent countries of origin of victims identified are: Romania, Brazil, Paraguay, and Russia. The countries of origin of presumed victims of trafficking for sexual exploitation are Romania, Brazil, Colombia and Spain.³ The majority of victims identified in 2009, were women of 23-32 years old trafficked for the purpose of sexual exploitation. There have been also child victims identified.⁴ There are reports of men and women being subjected to forced labour in the domestic service, agriculture, construction, and tourism sectors. Spanish nationals are reported to have been subjected to forced labour and forced prostitution within the country.⁵ Unaccompanied minors crossing into Spain may be vulnerable to forced prostitution and forced begging.⁶

Recruiting and capture involve different practices such as false promises for employment (usually for catering, restaurants or domestic sectors) or through travel agencies, matchmaking services or modelling promises are used or by women who have already been victims for the network and receive commissions from the organisation. The captured women is normally provided with travel tickets and the documentation needed to enter Spain for which victims contract a debt which subsequently is used as the pretext for exploitation. Upon arrival, this debt is then arbitrarily increased and becomes enormously difficult to pay back.⁷

Once in Spain, victims suffer different degrees of control which, in the most serious cases, can include being kept locked, surveillance by closed-circuit television, not being allowed any contact alone with people outside of this environment, threats and even aggression and beatings.⁸

Networks targeting Sub-Saharan African women (especially Nigerians) usually take advantage of their superstitions using voodoo or black magic, linking the debt with tragic events that may happen to the victim or her family members if she were not to satisfy the debt.⁹

Regarding routes to reach Spain, women from Central and South America frequently travel through third countries (within the Schengen zone); hence avoiding direct flights to Spanish airports. Eastern European women are taken to Spain from Russia,

Lithuania, Ukraine and especially Romania by bus or van crossing all of Europe.¹⁰

National anti-trafficking legislation and institutions

The main anti-trafficking legal instruments in Spain are: Organic Law 10/1995, November 23, Criminal Code, modified by Organic Law 5/2010, June 22; Organic Law 4/2000, January 11, on rights and freedoms of foreigners in Spain and their social integration, modified by Organic Law 8/2000, 11/2003, 14/2003 and 2/2009; Regulation of the Organic Law 4/2000, adopted by Royal Decree 2393/2004, of 30th of December; Transitory Application for victims of trafficking in human beings of Art. 59 bis of the Organic Law 4/2000, Instruction 1/2010 of the Secretary of State of Security; Organic Law 19/1994 of 23 December on the protection of witnesses and Experts in criminal cases; The Comprehensive Plan to combat trafficking in human beings for the purpose of sexual exploitation was approved by the Government in December 2009. An Inter-ministerial commission was created to evaluate and monitor the implementation of the Plan.¹¹ The leading Ministry, tasked with the coordination of the implementation of the Plan, is the Ministry of Equality. A Plan to combat trafficking in persons for labour exploitation is planned to be drafted. The Ministry of Interior coordinates a working group in which participate different ministries. Its work is expected to be public during 2010, but there has been no news yet.¹²

Identification, protection of rights, and referral

There have been legal modifications related to the establishment of a reflection period for presumed trafficking victims. The process for formal identification of victims of trafficking is provided in the above mentioned Instruction issued by the Ministry of Interior. This Instruction is a transitory administrative instrument until the Regulation on the Aliens Law develops the above-mentioned Art. 59 bis, and establishes procedures for the identification and referral of victims of trafficking¹³. However, the government has yet to adopt formalized, stand-alone guidelines or indicators for all front-line responders to use in identifying potential forced labour or sex trafficking victims among all vulnerable groups, such as women in the commercial sex trade or migrant workers.¹⁴

According to a government report of early 2010, 1,301 trafficking victims were identified throughout 2009, of which 95 percent were reportedly female victims of sex trafficking. While the government

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² Trafficking in Persons Report 2010, U.S. Department of State (hereinafter TIP Report 2010), p. 299.

³ Interview with Center of Intelligence for Organised Crime, Ministry of Interior, June 4, 2010; Nota de Archivo.

⁴ Ibid.

⁵ TIP Report 2010, p. 299.

⁶ TIP Report 2010, p. 299.

⁷ See Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, December 2009.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 12.

¹² Comparecencia de la Secretaria General de Políticas de Igualdad ante la Comisión de Igualdad, Congreso de los Diputados Núm. 552 de 19/05/2010, D^a Isabel Martínez, (<http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=puw9&FMT=PUWTXDTS.fmt&D OCS=1-1&QUERY=%28CDC201005190552.CODI.%29#>)

¹³ Interview with Center of Intelligence for Organised Crime, Ministry of Interior, June 4, 2010; Nota de Archivo: III Reunión del Foro Social contra la trata de seres humanos con fines de explotación sexual, May 2010.

¹⁴ Tip Report 2010, p. 300.

publicly stated that all of these identified victims were assisted, it did not officially collect or track the actual number of victims who were referred to NGOs for care in 2009.¹⁵ The government did not demonstrate adequate or thorough steps to screen the potential victims found to be sexually or labour exploited or refer them to NGOs.¹⁶

Identification of foreign persons, presumed victims of trafficking, in an irregular (migratory) situation is done by the Brigade for Aliens of the National Police, which can receive referrals from other police forces, governmental or non-governmental agencies and institutions (NGOs included).

When the Brigade for Aliens has reasons to believe that the foreign person is a victim of trafficking, the Brigade will submit all the documentation on the case to the Vice-Delegate of the Government requesting a reflection period.

The Law on Aliens establishes a minimum of 30 days as a reflection period for foreign presumed victims of trafficking.¹⁷ The current transitory procedures are still in the first steps of implementation. In other occasions, there have been requests by NGOs, UNHCR and Ombudsman Office, in order to stop the forced return of victims identified as presumed victims of trafficking, but there was no positive answer and the case was forcibly returned.¹⁸

Once a case has been identified and reflection period has been requested, the victim shall also be referred to specialized NGOs for assistance, if she/he desires so.

There were some reported instances in 2009 whereby police arrested victims alongside their traffickers and transported victims to the same detention facilities, where traffickers subsequently threatened them not to cooperate with authorities.¹⁹

Assistance services to victims of trafficking are normally provided by NGOs. Assistance includes shelters, legal advice, health care (in the public health system), education, vocational training (language training, domestic service, hair dresser, etc.), food and clothing, (in some cases) psychological follow-up, etc. The length of time for such assistance depends on the needs and the process of integration or return of the victim. Funding is mostly provided by central and local authorities, notably the Ministry of Equality and Labour and Social Affairs, and also by local authorities such as municipality and autonomous communities. However, NGOs indicate that the resources allocated are limited, as not all NGOs that work with victims of trafficking have sufficient funding.²⁰ In March 2009, the government allotted \$2.78 million dollars for NGOs to improve the quality

of care, services and security provided to trafficking victims. Regional governments continued to fund a network of NGOs throughout Spain offering protection and assistance to victims. One regional government provided \$520,000 in 2009 for protection programs.²¹

NGOs normally provide services for victims of trafficking for sexual exploitation. There is only one NGO, Proyecto Esperanza, which provides specialized assistance for women victims of trafficking for all forms of exploitation. There are no specialized services for men victims of trafficking, nor there are for children victims of trafficking. Specialized services for trafficked victims for purposes of labour exploitation have been recommended by NGOs and trade unions constantly.

A work and residence permit shall be granted to trafficked victims who collaborate with law enforcement. Normally such permits are granted for a period of one year, are renewable and duration will vary on the cooperation of the victim during the judicial cooperation, the criminal actions, the personal situation of the victim and the capacity to integrate.²² In practice, it will depend on how useful the cooperation of the victim with the authorities is.

The Ministry of Labour and Immigration funds programs for voluntary return of foreign nationals, including also victims of trafficking, for whom there are special considerations as vulnerable cases. The International Organization for Migration and other NGOs implement such programs. No formal identification is required for the victims to be assisted. The government reported 15 victims received some assistance before they were voluntarily repatriated.²³

Access to justice

There have been cases of good practices whereby victims have been informed on their rights and legal obligations, but these cases have taken place mostly when victims are assisted by NGO lawyers, specialized or sensitized on trafficking issues. In most of the cases, victims do not receive adequate information even if they decide to collaborate with law enforcement agencies.²⁴

The need for improvement of the procedural aspects has been also recognized by the Plan of Action which mentions specifically the need to improve legal counselling and information, through specialized services.

Of particular concern is the lack of procedures and guarantees during the judicial process, in in-court proceedings for adult and minors victims of trafficking. Although victims do have access to free legal aid, such aid is not specialized or trained for cases of trafficking. As a result, protection measures do not always take place or are available, including the request for compensation. Some of the shortcomings may also be due to lack of resources.²⁵

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Law on Aliens, Art. 59.

¹⁸ A presumed Nigerian victim of trafficking identified by NGOs, UNHCR and the Ombudsman Office, was deported although there were strong indicators and a reflection period was formally requested. According to state officials, the women did not "state that she was obliged to prostitute (...) not she said somebody was forcing her to prostitute". Comparecencia de la Secretaria General de Políticas de Igualdad ante la Comisión de Igualdad, Congreso de los Diputados Núm. 552 de 19/05/2010, D^a Isabel Martínez.

¹⁹ Tip Report 2010, p. 300.

²⁰ Interview with Proyecto Esperanza. June 7, 2010.

²¹ Tip Report 2010, p. 300.

²² Law on Aliens, Organic Law 4/2000, Art. 59 bis.

²³ TIP Report 2010, p. 301.

²⁴ Interviews with NGOs, June 4-8, 2010.

²⁵ Memorias 2009, Vol. I. Cap. III. Actividad del Ministerio Fiscal. G) Fiscales de Sala Coordinadores y Delegados para Materias Específicas y Secciones o Delegaciones Territoriales Especializadas. 4. Fiscal de Sala Coordinador de Extranjería, p. 828. (<http://www.fiscal.es/cs/Satellite?buscador=0&c=Page&c>)

The recently created fund for victims of trafficking guarantees “the subsistence of victims during the reflection period or their possible return to their country of origin if they request so.”²⁶

Prevention

In the last years, the Government of Spain as well as non-governmental organizations has implemented important awareness raising campaigns at national and local level. The focus of actions and initiatives remains that of trafficking for sexual exploitation, as that is the focus of the Plan of Action in Spain.

Among the campaigns, let’s mention: photographic exhibitions, distribution of beverage coasters to bars, cafes, restaurants and nightclubs to inform potential male clients that organized criminals sexually exploit the majority of women in prostitution in Spain; campaign to pressure newspapers not to publish classified ads that publicize sexually explicit services by women in prostitution, many of whom are assumed to be trafficking victims, exhibition on human trafficking for sexual exploitation ; co-sponsoring of a series of documentary films on trafficking; campaign to warn Spanish travellers against committing child sex tourism offences abroad; etc. At local level, in cities such as Madrid, Barcelona and Seville efforts were undertaken to reduce demand through plans of action against forced prostitution and public awareness campaigns.

Other training programs have been developed, such as that of awareness training for Spanish military before they are deployed abroad for international peacekeeping missions.²⁷ Another initiative is that of the Ministry of Education and Ministry of Equality, which proposed to the Autonomous Communities information and awareness raising program on trafficking for centres of education.²⁸ Trafficking has also been included in the training courses for consular officials in order to prevent trafficking from countries of origin.

The Ministry of Labour and Immigration has conducted a diagnosis and study on the situation of Temporary Centres of Stay for Immigrants in Ceuta and Melilla and is working on a training program for the identification of victims in these centres as well as protocols for identification and referral of victims.

Other training was delivered in the courses of Centres of Law Studies, by the Ministry of Justice, and others to Forensic Doctors and Lawyers of State, International Workshop between Spain and Portugal, etc.

On the other hand, three important studies have been conducted (pending to be published) in the Framework of the Plan of Action against trafficking in human beings for sexual exploitation: study on trafficking in women in Spain, coordinated by

Universidad de la Laguna (not published),²⁹ study on the consequences of trafficking and map of resources (not published),³⁰ and study on the judicial treatment of victims of trafficking, Ministry of Justice (not published).³¹ The only and first study on Trafficking in persons for labour exploitation was conducted by Accem NGO, funded by the Ministry of Labour and Immigration in 2008, published in 2009.³²

Monitoring and evaluation system

Evaluation on anti-trafficking policies, legislation and practical aspects has been mainly conducted by different parliamentary groups. As from December 2009, the approved National Plan of Action established the creation of an inter-ministerial body, tasked with monitoring and evaluation of the actions forming part of the Plan, drafting of proposals, communication for combating trafficking in human beings for the purpose of sexual exploitation, tabling of proposals and conclusions to the Monitoring Committee of the governmental Human Rights Plan and approval of an Annual Report for submission to the Executive Committee for Equality and to the Ministerial Cabinet.

The authorities tasked with the implementation and coordination, are also tasked to do the evaluation. Thus, the evaluation of the implementation of the Plan is not independent. It should also be noted that such monitoring of the effectiveness and impact of anti-trafficking measures in Spain has been initiated only regarding sex trafficking.

There have been no published criteria to evaluate the impact of the policies and programs implemented until now. According to the Spanish Network of NGOs against Trafficking in Persons, there are a serious number of concerns that the first annual report did not address or that were not properly addressed, in particular issues related to the identification and protection of victims of trafficking.³³

Recommendations

1. Public policies should include all forms of trafficking and a national action plan to combat all forms of trafficking should be drafted;
2. Strengthen procedures and mechanisms for the identification and referral of trafficked persons and set up national structures for this purpose independently from the victim's cooperation with the authorities;
3. Creation of a coordination structure, as well as an independent monitoring body with sufficient political weight and sufficient resources;
4. Strengthen access to protection mechanisms, including asylum when appropriate; set-up procedures for safe return of victims and presumed victims, including individual risk assessment and coordination with countries of origin.

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²⁶ Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 26.

²⁷ Ibid.

²⁸ See Report on the state of play of the Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 6.

²⁹ See Report on the state of play of the Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 4.

³⁰ Ibid.

³¹ Ibid.

³² G. Susaj, G., Nikopolou, K., Giménez-Salinas Framis *La Trata de Personas con Fines de Explotación Laboral*, Accem, Madrid, 2009, (<http://www.acem.es/publicaciones/trata.pdf>)

³³ Solicitud de información ampliada al: Seguimiento y Evaluación del Plan Integral contra la Trata, Red Española contra la Trata de Personas, 26 de mayo de 2010.

5. Improve legal framework, notably procedural aspects for identification, protection and redress to victims, and monitor jurisprudence on trafficking cases and enforcement of sentences.

Update as for January 2012

- The law modifying the Spanish Criminal Code was adopted on the 9th of June 2010 and a new Chapter titled “Trafficking in Human Beings” has been introduced (Article 177-bis): the reform entered into force on 23 of December 2010. The new introduced Article 177-bis defines trafficking in human beings in accordance with the definition contained in the international and European instruments on the matter.
- On 20 of April 2011 the competent authorities have adopted the Regulation of the Organic Law 4/2000 (as amended by Law 2/2009: the so-called “Immigration Law”) on rights and freedoms of foreigners in Spain and their social integration, by Royal Decree 557/2011. The so-called “Immigration Regulation” develops and details most of the dispositions contained in the Immigration Law, among others the one related to trafficking in human beings.
- On 28 of October 2011 the Public Prosecutor Office for Foreign Affairs, the Judiciary, the Ministry of Interior, the Ministry of Labour and Immigration, the Ministry of Health, Social Policy and Equality adopted the “General Protocol for the protection of trafficked persons”. NGOs have not been involved in the elaboration process since the beginning, but just at the very final stage in order to present their contribution. Nor they have been invited to sign the Protocol.
- On 20th of October 2010 the Spanish Ministry of Equality (created in 2008 by the then Prime Minister Zapatero) has been suppressed and its structure has been incorporated as a State Secretary to the new-renamed Ministry of Health, Social Policy and Equality.
- As stated in the report released in June 2011 by the State Secretary of Equality, 1.641 persons were identified as victims of trafficking for the purpose of sexual exploitation in 2010. According to the Spanish Network against Trafficking in Persons, data contained in that report does not give a comprehensive overview of the real situation existing in Spain. First of all, they are just limited to trafficking for the purpose of sexual exploitation. Besides, such data are based exclusively on police interventions and they lack of any kind of information related to the protection and assistance of (presumed) trafficked persons.
- Considering the relevance of the phenomenon and the necessity to take steps forward in the fight against trafficking in Spain and in the effective protection of its victims, the Spanish Ombudswoman has decided to elaborate a monographic report on trafficking in Spain. Its elaboration is ongoing.