

## IV CONCLUSIONS

### **Concerning general aspects:**

1. Human trafficking, in accordance with advanced interpretation of the international instruments, is the framework that covers all forms of so-called 'new' slavery. It includes labor exploitation and other forms of new slavery such as the organ trade, forced begging, forced crime, as well as various forms of trafficking for sexual exploitation.

2. Human trafficking is not only a criminal activity, but also constitutes a grave violation of human rights. The only way to maintain the focus on the victims is to guarantee that actions taken to combat human trafficking are not reduced merely to a problem of migration, public order, or the fight against organized crime.

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

4. Sexual exploitation is noted as by far the most commonly identified form of human trafficking followed by forced labor. This may be the result of statistical bias. By and large, the exploitation of women tends to be visible. Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking, in aggregate statistics. In comparison, other forms of exploitation are under-reported. Therefore, for cases of labor exploitation, committed action is required from all competent labor authorities. They must take an increased role in addressing this matter, which until now has been mainly handled by police and immigration authorities.

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

6. Globally, the majority of human trafficking crimes occurs on a national or regional level and are committed by individuals who have the same nationality as their victims. This is not the case in Europe, which is considered the destination for victims coming from very diverse points of origin.

7. It is common for authorities to incorrectly identify trafficked persons as immigrants illegally attempting to cross the border. Clearly, there is a lack of reliable victim identification procedures. While many trafficking victims consent to be illegally smuggled from one country to another when they embark on their journey, in the course of their journey, they may be tricked or forced to endure situations of exploitation and thus become victims of human trafficking.

8. Effective action against forced labor requires authorities to go beyond the criminal or punitive approach at the administrative level. This is important to guarantee financial compensation for workers under laws against forced labor and human trafficking. This is especially relevant for exploited workers who may not be entitled to compensation under criminal law.

9. Human trafficking is a very lucrative criminal activity, generating billions of Euros. The low number of convictions is due in part to the fact that trafficking cases are too often prosecuted as other crimes, instead of being prosecuted as human trafficking.

10. Judicial proceedings that charge traffickers continue to rely almost exclusively on victims' statements. However, effective financial research is an important tool for obtaining evidence and for risk assessment. This research also allows for a better understanding of the *modus operandi* of traffickers and helps to perfect methods of detection.

11. To guarantee the rights of trafficking victims, States must rely on organisms that have the expertise to develop the legal framework and comprehensive policies against trafficking.

12. There is a general consensus regarding the need to establish formal channels for the participatory role of social organizations that are specialized in detection procedures and in offering assistance to trafficking victims.

13. There are no international standards regarding the nature, duration, and purpose of the recovery and reflection period for human trafficking victims. This lack of clear standards causes significant variation in national practices and a high degree of confusion regarding the necessary requirements for offering and obtaining this measure.

14. The residence permit is an important measure to guarantee victims' protection and it increases the likelihood of a victim cooperating with the authorities for criminal prosecution.

15. In order to appropriately protect trafficking victims, it is essential that the State does not take criminal action against them for offenses related to their

trafficking situation, such as carrying false passports or working without authorization. This includes cases in which the victim consented to possessing these documents or working under these conditions.

16. Identifying and sharing best practices among national authorities is a very effective and practical tool to progressively improve detection and victim assistance standards.

17. The right to an effective remedy is a fundamental human right of all individuals, including victims of trafficking, who must be respected, protected and satisfied by the State in accordance with international human rights standards. The United Nations Special Rapporteur on trafficking in persons, especially women and children, declares that the right of compensation for victims is nothing more than one element of their right to recovery, restitution, satisfaction and the guarantee of non-repetition, as well as their right to a number of related matters that allow them to truly exercise their right to an effective remedy under free and secure conditions.

18. States have the responsibility to deem refugee status to individuals who have been trafficked and fear persecution upon return to their home country or who fear being trafficked, so that they may receive the corresponding international protection. This guarantee is to be applied to individuals who meet the criteria for refugee status according to the 1951 Convention or the 1967 Protocol relating to the Status of Refugees. The UNHCR draws attention to the most common obstacles human trafficking victims face in their attempts to receive international protection. The obstacles lie in the difficulty of establishing a well-founded fear of persecution and the membership of a particular social group.

19. The identification of a minor as a trafficking victim should not reduce or restrict their right to seek international protection or to be recognized as a refugee.

20. Given the lack of reliable data, it is not possible to perform a quantitative analysis regarding the age or sex of child trafficking victims, their countries of origin or destination, or the types of exploitation they may be subjected to. Regarding identification, it is essential for States to carry out age determination and adopt proactive identification measures, such as strengthening the procedures for the registration of births as well as the registration of missing and exploited children.

21. Methods and procedures used for identifying trafficked minors should require institutions and agencies to swiftly and adequately refer them to appropriate services. UNICEF directives intended to protect minors are extended to children born to trafficking victims.

22. It is essential that trafficked minors have adequate access to the

authorities in order to report their situation. Subsequently, procedures should evaluate the minor's individual circumstances. Moreover, criminal proceedings cannot rely solely on testimony of the victim. This is particularly relevant in the case of minors, since identification should be based on additional evidence. However, this is not to say that a minor's testimony is not relevant or that the appropriate procedures should not be undertaken to obtain the effective participation of the child in all proceedings affecting him or her.

### **Concerning the situation in Spain**

23. Based on an analysis carried out by the Attorney General's office, debt bondage is an important element of trafficking in Spain. A victim enslaved under debt bondage is subjected to an oppressive situation as a means of repayment for a loan with the trafficker.

24. There has been significant progress in the new legal framework against human trafficking in Spain (Article 177 bis of the Criminal Code and Article 59 bis of the Organic Act 4/2000). However, confusion persists among the competent authorities regarding the definitions of human trafficking and migrant smuggling, especially when the individual embarks on his or her journey voluntarily and later becomes a victim of trafficking in transit or at their destination.

25. The capacity for victim identification is impeded by the lack of regulations implementing Article 59 bis of Organic Act 4/2000, which guarantees the participation of nongovernmental organizations in identification procedures. In addition, the lack of definition and guidelines regarding NGO participation in the Framework Protocol for the Protection of Victims of Trafficking further hinders the effectiveness of victim identification in Spain. Focusing on experience and impact, authorities should carry out an evaluation of the methods and operations carried out thus far. This evaluation should also incorporate effective procedures utilized in other countries, and should be carried out in coordination with organizations specialized in assisting victims.

26. According to the estimation of the United Nations Office on Drugs and Crime, in Europe only one out of 20 potential victims of human trafficking for the purpose of sexual exploitation is detected. The trend in Spain seems to follow this pattern with only slight variations. In 2010, authorities detected 15,075 persons to be at-risk, of which 1,641 were identified as victims. In 2011, of the 14,370 individuals detected to be at-risk, only 1,082 were identified as victims.

27. Organizations working with victims submitted a number of complaints regarding the manner in which authorities evaluate what constitutes

reasonable indicators of trafficking. These organizations express concern over the use of these indicators as an isolated checklist as well as the lack of understanding that identification requires time and specialized assistance.

28. It has also been determined that victims commonly go unidentified due to lack of understanding on behalf of authorities that victims' defensive, withdrawn, and erratic behavior may often be rooted in trauma or fear of reprisals.

29. The effective implementation of the recovery and reflection period will depend on the establishment of a clear action protocol, which lays out instructions for every step in which an official is in contact with the victim. There must be a clear distinction between the two phases. First, the victim should reestablish herself, feel safe and recover physically and psychologically. Only when this first phase has been completed successfully and always with the support and advice of a specialized organization, can the second phase be addressed. In this second phase, the victim should be informed that they will have the opportunity to cooperate with competent authorities.

30. Despite the progress made in the methods used to offer the recovery and reflection period, the numbers of periods requested and granted remain very low. Therefore, it is necessary to review this procedure and consider methods that take into account the unique situations of certain groups of potential victims. One example is the women who arrive at the main airports or to the Spanish coast after very dangerous journeys that put their lives and the lives of their children at risk.

31. The Ombudsman Institution investigated cases in which applicants for international protection fit the profile for a potential trafficking victim. They reveal that the existing measures for detection of victims or potential victims of trafficking are not working properly. Deficiencies have been detected in international protection procedures and in the coordination between the different agencies of the Public Administration responsible for the correct identification during these procedures. It has been noted that authorities routinely refuse international protection requests based on the grounds that the applicant is or previously has been a trafficking victim. Competent authorities allege that the Asylum Law and its subsidiary protection do not legally cover these cases, and that these cases must be redirected to the measures provided under Article 59 bis of the Foreign Nationals Act. Consequently, there is a risk that in practice applications for international protection based on these grounds are denied without an in-depth examination of the claims or a risk assessment for those individuals who are returned to their country of origin.

32. A lack of training was also detected, especially with regards to officials at border crossings as well as during international protection procedures.

During these procedures, it is necessary to closely examine the circumstances of each individual case. This individualized examination is especially important for applicants who are minors, as it would improve the possibilities of identification by processing the accompanying adult's application, who in some cases may be the child's exploiter.

33. Granting a residence authorization as laid out in Article 59 bis of the Organic Act 4/2000 and its implementing regulations adequately meet standards set by the main international instruments. In 2011, Spanish authorities granted 58 of these authorizations. However, difficulties have been detected regarding the issuance of residence permits for the personal situation of the victim. Commonly, this guarantee is only considered when a victim's testimony is considered insufficient for a criminal proceeding.

34. Coordinating mechanisms between different governmental agencies must be improved in order to prevent re-victimization. When the testimony of victim has not been deemed sufficient enough for police to continue with a criminal proceedings, the victim may be left feeling more helpless and at a greater risk than they were prior to cooperating with the authorities.

35. The fight against such a serious crime like human trafficking, as well as the international obligation to prosecute perpetrators and protect victims, must include victim detection at the border and the prosecution of offenders regardless of whether they are in Spain.

36. Significant gaps are still detected in the methods used to determine age, despite the progress made following the recommendations made in the monographic report "Children or Adults?: Age Assessment Practices." The need to adopt the safeguards proposed in this report are particularly relevant to cases in which the minor is a potential trafficking victim. Recommendations include further guidance from the District Attorney's Office. Specifically, reports requested from forensic medical services or a legal medical specialist must also include an expert opinion to examine signs of any form of violence or abuse. A forensic examination should be conducted for cases in which the alleged victim claims to be a minor, as well as for cases in which there are reasons to believe that he or she may be a minor (despite whether the victim claims to be of legal age).

37. Cases in which State Security Forces detect any minor, accompanied or unaccompanied, trying to illegally access Spanish territory in small boats risking their physical wellbeing, constitute a risk and must be immediately brought to the attention of the Public Prosecutor's Office and the appropriate regional child protection agency.

38. The lack of action protocols involving all of the responsible departments of the Public Administration leads to the absence of early detection of minors, and places them in an at-risk situation. The lack of police records

that include data to effectively identify minors exacerbates this situation.

39. Weaknesses have also been identified in the monitoring of trafficked minors born in Spain to human trafficking victims. Victims were detected trying to illegally access Spanish territory while in advanced stages of pregnancy. It has been demonstrated that merely registering these children is not enough to monitor the situation.

40. The Ombudsman Institution expresses its concern over the lack of common action protocols between the regional child protection agencies regarding the detection of trafficked minors. Under the framework of the respective competencies of the autonomous communities, there is a lack of protocols that permit effective detection of child trafficking victims within specific regions. In addition, there is no network of specialized residential facilities to allow the victims to be transferred within national territory according to their individual protection needs.

41. Deficiencies have been detected in coordinating mechanisms between child protection agencies and provincial prosecutors. Therefore, those in custody of a given minor may not be aware of the status of the criminal proceedings in which the victim is involved. Subsequently, it cannot be guaranteed that all necessary measures are taken to prevent re-victimization during the criminal procedure.

## **V. RECOMMENDATIONS**

### **1. To the Ministry of Labor and Social Security**

Amend Article 140 of the Regulation implementing the Organic Act 4/2000, approved by the Royal Decree 557/2011, in order to comply with the legal mandate of paragraph 6 of Article 59 bis. This paragraph sets the conditions to allow for collaboration with nongovernmental organizations, which are non-profit and work to assist and protect trafficking victims.

—To the Office of the Undersecretary for Labor and Social Security

Expedite work on the publication of the Plan to Combat Human Trafficking for the Purpose of Labor Exploitation and its joint instruction from the Office of the Secretary of State for Security and its undersecretary. This instruction should lay out guidelines for collaboration between the Labor and Social Security Inspection Agency, and State Security Forces, in their monitoring of labor, immigration and Social Security.

—To the Office of the Secretary General for Immigration and Migration

Issue instructions to regulate the procedures to process and grant residence and work authorizations for exceptional circumstances based on the personal situation of the victim. These instructions should provide clear guidelines on the participation of organizations specialized in assistance to trafficking victims. Participation should be by means of issuance of a report on the personal situation of the victim.

### **2. To the Ministry of the Interior**

— To the Office of the Undersecretary of the Interior

a) Revise procedural criteria followed by the Asylum and Refugee Office for international protection requests in which the applicant alleges to be suffering from conditions of human trafficking or the UNHCR expresses that the applicant shows signs of human trafficking.

b) Issue joint instructions together with the Office of the Secretary of State for Security designed to fill gaps in the coordination of two aspects: Cases in which human trafficking indicators are detected during the processing of an international protection application, and cases in which an asylum seeker and potential trafficking victim is transferred to Spain under the application of the Council Regulation (EC) 343/2003.



— To the Office of the Secretary of State for Security

a) Set up a specific database that registers all undocumented minors detected by the police when attempting to illegally access national territory. Adopt, when appropriate and with authorization by the Public Prosecutor's Office, the necessary measures to verify the legal relationship between the minor and the adult(s) with whom they travel.

c) State Security Forces responsible for boarder control should increase efforts for the persecution of the crime of human trafficking. These increased efforts should pay special attention to potential victims that are detected at the national boarder and to the persecution of offenders of this crime regardless of whether they were located in Spanish territory. International cooperation among police is essential for these efforts.

d) Review the procedure set up to offer the recovery and reflection period, in light of the results obtained, and evaluate the need to include the legitimate participation of organizations specialized in identifying victims. Likewise, authorities should consider distinguishing this procedure in two distinct phases: the first of which focuses on providing the necessary measures to allow the victim to recover. Only when the objective of this first phase has been met can the second phase be addressed. In the second phase, the victim should decide whether to cooperate with authorities.

e) Increase training modules on human trafficking for officials of State Security Forces, incorporating a multidisciplinary approach.

f) Set up mechanisms to improve the quality of human trafficking victim data provided by the Center for Intelligence to Combat Organized Crime (CICO).

g) Strengthen coordinating protocols between the General Directorates of Police and the Civil Guard as well as between the autonomous police responsible for the investigation of human trafficking crimes. These improvements should address deficiencies identified in cases that involve undocumented third country nationals who are victims of trafficking.

### **3. To others**

—To the Office of the Secretary of State for Social Services and Equality and to the competent authorities in the regional autonomous communities and cities.

Promote the development of a national protocol for the detection and protection of child trafficking victims under the existing coordinating bodies of the autonomous communities and the General State Administration. This protocol should include among other elements, a list of indicators of human trafficking tailored to the specific circumstances of minors. Also, there should be effective procedures that allow identified minors to be transferred, for security reasons, within national territory to residential facilities that best suit their needs.

—To the Attorney General’s Office and to the competent authorities in the regional autonomous communities and cities.

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

—To the Attorney General’s Office and the Ministry of the Interior’s Directorate General of Police and the Autonomous Community of Andalusia Government Department of Health and Welfare.

When authorities detect any minor, accompanied or unaccompanied, attempting to illegally access Spanish territory in small boats through either of the two ports on the Andalusian coast, they should activate an identification protocol. This protocol should include immediate measures for police identification of each of the minors, as well as indications regarding the need to verify the legal relationship between minors and the adult(s) with whom they are traveling. In addition, data for both the minor and the adult (including information regarding where they will be transferred) must be immediately brought to the attention of the Public Prosecutor’s Office and the appropriate regional child protection agency. Once they are referred to a humanitarian care center, the regional child protection agency, under the supervision of the public prosecutor, should initiate a risk assessment of the minor until the legal relationship with the adult who is accompanying them is confirmed. The birth of the minor should be registered, together with all necessary measures taken in the interest of the minor.